

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.776/1998

New Delhi, this 24th day of May, 1999

Hon'ble Shri T.N. Bhat, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

Brij Bhushan
RZ-1/51, Gali No.3
Tuklakabad Extn. Kalkaji
New Delhi

.. Applicant

(By Shri Shankar Raju, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Home Affairs
North Block, New Delhi
2. Commissioner of Police
Police Hqs., New Delhi
3. Adl. Commissioner of Police
Armed Police
Police Hqs., New Delhi
4. Dy. Commissioner of Police
3rd Bn, DAP, Vikaspuri
New Delhi

.. Respondents

(By Shri Jog Singh, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

In this OA, applicant seeks to challenge the following:

- (i) A-1 order dated 17.5.95 issued by R-4 imposing upon him the major penalty of punishment of withholding of increments for three years, with cumulative effect
- (ii) Suo moto notice at A-2 dated 12.3.96 issued by R-3 seeking to enhance punishment under power of review in terms of Rule 25(B)(iii) of Delhi Police (Punishment & Appeal) Amended Rules, 1994 (hereinafter referred to as RULES);
- (iii) Enhancement of punishment from withholding of increments to removal from service by R-3 vide orders at A-3 dated 9.12.96;

(iv) Rejection by R-2 of applicant's appeal against enhanced order of punishment by A-4 dated 24.2.98;

(v) EO's findings dated 21.7.96 holding the applicant guilty of charges by A-5;

(vi) Rule 25(B)(iii) of the RULES alongwith notification dated 29.6.94;

2. To appreciate the issues raised in this application, we may mention the background facts in short. The applicant was issued with a major penalty charge-sheet with the following two article of charges: (a) absent from duty from 14.3.94 to 21.3.94 which continued upto 1.12.94 on 10 occasions, for 113 days and (b) remaining absent from duty on 19 occasions intentionally and unauthorisedly without any prior permission prior to 1994.

3. Both the charges stood established. After completion of DE, applicant was initially punished with stoppage of increments for 3 years with cumulative effect by an appropriate order. Applicant did not file any appeal against that order. Subsequently, he was served with show cause notice, issued suo moto by Sr. Addl. CP, Delhi, to enhance the punishment to the extent of dismissal from service in respect of which applicant has sent reply on 25.3.96. The aforesaid punishment was modified to removal from service at the appropriate level. This was followed by an appeal to R-2.

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4. Applicant has assailed the orders of punishment mainly on two grounds. The period of absence had already been treated as leave without pay in the previous order of punishment and once the said period has been regularised by the competent authority, no punishment or enhancement of punishment can be imposed upon the applicant. Secondly, the Addl. Commissioner of Police had wrongly applied the power of review under RULES. This is because the said rule is not at all admissible according to Section 148 of Delhi Police Act, 1978. Those RULES after being notified were required to be put before the House of Parliament for the purpose of ratification. In the present case after the gazette notification of the RULES no such procedure has been adopted till now and in the absence of compliance of the aforementioned statutory provisions, the said RULES could not have been validly exercised by R-3. That apart, RULES on review clearly stipulate that punishment can be enhanced only after an opportunity of personal hearing has been given to the delinquent official and this requirement was not fulfilled in the case of the applicant. Even notice for personal hearing has not been validly and legally given to the applicant and hence enhancement of punishment by exercising powers of review cannot be sustained in the eyes of law.

5. Respondents have denied the claims and would submit that applicant had absented himself on 19 occasions wilfully and unauthorisedly and was

awarded punishment for misconduct. Despite previous punishment, applicant did not improve his habits and became a habitual absentee. Disciplinary proceedings were conducted as per provisions of Delhi Police Act and there has been no violation of principles of natural justice.

6. Heard the learned counsel for both parties, gone through the pleadings and perused the records. We find that the applicant has assailed the order of enhanced punishment relying mainly upon the decision of the apex court in the case of **State of Punjab Vs. Bakshish Singh (1997) 6 SCC 381**. That was a case wherein it has been held that once the period of unauthorised absence has been regularised, an official cannot be held responsible for misconduct of being absent from duty. We, however, find that the applicant has been held responsible not only for remaining absent unauthorisedly but also being an "habitual absentee". The case law of Bakshish Singh cited by the applicant does not render any help to him. This is because applicant's claim of unauthorised absence having been regularised has been denied by the respondents. Applicant has not provided any material in support of his claim that the period of absence either of 1994 for 10 occasions or prior to 1994 on 19 occasions have been regularised. Applicant in his reply (undated) to the EO's findings has mentioned that absence on his part could be treated as EL and ML and sufficient leave on both accounts are available to his credit. This

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was apparently after EO's report of July, 1996. Applicant has admitted that he "became irregular in performing his duties for some time....I am not performing duties to the entire satisfaction of my superiors by being absent sometime from office". He also admits that "some of the medical documents in relation to my treatment have been misplaced somewhere in transit". It is on this basis that the respondents have denied of there being appropriate medical certificates that would cover some of the periods. In other words, all the different periods have not been regularised by the competent authority. In any case, Bakshish Singh's case cannot render any assistance to the applicant in respect of charge of "habitual absentism" which had been established. (15)

7. Applicant has also come out with the plea that review authority has not given any opportunity of personal hearing. We find that applicant had seen the review authority on 6.2.98 but did not adduce any fresh pleas in support of his claim. Applicant has not, therefore, come with clean hands.

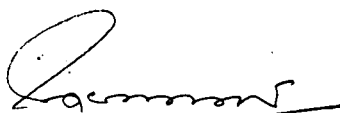
8. We also find that the applicant had concealed the fact that he was facing yet another DE for wilful and unauthorised absence for the third spell of 161 days from 5.12.94 to 15.5.95. Proceedings on this account were only kept in abeyance because of the applicant's removal from service pursuant to the earlier proceedings against the applicant for first two spells of unauthorised absence.

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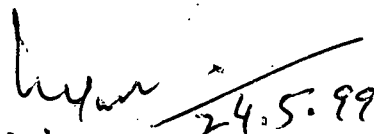
(16)

9. It is not in dispute that the charges against the applicant on account of habitual absentism has been duly established beyond any doubt by the EO on the basis of records available. Such habit of absentism or being absent from duty unauthorisedly has been considered to be a grave misconduct in terms of law laid down by the apex court in the case of State of UP & Ors. vs. Ashok Kumar & Anr. (1996) 1 SCC 302.

10. For the reasons discussed above, we do not find any merit in this application and we dismiss the same accordingly. There shall be no order as to costs.



(S.P. Biswas)
Member(A)

 24.5.99

(T.N. Bhat)
Member(J)

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