

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 418/1997

New Delhi this the 25th day of September, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI M. P. SINGH, MEMBER (A)

Mahipal Singh S/O Ganeshi Lal,
Ex. Constable 333/SD,
R/O D-I/17, Chaudhari Munshiram Gali,
Nehry Vihar, Karawal Road,
Near Dayalpur,
Delhi-110092.

... Applicant

(By Shri Jog Singh, Advocate)

-versus-

1. Government of National Capital Territory of Delhi through Chief Secretary, Raj Niwas, Delhi.
2. Additional Deputy Commissioner of Police (Hqrs.), MSO Building, I.P. Estate, New Delhi.
3. Deputy Commissioner of Police, VII Bataillon, Delhi Armed Police, Delhi.

... Respondents

(By Shri Ajay Gupta, Advocate)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

Disciplinary proceedings were conducted against applicant who was a Constable in Delhi Police for his unauthorised absence from duty for a period of one year one month and five days between 12.11.1993 and 16.12.1994. A charge was accordingly framed against him on 28.11.1994 in which it was alleged that while applicant was posted at P.S. Sriniwas Puri, he was detailed for picket duty at West Friends Colony booth from 8.00 p.m. to 8.00 a.m. on 12.11.1993 but he did not report for duty, and as such he was marked absent; an absentee notice was also sent to him at his native place on 4.2.1994 with a direction to resume his duty

immediately; applicant neither resumed his duty nor informed the department about his whereabouts and the reason of his absence. Hence, a departmental enquiry was initiated against him vide order dated 17.11.1994.

2. Two witnesses were examined in support of the prosecution whereas applicant examined one witness in his defence. The enquiry officer by his report of 7.2.1995 concluded that applicant was guilty of the charge framed against him. Aforesaid report of the enquiry officer was duly served upon applicant in order to enable him to submit his representation against the same. Despite ample opportunity having been given, applicant failed to submit his representation. The disciplinary authority by his order of 6.6.1995 concurred with the finding of guilt recorded by the enquiry officer. Apart from the aforesaid absence from 12.11.1993 and onwards, the disciplinary authority, based on the evidence of PW-2, also found that applicant had earlier absented himself on as many as 12 occasions. The disciplinary authority, in the circumstances, has proceeded to impose upon the applicant a penalty of removal from service. He has directed the period of absence to be treated as leave without pay..

3. Aggrieved by the aforesaid order of the disciplinary authority, applicant preferred an appeal. The appellate authority by his order of 23.1.1996 concurred with the findings of the enquiry officer and the disciplinary authority, both in respect of the guilt in regard to unauthorised absence as also in respect of the measure of penalty of removal from

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service. Appeal of the applicant was accordingly rejected.

4. The appellate authority in his order, however, has not taken into account the earlier absence on 12 occasions which had been taken into account by the disciplinary authority. Aforesaid orders passed by the disciplinary authority as also by the appellate authority are impugned by applicant in the present OA.

5. Shri Jog Singh, the learned counsel appearing in support of the OA, has first submitted that the disciplinary authority has taken into account applicant's earlier absence on 12 occasions when the same did not form the basis of the charge framed against him. To that extent, Shri Jog Singh appears to be justified. We have perused the articles of charge framed against applicant and we find that the aforesaid absence on 12 earlier occasions did not form the basis of the charge framed against applicant. We, however, do not find this good enough a ground to interfere in the present OA, as a reading of the order of the appellate authority would show that the said earlier absence has not been taken into account by the appellate authority and yet the appellate authority has proceeded to maintain the penalty of removal from service imposed on applicant. In the circumstances, we are inclined to hold that even if the aforesaid absence on 12 earlier occasions had not been taken into account by the disciplinary authority, he would have still been persuaded to impose the impugned penalty of removal from service. Applicant has

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absented himself without notice and had continued to remain absent for a period of over one year. Applicant, being a member of a disciplined force, was expected to inform his authorities and obtain permission^{and} to avail of leave. Applicant had failed to obtain prior permission of the competent authority and had left the headquarters. He had proceeded to his native place, failed to respond to the absentee notices and continued to remain absent for a considerable duration.


In the circumstances, the first contention raised by Shri Jog Singh is rejected.

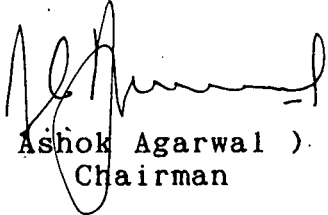
6. Shri Jog Singh has next contended that the applicant was ill during the aforesaid period of absence; he had also lost his mother; and in the circumstances, there was just and proper ground for his absence.

Aforesaid contention of Shri Jog Singh, we find, is also devoid of merit. As has been pointed out by the appellate authority, applicant, if ill, should have obtained prior permission of the competent authority to avail medical rest at his home as provided in Rule 19(5) of CCS (Leave) Rules, 1972. He had chosen to absent himself for a considerable duration without intimation. He has accordingly been found guilty of misconduct of having remained unauthorisedly absent without intimation and without obtaining prior permission. The finding of guilt, in the circumstances, is fully justified.

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7. No other contention has been advanced in support of the present OA. Present OA, in the circumstances, we find, is devoid of merit. The same is accordingly dismissed. There shall be no order as to costs.


(M. P. Singh)
Member(A)


(Ashok Agarwal)
Chairman

/as/