

Central Administrative Tribunal, Principal Bench

Original Application No. 53 of 1998

New Delhi, this the 31st day of May, 2000

Hon'ble Mr. Justice Ashok Agarwal Chairman  
Hon'ble Mr. V.K. Majotra, Member (Admnv)

Ex. Constable Rohtas Singh No. 2323/PCR, S/o  
Shri Raghunath Singh, aged about 30 yrs,  
lastly posted in the P.C.R., R/o Village-  
Sulkha, P.O-Baval, Distt-Mahender Garh,  
Haryana.

- Applicant

(By Advocate Shri Shanker Raju)

Versus

1. Union of India, Through its Secretary,  
Ministry of Home Affairs, North Block,  
New Delhi.

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

3. Addl. Dy. Commissioner of Police,  
P.C.R., Police Head Quarters, I.P. Estate,  
M.S.O. Building, New Delhi.

- Respondents

(By Advocate Shri George Parackin)

O R D E R (Oral)

By V.K. Majotra, Member (Admnv) -

The applicant has challenged the following orders/rules (i) Annexure-A-III dated 7.12.1995 containing findings of enquiry officer holding the applicant guilty of the charge, (ii) order dated 22.1.1996 (Annexure-A-1) whereby the applicant has been imposed the penalty of dismissal from service; (iii) order dated 16.10.1996 (Annexure-A-2) passed by the Additional Commissioner of Police (Operation) PHQ, New Delhi, respondent no.2, whereby the appeal preferred against the order of dismissal has been rejected; (iv) Rule 26 of Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter referred to as 'the Rules of 1980') as amended on 22.7.1988.

2. The applicant was enrolled in Delhi Police as Constable on 15.5.1979. A departmental enquiry was

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initiated against him under the provisions of Rules of 1980 vide order dated 20.10.1995 alleging that during his suspension ordered with effect from 27.10.1993, when he was required to attend morning roll call at District Line, Rose Bud and not to leave his headquarter without prior permission of the competent authority, he did not attend the roll call on numerous occasions between 2.4.1994 and 29.3.1995; <sup>that</sup> after his reinstatement on 10.4.1995 he absented himself wilfully and unauthorizedly for 69 days between 30.3.1995 and 23.9.1995 without any justification and without submitting any medical certificate, even ~~thereafter~~ <sup>previously</sup> he had been in the habit of absenting himself wilfully and unauthorizedly and did not mend himself despite being awarded minor and major punishments for such absence. All these acts cumulatively amounted to gross misconduct, negligence and carelessness in the discharge of applicant's official duties. The disciplinary authority dismissed the applicant for his grave misconduct of absenteeism rendering him unfit for Delhi Police force. His suspension period from 27.10.1993 to 9.4.1995 was treated as not spent on duty for all intents and purposes and the absence period from 10.4.1995 to 26.4.1995, 10.7.1995 to 26.7.1995, 30.7.1995 to 1.8.1995, and 27.8.1995 to 23.9.1995 was treated as leave without pay. The applicant's appeal against the punishment order was rejected by the appellate authority.

3. According to the applicant he was falsely involved in a criminal case on 12.1.1994 and was reinstated on 27.10.1996. He was acquitted of the

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charge on 2.9.1994 in FIR No.126 by the Court. However, the respondents did not treat the period of his suspension as spent on duty, despite his acquittal. He was placed under suspension without any direction to attend any duty. After his reinstatement on 10.4.1995 on account of illness of his wife and son, who is a patient of polio, as well as his own illness, <sup>he</sup> remained absent on medical ground for 69 days. According to him after each spell of absence he submitted his medical report and was allowed to join the duties. The applicant claims to have gone to Jaipur for the treatment of his son - a polio patient. He has alleged that the department has treated his intermittent absence during the period of suspension and absence on medical grounds for gross misconduct and ordered a departmental enquiry. The applicant has claimed that the prosecution witnesses have <sup>stated that</sup> ~~informed~~ that the applicant had gone to Jaipur for treatment of his son. He has maintained that during the roll call, a Police officer is not supposed to perform any duty and absence during the period of suspension does not amount to misconduct. The applicant has stated that the enquiry officer did not look into the medical record produced by him and held him guilty of the charge of alleged absence without permission. He has further contended that the finding that the applicant was guilty of remaining absent during suspension amounting to misconduct is perverse. He was not given any show cause notice to treat his suspension period as not spent on duty. The period of absence was regularised by grant of leave without pay which cannot be treated as grave misconduct leading to complete unfitness and consequential dismissal from service. The

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applicant has claimed that Rule 26 of Rules of 1980 stipulating attendance in roll call by Police officials during the suspension period is contrary to Govt. of India's instructions and law laid down by the Court. Further as per Section 24 of Delhi Police Act, 1978 a Police officer under suspension is not deemed to be on duty. The applicant has averred that the enquiry and the punishment are vitiated on the ground that period<sup>s</sup> of absence ~~having~~<sup>-e</sup> been regularised by grant of leave without pay. The applicant has sought setting aside of the impugned order of dismissal at Annexure-A-1, appellate order Annexure-A-2 and the findings of the enquiry officer at Annexure-A-3 and a direction to the respondents to reinstate him in service with effect from 22.1.1996 with consequential benefits. He has also sought declaration of Rule 26 of Rules of 1980 as illegal.

4. In their counter the respondents have stated to have examined six PWs with full opportunity to the applicant to cross-examine them. The applicant did not produce any DWs and submitted an unsigned defence statement on 29.11.1995. The enquiry officer assessed the statements of PWs, written defence statement of the applicant and the other relevant record and submitted his findings on 7.12.1995 concluding that the charge against the applicant is fully proved. A copy of the findings of the enquiry officer was served upon the applicant on 22.12.1995. He was asked to make a representation in his defence, which he made on 9.1.1996. The respondents have maintained that the applicant had neither informed about his illness or his son's illness nor did he seek any leave or permission

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from the competent authority to avail himself of the medical rest or leave. The PWs have clearly established that the applicant had absented himself wilfully and unauthorizedly for a total period of 69 days after his reinstatement from suspension. The applicant has made contradictory submissions that he was unwell and on the other hand he has stated that he had left the headquarter for treatment of his son.

5. We have heard the learned counsel of both sides and perused the record available on file.

6. The first issue raised for our consideration is whether provisions of Rule 26, *ibid*, are violative of provisions of Section 24 of Delhi Police Act, 1978.

These provisions read as follows:-

Section 24, Delhi Police Act.- Police Officers to be deemed to be always on duty and to be liable to employment in any part of Delhi.- Every police officer not on leave or under suspension shall for all purposes of this Act be deemed to be always on duty and any police officer or any number or body of police officers allocated for duty in any part of Delhi may, if the Commissioner of Police so directs, at any time, be employed on police duty in any other part of Delhi for so long as the services of the police officer or number or body of police officers may be required in such other part of Delhi."

Rule 26 of Rules of 1980.- Suspension -

(1) Officers of the rank of an Assistant Commissioner of Police and above are authorised to suspend all police officers of subordinate rank. Inspectors of police can suspend any police officer below the rank of Sub-Inspector. The suspension of an upper subordinate shall be immediately reported to the Deputy/ Additional Commissioner of Police.

(2) An officer shall be released from suspension only by the gazetted officer employed to punish/ appoint him.

(3) (i) During the term of such suspension the powers functions and privileges vested in him as a Police officer shall be in abeyance but he shall continue to be subject to the same

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responsibilities discipline and penalties and to the same authorities, as if he had not been suspended.

(ii) A Police Officer under suspension shall be transferred to the lines if not already posted there. He shall attend all roll calls and shall be required to perform such duties and to attend such parades as the Deputy Commissioner of Police may direct provided that he shall not perform guard duty and any other duty entailing the exercise of the powers or functions of a Police officer, shall not be placed on any duty involved the exercise of responsibility and shall not be issued of with ammunition. A Police officer under suspension shall ordinarily be confirmed to lines, when off duty, but shall be allowed responsible facilities for the preparation of his defence when transferred to the line, lower or upper subordinate shall deposit their kits in the lines and shall not wear any article of uniform till they are reinstated or specifically permitted by the Commissioner of Police as contained in sub-rule (iii) of Rule 15 of Delhi Police (General Conditions of Service) Rules, 1980.

7. The learned counsel of the applicant has contended that although a Police officer under the provisions of Section 24 *ibid* is considered to be always on duty and may at any time be employed as Police officer, but if a Police officer happens to be on leave or under suspension, he cannot be assigned any duties. He has further maintained that while an official is under suspension, the master and servant relationship between the Government and the suspended employee snaps and he cannot be required to attend any roll call or perform any duty. As the provisions of Rule 26, *ibid*, require a suspended Police officer to perform such functions, they are repugnant to the provisions of Section 24, *ibid*. The learned counsel of the applicant relied upon the decision of the Supreme Court in the case of V.P.Gidroniya Vs. State of Madhya Pradesh and another, (1970) 1 SCC 362 in this behalf. The learned counsel of the respondents contended that the interpretation being given to the ratio in the case of

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V.P.Gidroniya (supra) by the learned counsel of the applicant is wrong and that provisions of Rule 26, ibid, are not contrary to the provisions of Section 24, ibid. In the aforesaid case, it was held that the order of suspension has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. In that case rules did not provide for suspension during the pendency of an enquiry. Therefore, the impugned order of suspension could not be considered as an order suspending the contracts of service. From that conclusion it followed that when the appellant issued the notice terminating his services, the contract of service was in force and it was open to him to put an end to the same. In our view the relationship between the master and servant does not cease to exist during the suspension of a person. In this connection we may refer to the decision of Baldev Raj Guliani Vs. Punjab and Haryana High Court, AIR 1976 SC 2490 wherein it was held that "suspension is a stage of dismissal and may culminate in dismissal. When an officer is suspended, no work is taken from him. But he does not cease to be in service. When he is dismissed, the link with the service is snapped and naturally the order of suspension merges in dismissal". Reliance is also placed on the decision of the Hon'ble Supreme Court in the case of Khem Chand Vs. Union of India, AIR 1963 SC 687 wherein it has been clarified that during suspension of the public servant he does not cease to be a public servant and remains under obligation to comply with lawful directions of the superior and is bound by the Conduct Rules. Section 24,

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ibid, is analogous to Section 22 of the Police Act, 1861. It is the domain of the nature of Police duties that such liability is imposed. Under that provision every Police officer for all purposes of that Act was considered to be always on duty and could be employed at any time as a Police Officer. Section 24 does state that Police officer either on leave or under suspension shall be deemed to be always on duty. This seems to suggest that the person on leave or under suspension is exempted from the inherent duty which appears to be against the basic meaning of "Police", which is charged with the preservation of public order and tranquillity, promotion of the <sup>health</sup> ~~helps~~, safety and moral and the prevention, detection and punishment of crime. The provisions of Section 14 of the Delhi Police Act relate to the effect of suspension of Police officer. Under these provisions the powers, functions and privileges vested in a Police officer remain suspended while such Police officer is under suspension from service. However, notwithstanding such suspension such person "shall not cease to be a Police officer and shall continue to be subject to the control of the same authorities to which he would have been subject if he had not been under suspension". This means that such a Police officer will remain liable for the discipline and orders of the authorities to whom he was liable when he was not suspended. The provisions of Section 24 cannot be read in isolation. They have to be read in harmony with the provisions of Section 14. If that be so and also keeping in view the ratio of the judgments quoted above, the provisions of Rule 26 (3)(ii) cannot be held to be contravening any substantive provision of the

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Delhi Police Act. Thus, a Police officer under suspension can be called upon to attend roll calls and perform such duties and <sup>to</sup> attend such parade as directed by the Deputy Commissioner of Police. The only duties ~~for~~ which he cannot be called upon to perform <sup>are</sup> ~~is~~ the guard duty or any other duty entailing the exercise of powers or functions of a Police officer. In the above view of the matter the superior authorities in Police are within their rights and powers to fix the headquarters of a Police officer and to call upon him to attend all roll calls and to perform such other duties which do not entail exercise of the powers or functions of a Police officer. It is also inferred from the above conclusion that breach of the orders of the superior Police officer during suspension would come within the ambit of misconduct. If a suspended Police official leaves his headquarters without prior permission or does not attend the roll call as required by the superior officers he would be guilty of misconduct.

8. The second point pressed by the applicant is that whenever the applicant was absent <sup>on return</sup> ~~he~~ <sup>by</sup> he had submitted his application along with a medical certificate and either his leave had been sanctioned or was regularised as leave without pay. Thus, according to him the charge relating to wilful and unauthorised absence against him cannot be established by the respondents. The learned counsel of the respondents has referred to Rule 7 of the CCS (Leave) Rules, 1972. It ~~is~~ states, (i) leave cannot be claimed as of right and (ii) when the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it, but it shall not be open to that authority to alter

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the kind of leave due and applied for except at the written request of the Government servant". Another relevant provision is Rule 19(1)(ii) of the Leave Rules. An application for leave on medical certificate made by a non-gazetted Government servant shall be accompanied by medical certificate in Form 4 given by an Authorised Medical Attendant or Registered Medical Practitioner defining as clearly as possible the nature and probable duration of illness. Under Rule 19 ibid the authority competent to grant leave at his discretion can secure a second medical opinion by requesting a Government Medical Officer not below the rank of the Civil Surgeon to have the applicant medically examined on the earliest possible date.

9. The contention of the applicant's counsel that the applicant had been submitting his application and the medical certificates at the end of the period of leave cannot be entertained. The natural import of the above provisions relating to leave is that the application has to be made by the concerned official along with the medical certificate at the "earliest possible date from commencement of the leave asked for". This also means that ordinarily the concerned official must obtain prior sanction of the leave before proceeding on leave. If this requirement is given a go by, not only that the efficiency of the office will be adversely affected as the authorities will not be able to make alternate arrangement for performance of work, the competent authority will also not be able to satisfy himself about the medical opinion or take the second medical opinion, if necessary. If the concerned official always brings a fitness certificate at the end

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of the period of leave, the question of satisfaction about the illness of the person during the previous period would be ~~set at naught~~ <sup>meaningless</sup>. In the present case there is an admission by the applicant that he had produced the medical certificate along with the defence statement in the enquiry. The applicant has stated that the disciplinary authority and the appellate authority have not gone into the genuineness of the medical evidence. In the present facts of the case when the medical certificate had been furnished by the applicant much later than the relevant period, the question of checking its veracity or reference to a second medical opinion would not arise at all. From the record it is also established that the applicant has been resorting to different versions about his absence from the headquarters. Some times he took the plea that he was not well, on other occasions he attempted at stating that he had taken his son to Jaipur for medical treatment. In this background when he has been projecting different versions for his absence from headquarters and not sticking to a uniform line of defence, we are not in a position to consider his explanation satisfactory in this regard. Obviously, the applicant had been holding the provisions of Leave Rules in utter disregard and absenting himself without obtaining prior permission or submitting any valid reasons at the earliest possible opportunity of the concerned authorities.

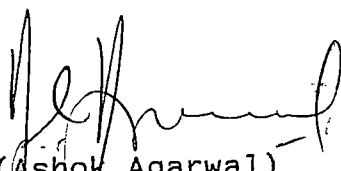
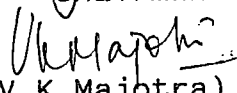
10. The next question arisen is can the treatment of certain periods of absence as leave without pay absolve the applicant of the entire charges and the punishment? Answer is certainly no, because the charge alleged against the applicant did not relate to this

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period alone when the period of absence was treated as leave without pay. There is sufficient material duly marshalled by the disciplinary authority and the appellate authority bringing home the guilt of the applicant regarding applicant's absence from the roll calls during his suspension, the habit of absenting himself wilfully and unauthorizedly, award of minor and major punishment for such absence on earlier occasions.

11. As regards non-issue of show cause notice for treating the suspension period from 27.10.1993 to 9.4.1995 as not spent on duty, there are no facts and grounds whereby the suspension could be treated as wholly unjustified by the respondents. We also do not have any reasons to hold any otherwise view in the matter on merits.

12. Having regard to the above discussion and reasons, we hold that the present OA is devoid of merit. The same is accordingly dismissed. No order as to costs.

  
(Ashok Agarwal)  
Chairman  
  
(V.K. Majotra)  
Member (Admnv)