

Central Administrative Tribunal
Principal Bench

O.A. No. 1134 of 1994

New Delhi, dated this the 29 September, 1999

Hon'ble Mr. S.R. Adige, Vice Chairman (A)
Hon'ble Mr. Kuldip Singh, Member (J)

Shri Narinder Kumar,
S/o Shri Yad Ram Singh,
R/o Vill. Sirodhian,
P.O. Ismailpur,
Dist. Bulandshahr,
U.P. ... Applicant

(By Advocate: Ms. Nidhi Bisaria)

Versus

1. Commissioner of Police, Delhi,
I.P. Estate, New Delhi.
2. Addl. Commissioner of Police,
Delhi, Civil Lines,
Delhi. ... Respondents

(By Advocate: Shri Rajinder Pandita)

ORDER

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant impugns Disciplinary Authority's order dated 31.5.90 (Annexure A-1) removing him from service and the Appellate Authority's order dated 22.4.93 (Annexure 1A) rejecting the appeal.

2. Applicant was proceeded against departmentally on the allegation that while posted to P.S. Sadar Bazar he absented himself w.e.f. 15.5.89 and later he resumed his duty on 1.2.90 after absenting himself for 8 months, 18 days and 10 hours unauthorisedly.

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3. The I.O. in his finding dated 4.5.90 (Annexure 4) held the charge of unauthorised absence from duty to have been established beyond doubt, and further noted that applicant was again absenting himself unauthorisedly since 9.4.90. After going through the available materials on record in the D.E. including the finding of the I.O. the Disciplinary Authority by impugned order dated 31.5.90 removed applicant from service and also directed the aforementioned absence be treated as leave without pay. The Disciplinary Authority's order was upheld in appeal vide impugned order dated 22.4.93.

4. We have heard applicant's counsel Ms. Bisaria and Respondents' counsel Shri Pandita.

5. Ms. Bisaria has pressed various grounds in the O.A. including the ground that applicant was genuinely ill which accounted for his absence, and for which he had produced relevant medical certificates which were not adequately considered by respondents.

6. One important ground taken by Ms. Bisaria that consequent to the Disciplinary Authority directing in his impugned order dated 31.5.90, that the period of applicants unauthorised absence from duty be treated him as leave without pay, the charge of unauthorised and wilful absence from duty does not survive, and the impugned orders require therefore to be quashed and set aside.

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7. In this connection she has relied upon Hon'ble Supreme Court's ruling in State of Punjab Vs. Bakshish Singh JT 1998 (7) SC 142 as well as the Delhi High Court's order in S.P. Yadav Vs. UOI /1 (1998) Delhi Law Times 68.

8. There is merit in these submission of Ms. Bisaria and in the light of the aforesaid rulings of the Hon'ble Supreme Court as well as Delhi High Court which are squarely applicable to the present case the impugned orders of the Disciplinary Authority as well as that of Appellate Authority cannot be sustained in law.

9. This O.A. therefore succeeds and is allowed to the extent that the impugned orders of the Disciplinary Authority as well as that of Appellate Authority are quashed and set aside. Respondents are directed to reinstate applicant within two months from the date of receipt of a copy of this order. The intervening period from the date of removal from service till applicant rejoins duty consequent upon reinstatement, and such consequential benefits as will accrue to him consequent to his reinstatement

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shall be regulated by the respondents in accordance with rules and instructions and judicial pronouncements on the subject. No costs.

Kuldeep
(Kuldeep Singh)
Member (J)

/GK/

Arfaliq
(S.R. Adige)
Vice Chairman (A)