

(69)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA-1236/97

New Delhi, this the 16th day of November, 2000

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI S.A.T. RAZVI, MEMBER (A)

1. ~~Ex. Constable Rajender Singh No. 2073/P.C.R,
S/o Shri Rajpal Singh, aged about 27 years
previously employed in Delhi Police,
R/o Village- Nangla Bari, P.O-Ratol,
Distt-Meerut, U.P.Applicant
(By Advocate : Shri Shanker Raju)

VERSUS

1. Union of India
through its Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

2. Addl. Commissioner of Police,
Operations, Police Headquarters,
I.P.Estate, MSO Building, New Delhi.

3. Addl. Dy. Commissioner of Police,
PCR, Police Head Quarters,
IP Estate, MSO Building,
New Delhi.Respondents.
(By Advocate: Sh. Devesh Singh)

O R D E R (ORAL)

By Hon'ble Mr. Justice Ashok Agarwal, Chairman:-

By an order passed by the disciplinary authority
on 9.10.96, applicant has been imposed with a penalty of
dismissal from service for misconduct of unauthorised
absence. Aforesaid order has been affirmed by the
appellate authority by an order passed on 30.4.97.
Aforesaid orders have been impugned by the applicant in
the present OA.

2. Applicant at the material time was Constable in
Delhi Police. In disciplinary proceedings, applicant was
alleged to have unauthorisedly absented himself for the
period from 11.5.96 to 9.10.96. He is said to have

(2)

and had

proceeded to his village on 9/10.5.96 and the applicant left his place of duty without prior intimation and permission. According to the applicant, after he had gone to his village, he had sudden high fever. Since the applicant had not resumed duty despite absentee notices having been sent to him, applicant was placed under suspension by an order passed on 31.5.96. A departmental enquiry was ordered against the applicant by the Addl.Dy.Commissioner of Police by an order passed on 3.6.96. According to the applicant, he was implicated in an offence under Section 384/506/170 read with Section 34 of the I.P.C. He was arrested in this case and remained in judicial custody from 4.7.96 to 5.8.96. He later on joined his duties on 7.8.96. Inspector Sh. R.P.Tyagi was appointed as enquiry officer who examined witnesses both for the prosecution as also for the defence. Based on the evidence, he by his report on 22.8.96 found the applicant guilty of unauthorised absence. Aforesaid report of the enquiry officer was served by the disciplinary authority on the applicant who in turn submitted his representation against the same. The disciplinary authority by his impugned order of 9.10.96 has concurred with the aforesaid findings of the EO holding the applicant guilty of unauthorised absence and has proceeded to impose the penalty of dismissal from service. As already stated, aforesaid orders of the disciplinary authority was carried by the applicant in appeal and the appellate authority by his order of 30.4.97 has maintained the aforesaid order of penalty and has dismissed the appeal. Aforesaid orders are impugned in the present OA.

3. On a contention raised on behalf of the applicant that a police officer, while under suspension, was not required to be present at his place of duty, present OA along with one other OA, namely, OA-2947/97 was referred to the Full Bench. By an order passed on 18.9.2000, the Full Bench answered the reference as under:-

"Whether a police officer under the provision of the Delhi Police Act and Rules thereunder is required to attend the roll call and be available to the authorities during the period of suspension and failure to do so would amount to 'unauthorised absence'.

Yes"

4. Present OA along with aforesaid OA were directed by the FB to be placed before a DB for decision in the light of the aforesaid findings given by them. Present OA has now been heard in the light of the aforesaid findings rendered by the FB.

5. Sh. Shanker Raju, learned advocate appearing on behalf of the applicant has strenuously urged that the absence of the applicant in the instant case, cannot be termed as 'unauthorised absence'. He has pointed out that he had submitted from time to time medical certificates in support of his plea that he was unwell and, therefore, could not remain present on duty. He has further gone on to contend that his absence during the period he was in custody cannot be termed as 'unauthorised absence'. According to him, if medical certificates submitted by him were doubted, the competent authority should have called upon him to submit himself to a second medical opinion which the competent authority

W.F.

has failed to do. In any event, the period of absence cannot be termed to be such as to brand the applicant as incorrigible absentee so as to warrant the extreme penalty of dismissal from service.

6. We have considered the aforesaid submissions of Sh. Shanker Raju, learned counsel in the light of the material which has been placed on record and we find that the same are without substance and are liable to be rejected. As far as the medical certificates which have been submitted by the applicant are concerned, they have been considered by all the aforesaid authorities, namely, the enquiry officer, the disciplinary authority as also the appellate authority and all have concurrently found that the same are not trust-worthy and, therefore, cannot be relied upon. The respondent authorities have pointed out that the applicant was not at all justified in leaving his place of duty in Delhi ^{without prior permission} and proceed to his native place where he is alleged to have fallen ill. They have further pointed out that the applicant had returned to Delhi and when he could go to GTB Hospital in Delhi, he could as well go to report himself to his place of duty which is a short distance away from the hospital, and this he has failed to do. Findings in respect of the medical certificates produced are findings of fact, the same are not liable to be interfered with in our limited jurisdiction. We are not a Court of appeal. It is, therefore, not open to us to re-appreciate the evidence and arrive at a finding different from the one which has found favour with the aforesaid disciplinary authorities. Aforesaid finding of unauthorised absence,

[Signature]

22

✓ in the circumstances, cannot be successfully faulted and the same is accordingly maintained.

7. As far as the measure of penalty is concerned, the disciplinary authority as also the appellate authority have found on the facts and circumstances arising in the case that the proper measure of penalty is that of dismissal from service. If one has regard to the fact that the applicant is a member of the disciplined force, no exception can be made.

8. In the aforesaid circumstances, the OA is dismissed without any order as to costs.



(Ashok Agarwal)

Chairman



(S.A.T. Rizvi)

Member (A)

/suni1/