

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 141/1997

New Delhi this the 6th Day of February 1998.

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)
Hon'ble Shri S.P. Biswas, Member (A)

Mrs. Leela Devi,
wife of Shri Satish Kumar,
Resident of C-3, New police Lines,
Kingsway Camp, New Delhi.

Petitioner

(By Advocate: Mrs. Meera Chhibber)

-Versus-

1. Union of India through
Commissioner of Police,
Police Headquarters,
I.P. Estate, New Delhi.
2. Additional Commissioner of Police,
(Northern Range)
Police Headquarters,
MSO Building, I.P. Estate,
New Delhi.
3. Deputy Commissioner of Police,
North West District,
Through Police Headquarters,
MSO Building,
I.P. Estate, New Delhi.

Respondents

(By Advocate: Shri Arun Bharadwaj)

ORDER

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)

The petitioner in this case was removed from service by an order dated 1.2.1996 and thereafter an appeal was filed on 26.2.1996. The same was dismissed by an order dated 18.11.1996. The order dated 1.2.1996 is being challenged on the ground that the same was ex parte order, and the order dated 18.11.1996, being an order without any application of mind and without considering the pleas that has been stated in the appeal against the ex parte removal order. It was also stated that the misconduct alleged to have been committed by the petitioner was not wilful and

in view of the submissions made in the petition, on the other hand, that absence that have occurred was due to the reasons beyond the petitioner's control. And the petitioner was under medical treatment for which copies of the medical certificates have been annexed at pages 28-55 of the paper book. It was also submitted by the petitioner that by a Circular of the Headquarters dated 16.9.1996, based on the decision of the CAT in OA 219/90 in the case of Mange Ram Vs. Commissioner of Police & Ors, the string from the absence is taken away once the leave is sanctioned irrespective of the nature of leave. That in such a case the disciplinary authority cannot impose punishment on the Govt. Servant concerned." It is stated that it is advisable that the observation passed by the CAT may be kept in mind while deciding the cases of absences. In the present case, the respondents had treated the leave as leave without pay and in the same said circumstances, the same period of absence cannot be a foundation for removal of the petitioner from the service. The respondents, on the other hand, submitted that the petitioner had initially taken 33 days earned leave w.e.f. 21.2.1994, thereafter she applied for extention of 60 days earned leave w.e.f. 26.3.1994 to 25.5.1994 and the same was also granted to her. Accordingly, the petitioner was to come back on 26.5.1994 but instead she continued her leave without permission till she joined the office on 30.7.1994. Thereafter on 12.8.1994 she proceeded on leave for 15 days and continued to remain on leave allegedly on medical grounds. Departmental Inquiry against the petitioner was to be conducted on a day to day basis and on the basis of the information from the Enquiry Officer that the petitioner is not joining the departmental

(9)

proceedings deliberately, the proceedings were allowed to continue ex parte. The Enquiry Officer submitted his findings that the charge of wilful/unauthorised absence has been fully proved. It was further stated that a copy of the findings was sent to the known address of the petitioner on 15.6.1995 and the petitioner did not file any reply. It was also stated that she was not found at the previous known address. Furhter the respondents submitted that the petitioner did not appear in orderly team and wilfully remained absent and in view of the findings that the absence throughout from 25.5.1995 to 29.7.1994, 12.8.1994 to 11.1.1995, and 1.3.1995 to 1.2.1996 is unauthorised absence and therefore by an order dated 1.2.1996 she was removed from service.

2. On receipt of the ex parte inquiry as well as the order of removal from the disciplinary authority, the petitioner filed an appeal stating that the petitioner was absent due to reasons beyond her control and there was no allegation of petitioner being absent prior to the said date during the nine years of service with the Delhi Police. It was submitted that all the problems started one after another after the petitioner got married in the early 1994. Thereafter she had to face two subsequent abortions and one serious accident of her husband resulting in ire of the in-laws and finally in September, 1996 with a lot of difficulties a baby boy was born. The petitioner had filed an appeal stating with folded hand and nailing done before the appellate authority that her case of wilful and unauthorised absence may be continued one more chance to serve the department be given to her. She had also produced before the appellate authority all

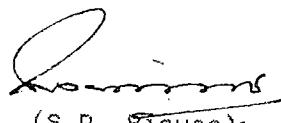
the certificates and medical history comprising of about 30 pages and the appellate authority without considering any of the such submissions, proceeded to state that the petitioner seems to have managed to obtain a medical certificate to cover up her absence and it was noticed that almost all the certificates indicated advising bed rest. The appellate authority had also stated on the appellate order that the petitioner was not only evading service of process and there is no doubt that the case was nothing but a wilful and deliberate absence on her part indicating her indifferent attitude towards government service. According to him, it was recorded in the appellate order that there was no mitigating circumstances which warranted interference with the appellate authority punishment awarded to by the disciplinary authority. (10)

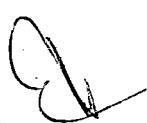
3. We have gone through the entire pleadings and the rival contentions of both the parties and we are afraid to note that the appellate authority has not applied his mind to the submissions made by the petitioner in her appeal and the findings on her appeal recorded in the appellate authority smacks nothing but non-application of mind. The petitioner had further elaborated her woes in the petition detailing the difficulties that she had undergone in para 4.4. to 4.12 wherein it was stated that her absence from service was not wilful but due to the factors that were beyond the control of the petitioner.

4. It was submitted on behalf of the petitioner that while she was pregnant for about two months, she fell sick and suffered serious backache which was followed by two abortions in succession and a delivery in extremely

complicated situation necessitating hospitalisation. On the top of these problems, her husband met with a serious accident which was in fact the cause of the second abortion. Continuous nagging from the in-laws coupled with misfortune of abortion accident, the mental and physical condition of the petitioner was not such that she could join service. It was stated that she had intimated the respondents and applied for leave but the respondents have taken a stand that the leave applied for was not sanctioned and as such the same remained to be unauthorised and wilful absence.

5. Looking into the entire prospect of the matter, we are of the firm opinion that the appellate authority failed to apply his mind to the case of the petitioner as is evident in the circumstances stated in the petition. We find that the ex parte proceedings, the enquiry report as well as the order of removal passed by the disciplinary authority need to be set aside. The respondents are directed to reinstate the petitioner with immediate effect. Since the respondents have already treated the period of absence as that of on leave, there is no question of payment of any back wages. It is further directed that the petitioner will be entitled to continue in service without break and the said service shall be counted for the purpose of promotion and other benefits except for payment of arrears. The OA is allowed as aforesaid with no order as to costs. ~~order as to costs.~~


(S.P. Biswas)
Member(A)


(Dr. Jose P. Verghese)
Vice Chairman (J)

Mittal