

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O. A. NO. 2661/1997

New Delhi this the 14th day of September, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

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

Ex. Constable (Driver)
Virender Singh No. 4528/Police
S/o Shri Ram Kishan
R/o Village Mazri, Post office
Gubhana, Police Station Bahadurgarh
District Rohtak
Haryana. Applicant

(By Advocate Shri Arvind Singh)

-versus-

1. Delhi Administration Through
Commissioner of Police, Delhi
Police Headquarters,
MSO Building, I.P.Estate,
New Delhi.
2. Additional Commissioner of Police (OPS)
Delhi Police Headquarters, MSO Building
I.P.Estate, New Delhi-110002.
3. Additional Deputy Commissioner of Police
Police Control Room
Through Commissioner of Police
Delhi Police Headquarters, MSO Building
New Delhi-110002.
4. Shri Chander Mohan Inspector
Enquiry Officer No.D-1/445
Through Deputy Commissioner of Police
(Headquarter-I)
Delhi Police Headquarters
MSO Building, I.P.Estate
New Delhi-110002. Respondents

(Shri R.K.Singh, proxy for Shri Anil
K.Chopra, counsel)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

A penalty of dismissal from service imposed on
the applicant in disciplinary proceedings conducted
against him by the Additional Deputy Commissioner of
Police who is the disciplinary authority of the
applicant, on 30.1.1996 is impugned in the present OA.

Aforesaid order of the disciplinary authority was carried by the applicant in appeal. The Additional Commissioner of Police being the appellate authority by his order of 16.10.1996 has dismissed the appeal and has maintained the aforesaid order of penalty. Aforesaid order is also impugned in the present OA.

2. Applicant at the material time was engaged as a Constable (Driver) in Delhi Police. By an order of 17.10.1995 disciplinary proceedings were initiated against him on the following allegations:-

"on the allegations that he was detailed for duty on Generator Vehicle on 10.12.94 in PCR Shift IIIrd Floor PHQ from 8.00 A.M. But neither did he report for duty nor sent any information about his whereabouts. Thus he was marked absent vide DD No.6/B Rose Bud/PCR dated 10.12.94. Four absentee notices vide Nos. 878/Admn. (AC)/PCR dated 20.12.94, 68-69/Admn. (AC)/PCR dated 16.1.95, 9674/SIP (AC) PCR dated 7.4.95 and 17668/SIP(AC)/PCR dated 23.6.95 were issued at his residential address deputing a responsible officer with the direction to resume his duty at once otherwise departmental action will be taken against him. Out of above 4 absentee notices three absentee notices i.e. Nos.878/Admn. (AC)/PCR dated 20.12.94, 68-69/Admn. (AC)/PCR dated 16.1.95 and 17668/SIP (AC)/PCR dated 23.6.95 were delivered upon him against his proper receipt. SI Mohinder Pal Singh of S.W.Zone/PCR who was deputed for delivery of the absentee notice No.9674/SIP (AC)/PCR dated 7.4.95 upon the Const.(Dvr.) submitted his report that the Const.(Dvr.) was not found present at his residence. He resumed his duty vide DD No.25-B dated 2.11.95 after absenting himself wilfully and unauthorisedly for a period of 327 days in violation of C.C.S. (Leave) Rules as well as S.O.No.111/88. The above act on his part amounted to gross misconduct negligence and carelessness in the discharge of his official duties. Hence, this D.E. was ordered."

The disciplinary proceedings were entrusted to Inspector Chander Mohan, who served the summary of allegations, list of witnesses and the list of documents upon the applicant on 31.10.1995. The

enquiry officer during the course of the disciplinary proceedings examined 5 Prosecution Witnesses in the presence of the applicant. Applicant was given full opportunity to cross examine them. He had declined to cross examine Prosecution Witnesses 1 to 4 but had crossed examined Prosecution Witness No.5 who had served 4 absentee notices on the applicant i.e. notices dated 20.12.1994, 16.1.1995, 7.4.1995 and 23.6.1995. Prior to the initiation of the disciplinary proceedings by the enquiry officer, applicant was explained the aforesaid summary of allegations and his plea was recorded on 31.10.1995 when he pleaded not guilty of the charge. In the said plea, he admitted to have received the summary of allegations along with a list of witnesses and list of documents relied upon by the prosecution against him free of cost. He had admitted that the summary of allegations was explained to him in Hindi and that he has understood the same and he did not admit the said allegations. He admitted to have inspected the concerned file. He did not opt to take extracts of any more documents from the departmental enquiry file than what had already been supplied to him. In regard to question No.6 as to whether he wanted to engage any Police Officer/Government servant to act as his defence assistant, he had answered that he would inform later. When the proceedings before the enquiry officer were conducted, he did not express his desire to engage a defence assistant. Applicant had accordingly chosen to proceed with the enquiry on his own. After the prosecution evidence was recorded, a charge was duly framed and served upon him. He was thereafter called

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upon to submit his list of defence witnesses/written defence statement. Though applicant did not admit the charge, he did not produce any defence witness. He, however, submitted his written defence statement on 8.12.1995. The enquiry officer, on a perusal of the entire evidence, oral as also documentary submitted his findings on 14.12.1995 holding the charge fully proved. Aforesaid findings of the enquiry officer were served upon the applicant on 28.12.1995 directing him to submit his representation against the same within a stipulated period of 15 days which the applicant did not submit. Applicant was thereafter called upon to appear in Orderly Room on 19.1.1996 along with his representation. He did not turn up for hearing in the Orderly Room nor he submitted his representation. Later on 25.1.1996, he came forward and submitted his representation stating therein that he was absent from duty due to illness of his wife and that his wife had been continuously ill for the last two years and that he had to look after her. The disciplinary authority by his order of 30.1.1996, on perusal of the entire material on record, as also the representation which the applicant had belatedly submitted on 25.1.1996 concurred with the finding of guilt arrived at by the enquiry officer against the applicant and has proceeded to impose the penalty of dismissal from service. As already observed, aforesaid order was carried by the applicant in appeal and the appellate authority by his order of 16.10.1996 has maintained the order of dismissal from service and has dismissed the appeal.

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3. We have heard Shri Arvind Singh, learned counsel appearing on behalf of the applicant and Shri R.K. Singh, proxy counsel appearing for Shri Anil K. Chopra, counsel for the respondents. In our judgement, the orders impugned are just and proper and no interference is called for in the present OA. All the three authorities, namely, the enquiry officer, the disciplinary authority as also the appellate authority have concurrently come to a finding that the charge of unauthorised absence has been duly proved against the applicant. Counsel for the applicant, however, has sought to contend that applicant's previous unauthorised absence has also been taken into account for the purpose of imposing the extreme penalty of dismissal from service even though the same did not form a part of the charge framed against the applicant. Aforesaid penalty, in the circumstances, cannot be sustained. Aforesaid ~~contention~~ ^{statement} has been made on the basis of an observation to be found in the report of the enquiry officer. During discussion of the evidence, the enquiry officer has, inter alia, observed as under:-

"....his contentions/pleas of defence carry no weightage. Previous record of absence of defaulter in PCR also reflects defaulter's casual attitude, carelessness and negligence.

Similarly our attention is drawn to the evidence of PW2 wherein he has, inter alia, deposed:-

"The previous absence record of Constable Virender Singh was also sent to HAT Branch from SIT Branch the original copy of which has been shown by you from the file. This record of 8 absent was sent from SIT Branch to this Branch, which is Ex.PW/3/E. Thereafter the file of all absence was sent to senior officers by us for necessary action."

(W)

Based on the aforesaid material, the counsel has strenuously submitted that the aforesaid previous unauthorised absence has been brought on record. The same could not have been taken into account in the absence of the same having been made a part of the charge framed against the applicant.

4. In our judgement, we find no merit in the aforesaid contention as neither the disciplinary authority nor the appellate authority has even remotely taken into account the aforesaid previous unauthorised absence of the applicant. Merely because a reference is made to the same by PW2 in his evidence as also by the enquiry officer in his report, the same will have no bearing in the matter as the same has not been taken into account by the concerned officer who conducted the crucial disciplinary proceedings and has imposed the penalty in question.

5. A perusal of the report of the departmental enquiry shows that the finding of guilt has been arrived at on evidence which has been brought on record. Hence no exception can be had to the finding of guilt arrived at against the applicant. Similarly, the record shows that the principles of natural justice have been duly followed. Applicant has been given opportunities to defend himself at every stage of the enquiry. In the circumstances, the finding of guilt is fully justified and does not warrant interference in the present proceedings.

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6. As far as the quantum of punishment is concerned, the counsel has strenuously submitted that the applicant has had a clean and meritorious service record and the extreme penalty which tantamounts to nothing less than the civil death of the applicant was not warranted in the circumstances of the case. As against this, the learned counsel for the respondents has pointed out that the applicant has been continuously absenting himself for a long period of 327 days which amounts to gross misconduct justifying the extreme penalty especially in view of the fact that the applicant belongs to a disciplined force.

7. In our view, the measure of penalty is really the domain of the disciplinary authority and the appellate authority. The same cannot be interfered with by the Tribunal or the Courts merely because ~~it would~~ ^{they may} have imposed a different penalty had they been in the position of the disciplinary authority than the one which has been imposed in the case. It is only when the penalty is unconscionably harsh one which no reasonable person would ^{be} ~~expect~~ to impose that interference would be called for. As far as the order of the disciplinary authority is concerned, this is what has been observed:-

...He could have got his leave sanctioned for the purpose. As per the medical certificate produced by him in support of the illness of his wife it is evident that she was under treatment in Delhi and he could have easily informed the department about his inability but he never bothered to do so even after receiving the absentee notices. After having carefully gone through the D.E. proceedings I find no justification to keep such an incorrigible type of Const. (Dvr.) in the force who is a liability and not an asset for the department. His continuance in the

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department would affect general discipline in the force besides being a burden on Govt. exchequer. Const. (Dvr.) Virender Singh No. 4528/PCR is hereby dismissed with immediate effect for his gross misconduct of absenteeism which renders him unfit for the Delhi Police Force." (Emphasis supplied).

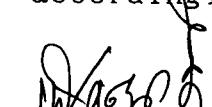
8. If one has regard to the fact that the applicant has remained absent continuously for a long period of 327 days, ^{that} though his wife was receiving treatment in Delhi and though he had been served with absentee notices, he did not care to intimate the reason of his absence and did not apply for leave, aforesaid order of dismissal from service for the aforesaid reasons cannot be successfully assailed.

9. The learned counsel for the applicant contended that the disciplinary authority while imposing the penalty of dismissal from service has treated the period of his absence as leave without pay. Placing reliance on the case of State of Punjab & Others 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 High Court in the case of Deputy Commissioner of Police vs. Jorawar Singh & Another in Civil Writ Petition No. 2611 of 1999 decided on 7.4.2000. The Delhi High Court in the judgement has considered the aforesaid decision of the Supreme Court in Bakshish Singh (supra) in the light of an earlier decision of the Supreme Court in the case of

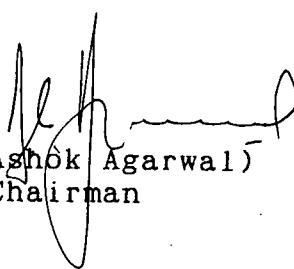
(V)

State of M.P. vs. Harihar Gopal, 1969 SLR 274 and has found that the decision is Bakshish Singh's case (supra) is a judgement per incuriam inasmuch as the aforesaid decision does not take into account the decision of the Larger Bench in the case of Harihar Gopal's case (supra). Based on the aforesaid finding, the High Court in the aforesaid decision has upheld the order of penalty of termination of service which was impugned before it. If one has regard to the decision which decision is binding upon us, we have no hesitation in holding that the contention advanced by the learned counsel for the applicant is without merit and the same is rejected.

10. For the foregoing reasons, we find the present OA as devoid of merit. The same is accordingly dismissed. No costs.


Govindan S. Tampli
Member (A)

sns


(Ashok Agarwal)
Chairman