

Central Administrative Tribunal, Principal Bench

Original Application No.236 of 1996

New Delhi, this the 11th day of November, 1999

Hon'ble Mr. Justice Ashok Agarwal, Chairman
Hon'ble Mr. R.K. Ahooja, Member (Admnv)

Chander Bhan (Ex-Constable) (608/RB) son
of late Shri Randhir Singh, resident of
Village Mahipalpur, Police Station Vasant
Kunj, New Delhi.

- Applicant

(By Advocate - Shri Shyam Babu)

Versus

1. Deputy Commissioner of Police,
Rashtrapati Bhawan, New Delhi.

2. Addl. Commissioner of Police,
Rashtrapati Bhawan, New Delhi.

- Respondents

(By Advocate Shri Surat Singh)

O R D E R (Oral)

By Justice Ashok Agarwal, Chairman -

By the present Original Application the applicant, who was a Constable in the Delhi Police Force, seeks to impugn an order passed by the disciplinary authority on 8.9.1995 imposing a major penalty of removal from service. The aforesaid order is Annexure-A to the application. The said order has been issued after holding the applicant guilty of remaining unauthorizedly absent. The same is impugned on a short ground, namely, by the very order the said absence has been directed to be treated as leave without pay.

2. It has been contended by Shri Shyam Babu, learned counsel appearing in support of the application, that the moment unauthorized absence is converted into leave without pay, misconduct of unauthorised absence will cease to have any effect. The impugned order of penalty in the circumstances cannot survive. ^{In our View} ~~and the same~~

said contention is justified in view of the decision of the Hon'ble Supreme Court in the case of State of Punjab Vs. Bakshish Singh, JT 1998 (7) SC 142 wherein it has inter alia been observed as under -

"It will thus be seen that the trial court as also the lower appellate court had both recorded the findings that the period of absence from duty having been regularised and converted into leave without pay, the charge of absence from duty did not survive. Once it was found as a fact that the charge of unauthorised absence from duty did not survive, we fail to understand how the lower appellate court could remand the matter back to the punishing authority for passing a fresh order of punishment".

The aforesaid decision of the Supreme Court has been followed by this Tribunal in the case of Suresh Kumar Vs. Delhi Administration & ors, O.A. No.3224 of 1992, decided on 26.8.1999 wherein it has inter alia been observed as under :

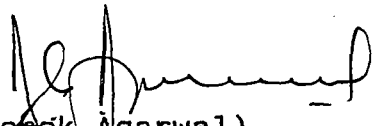
"6. We have heard applicant's counsel Shri Shyam Babu has taken various grounds in the O.A. the most important of which is that consequent to the Disciplinary Authority directing that the period of unauthorised absence from duty from 5.1.1990 to 4.6.1990 be regularised by treating the said period as leave without pay, the charge of unauthorised and wilful absence from duty does not survive and hence the impugned orders require to be quashed and set aside. In this connection he has relied upon the Hon'ble Supreme Court's ruling in State of Punjab Vs. Bakshish Singh, JT 1998 (7) SC 142 as well as the Delhi High Court's order in S.P.Yadav Vs. UOI 71 (1998) Delhi Law Times 68 wherein it has been held that the period of absence having been regularised and converted into leave without pay the punishment of removal from service on the charge of unauthorised absence did not survive.

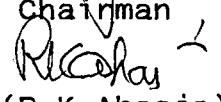
9. There is considerable merit in these submissions of Shri Shyam Babu and in the light of the aforesaid judgment of the Hon'ble Supreme Court as well as Delhi High Court, the impugned orders of the

Disciplinary Authority as well as that of Appellate Authority cannot be sustained in law."

The aforesaid observations indicate that apart from this Tribunal, the aforesaid ratio in the case of Bakshish Singh (supra) has also been followed by the Delhi High Court in the case of S.P.Yadav Vs. Union of India, 71 (1998) Delhi Law Times 68. If one has regard to the aforesaid decisions, the conclusion is inescapable that the impugned order of penalty cannot be sustained. By the very same order the period of absence has been converted into leave without pay. If this has been done the applicant cannot be held liable for unauthorised absence. The very charge on which the order of penalty rests thus falls to the ground.

3. The impugned order of penalty of removal from service as also the appellate order passed on 18.12.1995 at Annexure-B dismissing the appeal of the applicant and maintaining the order of penalty are hereby quashed and set aside. The present OA is accordingly allowed. There will, however, be in the facts and circumstances of the case, no order as to costs.


(Ashok Agarwal)
Chairman


(R.K. Ahooja)
Member (Adminv)