

Central Administrative Tribunal
Principal Bench

O.A. No. 1359 of 1994

(10)

New Delhi, dated this the 13th August, 1999

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

Shri Rishi Pal Singh (deceased),
No. 1953/SW,
S/o Shri Atma Ram,
through L.R
Smt. Sarla Devi, Wife
R/o House No. B-280/9, Gali No.7,
Subhash Vihar,
Ghonda,
Delhi-110053. ... Applicant

Versus

1. Commissioner of Police,
Police Headquarters, I.P. Estate,
M.S.O. Building,
New Delhi.
2. Additional Commissioner of Police,
Southern Range, New Delhi
Delhi Police Headquarters, M.S.O. Building,
I.P. Estate,
New Delhi.
3. Additional Dy. Commissioner of
Police, South Dist.,
Hauz Khas,
New Delhi. ... Respondents

(None appeared)

ORDER (Oral)

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

Applicant impugns Disciplinary Authority's order dated 25.6.93 (Ann. A-1) dismissing him from services and Appellate Authority's order dated 14.12.93 (Ann. A-2) rejecting his appeal.

2. Shri Shankar Raju appeared for applicant and has been heard. None appeared for respondents.

3. Applicant was proceeded against

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departmentally on the charge that while he ^{was} posted in P.S.C., Kalkaji since 19.4.91 he had been found absent on five previous occasions for periods ranging from approximately 3 hours to nearly 24 days. Again on 4.7.91 he was detailed for duty, but was found absent and continued to remain absent despite absentee notices issued to him to resume duty forthwith. The dates on which applicant was found absent on previous occasion was mentioned in the summary of allegations (Annexure A-3).

4. The Enquiry Officer in his report dated 30.11.92 (Annexure A-5) held the charge as proved, and furthermore noted that even till the date of submission of the report, applicant was absenting himself from duty. A copy of the E.O's report was furnished to applicant for representation, if any. Applicant did not submit any representation.

5. The Disciplinary Authority noted that applicant did not attend the DE proceedings on the dates fixed by the E.O. and as such ex parte proceedings had to be conducted against him. He further noted that applicant had remained absent for the whole of the D.E. proceedings and resumed duty only on 2.11.92 after absenting himself for a period of 1 year, 3 months and 28 days. Though the period of three months had elapsed applicant had not submitted his representation and he was again

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absenting himself w.e.f. 2.3.93. The Disciplinary Authority observed that this conduct of the applicant was in flagrant defiance of statutory provisions and applicant's attitude and conduct was totally irresponsible and inconsistent with the due discharge of duties in a disciplined force. Accordingly by impugned order dated 25.6.93 he ordered applicant's dismissal from service and further directed that the absences on the five previous occasions as well as the absence of 1 year, 3 months and 28 days be treated as leave without pay.

6. This order dated 25.6.93 was upheld by the appellate authority vide order dated 14.12.93.

7. It is to be noted that applicant's absence from 21.3.93 onwards did not form a part of the charge.

8. Shri Shankar Raju has argued that as applicant's absences from duty have been regularised by grant of leave without pay, the charge of misconduct does not survive, and hence the impugned orders deserve to be quashed and set aside. In this connection he relies upon the Hon'ble Supreme Court's decision in State of Punjab Vs. Bakshish Singh (JT 1998 (7) SC 142 as well as the Delhi High Court's decision in S.P. Yadav Vs. Union of India 71 (1998) Delhi Law Times 68 in Delhi Law Times in which it has been held that the unauthorised absence from duty

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having been regularised by treating the absence as leave without pay the charge of misconduct does not survive. These rulings are squarely applicable to the present case before us, and we note that they have also been followed in several recent orders of the Tribunal, one of which is dated 16.7.99 in O.A. No. 1536/94 Dharam Pal Vs. L.G., Delhi & Others.

9. Under the circumstances the O.A. succeeds and is allowed to the extent that the impugned order of the Disciplinary Authority dated 25.6.93 and the order of the Appellate Authority dated 14.12.93 are quashed and set aside.

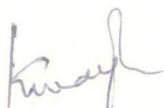
10. In this connection Shri Shankar Raju states that applicant has unfortunately expired and an M.A. No. 1488/99 has been pressed seeking to bring applicants legal heirs on record.

11. In the normal course, pursuant to the impugned orders being quashed and set aside, the late applicant would have been reinstated in service. However, now that he is no longer alive those claiming to be his legal heirs may file a representation to respondents in regard to their claim to be his legal heirs, on receipt of which respondents, after verifying the correctness of the claim, shall extend to legal heirs such consequential benefits as would be admissible to them in accordance with rules, instructions and judicial pronouncements, had applicant been alive and reinstated in service.

(VA)

12. These directions should be implemented as expeditiously as possible and preferably within three months from the date of receipt of a copy of this order.

13. The O.A. stands disposed of accordingly.
No costs.



(Kulidip Singh)

Member (J)



(S.R. Adige)

Vice Chairman (A)

/GK/