

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1892 of 1998

New Delhi, this 5th day of April, 2000

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

Ex-Constable Vinay Kumar No.9702/DAP
S/o Shri Umed Singh
R/o Vill & PO Rohat, Dist. Sonapat
Haryana.

...Applicant

(By Shri Shankar Raju, Advocate)

versus

1. Union of India, through

The Secretary
Ministry of Home Affairs
North Block
New Delhi.

2. Commissioner of Police
Police Head Quarters
I.P.Estate
New Delhi.

3. Sr. Addl. Commissioner of Police
A.P.&T.
Police Head Quarters
I.P.Estate
New Delhi.

4. Dy. Commissioner of Police
8th Bn., D.A.P.
Kingsway Camp
Delhi.

...Respondents

(By Shri Anil Kumar Chopra, Advocate)

Order (Oral)

By Reddy, J.

The applicant was working as Constable in Delhi Police. He proceeded on leave on 7.2.1995 and was due to come back on 13.2.1995 but he did not resume his duty and thus absented himself without intimation to the competent authority. He again absented repeatedly and he resumed duty only on 13.5.1995. On the ground of unauthorised absence, a departmental enquiry had been held against the applicant and the applicant was

removed from his service by the impugned order dated 19.8.1996. The appeal filed by the applicant was also rejected by order dated 19.5.1997. A revision petition also was filed and the same was also rejected by order dated 27.7.1998. The OA was filed challenging the above order by which the applicant was removed from service.

2. Heard the learned counsel for the applicant and the respondents and perused the pleadings carefully. The main contention that is advanced in this case is that the period of unauthorised absence from 13.2.1995 to 30.5.1995 having been treated as "leave without pay", the alleged misconduct of unauthorised absence would no longer exist. It is contended that the applicant is entitled for exoneration of the charges levelled against him.

3. We are of the view that the above contention has to be accepted. In the impugned order passed, the disciplinary authority itself states that unauthorised absence from 13.2.1995 to 30.5.1995 was treated as "leave without pay". The only misconduct that was alleged against the applicant was that of unauthorised absence for the above period. Now the said period having been regularised treating the period as "leave without pay", no misconduct would still exist. When the misconduct does not exist, the applicant cannot be punished again for the misconduct of unauthorised absence. The ratio in State of

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Punjab Vs. Bakshish Singh 1998 (8) SCC p.222 has straightaway to be applied to the facts of the case and the OA has to be allowed. The OA is accordingly allowed. The respondents are directed to reinstate the applicant in service within three months from the date of receipt of a copy of this order, paying 50% back wages.

No order as to costs.

Shanta Shastri
(Mrs. Shanta Shastri)
Member(A)

V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice Chairman(J)

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