

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O. A. NO. 1897/1996

New Delhi this the 08th day of March, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

Bijender Singh
S/o Shri Mohan Singh
R/o Village Batdanau
P.S. Laxmangarh, Distt. Sikar
Rajasthan.

.... Applicant

(None for the applicant.)

-Versus-

1. Sr. Addl. Commissioner of Police (AP&T)
Delhi Police Headquarter
I.P. Estate
New Delhi.

2. Dy. Commissioner of Police (6th Bn.)
DAP, Kingsway Camp
New Delhi. Respondents

(Head Constable Meghander Singh
Departmental Representative)

O R D E R (ORAL)

Shri V.K. Majotra, AM:-

Applicant and his Advocate are absent. We have perused the record and we proceed to dispose of the OA in their absence on merits as per Rule 15 of the Central Administrative Tribunal (Procedure) Rules 1987.

2. The applicant has assailed order dated 11.3.1996 passed by the Deputy Commissioner of Police, respondent No. 2 dismissing the applicant from service with effect from the date of the impugned order and also order dated 7.6.1996, Annexure-B passed by the Senior Additional Commissioner of Police rejecting the appeal of the applicant against the order dated 11.3.1996, Annexure-A. The applicant claims that in

August 1994, he suffered from Tuberculosis of abdomen and was under the treatment of Dr. P.M. Jain, Govt. Attendant and Registered Medical Practitioner and remained under his treatment from 1.8.1994 to 9.4.1995. He was declared fit to resume duty on 10.4.1995. According to him, he had informed the Deputy Commissioner of Police (6th Bn.) through a letter sent by UPC regarding his illness on 22.8.1994. An enquiry was ordered against the applicant on the charge that he had absented himself with effect from 1.8.1994 unauthorisedly, wilfully and without the proper permission of the competent authority. Several absentee notices were sent to him directing him to resume his duty. He neither joined his duty nor was the department informed by members of his family about his whereabouts. Police officers were despatched to search for him who did not succeed in locating him despite enquiries from his relations and at his last address given by him to the department. The enquiry officer held the applicant guilty of the charge. The disciplinary authority after going through the records, hearing him in OR and examining the written representation of the applicant found him guilty of remaining absent for over 8 months without any authorisation. The disciplinary authority has pointed out that as per S.O.No.111/88 of Delhi Police, the grant of medical certificate does not ⁱⁿ itself confer upon the individual concerned any right of leave. He has to forward the same to the competent authority and final orders of that authority will have to be awaited. It was concluded that the applicant was not interested in police work and was a liability to the police department. Apart from dismissing him from

(10)

service his period of absence was treated as leave without pay and the suspension period from 15.3.1995 to 27.6.1995 was treated as not spent on duty. On going through the appeal, comments and the record in the file and also hearing the applicant in OR on 31.5.1996, the appellate authority did not find any force in the pleas of the applicant and saw no reason to interfere with the punishment order of the disciplinary authority. The applicant has contended that he has not received any absentee notices as they were served on his father with whom he had strained relations. The applicant has alleged that the orders of dismissal passed by the disciplinary authority and affirmed by the appellate authority are arbitrary and not in accordance with Rule 8 (a) of the Delhi Police (Punishment and Appeal) Rules, 1980 as the disciplinary authority did not form an opinion that the applicant had committed grave misconduct and was unfit for police service. According to him, he was not provided reasonable opportunity to defend himself.

3. The respondents in their counter have maintained that the department had made all out efforts to serve the absentee notices on the applicant through his relatives at his last address. They have served notices on his father who had by a letter requested the authorities to show mercy on his son. The respondents have tried to prove that the applicant's contention that he did not have good relations with his father is not correct and that absentee notices served on his father must have come to the knowledge of the applicant and he cannot be

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allowed to take a plea that he has not received these notices. The documentary evidence, according to the respondents, had been proved by the statement of PW-1 and the applicant had been afforded full opportunity of defence. He was told to take any document other than the documents mentioned in the list attached with the summary of allegation, served upon him but he did not avail himself of that opportunity. The respondents have emphasised that submission of medical certificates does not confer upon the individual concerned any right of leave. The applicant should have obtained prior sanction of the leave. The applicant has submitted rejoinder as well.

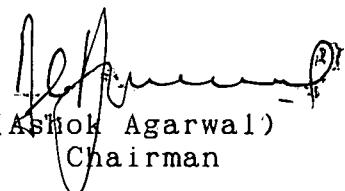
4. We have gone through the records placed before us. The applicant is said to have furnished medical certificates of Government Attendant and Registered Medical Practitioner regarding his illness. He, according to him had also informed the authorities under a UPC about his illness. We find that the authorities have not inquired into the genuineness of the medical certificates submitted by the applicant later on. Although the respondents have denied to have received intimation about applicant's illness sent under UPC, the benefit can be given to the applicant in that regard. We find that it is obligatory on the part of the respondents to enquire into genuineness or otherwise of the medical certificates about illness of the applicant. In spite of the fact that absentee notices had been sent to the applicant and they had been received by applicant's father, a situation can be there when an individual can suddenly fall ill and has to resort to forward

(12)

intimation about his illness and furnish medical certificate at a later stage. In such an event, it is obligatory on the part of the respondents to verify the veracity of the medical certificate and take a decision how to treat the period of absence.

5. In the circumstances described above, it would be just and proper to set aside the appellate order dated 7.6.1996, Annexure -B and direct the appellate authority to examine the genuineness or otherwise of the medical certificates and other documents submitted by the applicant, give a finding and thereafter proceed to decide about the imposition of penalty.

6. Present OA is disposed of in the above terms. No order as costs.


(Ashok Agarwal)
Chairman


(V.K. Majotra)
Member (A)

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