

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 2438/97

New Delhi this the 13th day of September, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Ex. Head Constable (Dvr.), Uday Bhan,
No. 7187/DAP, S/O Sh. Ram Kishan, R/O
H.No. 822, Village & P.O. Kapashera, New
Delhi-37

...Applicant.

(By Advocate: Sh. Shanker Raju)

-versus-

1. Union of India through its
Secretary, Ministry of Home
Affairs, North Block, New Delhi.
2. Commissioner of Police, Police Head
Quarters, I.P. Estate, New Delhi.
3. Sr. Addl. Commissioner of Police,
A.P. & T., Police Head Quarters,
I.P. Estate, New Delhi.
4. Dy. Commissioner of Police 6th
Bn., D.A.P., New Police Lines,
Delhi.

... Respondents

(By Advocate: George Paracken)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

Applicant in the present OA, at the relevant time, was a Head Constable in Delhi Police. For misconduct of remaining unauthorisedly absent for a period of 8 months, disciplinary proceedings were initiated against him. Enquiry Officer vide his report dated 6.10.1995 has found him guilty of remaining unauthorisedly absent. Aforesaid finding of guilt was found favour with the disciplinary authority, who by his order of 17.11.1995 has proceeded to impose a penalty of dismissal from service on the applicant. Applicant

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carried the aforesaid order of the disciplinary authority in appeal wherein the appellate authority by his order of 5.3.1996 has dismissed the same and has maintained the order of dismissal. Aforesaid order was carried by the applicant in revision and the revisional authority vide his order passed on 12.11.1996 has maintained the aforesaid orders of the disciplinary authority and the appellate authority and has dismissed the revision application. Aforesaid orders are impugned in the present OA.

2. Sh. Shanker Raju has impugned the aforesaid orders broadly on two grounds; one that the disciplinary authority while imposing the penalty of dismissal from service has treated the period of absence of the applicant as leave without pay. Placing reliance on the case of State of Punjab & Ors. Vs. Bakshish Singh, JT 1998 (7) SC 142, the learned counsel contended that the period of unauthorised absence having been regularised by treating the same as leave without pay, the same cannot be made the basis of a penalty against the applicant. In our judgement, aforesaid contention is devoid of merit, if one has regard to a later decision of the Delhi High Court in the case of Dy. Commissioner of Police Vs. Jorawar Singh & Another, (Civil Writ Petition No.2611/99); decided on 7.4.2000. The Delhi High Court in the aforesaid judgement, considered the aforesaid decision of the Supreme Court in Bakshish Singh's case in the light of an earlier decision also of the Supreme Court in the case of State of M.P. Vs. Harihar Gopal,

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1969 SLR 274 and has found that the decision in Bakshish Singh's case (supra) is a judgement per incuriam inasmuch as that decision does not take into account the decision of the Larger Bench of the Supreme Court in the case of Harihar Gopal (supra). Based on the aforesaid findings, the High Court in the aforesaid decision, has upheld the order of penalty of termination from service which was impugned before it. If one has regard to the aforesaid decision which decision is binding upon us, we have no hesitation in holding that the first contention raised by Sh. Shanker Raju is without merit and the same is rejected.

3. Sh. Shanker Raju has next contended and that is the only contention which he has raised in addition to the aforesaid contention which we have already rejected, namely, that the imposition of the extreme penalty of dismissal from service was wholly unjustified. According to Sh. Shanker Raju, applicant has had an unblemished past record. He has had a meritorious service record. In the circumstances, imposition of the extreme penalty is wholly disproportionate to the gravamen of the charge found proved against the applicant. According to him, if one has regard to the facts found proved, namely, his unauthorised absence for a period of 8 months, it cannot be held that the applicant is incorrigible who does not deserve to be continued in service. According to him, the disciplinary authority, the appellate authority and the revisional authority have failed to consider this aspect of the matter and mechanically imposed a

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penalty upon him which amounts to a civil death as far as the applicant and his family members are concerned. In order to buttress his argument, Sh. Shanker Raju has placed reliance on a decision of the Full Bench of this Tribunal in the case of Virender Kumar and Ors. Vs. Commissioner of Police, Delhi & Ors., 1999 (3) ATJ 342, wherein the Full Bench has observed as follows:-

"11. As a result of the discussions aforesaid, our answers to the questions before the Full Bench are as follows:-

(i) The disciplinary authority is not required to record a specific finding that the delinquent official is guilty of grave misconduct rendering him unfit for police service before passing the punishment of dismissal or removal from service in terms of Rule 8 (a) of the Delhi Police Rules. However, the order must indicate that the mandate of this statutory provision was borne in mind by the disciplinary authority while passing the order of dismissal or the removal from service.

ii) Rule 8 (a), or the decision of the Supreme Court in Ashok Kumar Singh's case (supra) does not lay down that any unauthorised absence from duty of an official in police force automatically amounts to grave misconduct rendering him unfit for police service, or for that reason, the punishment of dismissal or removal from service is justified. Isolated one or two acts of unauthorised absence from duty for short durations may not amount to grave misconduct. The misconduct of unauthorised absence must be "continued misconduct indicating incorrigibility and complete unfitness for police service" as provided in Rule 10, or such absence must be on several occasions, as held by the Supreme Court in Ashok Kumar Singh's case (supra), for holding unauthorised absence of a delinquent officer to be "grave misconduct" for purposes of inflicting the punishment of dismissal or removal from service.

iii) Generally speaking, if the punishment order of dismissal from service does not indicate "continued misconduct

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indicating incorrigibility and complete unfitness for police service" on the basis of the past service record of the delinquent officer, the punishment of dismissal or removal from service may be converted into a punishment of reduction in rank for a specified time as provided in Rule 10, but there may be exceptions like cases of Constables where no reduction in rank is possible, or cases of misconduct based on allegations creating criminal liability involving moral turpitude."

4. Sh. George Paracken, the learned counsel appearing on behalf of the respondents has countered that as far as the applicant is concerned, he had proceeded on earned leave for a period of 90 days on 9.12.1994 and was due to resume back on duty on 12.3.95 but he failed to do so and was marked absent as on 12.3.1995. Three absentee notices were issued at his native address dated 23.3.1995, 1.4.1995 and 3.5.1995 with a direction to him to resume his duty at once failing which disciplinary action would be taken against him. He was directed to report to the Civil Surgeon, Civil Hospital, Raj Pur Road, Delhi for medical examination in case he was sick. Absentee notices issued on 23.3.1995 and 1.4.1995 were received by his wife on 14.4.1995 and 17.4.1995 respectively but he did not resume duty. Similarly, he did not report to the Civil Surgeon and did not intimate the authorities about the reason of his absence. Absentee notice of 3.5.1995 and the order of 31.5.1995 directing disciplinary enquiry against the applicant could not be delivered at his address despite several visits by the local police as he was reported to have gone out of station. However, the message contained in the above absentee notice of 3.5.1995 and the DE order of

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31.5.1995 was conveyed and explained to his wife but she refused to acknowledge the same. Instead his wife disclosed that he was doing his private ~~business~~ ^{business} in Norang Pur and he does not want to serve in Delhi Police. In the proceedings before the EO, applicant did not appear. The EO in the circumstances was required to proceed ex-parte after obtaining the prior sanction of the disciplinary authority on 9.8.1995. Even thereafter, applicant has failed to appear and hence, the enquiry was conducted ex-parte by the EO. The enquiry officer thereupon submitted his findings holding the applicant guilty of unauthorised absence. The disciplinary authority tentatively agreeing with the findings of the enquiry officer sent a copy of the aforesaid findings at the address of the applicant for the purpose of enabling him to make his representation and to appear before the disciplinary authority. An Asstt. Sub-Inspector visited the village of the applicant along with a Head Constable to serve a copy of the findings on the applicant but the applicant flatly refused to accept the same. The disciplinary authority has ~~there~~after considering all the evidence produced in the enquiry, concurred with the findings of the enquiry officer and has proceeded to pass an order of dismissal from service. As already stated, aforesaid order was carried by the applicant in appeal as also in revision and the same has ~~also~~ been dismissed. According to Sh. George Paracken, if one has regard to the aforesaid circumstances, a conclusion is irresistible that the applicant is ^{an} incorrigible absentee and, therefore, his continuance in Delhi Police is not at all desirable.

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5. We have considered the rival contentions advanced by the learned counsel appearing for the contending parties. As far as the proportionality of the penalty imposed on the applicant is concerned, this is what the disciplinary authority in his order has observed.

"I have gone through the record carefully. The charge of unauthorised absence since 12.3.95 has been fully proved. A number of opportunities were given to the defaulter but he did not join the DE proceedings. As he had not cooperated with the EO in any manner, ex-parte proceedings were done. The documentary evidence as well as other evidence on record clearly prove that the absence of defaulter was unauthorised, wilful and unjustified from any angle whatsoever. He is not interested in police work any more. Police department cannot be run with such indisciplined and indifferent members.

The defaulter even refused to accept findings of the enquiry. He has not shown any interest whatsoever in explaining his absence. In the light of above, I am of the considered view that defaulter is not fit to be retained in police service any longer.

I, therefore, dismiss him from service...."

6. In our judgement, the aforesaid observations of the disciplinary authority makes it clear that the disciplinary authority has considered the pros and cons as also the attendant facts and has given a conscious findings that the applicant is not fit to be retained in police service any longer. The disciplinary authority apart from finding the applicant guilty of the unauthorised absence for a long duration of 8 months has

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✓ taken into account his conduct which he displayed during the entire conduct of the disciplinary proceedings. He seems to have avoided service of absentee notices. Though one of the absentee notices as also DE order were sought to be served upon him, the same could not be served ~~upon him~~ as he was not found at his residential address. When the same was sought to be served upon his wife, she refused to accept service by stating that the applicant was no longer interested in continuing in police service and was engaged in private business. Even thereafter, applicant has made himself scarce and has failed to appear at each stage of the enquiry before the enquiry officer as also before the disciplinary authority. He has failed to appear despite due notice and opportunities having been afforded to him. He has emerged on the scene only after passing of the order of dismissal whereafter he ^{has} sought to prefer ^{his} appeal and his revision application. Aforesaid conduct displayed by the applicant cannot be termed as irrelevant for the purpose of a finding as to whether he should be considered fit to continue in police service. The same has been ~~affirmed~~ ^{considered} and a finding has been given that he is not found fit to be continued in police service. The said finding, in our view, cannot be faulted ~~with~~ in the present OA. The said finding in the circumstances is affirmed and the second and the last contention of the Sh. Shanker Raju is also rejected.

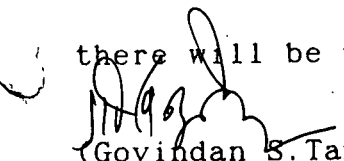
7. For the foregoing reasons, the present OA is dismissed. However, in the circumstances of the case,

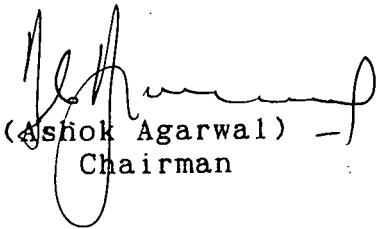
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there will be no order as to costs.


(Govindan S. Tampi)
Member (A)


(Ashok Agarwal) -
Chairman

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