

Central Administrative Tribunal  
Principal Bench

O.A. No. 1019 of 1995

New Delhi, dated this the 27th August, 1999

Shri Anil Kumar,  
S/o Shri Mange Ram Sharma,  
R/o Vill Dattaur,  
P.O. Sampla,  
Dist. Rohtak (Haryana) ... Applicant

(By Advocate: Shri M.K. Gupta)

Versus

1. The Commissioner of Police,  
Delhi Police,  
Police Headquarters,  
I.P. Estate,  
New Delhi.
2. The Dy. Commissioner of Police,  
Rashtrapati Bhawan,  
New Delhi. ... Respondents

(By Advocate: Shri Vijay Pandita)

ORDER (Oral)

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

Applicant impugns Disciplinary Authority's order dated 22.12.94 (Ann. P.21) removing him from service and the Appellate Authority's order dated 6.4.95 (Annexure P.23) rejecting his appeal.

2. Applicant was proceeded against departmentally on the allegation that he remained absent from duty unauthorisedly and wilfully from 7.10.93 and thereafter resumed his duty on 2.5.94 after remaining absent for a period of 208 days 12 hours and 10 minutes and did not bother to join his duty despite issue of absentee notice to him. It was alleged against him that as per his previous records he was found absent on four previous occasions, each of which has been listed in the Charge Sheet.

(Annexure P-2). The E.O. in his finding dated 27.5.94 (Annexure P-17) held the charge of absences as proved beyond doubt. A copy of the E.O.'s report was served upon applicant vide Respondents' letter dated 8.6.94, to which applicant submitted representation on 23.7.94. After going through the materials on record and giving the applicant a hearing in the O.R., the Disciplinary Authority accepted the finding of the E.O. and imposed the penalty of removal from service after directing that the period of applicant's absence from duty be treated as leave without pay. The appeal against the aforesaid order was dismissed on 6.4.95 against which this O.A. has been filed.

3. We have heard applicant's counsel Shri M.K.Gupta and respondents' counsel Shri Vijay Pandita.

4. Shri M.K. Gupta has taken various grounds in the O.A. including the submission that applicant was suffering from illness and hence could not attend his duties. In this connection medical certificate issued by the Delhi Municipal Corporation Dispensary has also been filed. However, the most important ground taken by Shri Gupta is the fact that as respondents have regularised applicant's absence from duty by treating the same as leave without pay, the charge of unauthorised absence from duty does not survive and hence the impugned orders are required to be quashed and set aside. In this connection Shri

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Gupta relies upon the Hon'ble Supreme Court's judgment in State of Punjab Vs. Bakshish Singh JT 1998 (7) SC 142 as well as the Delhi High Court's decision in S.P. Yadav Vs. Union of India 71 (1998) Delhi Law Times 68.

5. In Bakshish's case (Supra) the Hon'ble Supreme Court has held


"the period of absence from duty having been regularised and converted into leave without pay, the period absence from duty does not survive."

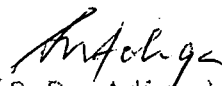
6. In the light of the aforesaid ruling cited by Shri Gupta the impugned orders of the Disciplinary Authority and Appellate Authority cannot be sustained in law and accordingly they are quashed and set aside.

7. This O.A. succeeds and is allowed to the extent that the impugned orders of the Disciplinary Authority and the Appellate Authority are quashed and set aside. Respondents are directed to reinstate applicant within two months from the date of receipt of a copy of this order. Upon applicant's reinstatement the intervening period between the date of his removal from service and rejoining duty together with such consequential

benefits as flow from his reinstatement shall be regulated by respondents in accordance with rules and instructions on the subject. No costs.

(81)

  
(Kuldip Singh)  
Member (J)

  
(S.R. Adige)  
Vice Chairman (A)

/GK/