

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 521/1996

New Delhi this the 30th day of November, 1999.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SMT. SHANTA SHAstry, MEMBER(A)

Sita Ram Meena (D-1016)
S/o Sh.Gopi Ram,
R/o VPO Niwana,
Police Station, Gobindgarh,
District Jaipur (Rajasthan),
Presently working as
Sub Inspector in Police Station
Janakpuri New Delhi.

...Applicant

(By Advocate Shri Shyam Babu)

-Versus-

1. Deputy Commissioner of Police,
South District,
Police Station, Hauz Khas,
New Delhi.

2. Additional Commissioner of Police
(Southern Range),
Police Headquarters,
I.P.Estate,
New Delhi

...Respondents

(By Advocate Shri Vimal Jad)

O R D E R (ORAL)

Justice Ashok Agarwal:

In our view, the present O.A. is covered by a decision of this Tribunal in O.A.No.236/1998- Chander Bhan vs. Deputy Commissioner of Police & anr- rendered on 11.11.1999 to which one of us (Justice Agarwal) was a party.

2. By the present O.A., applicant seeks to impugn an order dated 12.3.1992 passed by the Deputy Commissioner of Police in disciplinary proceedings against the applicant whereby a penalty of forfeiture of one year's approved service temporarily for a

period of one year has been directed. The order further proceeds to direct that the absence of the applicant for the period 19.7.1990 to 7.9.1990 during which period he was said to have been unauthorisedly absent from duty was to be treated as leave without pay. The order thus directs that the period of unauthorised absence for which the delinquent was chargesheeted is to be treated as leave without pay. The aforesaid order of the Disciplinary Authority was affirmed in appeal by the Appellate Authority vide its order dated 25.7.1995. According to Shri Shyam Babu, learned counsel for the applicant, the moment the period of unauthorised absence is directed to be treated as leave without pay, the same has been regularised. Once this is done, no penalty for the aforesaid absence can be imposed upon the applicant. In the aforesaid decision rendered in O.A.No.236/1996 where again Shri Shyam Babu had appeared this is what has been observed:

"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, 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 26.8.1998 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. U.O.I. 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.

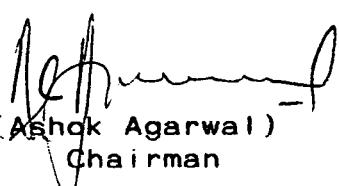
9. There is considerable merit in these submissions of Shri Shyam Babu and in the light of the aforesaid judgment of the Hon'ble Supreme Court as well as Delhi High Court, the impugned orders of the Disciplinary Authority as well as that of Appellate Authority cannot be sustained in law."

....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

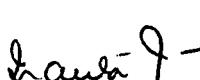
unauthorised absence. The very charge on which the order of penalty rests thus falls to the ground." 9

3. In our view, having regard to the ratio laid down in the aforesaid decision, the impugned order of penalty passed against the applicant on 12.3.1992 by the Disciplinary Authority and affirmed in appeal by the Appellate Authority by its order dated 25.7.1995 are liable to be quashed and set aside. We order accordingly.

4. Present O.A. is accordingly allowed. It follows that in case applicant becomes entitled to some consequential reliefs based on the present order, the respondents will consider the same on its own merits. There will, however, in the facts and circumstances of the case, be no order as to costs.


(Ashok Agarwal)

Chairman


(Shanta Shastray)

Member (A)

/sns/