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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1750 /19 95

DATE OF DECISION : 25-9-98

HON'BLE SHRI JUSTICE K. M. AGARWAL, CHAIRMAN

HON'BLE SHRI R.K.AHOOJA, , MEMBER (A)

Shri Siri Bhagwan

... Applicant(s)

-Versus-

Lt. Governor, Delhi & anr

... Respondent(s)

Advocates :

Mr./~~Mrs~~ M.L.Chawla & for Applicant(s)

Mr./~~Mrs~~ S.L.Lakhanpal

Mr./~~Mrs~~ Surat Singh for Respondent(s)

- ✓ 1. Whether to be referred to Reporter? *yes*
2. Whether to be circulated to other Benches?

Km
(K. M. Agarwal)
Chairman

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.1750/95

NEW DELHI, THIS THE 25th DAY OF SEPTEMBER, 1998.

HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN
HON'BLE MR.R.K.AHOOJA, MEMBER(A)

Shri Siri Bhagwan,
S/o Shri Jai Narain,
R/o Village Sherpur, P.S.Kot Kasim,
Distt. Alwar (Rajasthan).

....Applicant

(By Advocates Shri M.L.Chawla &
Shri S.L.Lakhanpal)

vs.

1. Lt. Governor,
Through the Chief Secretary,
Delhi Administration,
Raj Niwas,
Delhi.
2. The Commissioner of Delhi Police,
Police Head Quarters,
New Delhi.

....Respondents

(By Advocate Shri Surat Singh)

ORDER

JUSTICE K.M.AGARWAL:

By this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has made a prayer for quashing the order of dismissal passed against him by the disciplinary authority and the appellate order, confirming the order of dismissal passed by the disciplinary authority.

2. The applicant was a Constable in Delhi Police. He was charge-sheeted for his unauthorised absence between 11/12.7.92 and 11.10.92. The charge was found proved and accordingly he was dismissed from service by the disciplinary authority. Appeal preferred against the order of the disciplinary authority was dismissed. The applicant has, therefore, filed the present O.A. for quashing the said orders of the disciplinary authority and the appellate authority.

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3. The learned counsel for the applicant did not dispute that the applicant remained absent but he submitted that he had suddenly fallen sick and had gone to his village. He could not send medical certificate, because he was getting his treatment from a local vaidya.

The learned counsel also did not dispute that on earlier occasions also, the applicant had unauthorisedly remained absent from duty but submitted that he was adequately punished in regard to the previous absence and, therefore, that should not have been taken into account in so far as the latest allegation of unauthorised absence was concerned. It was also argued that the punishment was not commensurate with the misconduct found proved against the applicant. He cited R.P. BHATT V. U.O.I. & OTHERS, ATR 1986 (1) SC 149; RAM CHANDER v. U.O.I. & OTHERS, ATR 1986 (2) SC 252; KARAM CHAND v. U.O.I., 1992 (2) ATJ 401 (CAT) in support of his contentions.

4. Learned counsel for the parties were heard. Record also perused. Paragraph 3 of the appellate order would give a clear picture of the case against the applicant. It is, therefore, reproduced hereinbelow:

"A regular DE was ordered against the appellant for his absence from 11.7.92 to 11.10.92. The EO concluded that the charges of unauthorised and habitual absence stand proved. A copy of the findings was given to the appellant for making representation, if any. He submitted his representation against the findings of the EO on 29.4.93. However, the disciplinary authority after carefully going through the evidence on DE file, findings of the EO and other relevant papers, came to the conclusion that the appellant does not deserve to be retained in the force and, therefore, decided to dismiss his service w.e.f. 4.5.93 and his entire period of wilful absence was treated as 'Not spent on duty' vide order No.2193-2292/HAP-P&L dated 4.5.93. Hence this appeal."

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In the order made by the disciplinary authority, it has been mentioned that after examining 3 PWs the charge was prepared by the EO and served upon the applicant at his residence in native village. He did not either reply to the charge or produce any DW. It also mentioned that:

"The constable has been a habitual absentee. During his 16 years of service he has absented himself 19 times for which he has been warned 4 times, granted LWP 7 times, awarded PD once, Censured once and a major punishment of forfeiture of 5 years approved service. But he has failed to mend himself. This shows that he is an incorrigible type of person. The retention of such an individual in a disciplined and uniformed force like Delhi Police is highly detrimental to the maintenance of discipline amongst its various ranks. In the instant case he had remained absent for long periods, unauthorisedly and without any intimation to the superior officers. He has even absented 6 times during the suspension period which is a serious lapse. His conduct has been reprehensible."

Under these circumstances, if the applicant was found guilty of the misconduct alleged against him, he can have no reasonable grievance against it.

5. The learned counsel did not dispute that before absenting himself from duty, the applicant had not obtained leave from the competent authority. Leave could not be claimed as a matter of right. The learned counsel had referred to Rule 19 of the CCS (Leave) Rules, 1972 to support his contention that on the basis of the medical certificate subsequently filed, the period of absence ought to have been regularised or treated as absence on medical leave. The argument cannot be accepted. Similar argument advanced in D.K. KASHYAP v. U.O.I., O.A. No.280/93, decided on 4.12.1997 by this Tribunal was rejected. It was observed:

".....In sub-rule (5) of Rule 19 of the Leave Rules, it is specifically provided that the

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grant of medical certificate does not in itself confer upon the Government servant any right to leave. Rule 7(1) thereof also provides that leave cannot be claimed as of right. Similarly the decision of the Government of India referred to by the learned counsel for the applicant does not help him or grant any immunity from disciplinary action as contemplated under Rule 25 (2) of the Leave Rules."

Accordingly the contention deserves to be rejected and is hereby rejected.

6. The absence of the applicant on earlier occasions was not taken into account by the disciplinary authority for holding the applicant guilty of misconduct.

It was taken into account for the limited purpose of quantum of penalty to be imposed on the applicant. Rule 8 of Delhi Police (Punishment and Appeal) Rules, 1980 lays down principles for inflicting penalty. Clause (a) thereof provides that the punishment of dismissal or removal from service shall be awarded for the act of grave misconduct rendering him unfit for police service. Accordingly while inflicting extreme penalty of dismissal, if the disciplinary authority took into consideration the absence of the applicant on previous occasions, it cannot be said that the authority acted illegally or arbitrarily. In UNION OF INDIA v. PARMA NANDA, 1989 (1) SCALE 606, it was held by the Supreme Court as follows:

"We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters of punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the

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Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

Accordingly we cannot go into the question that the penalty was disproportionate to the misconduct found proved against the applicant. For similar reasons, this Tribunal refused to go into the question of quantum of penalty in similar circumstances in BHAGWAN LAL ARYA v. COMMISSIONER OF POLICE DELHI, O.A. No.1195/98, decided on 1.7.1998.

7. In the light of aforesaid authorities and facts and circumstances of the case, it does not appear necessary to examine the various authorities cited by the learned counsel for the applicant in support of his arguments.

8. In the result, this O.A. fails and it is hereby dismissed, but without any order as to costs.

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(K.M. AGARWAL)
CHAIRMAN

R.K. Ahuja
(R.K. AHOOJA)
MEMBER (A)