

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

...

OA.No.2576 of 1994

New Delhi, this 22nd day of July, 1999.

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN(J)  
HON'BLE SHRI S.P. BISWAS, MEMBER(A)

Ex-Constable Ram Kishan, No.1326/NW  
Delhi Police  
R/o Village Tejpur, P.O. Jainpur  
P.S. Gannaur  
Dist. Sonapat  
Haryana.

C/o Mrs Avnish Ahlawat, Advocate  
243, Lawers' Chambers  
Delhi High Court  
New Delhi.

... Applicant

By Advocate: Ms Vibha Mahajan, proxy for  
Mrs Avnish Ahlawat.

versus

1. Government of National Capital  
Territory of Delhi, through  
Commissioner of Police, Delhi  
Police Headquarters  
M.S.O. Building  
I.P. Estate  
New Delhi 110 002.
2. Shri P.R.S. Barar  
Additional Commissioner of Police  
Northern Range, Delhi Police  
Police Headquarters  
M.S.O. Building  
I.P. Estate  
New Delhi 110 002.
3. Inspector Dharamvir Gupta,  
Inquiry Officer to be served through  
Deputy Commissioner of Police/HQ(II)  
Police Headquarters  
M.S.O. Building  
I.P. Estate  
New Delhi 110 002. ... Respondents

By Advocate: Shri Girish Kathpalia

O R D E R (ORAL)

Hon'ble Shri A.V. Haridasan,VC(J)

The applicant, a Police Constable of the Delhi Police was proceeded under the provisions of Delhi Police (Punishment & Appeal) Rules for alleged misconduct of unauthorised absence of 1 month, 22 days, 10 hours and 35 minutes. The applicant contends that he was unwell and was under treatment, and that was the reason why he could not be present and apply for leave. Finding the applicant guilty of the misconduct, the disciplinary authority passed the impugned order dated 13.11.92 (Annexure-B) imposing on the applicant a penalty of dismissal from service. The last part of the impugned order reads as follows:

"Therefore, Constable Ram Kishan No.1326/NW is hereby dismissed from the Force from the date of the issue of this order. His above mentioned absence period is decided as leave without pay."

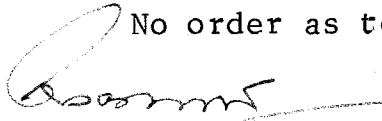
2. An appeal preferred by the applicant against the order was rejected by the appellate authority by order dated 30.3.94.

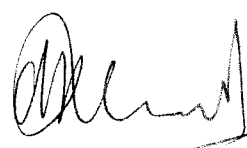
The applicant has filed this application impugning these orders on various grounds stating that the impugned orders are not sustainable.

3. It has been held by the Supreme Court in State of Punjab Vs. Bakshish Singh JT (7) SC 142 that once the period of unauthorised absence for which the person is departmentally proceeded with, is regularised by granting any kind of leave, no penalty can be imposed for that unauthorised absence. In this case by the impugned order itself the unauthorised absence has been treated as leave without pay. Therefore, this absence having been regularised by grant of leave becomes authorised. Hence penalty cannot be validly imposed.

4. In the light of what has been stated above, applying the dictum of the Supreme Court in State of Punjab Vs Bakshish Singh (supra), we allow the application. The impugned orders are set aside. The respondents are directed to reinstate the applicant in service forthwith with all consequential benefits including arrears of pay and allowances. The above directions shall be complied with within a period of three months from the date of receipt of a copy of this order.

No order as to costs.

  
(S. P. Biswas)  
Member(A)

  
(A.V. Haridasan)  
Vice Chairman(J)

dbc