

Central Administrative Tribunal
Principal Bench

O.A. No. 2584 of 1994

New Delhi, dated this the 30th August, 1999

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

Shri Jagbir Singh,
(Ex Constable No. 845 Sec)
S/o Shri Desh Ram,
R/o Vill. & P.O. Charkhi, Teh. Charkhi Dadri,
Dist. Bhiwani, ... Applicant
Haryana.

(None appeared)

(b)

Versus

1. The Commissioner of Police,
Delhi,
Police Headquarters,
New Delhi.
2. The Additional D.C.P.,
Security, ... Respondents
New Delhi.

(By Advocate: Shri Amresh Mathur)

ORDER (Oral)

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

Applicant impugns Respondents order dated 4.6.93 (Ann. C) dismissing him from service and the Appellate Authority's order dated 29.3.94 (Ann. P) rejecting his appeal.

2. Applicant was proceeded against departmentally on the allegation that while he was posted in Security Line and was detailed for reserve duty on 12.1.92 from 2.00 p.m. he did not report for duty and was marked absent. He was issued three absentee notices but he did not respond to the same and resumed duty on 21.7.92 after unauthorisedly

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absenting him for 191 days 3 hours and 15 minutes.

He submitted three medical certificates and a fitness certificate issued by a private doctor from 10.1.92 to 20.7.92 but neither did he inform the department about his illness nor obtained prior permission before availing medical rest and availed the same at his own sweet will, and he left the headquarters without permission.

3. A copy of the E.O's report dated 14.1.93 has not been filed but the Disciplinary Authority in his impugned order dated 8.6.93 stated that the E.O. had concluded that the charge of wilful and unauthorised absence stood proved against applicant beyond any shadow of doubt. A copy of the E.O's finding was sent to the defaulter on 27.1.93 for making a representation if any which applicant received on 28.1.93, he did not submit any representation to the E.O.'s finding. After going through the findings of the E.O. and the available materials on records the Disciplinary Authority concluded that the defaulter was a habitual absentee, as he had also absented himself from duty frequently in the past, and by the impugned order dated 8.6.93 dismissed applicant from service directing that the period of absence be treated as leave without pay.

4. Applicant's appeal was rejected by the impugned order dated 29.3.94 and a mercy petition

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filed by him was also rejected by order dated 1.6.94
(Annexure E) against which this O.A. has been filed.

5. None appeared for applicant even on the 2nd call when the case was called out. Shri Amresh Mathur appeared for respondents and has been heard.

6. This is a very old case of 1994 and we dispose it of after going through the materials on record and hearing Shri Mathur.

7. We find that the Disciplinary Authority in his impugned order dated 8.6.93 while dismissing applicant from service has directed that the period of absence would be treated as leave without pay. In this connection the Hon'ble Supreme Court in State of Punjab Vs. Bakshish Singh JT 1998 (7) SC 142 has held that where the period of unauthorised absence from duty has been regularised by grant of leave without pay the charge of unauthorised absence would not survive. The Delhi High Court in S.P. Yadav Vs. U.O.I. 71 (1998) Delhi Law Times 68 has also taken a similar view

8. Under the circumstances, although applicant has not specifically taken this ground in the O.A., nor indeed in the appeal or in the mercy petition, in view of the law laid down by the Hon'ble Supreme Court as well as the Delhi High Court contained in the aforesaid two judgments, the impugned orders cannot be legally sustained.

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9. The O.A. succeeds and is allowed to the extent that the impugned orders of Disciplinary Authority and that of Appellate Authority are quashed and set aside. Respondents are directed to reinstate applicant in service within two months from the date of receipt of a copy of this order. The intervening period between the date of applicant's dismissal and the date of his reinstatement together with such consequential benefits as would accrue to him upon his reinstatement, shall be regulated by Respondents in accordance with rules and instructions and judicial pronouncements on the subject. No costs.

(Kuldip Singh)
Member (J)

(Kuldeep Singh)
Member (J)

Member (J)

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

GK /