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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.796//96

New Delhi, this 27th day of January, 2000

Hon'ble Shri Justice Ashok Agarwal, Chairman  
Hon'ble Smt. Shanta Shastry, Member(A)

Suresh Chand  
Head Constable No.302/NE  
c/o SHO, PS Bhajan Pura  
New Delhi

.. Applicant

(By Ms. Rachna Tiwari, Advocate)

versus

1. Lt. Governor, Delhi  
Raj Niwas, Delhi-7
2. Addl. Commissioner of Police  
New Delhi Range  
Police Hqrs., New Delhi
3. Deputy Commissioner of Police  
North East District  
Police Hqrs., New Delhi
4. Addl. Deputy Commissioner of Police  
North East District  
Police Hqrs., New Delhi .. Respondents

(By Shri Rajinder Pandita, Advocate)

ORDER(oral)

Hon'ble Smt. Shanta Shastry

The applicant has been working as Head Constable in Delhi Police. Disciplinary proceedings were initiated against him on 5.7.93 as he remained absent on three occasions without any intimation or prior permission from the competent authority. He was absent on 14.1.93, 21.2.93 and 22.2.93. The Enquiry Officer who submitted his report on 3.12.93 came to the conclusion that the applicant absented himself on all the 3 occasions but keeping in view the lacunae in recording the absence report, did not hold the applicant responsible fully. The enquiry officer held that the first part of the charge was not fully proved and it would be unjustified if the second part of the charge is included. For this reason, benefit of doubt was given to

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the delinquent official in this case. Thereafter the disciplinary authority, however, passed the impugned order on 19.1.94 awarding punishment of permanent forfeiture of two years approved service entailing proportionate reduction in pay with effect from the date of issue of the order. Also the applicant would earn no increment during the period of reduction and on expiry of the period, the reduction will have the effect of postponing his future increments of pay. It was further ordered that the absence period of the applicant would be treated as 'leave without pay'. The applicant filed an appeal and the same was dismissed on 15.3.94.

2. It is the case of the applicant that the enquiry officer had not held the charge as proved and therefore the disciplinary authority's order imposing punishment is not in order. The disciplinary authority has taken into consideration extraneous matter such as absences on 24 earlier occasions throughout the career of the applicant. Learned counsel for the applicant also points out that absence period has been regularised by treating it as leave without pay, <sup>which</sup> ~~which is not proper~~. The applicant seeks the quashing and setting aside of the impugned orders dated 19.1.94, 15.3.94 and 22.11.95 as well as the initiation of disciplinary proceedings on 5.7.93.

3. The learned counsel for the respondents points out that the disciplinary authority has given full opportunity to the applicant, he was heard in the orderly room and only thereafter the orders were passed. Also it is an admitted

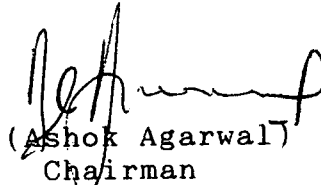
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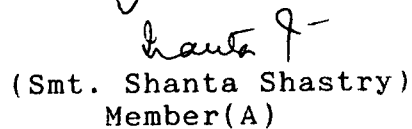
fact that the applicant had admitted his absence on the 3 occasions for which he was charged. The learned counsel has drawn our attention to the judgement dated 10.1.2000 in OA 819/99 of this Tribunal in the case of Lok Pal Vs. Commissioner of Police, Delhi & Ors. wherein the OA was dismissed. In this case, the applicant had absented himself unauthorisedly for more than 214 days and disciplinary proceedings were conducted against him and he was awarded the penalty of removal from service. Applicant in that case had also remained absent on 10 earlier occasions. Being a member of uniform force, the aforesaid absence from duty was considered as a serious misconduct. According to the learned counsel for the respondents, the present case of the applicant is fully covered by the abovesaid judgement and therefore the OA should be dismissed.

4. We have heard the learned counsel for both the parties and perused the relevant material. We find that the disciplinary authority has passed a speaking order after careful consideration of the findings of the enquiry officer and has applied his mind. However, while holding the applicant guilty and punishing him, he has treated the absence period as leave without pay. Thus the absence has been regularised. As the enquiry was for unauthorised absence and as the said absence has been regularised nothing survives in the enquiry. The applicant's case is clearly covered by the ratio in the judgement of the

Hon'ble Supreme Court in the case of State of Punjab Vs. Bakshish Singh JT 1998(7) SC 142 wherein it has been held that once the absence is regularised, it cannot be a ground for punishment. We cannot but abide by the law laid down by the Hon'ble Supreme Court.

5. In the circumstances, we allow the present OA and quash and set aside the impugned orders passed by the respondents. No costs.

  
(Ashok Agarwal)  
Chairman

  
(Smt. Shanta Shastry)  
Member(A)

/gtv/