

(11)

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 2485/98

New Delhi this the 4th day of January, 2001

Hon'ble Mr. V.K. Majotra, Member (A)
Hon'ble Mr. Shanker Raju, Member (J)

Shri Brij Gopal,
Head Constable, No. 458/PCR
Delhi Police, Police Station Hauz Khas,
New Delhi.

-Applicant

(By Advocate: Shri B.S. Charya with
Shri Gurbeer S. Charya)

Versus

1. The Commissioner of Police,
Delhi Police, MSO Building,
Police Headquarters, New Delhi.
2. The Addl. Commissioner of Police,
Police Control Room, Police Headquarters,
Delhi.
3. Union of India,
Ministry of Home Affairs,
Government of India,
New Delhi through its Secretary

-Respondents

(By Advocate: Shri Vijay Pandita)

ORDER (Oral)

Shri Shanker Raju, Member (J)

The applicant, a Head Constable, working in Delhi Police has impugned an order of punishment whereby the Disciplinary Authority awarded him a major punishment of forfeiture of five years approved service permanently with proportionate reduction in pay and with-holding of increment and also the period of suspension was treated as not spent on duty on appeal. The applicant has also challenged the Appellate order dated 10.8.98 whereby the punishment awarded to him by the Disciplinary Authority has been reduced to forfeiture of three years approved service permanently with consequent

reduction in pay and increments. The decision regarding suspension period has been maintained by the Appellate Authority.

2. The brief facts of the case are that the applicant has been allowed 5+4 days Casual Leave w.e.f. 2.5.97 and was to resume his duty on 12.5.97. The applicant failed to join duty on the specified date as such he has marked absent and according to Respondent No.4 absentee notices have been sent to his native place but without any avail. The applicant resumed his duties on 18.7.97 after allegedly absenting himself for a period of 67 days. The applicant was placed under suspension on 17.7.97 and a departmental enquiry was ordered against him for his wilful and unauthorised absence for a period of 67 days. In the summary of allegation, it has been alleged that the medical record submitted by the applicant was found unconvincing and as he had not sent any intimation he is guilty of grave misconduct. The previous bad record of the applicant was also recokned by the Enquiry Officer.

3. Admittedly, the applicant submitted his medical report at the time of resuming duty. The three medical certificates were issued from Assistant Medical Officer of Government Dispensary at his native place Bilwar (M.P.). Before that the applicant has examined one Gulab Singh as DW-I who proved an information given to the competent

13

(3)

authority of the applicant on 28th or 30th May 1997. This witness was not cross-examined by the Enquiry Officer.

4. The Enquiry Officer through his finding dated 4.11.97 substantiated the charge against the applicant by observing as under:-

"The DW-1 and the statement of DW-2, they tried to prove that HC Brij Gopal has given the intimation to the department regarding his illness and absence through a person but the same are unreliable because he knew that he was due back on 12.5.97 to resume his duty and he contacted the DW-1 on 20.5.97 for intimation. He served in the department for a quite long time thus he knew that on or before the date of his arrival for resuming his duty he has to inform the department but he failed to do so and also he has been given punishment 7 times for such absents. The defence statement of the defaulters also seems to be an eye wash and nothing could be extracted from it in his favour".

5. The Disciplinary Authority vide an order dated 17.1.98 imposed the major punishment and treated the period of suspension as not spent on duty. The medical report of the applicant has been discarded on the ground that the applicant failed to give prior intimation to the concerned authorities and the same was managed one. The Disciplinary Authority has also stated that the medical certificates were produced on return of the applicant and as such the same would have no weight and are liable to be ignored. As regards the intimation given to the competent authority, the Disciplinary Authority discarded the same on the ground that the defence witness had gone to deliver


the letter on 28th or 30th May 1997 but the applicant was supposed to resume his duties on 12.5.97. This piece of evidence has been set-aside on the ground that two absentee notices have been sent to the applicant at his residence and were returned back as undelivered as the applicant was not found. From these circumstances the Disciplinary Authority construed that the applicant was not actually bed ridden but was engaged in some other activities. The Disciplinary Authority has also referred to one of the absentee notices where according to him the remarks were regarding the refusal by the applicant to accept the notice.

6. The Appellate Authority has also agreed with the findings recorded by the Disciplinary Authority but deviated when it comes to the proportionality of punishment and feeling that the punishment is excessive reduced the same.

7. Learned counsel for the respondents in his reply contended that the applicant had never sent any information regarding his alleged sickness and mere procurement of medical certificate would not confer upon him a right to avail leave. It has been further averred that the medical record is an after thought to cover his unauthorised absence. According to the respondents, the past record has also reflected the applicant as a habitual absentee. Another plea has been taken by the respondents regarding grave misconduct and that the Disciplinary Authority had already given a lesser punishment.

8. We have carefully heard both the counsel and perused the available record.

9. It is an admitted fact that the applicant had proceeded to avail 5+4 days Casual Leave after duly granted by the respondents and on account of his illness, he has been suffering from Typhoid and Jaundice. He sent an information to the Department to one of his relative PW-1 Gulab Singh through one letter. In the course of enquiry, the said information has not been refuted or doubted by the Enquiry Officer. Rather, it has been stated by the Enquiry Officer that as the applicant had to resume his duties on 12.5.97, this information could have been sent prior to that date. In our view, this finding of the Enquiry Officer clearly establishes that an information was sent by the applicant and was existing on the departmental record. As this information regarding the illness of the applicant was available with the department they, in case of any doubt to the genuinity on the ground of illness of the applicant, could have sent a letter for second medical examination to the applicant as per rule 19(3) of the CCS(Leave) Rules, 1972. We have carefully gone through the record of the enquiry and the averments made by the respondents' counsel and found that no notice for second medical examination has been sent to the applicant. In that event, the respondents being non-medical authority could not been legally entitled to comment upon the medical record of the



15-A

applicant which has been issued from a Government hospital and admissible as per Rule-19 (1) of CCS(Leave) Rules, 1972. In the instant case, a^h Disciplinary Authority in his order observed the medical record was manipulated and procured one on the ground that they have been deprived of an opportunity for seeking second medical opinion and also on the ground that the medical record has been tampered by the applicant at the time of resuming duty. In our view, in absence of sufficient evidence,^h the procedure adopted by the Disciplinary Authority with regard to the verification of medical certificate by subjecting the applicant to second medical examination is absolutely perverse, arbitrary and is not legally sustainable.

10. We find that the medical record of the applicant was already accepted in the departmental record and has been exhibit^hed by PW-2 HC Brij Bhushan an absented clerk. The Enquiry Officer has not at all taken into consideration the medical record of the applicant and rather heavily relying upon the previous bad record proved the charge against the applicant. The defence documents produced by the applicant and the defence evidence examined by the applicant is not at all taken into consideration by the Enquiry Officer. In our view, the Enquiry Officer has passed the finding without application of mind and the same is not legally sustainable as per rule-16(a)^h of Delhi Police (Punishment & Appeal) Rules, 1980. The Enquiry Officer was himself in doubt while coming to the

13

(7)

conclusion and also the charge was based on mere probabilities absolutely unmindful of the defence of the applicant. The same would not be legally sustainable. We are fortified in this view of ours by ratio laid down of Hon'ble Delhi High Court in Budh Singh Vs. Delhi Vidyut Board and another 2000 (3) AISLJ 224.

11. In the result, we find from the record that the information of the applicant in his medical record and other defence contentions have been rejected arbitrarily by the departmental authorities without any justified reasons. The impugned orders are perverse and without application of mind. In our considered view, the applicant has complied with the requisite procedure by giving an information and submitting the medical record. We feel that in these circumstances the absence of the applicant was neither wilful nor unauthorised but on account of his sickness supported by valid medical record.

12. In the result, OA is allowed. The impugned orders of penalty dated 17.1.98 and the Appellate Order reducing the punishment at Annexure P-2 dated 10.8.98 are quashed and set aside. As a result, the respondents are directed to restore to the applicant his reduced pay and with-held increment and also to treat the period of suspension as spent on duty in accordance with rules and instructions. No costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Member (A)

cc.