

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(10)

C.A./T.A. No. 1906 of 1995 /19 Decided on: 10.1.97

Const. Sadhu Ram APPLICANT(S)
(By Shri B.S. Oberoi Advocate)

VERSUS

NCT, Delhi & Ors. RESPONDENTS

(By Shri Anoop BAGAI Advocate)

OO RAM

THE HON'BLE SHRI S.R. Adige, Member (A)

THE HON'BLE ~~SRI S. R. ADIGE~~ DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal ? No

S.R. Adige
(S.R. ADIGE)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 1906 of 1995

New Delhi, dated this the 10th January, 1997

HON'BLE MR. S.R. ADIGE, MEMBER (A)
HON'BLE DR. A. VEDAVALI, MEMBER (J)

Ex-Const. Sadhu Ram,
No.9280/DAP,
S/o Shri Risal Singh,
R/o V & P.O. Ghilorekalan,
Tehsil & Distt. Rohtak,
Haryana. APPLICANT

(By Advocate: Shri B.S.Oberoi)

VERSUS

1. Govt. of NCT of Delhi,
through Commissioner of Police,
Police Hqrs.,
M.S.O. Building,
I.P. Estate,
New Delhi.
2. Sr. Addl. Commr. of Police(AP&T),
Police Hqrs.,
New Delhi.
3. Dy. Commr. of Police,
VIII Bn. DAP,
Delhi. RESPONDENTS

(By Advocate: Shri Anoop Bagai)

J U D G M E N T

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

Applicant impugns the E.O's findings dated 13.9.93; the dismissal order dated 5.11.93 (Ann. A-1) and the appellate order dated 10.10. 94 (Ann. A-2) and seeks reinstatement with all consequential benefits.

2. Shortly stated the applicant was proceeded against departmentally for unauthorised and wilful absence on three separate occasions i.e. from 30.9.92 till 23.12.92 totallying 85 days 2 hrs. and 45 minutes; 25.12.92 to 30.12.92 totallying 4 days 18 hrs.; and 13.1.93 to 25.3.93

totalling 132 days 3 hrs. and 30 minutes. The E.O. held the charge proved. A copy of the E.O.'s report was served on the applicant vide U.O. No. 15.9.93 and he was given 15 days to submit reply, but the disciplinary authority's impugned order dated 5.11.93 records that the applicant was unauthorisedly absent since 22.9.93. Accepting the E.O.'s findings the disciplinary authority issued impugned dismissal order dated 5.11.93 which was upheld in appeal vide impugned order dated 10.10.94 against which the present O.A. has been filed.

3. The main ground taken by the applicant is that he was absent from duty for reasons beyond his control owing to sickness and mental disturbance. In this connection attention has been invited to the medical certificates issued to him in support of his claim to have been ill, photo copies of which are on record. It is also contended that the applicant was all along informing the authorities of his sickness and inability to join duty, but despite that he has been dismissed from service. The appellate authority, who also appears to have given the applicant a ^{personal} ~~formal~~ hearing, has correctly pointed out that according to the CCS (Leave) Rules, 1972 and S.O. 111, the grant of medical certificate does not itself confer upon the individual concerned any right to remain

absent from duty. The applicant should have submitted the M.Cs to the leave sanctioning authority along with a proper application for leave and then awaited the final orders of the competent authority, but as per the appellate authority's order neither did the applicant obtain prior permission of the competent authority, nor did he inform the department about his illness during the absence period and thus remained unauthorisedly absent from leave in contravention of S.O. 111 and CCS (Leave) Rules, 1972. The appellate order further states that the applicant was referred to Civil Hospital for second medical opinion to find out the genuineness of his illness but he did not bother to attend the Civil Hospital for second medical opinion, which clearly indicates that he was not ill during the absence period and managed to procure the medical certificates only to cover his absence period. No materials have been produced by the applicant to rebut these conclusions reached by the appellate authority and hence this ground fails.

4. The next ground taken is that the respondents acted in violation of Sec. 21 Delhi Police Act which provides for powers of punishment and not procedure for punishment ordered D.E. under the above section. It is a well settled proposition of law that when the statute itself given necessary powers to

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act, mere mention of the ~~wrong~~^{wrong} sections of the statute does not by itself vitiate the action taken pursuant to that statute, and the appellate authority has correctly pointed out that this hardly affects the merits of the case, as the charges against the applicant stood proved beyond all shadow of doubt. Hence this ground also fails.

5. The next ground taken, ^{is} that the charge sheet served upon the applicant was not approved by the competent authority, also fails in the absence of any materials furnished in support of the same, and the categorical assertion in the appellate order that the charge was duly approved by the competent authority.

6. The next ground taken is that the applicant was not given sufficient time to prepare his reply in response to E.O.'s findings. We note that the copy of the E.O's findings were served on the applicant on 15.9.93 and he was given time till 30.9.93 to file his reply, but he failed to do so within the stipulated time. No materials have been shown to us to indicate that he made any prayer for extension of time to file reply either. Hence this ground also fails.

7. It has next been urged that the respondents in violation of Rule 8 & 10 Delhi Police (P&A) Rules without recording a finding that the applicant is unfit to be retained in service, dismissed him from

service. Reliance in this connection has been placed on the CAT, Principal Bench judgment dated 23.9.94 in OA-802/90 Dalip Singh Vs. L.G.Delhi & Ors. which has been upheld by the Hon'ble Supreme Court in SLP No. 12208/95 on 12.3.95 and also the CAT, Principal Bench judgment dated 15.12.94 in OA-1274/91 Hari Singh Vs. UOI & Ors.

8. We have already noted that the applicant was absent not merely for one stretch of time, but on three separate periods of time i.e. 85 days, 4 days and 132 days. His main defence as already pointed out was that he was ill, but he did not file any medical certificates supported by applications for leave for each of the relevant periods of time. Furthermore he failed to report himself at the Civil Hospital for a second medical opinion when he was directed to do so, and on the basis of the Medical Certificates filed by the applicant the appellate authority has come to the conclusion that the same were procured by the applicant only to cover his absence periods. No valid grounds have been adduced to allow us to come to any different finding on this point, which would warrant our judicial interference.

9. In this connection the Hon'ble Supreme Court's judgment dated 10.11.95 in State of U.P. Vs. Ashok Kumar Singh & Anr. ^{1996 (32) ATC 239} is extremely relevant. Shri Ashok Kumar Singh was a police constable in U.P. State who was removed from service pursuant to a duly conducted departmental enquiry by order dated 6.5.85 for having absented himself from duty for several occasions totalling 251 days in 1981-82; 93 days in 1982 and from 28.2.84 onwards. He challenged the order of removal before the U.P. Public Services Tribunal who by their detailed and considered order dated 29.6.90 declined to interfere with the order of removal.

10. Thereupon he moved the Allahabad High Court under Article 226 of the Constitution on that ground that he had not been given reasonable opportunity in the D.E. This ground was rejected by the High Court who also concurred with the Tribunal's findings rendered on the charges levelled against the first Respondent, but allowed the Writ Petition on the ground that absence would not amount to such a grave charge for ^{which} the extreme penalty of dismissal was warranted.

11. The Hon'ble Supreme Court while setting aside the Allahabad High Court's order observed that

" We are clearly of the opinion that the High Court has exceeded its jurisdiction in modifying the punishment while concurring with the findings of the Tribunal on facts. The High Court failed to bear in mind that the first Respondent was a police constable and was serving in a disciplined force demanding strict adherence to the rules and procedures more than in other dept. Having noticed the fact that the first respondent has absented himself from duty without leave on several occasions, we are unable to appreciate the High Court's observation that his absence from duty would not amount to such a grave charge".

12. As in that case, so the present one before us, it is clear that the applicant's unauthorised absence from duty amounts to grave misconduct rendering him unfit for a disciplined service such as the police force, even if the impugned orders did not specifically say, in so many words, that the applicant was completely unfit for service.

13. In this connection the CAT, Principal Bench judgment dated 10.1.95 in OA-2252/90 Phool Kumar Vs. Commissioner of Police & Ors. is also relevant. In that case also the applicant was proceeded against for unauthorised absence on several occasions. That applicant was proceeded against departmentally and was dismissed from service and his appeal was rejected against which he filed the said O.A. In that O.A., as in the present one before us, the applicant took the

plea that he could not attend duty because of illness. One of the grounds taken was that in the absence of a specific finding of complete unfitness for retention in police force the impugned orders needed to be struck down. In that case also the CAT, Principal Bench judgment dated 23.9.94 in OA-802/90 Dalip Singh Vs. L.G. Delhi & Ors. was cited in support of this ground. The CAT, Principal Bench in its judgment dated 10.1.95, however, noticed the CAT, Full Bench judgment in Hari Ram Vs. Delhi Admn. & Ors. bearing O.A. No. 1344/90 decided on 4.8.93 wherein it had been upheld that in accordance with the well settled rules of construction of statutes, which were equally applicable in respect of orders and documents as well, the real intention of the author of the impugned order had to be ascertained. In Hari Ram's case (Supra) on a plain reading of the entire order, the Full Bench had no hesitation in coming to the conclusion that the intention of the disciplinary authority in passing the impugned order was to terminate the services of the petitioner having regard to the proved misconduct, namely unauthorised absence. Similarly in Phool Kumar's case (Supra) the Tribunal noticed that the Disciplinary Authority categorically held that the applicant was a habitual absentee and an incorrigible type of constable and the entire tenor of the punishment order reflected his unsuitability for retention in police service and therefore held that there was sufficient compliance of Rule 8(c) Delhi Police (P&A) Rules to warrant any interference. The Tribunal accordingly dismissed the O.A. SLP No.18668/96 filed by Shri Phool Kumar against

that judgment dated 10.1.95 was dismissed by the Hon'ble Supreme Court on 4.9.96.

case
14. In the present/before us also we find that the disciplinary authority had noted that the charges against the applicant for unauthorised absence from duty on three separate occasions stood proved, so much so that even at the time of passing the final order the applicant was absent from duty, and he saw no reason to retain such an [↑] indisciplined person in the police force, more so in view of the applicant's past record of previous unauthorised absences from duty, which clearly spoke about his chronic absentism and absence of any scope for improvement. It is thus clear that the disciplinary authority held that the applicant was guilty of grave misconduct by reason of repeated absences, which rendered him completely unfit for a disciplined force such as the police, and further that the applicant was an incorrigible type of person in respect of whom even [↑] past punishment had not effected any improvement. Under the circumstances it must be held that there was sufficient compliance of Rule 8(a) & Rule 10 Delhi Police (P&A) Rules to warrant any interference.

15. The O.A. therefore fails and is dismissed. No costs.


(Dr. A. Vedavalli)
Member (J)

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(S.R. Adige)
Member (A)