

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 400/1998

New Delhi, this the 12th day of January, 2001

(16)

HON'BLE MRS. LAKSHMI SWAMINATHAN, VICE CHAIRMAN (J)
HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

Ex. Constable Surender Kumar,
No. 7448/DAP,
S/o Shri Tara Chand,
R/o Village Nangal Kheri,
Post Office Vayas Project Sibhah
Teh & Distt Panipat
Haryana Applicant
(By Advocate : Ms. Vaishalee Mehra, proxy
counsel for Mrs. Anish Ahlawat)

VERSUS

Union of India through

1. The Commissioner of Police,
Police HQrs, Delhi Police
M.S.O. Building,
I.P. Estate, Delhi.
2. Senior Addl. Commissioner of Police
AP&T, Delhi, M.S.O. Building,
I.P.P. Estate,
Police Hqrs, Delhi Police,
Delhi
3. Dy Commr. of Police (6th Bn)
DAP, Kingsway Camp, Police Lines,
Delhi Respondents
(By Advocate : Mrs Meera Chhibber)

O R D E R (ORAL)

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

We have heard the learned proxy counsel for the applicant further and Mrs. Meera Chhibber, learned counsel for the respondents and have passed the following orders on 12.1.2001:-

"Learned proxy counsel for the applicant has handed over a copy of the written synopsis on behalf of the applicant with Judgements on which she is relying which is taken on record. She has also handed over a copy of the same to Mrs. Meera Chhibber, learned counsel for the respondents.

Learned proxy counsel for the respondents has handed over a copy of Standing Order No.111 for our perusal.

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For reasons to be recorded separately, the O.A. is dismissed without any order as to costs." 

2. We now proceed to record our reasons in support of the above order.

3. On being charged for unauthorised absence on four different occasions during the period from 24.12.1994 upto 1.11.1995 and without obtaining prior permission of the competent authority as required in the Standing Order No. 111, and for habitual absence reflected in his service record detailing 10 different occasions of absence, the applicant in this OA has been proceeded against departmentally in accordance with the prescribed rules and has been dismissed from service vide Disciplinary Authority's order dated 9th April, 1996 (Annexure-A). The aforesaid order was carried in appeal and later in revision. However, on both these occasions, the order passed by the Disciplinary Authority has been up-held/affirmed. The respective orders are dated 28.6.1996 and 25.6.1997 (Annexures 'B' & 'C').

4. The Learned counsel appearing for the applicant has, in short, contended that the absence of the applicant on each occasion, out of the four for which he has immediately been charged, stands suitably and properly explained, and each absence is also supported by medical certificates as required and, therefore, the order of dismissal passed is perverse and deserves to be thrown out. The Learned counsel has

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also alleged malafide on the part of a certain official who, it is alleged by the applicant, kept the applications/certificates of the applicant pending without getting the leave duly sanctioned in favour of the applicant on each occasion. She has further contended that inclusion of the past ten absences in the charge memo was unfair in that, according to the record, the applicant was granted leave on all such occasions or the matter was otherwise decided by the competent authority. She has, in this context, relied on the Judgement of Supreme Court in State of Punjab & Others versus Bakshish Singh, reported as 1998 (7) J.T. 142, and has gone on to argue that if the charge memo is viewed in the background of the aforesaid decision rendered by the Supreme Court, the second charge, namely, that of previous ten absences, would seem to evaporate, leaving just one charge of unauthorised absence, on four different occasions, already referred to. Viewed thus, according to her, the punishment imposed on the applicant would, even if he is held guilty of the aforesaid four absences in accordance with the charge memo, seem to be excessive.

5. The Learned counsel appearing for the respondents has contested each and every contention raised by the Learned counsel for the applicant. Firstly, she has drawn our attention to the decision of the Supreme Court in the State of M.P. Vs Harihar Gopal, reported as (1969) SLR 274 ^{2 on the strength of 2} in which the decision of Supreme Court in Bakshish Singh's case (supra) ^{2 field 2} cannot be said to hold the ~~ground~~. The Learned counsel

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has also drawn our attention to Deputy Commissioner of Police Vs Ex-Constable Karan Singh & Anr. decided by the Hon'ble High Court of Delhi on 18th April, 2000, in which the Learned Court has held as follows:-

"The judgement of the Supreme Court in Bakshish Singh's case is per incuriam and does not over rule nor differentiate the judgement in Harihar Gopal's case. In this view of the matter, we are of the opinion that the order of termination does not suffer from any illegality and that the regularisation of leave without pay is only for purposes of maintaining correct record of service which does not interfere with nor obliterate the order of dismissal from service."

6. Going into the details of the conduct of the applicant during the period he remained on unauthorised absence, the Learned counsel for the respondents points out that after proceeding on five days Casual Leave on 19.12.1994, the applicant returned only on 18.1.1995 after remaining absent unauthorisedly for more than 26 days. He produced a medical certificate of his illness (pain in his waist) issued to him by the CGHS Dispensary at Kingsway Camp, Delhi. The aforesaid dispensary is not far from the Bn. HQrs. However, the applicant did not bother to inform the authorities personally nor did he care to obtain their timely permission for medical rest. In respect of his absence from 28.2.1995 to 19.4.1995, the applicant, according to the learned counsel, has submitted two applications, one on 19th April, 1995 and another on 26th April, 1995. In the first application aforesaid the applicant has stated the ground of his own illness, while in the other he has stated the ground of construction of his house. Thus, according to the learned counsel, the

applicant has taken mutually contradictory stands in regard to the aforesaid period of unauthorised absence. The third period of the applicant's absence extends from 19.7.1995 to 14.8.1995. During this period, he remained absent unauthorisedly for more than 18 days. According to the applicant, his child was seriously ill during the aforesaid period. However, this version is not supported by a proper medical certificate. The fourth period of absence relates to the period from 16.9.95 to 1.11.1995. According to the applicant, during the aforesaid period, his wife remained unwell as she had undergone Family Planning Operation on 16.9.1995. In accordance with the Rule, according to her, in the absentee notices served on the applicant, he was directed to report to the Civil Surgeon, Civil Hospital, Muzaffar Nagar and Panipat respectively for medical examination, but he failed to do so.

7. In regard to the contention of malafide raised by the Learned counsel for the applicant, the respondents have stated that since the applicant was in the habit of absenting himself frequently, decisions on his various applications/certificate were kept pending not by a lower functionary as contended by the applicant, but by the competent authority himself. The intention was to take a decision in all the cases on a consolidated basis.

8. The Learned counsel for the respondents has stressed that the applicant has not submitted any medical treatment papers in respect of his wife and the

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child to cover his absence on account of their respective illnesses. The pleas advanced by the applicant in respect of the aforesaid periods of leave are thus untenable and deserve to be rejected.

9. According to the Learned counsel for the respondents, the applicant cannot make any capital out of his contention that the absentee notices were not received by him. No doubt, the concerned official, according to the enquiry report, did not have record to show that the absentee notices were received by the applicant, but the same cannot be interpreted to mean that the absentee notices were indeed not received by the applicant. Further, according to the learned counsel, having remained absent without prior sanction of leave, not on one occasion, but on as many as four occasions, the applicant is supposed to have been fully aware of the penal consequences likely to follow. He cannot shelter himself behind the plea that absentee notices were not received and, therefore, he had nothing to explain.

10. In regard to the plea of the applicant's own illness, the learned counsel for the respondents has pointed out that in accordance with the enquiry report, the applicant visited the CGHS dispensary aforesaid on four different occasions, but he never found enough time to visit the respondents' office at a stone's throw from the dispensary for giving information about his illness and for obtaining necessary permission in accordance with the standing order No. 111. Since the

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applicant was not bed ridden, he should have personally visited the respondents for obtaining their permission. The worst part, according to the learned counsel, is that the applicant did not even try to send any information through post either. This, according to her, discloses an irresponsible and an indifferent attitude on the part of the applicant.

11. In the background of the above discussions, the learned counsel for the respondents has vehemently argued that the applicant in this OA has availed leave in each case, out of the four different occasions aforesaid, for which, inter alia, he stands charged, in a totally unauthorised manner and without observing the rules and regulations concerning the grant of leave. He has done so deliberately and in total defiance of the authority of the respondents. The applicant's action, therefore, according to her, clearly amounts to indiscipline, carelessness, negligence and cumulatively to grave mis-conduct.

12. We have with the assistance of the Learned counsel on either side gone through the findings of the Inquiry Officer and have also perused the orders passed by the disciplinary authority, appellate authority as well as the revisional authority. We find ourselves fully in agreement with the various contentions raised by the learned counsel for the respondents. We also find that the Inquiry Officer has taken pains to deal with each and every contention raised by the applicant and has correctly found him guilty of unauthorised

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absence in the manner charged. The Inquiry Officer has fully observed the rules prescribed for the conduct of disciplinary proceedings. We also find that the disciplinary authority has also passed a comprehensive order dealing with the various contentions raised by the applicant and keeping in view the findings of the enquiry officer. The same cannot be faulted in any way. Similarly, we find that the orders passed by the Appellate as well as the Revisional Authorities have also been properly passed after due consideration of the appeal/petition filed by the applicant.

13. The applicant has been afforded due and reasonable opportunity throughout the course of the disciplinary proceedings and no ground is made out in support of the general contention raised by the applicant's counsel that the principle of natural justice has not been observed in this case. We, thus, find that the applicant's dismissal was well deserved.

14. The OA is dismissed in the aforesated terms without any order as to costs.

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S.A.T. Rizvi
(S.A.T. RIZVI)
MEMBER (A)

(pkr)

Lakshmi Swaminathan

(MRS. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN (J)