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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 2499/98

New Delhi : this the 15 day of October, 1999.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE MR. KUL DIP SINGH, MEMBER (J).

Ex. Constable Prem Pal, No. 11513/DAP,
10th Bn. Delhi.

R/o Village & Pauri,
Aroni,
Distt. Bulandshahr (UP) Applicant.

(By Advocate: Shri S. K. Gupta)

Versus

1. Govt. of NCT of Delhi,
through
Chief Secretary,
5, Sham Nath Marg,
Delhi-054.

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

3. Sr. Addl. Commissioner of Police,
(AP & T),
Police Head Quarters,
I.P. Estate,
New Delhi.

4. Deputy Commissioner of Police,
10th Bn. DAP,
Pitam Pura,
New Delhi Respondents.

(By Advocate: Shri Ajesh Luthra)

ORDER

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

Applicant impugns the disciplinary authority's order dated 26.9.97 (Annexure-A2) and the appellate authority's order dated 23.3.99.

2. Applicant was chargesheeted on the ground that he absented himself wilfully and unauthorisedly from duty

on 9.10.95 and did not report back for duty till 5.1.96 despite absentee notices. He was also arrested in case FIR No. 98/95 under section 364-A/420/34 IPC P.S. Chitranjan Park for which he was placed under suspension vide order dated 10.1.96.

3. The Inquiry Officer in his report dated 26.6.97 (Annexure-A1) held the charge of wilful and unauthorised absence from duty as proved. A copy of the Inquiry Officer's findings was furnished to applicant for representation, if any. After going through applicant's representation and the other materials on record, the disciplinary authority by impugned order dated 26.9.97 imposed upon applicant the penalty of withholding 3 years' increment with cumulative effect. He also directed that the period of unauthorised absence from 9.10.95 to 5.1.96 be treated as leave without pay. His suspension period from 6.1.96 to 14.1.97 was already decided as not spent on duty vide respondents' order dated 29.7.97.

4. Against the disciplinary authority's impugned order dated 26.9.97, the Sr. Addl. Commissioner of Police under the provision of Rule 25 B Delhi Police (P & A) Rules issued show cause notice to applicant on 21.11.97 as to why he should not be removed from service. Applicant submitted his reply on 22.12.97 upon which after going through the materials on record and giving applicant a personal hearing the Sr. Addl. Commissioner of Police by his order dated

2.2.98 set aside the disciplinary authority's order dated 26.9.97 and confirmed the show cause notice thereby removing applicant from service. He also directed that the absence period from 9.10.95 till 7.8.96 be treated as leave without pay.

5. Against that, the applicant filed an appeal to the Commissioner of Police (Appellate Authority) which was rejected by order dated 23.3.99.

6. We have heard applicant's counsel Shri S.K. Gupta and respondents' counsel Shri Luthra.

7. Various grounds have been taken by Shri Gupta. One important ground taken is that the disciplinary/appellate authority having themselves directed regularisation of the absence period by grant of leave without pay, the charge itself does not survive. Reliance is placed by Shri Gupta on the Hon'ble Supreme Court's decision in State of Punjab Vs. Bakshish Singh J.T. 1998(7) SC 142 and the Delhi High Court's decision in S.P. Yadav & Ors. Vs. UOI & Ors. 71(1998) Delhi Law Times 68. The Tribunal has also in OA No. 2223/95 decided on 13.1.99, held that once the period of unauthorised absence for which the person is departmentally proceeded against, is regularised by grant of leave of any kind, no penalty can be imposed for that unauthorised absence.

8. In the light of what has been stated above, the OA succeeds and is allowed. The impugned orders are set aside. Respondents are directed to reinstate applicant within one month from the date of receipt of a copy of this order, without prejudice to such

action as may be taken against him by respondents in accordance with law in respect of a charge other than that of unauthorised absence. Upon reinstatement applicant shall be entitled to such consequential benefits as will be determined by respondents in accordance with rules, instructions and judicial pronouncements. No costs.

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(KULDIP SINGH)
MEMBER(J)

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(S. R. ADIGE)
VICE CHAIRMAN (A).

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