

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.819/1997

New Delhi, this 10th day of January, 2000

Hon'ble Shri Justice Ashok Agarwal
Hon'ble Smt. Shanta Shastri, Member(A)

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Lok Pal
146, Ambedkar Basti
Khajoor Wali Gali
Ghonda, Delhi

Applicant

(By Shri R.K. Sharma, Advocate)

versus

1. Commissioner of Police, Delhi
representing Lt. Governor, Delhi &
UI, Delhi Police Headquarters
MSO Building, IP Estate, New Delhi
2. Senior Addl. Commissioner of Police(AP&T)
Delhi Police Hqrs., MSO Building
IP Estate, New Delhi
3. Dy. Commissioner of Police
Xth Bn DAP
Pitampura, Police Lines, New Delhi .. Respondents

(By Shri Rajinder Pandita, Advocate)

ORDER(oral)

Hon'ble Shri Justice Ashok Agarwal

For misconduct committed by the applicant, at the relevant time when he was Constable posted in E Block Security Lines, for having unauthorisedly absenting from duty during the period of 23.6.94 to 23.1.95, i.e. for a period of 214 days, 3 hours and 20 minutes, disciplinary proceedings were conducted against him. The Enquiry Officer-Inspector Mange Ram has on 28.12.95 framed charges against the applicant which contain the charge of aforesaid absence as also unauthorised absence on ten earlier occasions in order to show that the applicant was habitual absentee. Though the applicant was issued several notices to attend the disciplinary proceedings, he has avoided to attend. The DCP accordingly issued orders to conduct departmental enquiry ex-parte. The Enquiry Officer has accordingly

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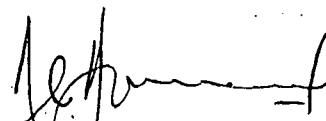
submitted his findings vide order dated 1.2.96 holding the applicant guilty of misconduct. The disciplinary authority vide his order dated 8.3.96 accepted the findings of the Enquiry Officer and has proceeded to pass the impugned order of removal from service. Applicant preferred an appeal against the said order and by order dated 13.6.96, the Senior Additional Commissioner of Police has dismissed the appeal. The aforesaid orders are impugned in the present OA. (9)

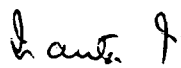
2. Mr. R.K. Sharma, learned advocate appearing in support of the OA, has averred that the applicant was absent from duty during the period from 23.6.94 to 23.1.95 on account of the illness of his son. He has further submitted that the applicant had presented himself before the Enquiry Officer during the disciplinary proceedings. However, he was unnecessarily marked absent and appropriate orders were obtained from the DCP to conduct the enquiry ex-parte. According to Mr. Sharma ex-parte proceedings are accordingly liable to be quashed and set aside.

3. The averment of the applicant that he had presented himself during the disciplinary enquiry has been refuted on oath by the respondents in their counter. If one has regard to the facts and circumstances, then the allegation made by the applicant that he had presented himself in the disciplinary proceedings but was marked absent is devoid of merit. Enquiry proceedings undisputedly show that though several notices were issued to the applicant to attend the disciplinary proceedings, yet he had avoided the same. In the circumstances, direction issued by the DPC to hold

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enquiry ex-parte cannot be faulted. Findings arrived at by the Enquiry Officer show that apart from the unauthorised absence of the applicant during the period 23.6.94 to 23.1.95, applicant on 10 earlier occasions had been found to be unauthorisedly absent. Applicant, therefore, has been shown to be a habitual absentee. Being a member of the uniform force, the aforesaid absence from duty is a serious misconduct. In the circumstances, the only penalty which could possibly have been imposed on the applicant is the one which has been imposed, namely removal from service. Even if we assume the plea taken by the applicant that he was absent during the relevant period on account of illness of his son is true, the same cannot justify his absence for as many as 214 days and that too without intimation. The impugned orders are, therefore, found to be in order and cannot be interfered with. The present OA is accordingly devoid of merit and the same is, therefore, dismissed. There will, in the facts and circumstances, be no order as to costs.


(Ashok Agarwal)
Chairman


(Smt. Shanta Shastri)
Member(A)

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