

Central Administrative Tribunal
Principal Bench

O.A.No.1675/96

Hon'ble Shri A.V.Haridasan, Vice-Chairman(J)
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 3rd day of December, 1998

Balbir Singh
s/o Late Shri Chander Bhan
r/o House No.H-208, Police Lines
Kingsway Camp
Delhi.

... Applicant

(By Shri Sudhir Mehndiratta, Advocate)

Vs.

1. Commissioner of Police, Delhi
Delhi Police Headquarters
M.S.O.Building, I.P.Estate
New Delhi.

2. Senior Additional Commissioner of Police
A P & T,
Delhi Police Headquarters
M.S.O.Building, I.P.Estate
New Delhi.

3. Deputy Commissioner of Police
VIth Bn. D.A.P.
P.T.S.Malviya Nagar
New Delhi.

... Respondents

(By Shri S.K.Gupta, proxy of Shri Amresh Mathur,
Advocate)

O R D E R (Oral)

Hon'ble Shri A.V.Haridasan, Vice-Chairman (J)

The applicant, Ex-Constable working under the 3rd Respondent, was dismissed from service on conclusion of departmental proceedings initiated against him for the misconduct of unauthorised absence between 2.9.1994 to 26.11.1994, vide impugned order dated 8.2.1995, Annexure-A1. The appeal filed by him against this order was rejected by the appellate authority vide its order dated 12.10.1995, Annexure-A2. The revision filed by him also met the same fate vide Annexure A-3. It is the case of the applicant that he was not absent wilfully as he was sick and was not in a position to report for duty.

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At the enquiry the applicant had produced medical certificate and prescriptions to show that he was really ill and could not report for duty even if he wanted to do so.

2. Enquiry officer after conclusion of the enquiry and summing up the evidence adduced at the time of enquiry came to the following conclusion:

"It seem to be genuine that the defaulter had been ill during the impugned period. He might have send his brother to inform the department but due lack of proper information recorded in the Daily Diary, the defaulter cannot claim it. Further, it is time that since the defaulter is not involved in any case of moral turpitude/Corruption the grantiy of misconduct is not of so serious. A lenient view may be taken please."

3. The disciplinary authority however did not take any lenient view. On the contrary, he took into consideration certain matters which were totally unrelated and extraneous while determining the quantum of penalty. It is seen from the impugned order, Annexure-A1 that the disciplinary authority has imparted his personal knowledge to him of his misbehaviour but the appellate authority and the revisional authority have also not taken into account the specific grounds raised by the applicant and have not given application of mind before passing the order. On this ground the applicant seeks to quash and set aside the impugned orders and for a direction to reinstate the applicant in service.

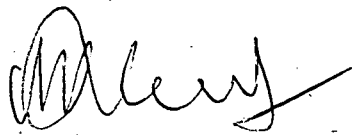
4. We have heard the learned counsel for the applicant and the proxy counsel for the respondents. It is evident from the enquiry report and the impugned order, Annexure-A1 that the disciplinary authority has never in fact ^{or disagreed} agreed with the view expressed by the enquiry authority. Enquiry authority has not stated that

the applicant is guilty. At the same time, by inference it can be gathered that his finding was that the applicant was unauthorisedly absent but his absence was not wilful for the reason that the claim of the applicant that he was ill, appeared to be genuine. It was under these circumstances that the enquiry officer recommended a lenient view. For coming to the conclusion that the applicant is guilty of wilful unauthorised absence, the disciplinary authority has not referred to any evidence to disagree with the finding of the enquiry officer other than that during the period in question applicant's wife approached him and requested that the applicant be called back to duty as he was indulging in excessive drinking and manhandling her. This whether true or false should not have been considered by the disciplinary authority to come to a finding that the applicant was wilfully and unauthorisedly absent. This is an extraneous matter to which the attention of the applicant was not drawn during the enquiry. For this reason we are of the considered view that the finding of the disciplinary authority that the applicant is guilty is based on matters which are extraneous and not notified to the applicant. If the appellate and the revisional authorities had taken care to appreciate this aspect of the case, we are of the considered view that they would not have upheld the order of disciplinary authority.

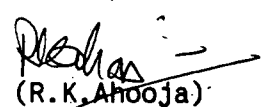
In view of the fact that a wilful unauthorised absence which was the gravamen of the charge has not been established, we are of the considered view that the

decision of the disciplinary authority that the charge is proved and the consequent order of penalty are unjustified and are liable to be set aside.

6. In the light of what is stated above, we allow the application and set aside the impugned orders of the disciplinary, appellate and revisional authorities and direct the respondents to reinstate the applicant in service forthwith. Normally, on the order of penalty being set aside as unjustified the necessary consequence would be payment of full back wages to the person concerned. However, in this case, we find that the applicant had been absent without leave however justified his absence ^{was}. We are of the view that he does not deserve full back wages and be paid only 50% of the back wages. Hence the respondents are directed to pay to the applicant 50% of the pay and allowances for the period during which the applicant was kept out of service within three months from the date of receipt of a copy of this order.



(A.V. HARIDASAN)
Vice-Chairman



(R.K. Ahooja)
Member(A)

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