

Central Administrative Tribunal  
Principal Bench

O.A. No. 971 of 1994

New Delhi, dated this the 20<sup>th</sup> September, 1999

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

Const. Mahavir Singh,  
No. 11321/DAP,  
S/o Shri Surajbhan Yadav,  
R/o Vill. & P.O. Baspadamaka,  
Tehsil Pataudi,  
Dist. Gurgaon. ... Applicant.

(By Advocate: Shri N. Safaya)

Versus

1. Lt. Governor, Delhi  
Raj Niwas, Rajpur Road,  
Delhi.
2. Addl. Commissioner of Police (S&T),  
Police Headquarters,  
I.P. Estate,  
New Delhi.
3. Addl. Dy. Commissioner of Police,  
(Security), Police Headquarters,  
New Delhi. ... Respondents

(By Advocate: Shri S.K. Gupta proxy  
counsel for Shri B.S. Gupta)

ORDER (Oral)

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

Applicant impugns the Disciplinary  
Authority's order dated 30.6.93 (Annexure A) removing  
him from service and the appellate order dated  
21.2.94 (Annexure B) rejecting the appeal.

2. Applicant was proceeded against  
departmentally for unauthorised and wilful absence

from duty, without intimation and without permission of the competent authority for a period of 92 days from 28.9.92 to 28.12.92. A perusal of the Disciplinary Authority's impugned order reveals that the I.O. submitted his findings on 4.5.93 (Annexure 6) in which the charge against applicant of wilful, deliberate and unauthorised absence from duty was proved. After going through the I.Os findings and the other materials on record, the disciplinary authority by impugned order dated 30.6.93 ordered applicant's removal from service against which the appeal was rejected by appellate order dated 21.2.94. (9)

3. We have heard applicant's counsel Shri Safaya and respondents' proxy counsel Shri S.K.Gupta.

4. The main ground taken by Shri Safaya during hearing is that it was not a case of deliberate and wilful absence from duty. He contends that applicant was genuinely ill, in support of which he had submitted medical certificates on his rejoining duty and respondents should have regularised his absence by the grant of leave of the appropriate kind which was due to him. In this connection reliance is placed on a Gujarat High Court judgment Bhursinh Hamsinh Rajput Vs. State of Gujarat & Ors. AISLJ 1982 (1) Page 697.

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5. We have considered the matter carefully. (10)

6. If indeed applicant was so unwell as to be unable to attend his duties, he should have applied for leave as soon as he became unwell, or at least informed the authorities of his inability to rejoin duty because of his illness soon after 28.9.92. There is nothing to indicate that he made any such effort to do so. No government servant much less one in a uniformed and disciplined force such as the police force can be permitted to remain absent from duty for a period as long as 3 months without even intimating to the authorities atleast the reason for his absence, and there<sup>after</sup> upon his return to duty after three months claim that as he was unwell, and his illness is supported by medical certificates, he is entitled to get the entire period of absence regularised by grant of leave of the appropriate kind due.

7. This is not a case where the medical certificates furnished by applicant after he rejoined duty have not been considered. As pointed out by the appellate authority

".....The appellant was staying at Najafgarh, Delhi and did not send any intimation regarding his illness to the dept. through any messenger or personally or on phone. Rule 19.5 CCS (Leave Rules) 1972 makes it clear that grant of medical certificates does not in

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itself confirm upon Govt. servant any right to leave; the medical certificate has to be forwarded to the authority competent to grant leave and its orders awaited. In this case, if the relevant medical documents to the concerned authority. This he did not do for reasons best known to him. There was no problem for the appellant who was residing in Delhi with his relative to send medical papers to the concerned authority immediately on receipt of medical rest from the Doctor. Here also he failed to do so. The absentee notice was sent at the residential address of the appellant which was received back with the remarks that the appellant is already performing his duty. The department cannot send absentee notice at the relatives address in absence of intimation not given by the appellant before or after absenting himself from duty. In the same notice it was clearly indicated for the appellant to get him medically examined from the Chief Medical Officer, Dist. Gurgaon, Haryana for second medical opinion, in case, he was sick. I have also seen the medical rest papers issued by the M.O., Incharge, MCD, Unani Dispensary, Dichaon Kalan, Delhi in which the Doctor diagnosed the disease as viral fever. This goes to show that the appellant was in position to make and could have easily contacted his office to seek permission to avail medical rest at home. This was not done. Sufficient opportunity was given to the appellant by the Enquiry Officer for submitting his written statement or defence but he did not submit the same. In any case it is no where stated that in case a second medical is not done it would be obligatory on the disciplinary authority to sanction leave on medical ground even if no prior permission is obtained by the individual concerned."

Hence the ruling in Rajput's case (Supra) does not help the applicant.

2

8. In Union of India Vs. Parmananda AIR

1989 SC 1185 it has been held:

".....If there has been any enquiry consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority."

12

9. Similarly in Union of India & Others Vs. Upendra Singh (1994) 27 ATC 200, the Hon'ble Supreme Court has, while discussing the scope and ambit of judicial review under Article 226 of the Constitution, affirmed the following principle.

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

10. No infirmity in decision making process has been brought to our notice and manifestly applicant got full opportunity to defend himself in the D.E.

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11. In the result the O.A. warrants no interference. It is dismissed. No costs.

*Kuldip Singh*  
(Kuldip Singh)  
Member (J)

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

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