

Central Administrative Tribunal
Principal Bench

O.A. No. 1054 of 1997

New Delhi, dated this the 6th April, 2000

Hon'ble Mr. S.R. Adige, Vice Chairman (A)
Hon'ble Mr. Kuldip Singh, Member (J)

Ex-Constable Ganesh Pal Meena,
(No. 11024/DAP, Delhi Police)
S/o Shri Prabhu Lal,
R/o Vill. & P.O. Garh Khera,
Dist. Swai Madhopur,
Rajasthan. Applicant

(By Advocate: Mrs. Avnish Ahlawat)

Versus

1. Union of India through
Lt. Governor of Delhi through
Commissioner of Police (Delhi)
MSO Building, New Delhi.
2. Shri T.R. Kakkar,
Sr. Addl. Commissioner of Police (AP&T),
MSO Building, New Delhi.
3. Shri L.S. Sandhu,
Dy. Commissioner of Police,
XI Battalion, Delhi Armed Police
Delhi.
4. Inspector Mahesh Chand Sharma,
Enquiry Officer,
X Bn., Delhi Armed Police,
P.P.Lines, Delhi. Respondents

(By Advocate: Ms. Neelam Singh)

ORDER (Oral)

HON'BLE MR. S.R. ADIGE

Applicant impugns Disciplinary Authority's order dated 6.12.94 (Ann. P), the Appellate Authority's order dated 29.8.95 (Annexure C) and the Revision Order dated 13.5.96 (Annexure D).

2. Applicant was proceeded against departmentally on the allegation that while temporarily attached with Security Unit, he absented

himself unauthorisedly from 25.10.92 and resumed duty on 29.10.92. His services were terminated under Rule 5(1) CCS (Temporary Service) Rules, 1965. Against that order of termination of his services, he preferred a representation to the Commissioner, Police, Delhi, which was accepted and it was ordered that applicant be reinstated in service forthwith, with a further direction that a regular Departmental Enquiry be held against him for his various misconduct. Applicant was ordered to be kept under suspension during the course of D.E.

3. In compliance of the aforesaid order of Commissioner of Police, Delhi, applicant was reinstated in service vide order dated 7.7.94, and a regular D.E. was initiated against him, in which it was mentioned that applicant had remained absent unauthorisedly and wilfully for a period of four days. It was also alleged that applicant was a habitual absentee, and ^{during} ~~for~~ his service, applicant was found absent from his duties on 32 different occasions, for which he was awarded many minor punishments.

4. The E.O. in his report dated 31.8.94 ((Annexure A)), held the charge of applicant having absented himself for four days from Government duty wilfully and unauthorisedly. ^{as substantiated} He also observed that during applicant's service he absented himself on 32 different occasions and concluded that applicant was a habitual absentee and incorrigible person. A copy

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of E.O.'s report was furnished to the applicant for representation, if any. Applicant submitted his representation on 20.9.94.

5. After hearing applicant in the orderly room on 30.9.94 and perusing the materials on record, the Disciplinary Authority by impugned order dated 6.12.94 reduced applicant's pay by two stages from Rs.1010/- to Rs.970/- p.m. with immediate effect from a period of two years permanently, subject to the condition that the stage of reduction would be changed if his termination/suspension period from 8.4.93 to date of reinstatement was decided in his favour. It was directed that ^{not} applicant would earn increments during the period of reduction, and after expiry of the penalty period the reduction would have the effect of postponing his future increments of pay. The Disciplinary Authority further ordered that the period of absence would be treated as leave without pay.

6. Applicant filed an appeal which was received in Respondents' office on 22-2-95 (Annexure-L). The aforesaid appeal was considered and rejected by the Appellate Authority and by order dated 4.7.95 (Annexure-M) ¹ the proposed enhancement of the penalty and directed applicant to show cause as to why he should not be removed from service.

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7. Applicant submitted his reply to the same on 11.8.95 (Annexure-N), and after considering the same the Appellate Authority by impugned order dated 29.8.95 enhanced the penalty to one of removal from service. While doing so he also ordered that applicant's absent~~e~~ period of four days and suspension period from 8.4.93 to 17.1.95 would be treated in the same manner as already decided by Disciplinary Authority vide his orders dated 16.12.94 and 17.1.95. Applicant preferred a review petition to the same, which was rejected vide order dated 15.5.96 by the Revisional Authority.

8. We have heared applicant's counsel Mrs. Avnish Ahlawat and Respondents' counsel Ms. Neelam Singh.

9. During the course of hearing Mrs. Ahlawat has taken the legal point that the Disciplinary Authority having himself regularised applicant's period of absence by grant of leave without pay, the charge of unauthorised absence from duty does not survive and the impugned orders are, therefore, fit to be quashed and set aside. In this connection she relies upon the Hon'ble Supreme Court's

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judgment in State of Punjab & Others Vs. Bakshish Singh JT 199 (7) SC 142 as well as Delhi High Court's judgment dated 20.10.97 in S.P. Yadav Vs. U.O.I. & Others 71 (1998) Delhi Law Times 68.

10. In both these rulings it has been held that the period of absence from duty having been regularised as leave without pay, the charge of unauthorised absence from duty would not survive. This legal position is not seriously disputed by Respondents' counsel Ms. Singh, and in fact the Tribunal in several orders issued in the recent past, after relying on the aforesaid rulings, have quashed and set aside such orders where, while imposing a penalty for unauthorised absence from duty, the concerned authorities have themselves regularised those absences by grant of leave without pay.

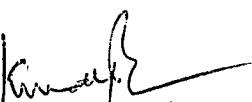
11. We are satisfied that the above rulings fully cover the facts and circumstances of the present case, and the impugned orders, therefore cannot be legally sustained.

12. Under the circumstances the O.A. succeeds and is allowed to the extent that the aforesaid impugned orders are quashed and set aside.

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Applicant should be reinstated in service within two months from the date of receipt of a copy of this order. The period from the date of applicant's removal from service till the date of his reinstatement and such consequential benefits as will flow from the reinstatement shall be regulated by respondents in accordance with rules, instructions and judicial pronouncements on the subject. No costs.



(Kuldip Singh)
Member (J)



(S.R. Adige)
Vice Chairman (A)

"gk"