

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 1550/97

New Delhi this the 2nd day of August, 2000

Hon'ble Mr. Justice Ashok Agarwal, Chairman
Hon'ble Mr. V.K. Majotra, Member (A)

Smt. Ranvir Kaur
Legal Representative of
Ex. Constable Satish Kumar
W/o Shri Rajender Singh
R/o Qtr. No. 90, Police Colony,
Hauz Khas,
New Delhi.

...Applicant

(By Advocate: Shri Shankar Raju)

Versus

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

2. Sr. Addl. Commissioner of Police,
A.P.&T, Police Head Quarters, I.P. Estate,
M.S.O. Building, New Delhi.

3. Dy. Commissioner of Police,
3rd Bn, D.A.P, Kings Way Camp,
Delhi.

..Respondents

(By Advocate: Shri Ajay Gupta)

ORDER (Oral)

By Mr. V.K. Majotra, Member (A)

The applicant was a Constable in Delhi Police since 1993 and was detailed for Guard duty on 28.2.95 but he did not turn up. He was marked absent and subsequently placed under suspension vide order dated 16.3.95. He was reinstated in service vide order dated 26.5.95. However, the applicant had already resumed duty after absenting himself for a period of 25 days 10 hours and 10 mts. The departmental enquiry was instituted against him for the aforesaid allegedly wilful and unauthorised absence without prior permission of the competent authority in violation of Standing Order 111 of 1988. The Enquiry officer

reported that the charge against the applicant stood proved. The Disciplinary Authority endorsing the findings of the Enquiry officer awarded the punishment of removal from service vide order dated 11.11.1996 Annexure A-1. The applicant carried the punishment order in appeal which was dismissed vide order dated 30.4.97 Annexure A-2. In this OA, the applicant has assailed Annexure A-1, Annexure A-2 as well as the findings in the enquiry dated 12.7.1996 Annexure A-3. (9)

2. According to the applicant, the prosecution evidence has failed to establish the charge against him and his defence witness had stated in his evidence that he had handed over applicant's application for leave and supporting medical papers to the respondents on 1.3.1995. He had also produced the Doctor who had examined the applicant and treated him as his witness but he was made to wait for five hours by the Enquiry Officer and he ultimately went away and could not be examined. The applicant has alleged that this is a case of no evidence. The department had neither refused the request of the applicant for medical leave and rest nor did it send any absentee notices to him. It has further been pointed out by the applicant that the Standing Order No. 111 relied upon by the Enquiry officer in the charge and the findings had not been mentioned in the summary of allegations and as such the same cannot be taken into consideration in accordance with the rules. The applicant has sought setting aside of the impugned order of removal at Annexure A-1, the appellate order at Annexure A-2 and findings of the Enquiry Officer at Annexure A-3 with consequential benefits.

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3. According to the respondents, the applicant did not avail himself of the opportunity to cross examine the prosecution witnesses. The charge against the applicant had been proved in the enquiry. The Disciplinary Authority agreed with the findings of the Enquiry Officer against which the applicant had not made representation and held that the charge was fully proved and the punishment of removal was awarded against the applicant. According to the respondents, intimation regarding illness was received in the office on 20.3.95 i.e. 21 days after his absence w.e.f. 28.2.95. The respondents have also taken exception to production of a medical certificate by the applicant for treatment from hospital other than the Central Government Health Scheme Dispensary, Hauz Khas where the applicant is registered and which is nearest to his residence. The respondents have contended that unauthorised absence which has been proved against the applicant is one of the severest form of in-discipline and it affects the efficiency of a sensitive organisation like Delhi Police and thus the applicant has been awarded the punishment of removal from service.

4. We have heard the learned counsel of both sides and carefully considered the material available on record.

5. Re-iterating the points made in the OA, the learned counsel of the applicant supplemented that the charge ultimately framed against the applicant was different than the contents of the summary of

✓ allegations. According to him, this is impermissible under Rule -16(iv) of Delhi Police (P&A) Rules, 1980 (hereinafter referred to as Rules of 1980). Rule-16 (iv) reads as follows:-

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"When the evidence in support of the allegations has been recorded the Enquiry Officer shall:-

- a) If he considers that such allegations are not substantiated, either discharge the accused himself, if he is empowered to punish him or recommended his discharge to the Deputy Commissioner of Police or other officers, who may be so empowered or,
- b) Proceed to frame a formal charge or charges in writing, explain them to the accused officer and call upon him to answer them".

✓ According to the learned counsel of the applicant that the formal charge has to be based on the facts alleged in the summary of allegations and substantiated by the evidence in support of the allegations. As a matter of fact, according to him since, the allegations were not substantiated through evidence, the Enquiry Officer should have recommended discharge of the applicant to the Disciplinary Authority under the above rule.

The summary of allegations reads as follows:-

"It is alleged that Constable Satish Kumar No. 2343/SW while posted in IIIrd BN. DAP was detailed for Guard duty from 6.00 AM on 28.2.95 as per duty roaster time. Hence he was marked absent vide D.D. No. 15 dated 28.2.95. He did not send any intimation to the department through any means regarding the reasons and cause of his absence or even his whereabouts. Accordingly he was placed under suspension vide order dated 16.3.95. However, he resumed his duty vide D.D. No. 86 dated

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25.3.95 after absenting himself wilfully/unauthorisedly for a period of 25 days, 10 hrs & 10 minutes. Subsequently he was reinstated vide order dated 26.5.95.

The above act on the part of Ct. Satish Kumar No. 2343/SW amounts to grave misconduct, indiscipline, disobedience of lawful orders/direction of senior officers and dereliction in the discharge of his official duties which renders him liable for the punishment as envisaged in section 21 of the Delhi Police Act 1978 and Punishment & Appeal Rules, 1980".

The charge framed after evidence is as follows:-

"I, R.P. Singh, 3rd Bn. DAP charge you Constable Satish Kr. No. 2343/SW, that while posted in 3rd BN. you were detailed for 'gaddi guard' duty at 6 am. On 28.2.95 as per duty roster, but you did not report for duty in time. Therefore, you were marked absent vide D.D. No. 15 Dt. 28.2.95. Your condition was not so detoriating and so you did not bother to avail medical rest after getting it duly permitted by the Competent Authority as contained in S.O. No. 111 for the purpose and avail it at your own for such a long time. Accordingly you also remained suspended w.e.f. 16.3.95 to 26.5.95. Later on you joined your duty on 25.3.95 vide D.D. No. 86 after absenting yourself wilfully and unauthorisedly for a period of 25 days, 10 hours and 10 minutes.

The above act on the part of you Constable Satish Kumar No. 2343 S.W. amounts to grave misconduct, indiscipline and disobedience of lawful orders/directions of senior officers and dereliction in discharge of your official duties, which render you liable to be punished under Section 21 of Delhi Police Act, 1978 (P&A) Rules, 1980".

According to the learned counsel of the applicant, the allegation of availing the medical rest without obtaining permission of the competent authority as per S.O. No. 111 was not contained in the summary of allegations and was added as an after thought as the

applicant had already submitted his medical papers and advice of the doctor for rest. Learned counsel of the applicant has further drawn our attention to Rule-16(9) which reads as follows:-

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"If the enquiry establishes charges different from those originally framed, he may record finding on such charges, provided that findings on such charges shall be recorded only if the accused officer has admitted the facts constituting them or has had an opportunity of defending himself, against them".

6. It is not disputed by the respondents that the information regarding illness of the applicant had been given to the respondents by PW-3. The medical certificate and papers alongwith application of the applicant were also available with the respondents. Vide Annexure A-6 dated 7.4.95, it is established that the respondents had received applications dated 6.3.95 and 23.3.95 regarding medical rest from the applicant and whereas the applicant had already reported for duty on 25.3.95, the respondents informed the applicant vide Annexure-6, dated 7.4.95 that he should resume his duty at once. We have perused the medical papers furnished by the applicant to the respondents. The respondents had not decided the application for medical leave of the applicant. The plea that the applicant had not taken treatment from CGHS Dispensary, Hauz Khas is frivolous and not acceptable. As per the medical evidence, the applicant had fallen ill on 28.2.95. He had been visiting the Dispensary occasionally from 28.2.95 till 25.3.95. The period of rest from 28.2.95 to 24.3.95 is fully covered under the advice of the doctor. The learned counsel of the applicant relied on decision dated 13.11.91 in OA No. 918/88 of this

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Tribunal in the case of T. Subbarao Vs. Union of India & Ors. in which it was held that when an application for casual leave was not rejected, the issuance of charge memorandum for unauthorised absence cannot be a ground for rejection of the leave applied for. The application for leave of the applicant had not been decided by the respondents but the fact of non-obtaining of prior sanction of leave was made the subject matter of charge against the applicant which again cannot be permitted in the light of the aforestated judgment.

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7. Applicant's counsel has further drawn our attention to the case of State Bank of India & Ors Vs. Samarendra Kishore Endow and Another JT 1994 (1) SC 217. The Supreme Court held as follows:-

"Now coming to the facts of this case it would appear that the main charge against the respondent is putting forward a false claim for reimbursement of expenditure incurred for transporting his belonging from Phek to Amarpur. So far as charge No. 5 is concerned there is no finding that the account become irregular or that any loss was incurred by the bank on account of the irregularity committed by the respondents. In the circumstances it may be that the punishment of removal imposed upon the respondent is harsh but this is a matter which the disciplinary authority or the Appellate authority should consider.

For the above reasons, the appeal is dismissed with an observation that the Appellate authority shall consider whether a lesser punishment is not called for in the facts and circumstances of the case. The Appellate Authority shall pass orders in this behalf within four months of the receipt of the copy of this order. No costs".

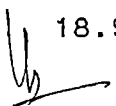
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8. The Applicant's counsel contended that it is incumbent upon the Appellate Authority to go into the question of the harshness of the punishment of removal inflicted upon the applicant vis-a-vis the charge against him and particularly when the proven blemishes in the past had not been taken into cognizance. In the present case the Appellate Authority without going into this aspect of the matter in detail decided to endorse the decision of the disciplinary authority and maintained the punishment of removal. In the light of the ratio of the Hon'ble Supreme Court in the aforestated matter, the Appellate Authority should not have adopted a passive stance in the present matter but considered the question whether a lesser punishment could have been awarded in the facts and circumstances of the present case.

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9. Having regard to the reasons and discussions made above, we are of the view that the respondents have failed to prove the charge in the enquiry. Applicant had sent his leave application and submitted his medical papers on which the respondents have not given any decision and proceeded ahead with the disciplinary enquiry. In the ultimate analysis the OA succeeds and is allowed. Annexures A-1, A-2 and A-3 are quashed and the respondents are directed to reinstate the applicant in service w.e.f. 11.11.1996 with all consequential benefits.

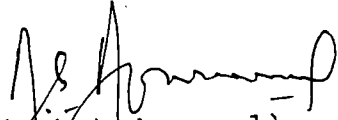
10. Learned counsel of the respondents also brought to our notice that the applicant had expired on 18.9.97. Although it has been claimed in the OA that



he was married and had minor children, the learned counsel of the applicant admitted that it was wrongly stated. Actually the applicant was a bachelor. In this view of the matter, so far as the consequential benefits are concerned, the respondents would be free to make enquiry into the question who the legal heirs of the applicant are and disburse the rightful claims to them on verification.

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(V.K. Majotra)
Member (A)


(Ashok Agarwal)
Chairman

cc.