

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 1480/98

New Delhi, this the ^{95th} day of August, 2000

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HON'BLE MR. KULDIP SINGH, MEMBER (J)
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

Shri Rakesh Kumar (979/DAP), S/O Sh.
D.R.Tyagi, R/O D-13, Gali No.2, Khajuri
Khas Colony, Delhi - 110 094.

.....Applicant

(By Advocate: Sh. Shyam Babu)

Versus

1. Commissioner of Police, Delhi,
Police Headquarters, I.P.Estate,
New Delhi - 110 002.

2. Sr. Addl. Commissioner of Police
(AP&T), Police Headquarters,
I.P.Estate, New Delhi - 110 002.

....Respondents

(By Advocate: Sh. Rajinder Pandita)

O R D E R

Hon'ble Mr. S.A.T. Rizvi, Member (A):

The applicant, a Constable in Delhi Police, has come up in his OA against three different orders respectively dated 18.6.96, 13.6.97 and 26.9.97 (Annexure-A, B & C). By means of the order dated 18.6.96, the Appellate Authority has scaled down the punishment of removal inflicted on the applicant to withholding of just one increment for a period of two years on a permanent basis. Earlier, he was punished with removal from service by the competent authority vide orders dated 12.3.96. The order dated 13.6.97 is the order of rejection of the revision petition filed by the applicant before the Commissioner of Police, Delhi (Respondent No.1). The 3rd order dated 26.9.97 is an Addendum which seeks to amend the aforesaid order dated 18.6.96 by inserting a few lines about the period of absence and the period of suspension of the applicant.

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2. A perusal of the OA reveals that it relates to a long standing matter which started taking shape early in 1991. As per the facts of the case brought out in the OA, it seems that in the compelling circumstances relating to the illness of his wife, the applicant had, way back on 31.12.90 applied for 90 days' EL, which was rejected despite the fact that the concerned Inspector and the Asstt. Commissioner of Police had both recommended the case of the applicant for 70 days' EL. Since, the competent authority for the grant of leave, namely, DCP, 6th Bn. had not responded in the matter, the applicant was, in the first instance, after a short leave of 5 days supposed to report back for duty on 7.1.91 but he did not do so and instead requested for extension of leave for 90 days by means of a Telegram/ Regd. letter. Meanwhile, the applicant's wife was admitted in Lok Nayak Jay Prakash Narain Hospital (LNJP), New Delhi on 13.1.91, where the very next day, she gave a birth to a male child on 14.1.91. Following this, the applicant again requested for extension of leave on 29.1.91. His contention is that it was for the first time on 31.1.91 that he received an Addendum Notice and also information to the effect that his request for 90 days' EL had been rejected. He had to extend leave further on account of the continued illness of his wife. However, he received an Addendum Notice dated 14.2.91 once again conveying that his leave for 90 days EL had been rejected. Subsequently, on 26.2.91, a departmental enquiry was initiated against him. The E.O. gave his report on 4.7.91 holding that the charge of unauthorised absence levelled against the applicant stood proved. In

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the meantime, the applicant had already challenged the initiation of the departmental enquiry against him in this Tribunal by filing OA-1796/91. The EO gave his report in the ongoing departmental proceedings during the pendency of the said OA, and the applicant was removed from service by the disciplinary authority on 14.5.92. The OA-1796/91 was accordingly amended. The amended OA was decided by this Tribunal on 2.11.95, setting aside the impugned order dated 14.5.92 removing the applicant from service and also quashing the appellate order dated 25.4.92. This Tribunal, however, at the same time permitted the disciplinary authority to resume the departmental proceedings and to complete the same from the stage of giving the applicant an opportunity to file his defence statement and to adduce evidence in his defence. The disciplinary authority accordingly resumed the departmental enquiry by order dated 15.1.96 and, after going through the prescribed drill, the said authority once again by order dated 12.3.96, removed the applicant from service and the period of his absence from 7.1.91 to 7.6.91 together with the period of suspension from 14.5.92 till the date of issuance of the punishment order was treated as not spent on duty. The applicant went up in appeal against this order and, as already stated in the beginning, the punishment imposed was scaled down to withholding of just one increment for a period of two years on a permanent basis. Thereafter, the revision petition filed by the applicant met the fate, already pointed out. The mercy appeal filed by the applicant before the Commissioner of Police on 19.9.97 was also rejected. About the Addendum dated 26.9.97, the

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applicant has expressed his surprise inasmuch as, according to him, the order dated 18.6.96 which the said Addendum sought to modify, had already become final and binding consequent upon the rejection of the applicant's revision petition by the Commissioner of Police on 13.6.97. According to him, the Sr. Addl. Commissioner of Police had no authority whatsoever under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980 or under any other rule to issue the said Addendum dated 26.9.97. The ground taken by the applicant is that when he applied for 90 days' EL, sufficient amount of leave, totalling about 240 days, was already available in his leave account and so it should not have been difficult for the competent authority to sanction the leave applied for, particularly since the Inspector as well as Asstt. Commissioner of Police both had recommended 70 days' EL as a special case w.e.f. 4.1.91. According to him, the respondents have also ignored the provisions of Rules, 25 of C.C.S (Leave) Rules, which provide for sanctioning of half pay leave and also extra-ordinary leave. Referring to the decision taken by the Govt. of India under the said Rule 25, the applicant has rightly pointed out that if the disciplinary authority was satisfied that the grounds advanced for unauthorised absence, were justified, the leave of the kind applied for and due and leave admissible should have been granted to him. The competent authority has ignored the contents of this decision of the Govt. of India. The applicant has stressed that there was no allegation of wilful absence in his case and, therefore, even to begin with, in terms of Rule 25 (2) of C.C.S. (Leave)

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Rules, he should not have been proceeded against departmentally. He has, in this connection, drawn attention to what the Appellate Authority himself had to say in his order dated 18.6.96. The applicant has also raised the issue of the order dated 18.6.96 and the order dated 30.6.97 being passed by one and the same person, namely, Sh. T.R.Kakkar, who was the Addl. Commissioner of Police on the first date and had become Commissioner of Police at the time of considering (30th June, 1997) the revision petition filed by the applicant. The applicant's contention is that while passing orders in the revision petition, the same Officer (Sh. T.R.Kakkar) did not care to see the order passed by him in appeal.

3. In the counter filed by the respondents, the facts and the circumstances covered are, by and large, on the same lines as given in the OA and to which, a reference has been made in the proceeding paragraphs. The contention of the applicants based on the various rules referred to in the proceedings paragraphs has not been accepted by the respondents, however. In respect of the Addendum dated 26.9.97, it has been stated that the applicant had filed an application on 11.9.97 for the grant of benefit for the period of suspension, and that the same was forwarded to the Sr.Addl. Commissioner of Police/Appellate Authority, who issued the said Addendum and that he had a right to do so. The respondents have admitted that the applicant had appeared before the D.C.P., 6th Bn./Disciplinary Authority on 1.1.91, when he was told that firstly he would be granted CL and thereafter EL would be granted to him as and when his

wife was admitted in the Hospital and, for this purpose, the applicant was required to produce the admission card of the Hospital. The respondents have also stated that the applicant used to frequent the Line Complex of 6th Bn. for collecting pay and for attending the DE proceedings and was, therefore, in a position to resume his duties much before he actually did.

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4. In his rejoinder, the applicant has vehemently stressed that it would be wrong to say that the applicant had committed gross carelessness, negligence and dereliction in the discharge of his official duties. He has reiterated the observations made by the Appellate Authority point out once again that the absence of the applicant from duty could not be termed wilful in any case, and that the applicant was really compelled by the circumstance of serious illness of his wife to stay away from work. Stressing that the Inspector as well as the Asstt. Commissioner of Police both had duly recommended 70 days' EL, he has emphasised once again that rejection of his leave resulted in miscarriage of justice. He has denied that he used to attend the Line Complex of the 6th Bn. frequently and has claimed that since he used to attend the departmental enquiry proceedings, it would be incorrect to say that he remained absent from duty.

5. We have heard the learned counsel for both the parties and have perused the records. We have come across a few problems in accepting the orders passed by the respondents. Firstly, we have clearly felt that the applicant proceeded on leave and remained on leave,

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whether granted or not, on the genuine ground of illness of his wife, and inasmuch as the Inspector and the Asstt. Commissioner of Police both had recommended the grant of 70 days EL in favour of the applicant, the disciplinary authority should have considered the matter properly giving weightage to the recommendations made by the Officers below and should not have rejected the leave application in the manner he did. We have also considered the implications of Rule 8 (a) of Delhi Police (P & A) Rules, 1980. In accordance with this rule, the punishment of removal from service could be awarded only for an act of grave misconduct which renders the charged official unfit for police service. There is no evidence on record to show that the applicant had committed a misconduct of such a grave nature as to render him unfit for police service. All that he did was to ask for leave on grounds which were genuine and it was the sanctioning authority who has been found wanting in bestowing proper care on the legitimate and felt needs of the official below. In the legitimate and felt needs of the official below. In holding this view we incidentally have the support of the Appellate Authority/ Sr. Addl. Commissioner of Police, who has, in his order dated 18.6.96, mentioned as follows:-

.....His past record also has only the punishment drills and warning and, therefore, it is fairly clean record. I am, therefore, inclined to take a sympathetic view and I wish the DCP had also some consideration for his ailing wife and had granted him leave unless of course all kinds of leave had been stopped during that period. Considering all these facts, I am inclined to take a lenient view and order that he be reinstated in service. But for remaining absent

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despite non-sanction of leave, his next one increment is withheld for a period of two years permanently. The order of the disciplinary authority is set aside." (9)

6. Further, a perusal of the Govt. of India's order recorded below, F.R. 17-A, to which our attention has been drawn by the learned counsel for the applicant, shows that the period of unauthorised absence in the case of individual employees can lead to break in service etc. in the manner provided in F.R. 17-A only if such an order is passed after giving a reasonable opportunity of representation and of being heard in person to the affected employee in accordance with principles of natural justice. Thus, in agreement with the plea advanced by the learned counsel for the applicant, we hold that the Addendum dated 26.9.97 treating the period of absence of the applicant and also the period of his suspension as period not spent on duty, has no legal basis on the ground that no opportunity was separately given to the applicant to state his case against this punishment. As regards, Sh. T.R.Kakkar figuring both as the Sr.Addl. Commissioner of Police/ Appellate Authority and later again as the authority competent to entertain revision petition in his capacity as the Commissioner of Police to which our attention has been drawn by the learned counsel for the applicant, we do not feel inclined to agree with the contention that one and the same person could not so figure. We would nevertheless like to advise the respondents to evolve an appropriate procedure, so that such events do not recur and one and the same person is not called upon to act both as the

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Appellate Authority as well as the authority competent to entertain revision petitions in future.

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7. In the result, the OA succeeds and is allowed and all the three impugned orders, namely, orders dated 18.6.96, 13.6.97 and 26.9.97, passed by the respondents, are quashed and set aside. The respondents will sanction leave for the period of the applicant's absence in accordance with extant rules on the subject and will also give an opportunity to the applicant to state his case before the orders are passed. The action in respect of the period of suspension will also follow the same course.

8. There shall be no order as to costs.

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(S.A.T.Rizvi)
Member (A)

Kuldeep Singh
Member (J)

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