

Central Administrative Tribunal, Principal Bench

Original Application No.2555 of 1996

New Delhi, this the 5th day of April, 2000

Hon'ble Mr.Justice Ashok Agarwal Chairman
Hon'ble Mr.V.K.Majotra, Member (Admnv)

Surender Kumar, Ex-HC No.4051/ PCR, Delhi
Police, S/o Shri Kedar Nath, R/o Village
Madana Khurd, P.O. Madana Kalan, Distt.
Rohtak (Haryana) - Applicant

(By Advocate -None)

Versus

1. The Commissioner of Police, Delhi, Police Head Quarters, I.P.Estate, New Delhi.
2. Addl.Commissioner of Police (Operations), Police Headquarters, I.P.Estate, New Delhi.
3. Addl. Dy. Commissioner of Police, Police Control Room, Delhi. - Respondents

(By Advocate Shri Ram Kawar)

O R D E R (Oral)

By V.K.Majotra, Member(Admnv) -

Applicant Head Constable Surender Kumar was proceeded ^{wa} against ^A departmental enquiry under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980 on the allegations that when he was detailed for duty on 23.8.1994 at PCR Van R-30 he neither reported for duty nor did he send any information about his whereabouts and two absentee notices were issued at his home address with the direction to resume his duty at once, otherwise disciplinary action would be taken against him. He resumed his duty on 7.12.1994 after remaining absent unauthorizedly for a period of 105 days and 14 hours. He submitted his written statement on return on 23.8.1994 stating that he had met with an accident but he did not produce any medical papers in support of his version. A departmental enquiry was entrusted to Inspector Chander Mohan, who prepared

summary of allegations, list of witnesses and list of documents which were served upon the applicant on 11.2.1995 and which were duly acknowledged by him. The enquiry officer examined 3 prosecution witnesses. in the presence of the applicant. He did not cross-examine anyone of them. After completion of prosecution evidence, the enquiry officer prepared a charge against the applicant. The applicant submitted his list of 4 defence witnesses and also submitted his defence statement. The enquiry officer, on assessment of the prosecution evidence, defence evidence and defence statement of the applicant and other relevant record available in the DE file, submitted his findings concluding therein that the charge framed against the applicant stood fully proved. A copy of the finding of the enquiry officer was served upon the applicant. He submitted his representation. The disciplinary authority after considering the entire evidence adduced in the case did not accept applicant's plea that he had met with an accident while coming to join his duties. He found that the applicant had absented himself from duty knowingly, willfully and deliberately. Earlier also, the applicant had been absenting himself unauthorizedly on more than 32 occasions, during his short service, and was given ample opportunities to improve himself. The applicant became habitual absentee and incorrigible. It was held that he is not fit for

retention in the police force. Consequently, he was dismissed and his period of absence from 23.8.1994 to 6.12.1994 was treated as leave without pay.

2. The applicant went in appeal. The appellate authority also vide his order of 5.12.1995 held the plea of the applicant having met with an accident as untenable and also concurred with the conclusion of the disciplinary authority that the applicant absented himself from duty knowingly and wilfully. The appeal was rejected. The applicant alleged the findings of the enquiry officer and the disciplinary authority as perverse and illegal. The applicant averred that the evidence on record was not appreciated in true perspective and also that the punishment of dismissal is harsh and disproportionate to the alleged absence. According to the applicant the defence witnesses have stated on oath that the applicant had met with an accident, was given first aid and later plastered and remained on medical advice. According to him, he had informed the authorities about his illness. He further alleged that he was not given opportunity to cross-examine the witnesses. He has sought quashing of the orders Annexure-A-6 dated 1.2.1995 regarding appointment of the enquiry officer, Annexure-A-7 dated 8.3.1995 relating to the charge, Annexure-A-10 dated 26.4.1995 the findings of the enquiry officer,

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Annexure-A-12 dated 8.6.1995 the penalty order passed by respondent no.3 and Annexure-A-14 dated 5.12.1995, the order in appeal passed by the Additional Commissioner of Police. He has also sought directions to the respondents to reinstate him in Delhi Police as Head Constable (Driver), with all consequential benefits.

3. The respondents in their counter have stated that two absentee notices were sent at applicant's home address with the direction to resume his duties. However, the applicant after remaining absent from 23.8.1994 till 7.12.1994 i.e. for a period of 105 days & 14 hours unauthorizedly, resumed his duties on 7.12.1994. On return he made a written statement that on 23.8.1994 he had met with an accident while coming to resume his duties. But he did not produce any medical papers in support of his version. Departmental enquiry was initiated against the applicant vide memo dated 1.2.1995. Copy of the findings of the enquiry officer was served upon the applicant on 5.5.1995. The applicant submitted his representation on 24.5.1995. In the enquiry it was proved that during 105 days & 14 hours period he never informed the department nor did he obtain permission of the competent authority to avail medical rest and absented himself on his own volition. Earlier also he had absented himself unauthorizedly on more than 32 occasions during a short service. He did

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not mend himself despite having been given ample opportunity to improve his conduct. The respondents did not find him fit for retention in the department. The enquiry officer has stated that whereas PW3 Doctor had stated that the applicant had fallen from staircase, the applicant on his own has stated that he had met with an accident while on his way to join his duties. The applicant had obtained certificates from different dispensaries for medical rest and about his fitness. He had never intimated the department about his whereabouts. Therefore, the pleas taken by the applicant were not accepted. The respondents have also contended that the appellate authority has also passed a self speaking order. The applicant has filed a rejoinder as well.

4. We have heard the learned counsel for the respondents and perused the material available on record.

5. On a perusal of the impugned order dated 8.6.1995, imposing the punishment of dismissal on the applicant, we find that the period of absence from 23.8.1994 to 6.12.1994 has been decided to be treated as leave without pay. On being asked about the application of the ratio of the decision of the Hon'ble Supreme Court in the case of State of Punjab Vs. Bakshish Singh, JT 1998 (7) SC 142, the learned counsel for the

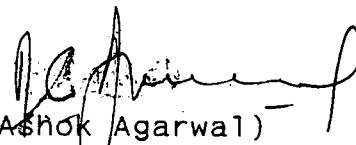
respondents expressed that same is not applicable to the facts of the present case. In the said case the Trial Court had recorded a finding that unauthorised absence from duty having been regularised by treating the period of absence as leave without pay the charge of misconduct did not survive. The lower appellate Court confirmed the finding that since the period of unauthorised absence from duty was regularised, the charge did not survive. The High Court before which the second appeal was filed by the State of Punjab did not advert itself to any inconsistency and has dismissed the appeal summarily, which indirectly reflects that it allowed the judgment passed through it. The Hon'ble Supreme Court allowed the appeal, upholding the judgment and decree passed by the Trial Court. In our view, the ratio of Bakshish Singh (supra) is indeed applicable to the present case where the disciplinary authority in the final order has treated the period of unauthorised absence of the applicant as leave without pay i.e. the period of the absence of the applicant had been regularised and thus the very basis of the charge did not survive.

6. In the light of the above reasons and discussions the impugned orders Annexure-A-6 dated 1.2.1995 Annexure-A-7 dated 8.3.1995, Annexure-A-10 dated 26.4.1995, Annexure-A-12 dated 8.6.1995 and

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Annexure-A-14 dated 5.12.1995, are quashed and set aside. The respondents are directed to reinstate the applicant in service. The applicant, however, is not entitled to any back wages. No costs.


(Ashok Agarwal)

Chairman


(V.K. Majotra)
Member (Admnv)

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