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Central Administrative Tribunal, Principal Bench

Original Application No. 864 of 1997

New Delhi, this the 24th day of July, 2000

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

Ex. Constable Chand Prakash son of Shri
Ravi Dutt, R/o Village Mundhela Khurd, P.O.
Mundhela Kala, New Delhi-73 - Applicant

(By Advocate Shri Shanker Raju)

Versus

1. Union of India through Lt. Governor, Raj
Niwas, Delhi.
2. Commissioner of Police (PHQ), M.S.O.
Building, I.P. Estate, New Delhi.
3. Dy. Commissioner of Police, 8th Bn.
DAP, Malivya Nagar, New Delhi. - Respondents

(By Advocate Shri Ajay Gupta)

O R D E R (Oral)

By V.K. Majotra, Member (Admnv) -

Punishment of dismissal from service imposed on the applicant, who was a Constable in Delhi Police has been assailed in the present O.A.

2. While posted in the 8th Bn. DAP the applicant was detailed for line duty on 9.10.1993. He absented himself from duty. He resumed his duties after an absence of 97 days, 18 hours and 35 minutes. It is alleged that the applicant did not care for absentee notice and he remained absent deliberately and without informing the department. He had remained absent on 23 occasions earlier as well during his short service from May 1987 to 1994. A departmental enquiry was initiated against him vide order dated 25.11.1993. The enquiry officer held the applicant guilty of charge. Although he was given an opportunity to submit his reply to the findings in the enquiry, he failed to avail himself of

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the opportunity. The disciplinary authority passed an order on 28.9.1994 of dismissal of the applicant from service also treating his unauthorised absence as period not spent on duty. The applicant's appeal and revision against the order of dismissal were also rejected by the appellate and revisional authorities.

3. According to the applicant he had informed the authorities about his illness and had also submitted medical papers in proof of his illness from 9.10.1993 to 15.1.1994. He had requested the enquiry officer to summon Dr.Ved Prakash Sharma officially to give evidence but he was not obliged. According to the applicant Constable Rishipal, who had gone to serve the absentee notice on him, had found him ill and lying on bed which he had stated in his evidence also. He has alleged that charges have been held proved against him arbitrarily and he had never been punished for earlier absences which had been regularised. It has been pleaded that in the facts and circumstances of the case the authorities should not have held him guilty and inflicted the severest punishment upon him.

4. In their counter, the respondents have stated that the applicant had submitted his medical papers at a belated stage and that it was the responsibility of the applicant himself to have produced his defence witnesses including the medical doctor. The respondents have stated that through Constable Rishipal they had sent absentee notice to the applicant which also indicated that he was to go for second medical opinion. The respondents have contended that the applicant had neither informed the authorities about his illness nor

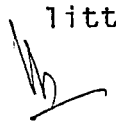


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did he produce defence witnesses. However, the respondents have admitted that the applicant was dismissed not on account of his unauthorised absence on earlier 23 occasions but for his unauthorised absence for 98 days.

5. We have heard the learned counsel of the applicant and gone through the material available on record. The learned counsel of the applicant stated that the applicant had made available the medical report both before the enquiry officer and the disciplinary authority during the enquiry. He also drew our attention to the UPC dated 12.10.1993 in proof of having sent an intimation to the authorities in regard to his illness. The applicant had submitted a certificate from a Government doctor, namely, Dr. Ved Prakash Sharma but the enquiry officer did not oblige the applicant in summoning the doctor despite his request. According to the learned counsel of the applicant the Government doctor would not have come at the behest of the applicant, however, he would certainly have come to give his statement to the enquiry officer on notice by him. The learned counsel also further stated that when Constable Rishipal went to the applicant to serve the absentee notice on him, he found that the applicant was ill and lying on the bed as admitted by the Constable himself in his statement.

6. We find from the counter of the respondents that the absence of the applicant on 23 previous occasions has not been reckoned in deciding upon the penalty in the present case. Thus, the only charge that remains to be examined is unauthorised absence for a little over 97 days. We find that the applicant had

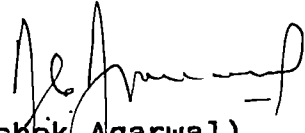


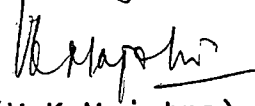
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sent information regarding his illness through UPC to the authorities. He had also furnished medical certificates and other papers regarding his illness both to the enquiry officer and the disciplinary authority. Both the authorities along with absentee notice have asked the applicant to have himself examined once again for second medical opinion. We find that Constable Rishipal who had gone to serve the absentee notice on the applicant found that the applicant was really unwell and was lying on bed. The evidence of Constable Rishipal has not been challenged at all. Dr. Ved Prakash Sharma, who had given the medical certificate of illness to the applicant is a Government doctor. Normally there should be no reason to disbelieve the medical certificate given by a Government doctor. In any case, when the applicant requested in the enquiry that Dr. Sharma should be summoned officially, he was not obliged. We agree with the learned counsel of the applicant that in normal circumstances Dr. Ved Prakash Sharma would not have appeared before the enquiry officer on the request of the applicant to give his evidence on behalf of the applicant. We are of the view that the applicant had given adequate information about his illness to the authorities. He had also submitted sufficient medical evidence in proof of his illness. When the enquiry officer did not summon Dr. Ved Prakash Sharma, as defence witness on behalf of the applicant, certainly he has not provided adequate opportunity of defence to the applicant. Absence on the earlier 23 occasions had been decided on earlier by the respondents and was not taken into account while considering the punishment of dismissal upon the applicant.



7. Having regard to the reasons and discussions made above, we go with the applicant to hold that the respondents have not provided full opportunity of defence to the applicant and have held the applicant guilty of the charge. Thus, we find merit in the OA and quash the order dated 28.9.1994 dismissing him from service and the orders in appeal and revision dated 25.4.1996 and 8.11.1996 respectively confirming the order of the disciplinary authority. The applicant should be reinstated forthwith. He will not be entitled to any pay for the intervening period between 28.9.1994 to the date of reinstatement. As regards the period of absence from 9.10.1993 to 14.1.1994, the respondents may consider regularising the same by granting him leave of the kind due. He will, however, be entitled to other consequential benefits like seniority and promotion as per rules.


(Ashok Agarwal)
Chairman


(V.K. Majotra)
Member (Admnv)