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Central Administrative Tribunal, Principal Bench

Original Application No. 1032 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)

Syed Afaq Ali, S/o Iqbal Ali, at present
610, Communication Reserve Staff, Old Police
Lines, Rajpur Road, Res. Qtr. 48, Ashoka
Police Line, Chanakya Puri, New Delhi-21 - Applicant

(By Advocate - None)

Versus

1. Union of India through Secretary,
Ministry of Home, Home Affairs,
Secretariat, New Delhi.
2. Govt. of National Capital Territory,
Delhi, through Home Secretary, 5,
Sham Nath Marg, Delhi-54.
3. The Commissioner of Police, Police Head
Quarters, I.P. Estate, New Delhi. - Respondents

(By Advocate Shri Harvir Singh)

O R D E R (Oral)

By Justice Ashok Agarwal, Chairman.-

In disciplinary proceedings conducted against the applicant for unauthorised absence, a penalty of reduction of pay by two stages from Rs.1240 to Rs.1180/- in the time scale of pay for a period of two years with effect from the date of issue of the order with a direction that he will not earn increments of pay during the period of reduction and on expiry of the said period reduction will have the effect of postponing his future increments of pay, has been imposed on the applicant. Aforesaid order of penalty has been imposed by the disciplinary authority by the impugned order passed on 27th September, 1995. The same is impugned in the present OA. Aforesaid order of the disciplinary authority was carried by the applicant in appeal. The appellate authority by an order passed on 2nd May, 1996 has maintained the order of penalty and has dismissed

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the appeal. Aforesaid order is also impugned in the present O.A.

2. The applicant was working as Head Constable and was posted in the Ambulance Section at PP Dhaula Kuan Base. He had applied for casual leave for a period of 7 days with effect from 19th January, 1995. Due to heavy law and order arrangement of Republic Day all kinds of leave had been stopped. The applicant was accordingly directed to put up his leave application after 26th January, 1995. He, however, insisted on grant of leave immediately. He took 7 days medical rest with effect from 22nd January, 1995 from Unani Dispensary and availed of the same without prior permission of the competent authority. He had obtained medical rest merely in order to avoid arrangement duty of Republic Day. He had failed to obtain prior permission of the competent authority to avail of the same. He was directed to appear before the Medical Superintendent, Civil Hospital, Rajpur Road, Delhi for second medical opinion but he failed to appear. It was found that he was out of station of his own. Hence he was marked absent vide DD No.53 dated 25th January, 1995. He reported back on duty on 29th January, 1995 vide DD No.10 after absenting himself wilfully and unauthorizedly for a period of 4 days. Disciplinary proceedings were accordingly initiated against him vide office order dated 10th March, 1995. In the enquiry he gave a false statement that his immediate superior Inspector N.K.Sahni had demanded a sum of Rs.100/- from him for grant of leave. The applicant was in the



circumstances placed under suspension on 22nd February, 1995. The enquiry officer prepared summary of allegations, list of witnesses, list of documents on 31st March, 1995 and served the same on the applicant. The applicant did not plead guilty. Enquiry proceedings were commenced. The enquiry officer examined six prosecution witnesses in the presence of the applicant. The applicant cross-examined each of them. After recording the evidence of prosecution witnesses, the enquiry officer framed the charge against the applicant, got the same approved by the disciplinary authority on 1st May, 1995 and served the same upon the applicant on 2nd May, 1995. The contents of the charge were explained to him in Hindi by the enquiry officer. The applicant thereafter produced two defence witnesses and on 18.5.1995 he submitted his written defence statement. Several opportunities were thereafter afforded to the applicant to cross-examine court witness Shri P. Dass, ACP/P&L. The applicant, however, kept himself away from the proceedings. Hence by an order passed on 4th June, 1995 proceedings were conducted ex parte. Aforesaid court witness was thereafter examined on 11th August, 1995. Based on the evidence of the prosecution witnesses, defence witness^{es} and the court witness as also the documentary evidence on record, the enquiry officer by her findings recorded on 21st August, 1995 concluded that the charged levelled against the applicant stood proved beyond a shadow of doubt. Aforesaid findings of the enquiry officer were furnished by the disciplinary authority to the applicant in order to enable him to submit his representation against the same. The applicant on 15th September, 1995 submitted his

representation stating that his defence statement ~~to~~ be treated as his representation. The defaulter i.e. the applicant was given a hearing in the orderly room on 15th September, 1995 by the disciplinary authority. At this stage also the applicant submitted that whatever he had mentioned in the defence statement may be taken into account. The disciplinary authority ~~has~~ based on aforesaid evidence has observed that his misconduct renders him unfit and he deserves dismissal from service. However, in view of his request in the orderly room that he is the only earning member of family and he has to look after his family consisting of parents, brothers, sisters and children, he was inclined to take a lenient view perceiving hardship of the family. In the circumstances the disciplinary authority has proceeded to impose the penalty of reduction of pay as already mentioned. The applicant who had been suspended with effect from 22nd February, 1995 and had continued under suspension till the passing of the order by the disciplinary authority on 27th September, 1995 was directed to be reinstated in service. The period of suspension from 22nd February, 1995 till the date of reinstatement was directed to be treated as period not spent on duty for all intents and purposes. Aforesaid order of the disciplinary authority dated 27th September, 1995^f was carried by the applicant in appeal. By an order passed on 2nd May, 1996 by the appellate authority, aforesaid order of penalty has been maintained and appeal has been dismissed. Aforesaid orders one passed by the disciplinary authority and the other by the appellate authority are impugned in the present OA.



3. When the present OA is called out for hearing both the applicant and his counsel are absent. We have heard Shri Harvir Singh, learned counsel of the respondents. We have also perused the entire material on record. We are accordingly disposing of this O.A. on merits in terms of Rule 15 of the Central Administrative Tribunal (Procedure) Rules, 1987.

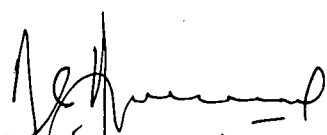
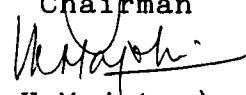
4. A perusal of the record shows that the order holding the applicant guilty of the charge framed against him is ~~based~~ on good and sufficient evidence on record. The record further shows that principles of natural justice have also been scrupulously followed. As far as measure of penalty is concerned, as has been pointed out by the disciplinary authority this was really a case of indiscipline where the applicant has contrived a devise of avoiding duties in respect of Republic Day arrangement. This he has done by ~~feeling~~ ^{feigning} illness and thereby obtaining medical rest. When asked to report for second medical opinion, he has refused to appear. He has accordingly remained absent wilfully and unauthorizedly. He has further gone on to make a false and wild allegation against his immediate superior Inspector N.K.Sahni stating that he had demanded Rs.100/- from him in lieu of granting him leave. In the circumstances, the disciplinary authority ~~was~~ fully justified in holding that the applicant does not deserve to be continued in service. However, the disciplinary authority has taken a lenient view as the applicant was the only earning member of the family and he was required to look after his parents, brothers, sisters and children. In the circumstances, the measure of penalty imposed upon the applicant, if at all ^{leans} is on the

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side of leniency. The impugned orders in the circumstances, we find are just and proper. The same ~~would~~ not call for interference in the present OA. Present OA, in the circumstances is dismissed. However, without any order as to costs.


(Ashok Agarwal)
Chairman

(V.K. Majotra)
Member (Admnv)

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