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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 75 of 1994

New Delhi: this the 9th day of September, 1999.

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

HON'BLE MR. KULDIP SINGH, MEMBER (J)

Constable Irfan Ahmed No. 619/p.

S/o Sh. Ishtitiyaq Khan,
A-14, Anandvas Police Colony,
P.S. Saraswati Vihar,
New Delhi

..... Applicant

(By Advocate: Shri Ashish Kalia)

Versus

Union of India
through

1. The Administrator,
NCT of Delhi,
Raj Niwas,
Delhi.

2. Commissioner of Police,
NCT of Delhi,
PHQ, IP Estate,
New Delhi - 110 002

..... Respondents.

(By Advocate: Shri Rajendra Pandita)

ORDER

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

Applicant impugns the Disciplinary Authority's order dated 18.6.91 (Annexure-A1) dismissing him from service and the appellate order dated 17.10.91 (Annexure-A2) rejecting the appeal.

2. Applicant was proceeded against departmentally on the ground that on 22.7.90 he was detailed for duty from 7 p.m. to 8 a.m. and while on duty he fell ill and was taken to Safdarjung Hospital. Another constable was detailed to accompany him who came back and reported that applicant was discharged from hospital at 4 a.m. on 23.7.90 and was advised 7 days' medical rest and applicant had proceeded to his residence without taking permission to avail medical

(b)

rest there. Applicant was due back on 30.7.90 but he did not report for duty and was marked absent. He sent an application for grant of 15 days' EL which was rejected by order dated 6.8.90 but he did not report back for duty and ultimately resumed duty only on 31.8.90. Again applicant was detailed for duty on 2.9.90 from 7 p.m. onwards but he did not report for duty and remained absent till 8.9.90. Again applicant was absent from duty on 11.9.90 for approx. 5 hrs. and was again absent from duty on 20.9.90 for over 15 hrs. On scrutiny of his previous record it was revealed that he had absented himself on 26 previous occasion and had been awarded minor/major punishments but he had failed to improve himself.

3. The Inquiry Officer in his findings dated 1.4.91 (Annexure- 5) held the charges proved. A copy of those findings was sent to applicant vide Memo dated 6.5.91 for representation, if any. Upon receipt of applicant's representation, the Disciplinary Authority considered the same along with other materials on the D.E. file, and agreeing with the Inquiry Officer's findings imposed the punishment of dismissal from service upon applicant vide impugned order dated 18.9.91 and directed that applicant's unauthorised absence from duty from 30.7.90 to 31.8.90 and from 2.9.90 to 7.9.90 and 11.9.90 and 20.9.90 be treated as leave without pay. Applicant's appeal was rejected by impugned order dated 17.10.91. Applicant had also filed a revision petition on 27.6.92, but upon getting no reply even after waiting for 6 months, he filed this O.A.

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4. We have heard Shri Kalia for applicant and Shri Pandita for respondents.

5. Shri Kalia has taken various grounds, the most important of which is that respondents having regularised the applicant's absences from duty by the grant of leave without pay as noticed in the Disciplinary Authority's order above, the charge of unauthorised absence did not survive and the impugned order had therefore to be quashed and set aside. In this connection, he relied upon the Hon'ble Supreme Court's judgment in State of Punjab Vs. Bakshish Singh J.T.1998(4) SC 142 as well as the Delhi High Court's judgment in S.P. Yadav Vs. UOI & Ors. 71(1998) Delhi Law Times, 68.

6. As the absences on the previous 26 occasions form a subsidiary charge upon which alone applicant cannot be dismissed from service, he having separately been punished for those occasions as is clear from the Disciplinary Authority's order dated 18.6.91, and as regards the main charge of absences from duty, the Disciplinary Authority has directed regularisation of those absences by grant of leave without pay, the main charge does not survive and the impugned orders are therefore not sustainable in law.

7. The OA therefore succeeds and is allowed to the extent that the impugned orders are quashed and set aside. Respondents are directed to reinstate applicant within 2 months from the date of receipt of a copy of this order. The intervening period between the date of dismissal and the date of reinstatement and such consequential benefits as will flow from applicant's reinstatement shall be regulated by respondents in accordance with rules.

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instructions and judicial pronouncements on the subject. No costs.

Kuldeep Singh
(KULDIP SINGH)
MEMBER(J)

S.R. Adige
(S.R. ADIGE)
VICE CHAIRMAN (A).

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