

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No. 901/95

New Delhi, this the 22nd day of January, 1999

Hon'ble Shri T.N. Bhat, Member (J)
Hon'ble Shri R.K. Ahooja, Member (A)

In the matter of:

Jorawar Singh
Ex. Cont. No. 10372/DAP, 599/ND
s/o Shri Jawant Singh,
r/o Village & Post Office Alamgir Pur,
Badala - 8 [Distt. Meerut (UP)]Applicant

(By Advocate: Shri L.C. Rajput)

Versus:

1. The Commissioner of Police,
Delhi Police,
Police Head Quarters,
I.P. Estate,
New Delhi.
2. The Addl. Commissioner of Police,
Armed Police,
Police Headquarters,
I.P. Estate,
New Delhi.
3. The Deputy Commissioner of Police,
IX Bn. DAP through P.H.Q. I.P. Estate,
New Delhi. Respondents

(By Advocate: Shri Arun Bhardwaj through proxy
Shri Deepak Bhardwaj)

O R D E R

delivered by Hon'ble Shri T.N. Bhat, Member (J):

The applicant was working as Constable in Delhi Police prior to his dismissal from service by the order dated 29.4.1993 passed by the Deputy Commissioner of Police, 9th Bn DAV, New Delhi. This punishment order was passed after a regular departmental enquiry held against the applicant. While dismissing the applicant the disciplinary authority further ordered that the period of absence would

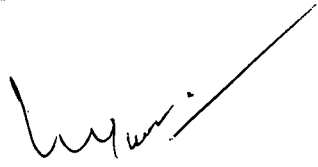
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be treated as leave without pay. It needs to be stated that the charge against the applicant was that he had absented himself unauthorisedly on several occasions and he was also a habitual absentee.

2. The appeal filed by the applicant was dismissed by the Additional Commissioner of Police on 4.3.1994 which order was communicated to the applicant by the order/letter dated 25.4.1994.

3. The applicant has assailed not only the punishment order and the appellate order but also the entire proceedings including the chargesheet, the findings of the Enquiry Officer as also the order by which the disciplinary enquiry was ordered to be initiated.

4. The applicant has taken several grounds in the O.A. It is, firstly, contended that the enquiry was conducted in an 'illegal', 'hasty' and 'prejudicial' manner without examining any prosecution witness. Secondly, it is averred that the Enquiry Officer and the disciplinary authority had wrongly stated in their orders that the applicant had admitted his guilt and that, therefore, examining any witness was not required. Thirdly, it is contended that the applicant was not afforded reasonable opportunity to produce his defence witnesses nor the copies of the documents relied upon in the departmental enquiry were made available to him. The applicant further takes the plea that the period of absence having been regularised no punishment could be legally awarded to the applicant.



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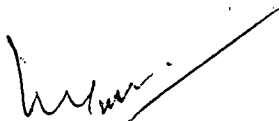
5. The respondents have filed a detailed counter in which it is asserted that the applicant had infact admitted his guilt as soon as the chargesheet was served upon him and that, therefore, there was no need to examine any witnesses. It is further averred that copies of as many as 36 documents relied upon by the department were furnished to the applicant. As regards the question of adequate opportunity, the respondents have taken plea that the applicant was afforded reasonable opportunity and that he did infact file a detailed defence statement.

6. In reply to the applicant's averment relating to regularisation of period of absence the respondents have contested the plea of the applicant.

7. The applicant has also filed a rejoinder in which the contentions made in the O.A. are reiterated.

8. We have heard the arguments of the learned counsel for the parties and have also perused the departmental records furnished by the learned counsel for the respondents.

9. On perusal of the record, we find that when the chargesheet was served upon the applicant on 25.08.1992 and he was asked whether he pleaded guilty, the applicant in clear terms answered in the affirmative. Thus, there is much force in the contention of the learned counsel for the respondents that since the applicant had admitted his guilt, there was no need for examining any witness.



10. We also find much merit in the contention of the respondents that the applicant had been afforded adequate opportunity to effectively defend himself and was also furnished the copies of the documents upon which the prosecution proposed to rely in the departmental enquiry.

11. The respondents' contention is that by passing the order that the period of absence shall be treated as leave without pay the disciplinary authority should not be held to have condoned the alleged misconduct. According to the learned counsel for the respondents the disciplinary authority could not have had the intention of regularising the period of absence. In reply, the learned counsel for the applicant vehemently argues that the law is now well settled that where the entire period of absence is treated as leave of whatever kind due or even as leave without pay no punishment on the charge of absence from duty for that period can be legally awarded.

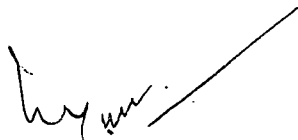
12. On consideration of the rival contentions of the learned counsel for the parties, we find ourselves in agreement with the plea raised by the applicant and re-iterated by his counsel during the course of his arguments. This is so for the simple reason that there is a clear authority in the form of a judgement passed as recently as on 13th January, 1999 by the Bench of this Tribunal of which one of us (Hon'ble Shri R.K. Ahooja) was a Member. The judgement was passed in Ex-Head Constable Ram Piara Singh vs. Union of India & Ors. (OA 2223/95). The following observations were made while allowing the OA filed by the aforesaid Ex-Head Constable assailing the punishment

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order and the appellate order passed against him in disciplinary proceedings based upon his alleged absence from duty.

"Mrs. Ahlawat argued that the principle laid down by the Punjab and Haryana High Court in Chanan Singh's case which was followed by the Delhi High Court in Satyapal Yadav's case and approved by the Apex Court in State of Punjab and Others vs. Bakshish Singh, is applicable to the case on hand as the relevant facts in all these cases are identical. We find considerable force in this submission of the learned counsel. In the case of Satyapal Yadav in the final order in the disciplinary proceedings dated 19th August, 1991 after finding Sri Yadav guilty of unauthorised absence and imposing on him a penalty of removal from service with immediate effect, it was stated that the absence of Sri Yadav from 30th March, 1991 to 23rd May, 1991, i.e., for 54 days was regularised against extraordinary leave. The Court held that once the unauthorised absence has been regularised by the grant of leave of any kind, there was no question of Sri Yadav being absent and hence the charge did not survive. Same was the reasoning of the High Court of Punjab and Haryana in Chanan Singh's case. In State of Punjab and Others vs. Bakshish Singh, though the State of Punjab filed an appeal, the Apex Court refused to interfere with the finding of the trial court which was affirmed by the District Court and the High Court

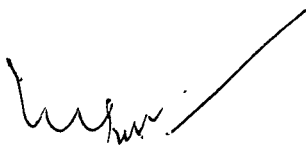




that once the unauthorised absence from duty has been regularised by treating the period of absence as leave without pay, the charge of misconduct of unauthorised absence would not survive. In this case also in the final order dated 4.4.1994 the disciplinary authority after stating that the applicant was dismissed from service with immediate effect regularised his absence from duty from 30.9.1992 to the date of issue of the order as leave without pay. In this respect the facts are identical with the facts of the cases under citation including the case of Bakshish Singh".

13. We may state that the judgement of the Pb. & Hr. High Court referred to in the judgement (supra) is reported as SLJ 1988 (3) 21 while the judgement of the Delhi High Court in Satya Pal Yadav is reported in 71(1998) Delhi Law Times 68 and the judgement of the Apex Court in Bakshish Singh's case is reported in JT 1998(7) SC 142.

14. The learned counsel for the respondents in OA 2223/95 (Supra) had relied upon the judgement of the Supreme Court in State of Madhya Pradesh vs. Harihar Gopal, reported in 1969 SLR (SC) 274 in which a separate order granting the leave for the period of absence had been issued. The Madhya Pradesh High Court had taken the view that as the State Govt. had granted leave to the respondent and thereby regularised his absence the respondents in the writ petition had no power to remove him from service. When an appeal was filed before the Apex Court the Apex Court did

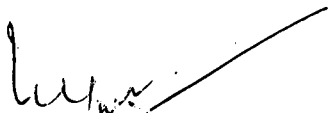


not agree with the conclusion of the High Court, holding that the order granting leave had been passed only for the purpose of covering the dates of absence and that such an order granting leave passed subsequent to the order of punishment would not amount to regularisation or condonation of the misconduct as the subsequent order appeared to have been issued only for the purpose of keeping a correct record of the service of the charged officer. The Bench of this Tribunal in the aforesaid case held that the case before it was not identical as the order granting leave was not passed subsequent to the order of punishment and was in fact a part of that order.

15. The same principle would apply to the instant case. Furthermore, the subsequent judgement in Bakshish Singh's case (supra) should be held to have finally settled the issue. There is a clear pronouncement in the aforesaid case that once the period of absence from duty has been regularised by grant of leave the charge of absence from duty would not survive and the disciplinary authority would not be competent to dismiss the employee from service on that score.

16. On the above ground alone this O.A. is deserves to be allowed.

17. For the foregoing reasons the O.A. is allowed and the impugned orders of punishment as also the appellate order are hereby quashed and the respondents are directed to re-instate the applicant in service forthwith, in any case not later than three months from the date of receipt of a copy of this order. However, the applicant will not be entitled to any back wages for the period he was out of job in pursuance to the impugned orders of punishment and the appellate order. However, this period shall not be treated to constitute break in service for other purposes.



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18. With the above order the O.A. is disposed of,
but without any order as to costs.

R. K. Ahooja
(R. K. Ahooja)
Member (A)

T. N. Bhat
22.1.99
(T. N. Bhat)
Member (J)