

O.A. No. 1444 of 1994

(b)

New Delhi, dated this the 25th August, 1999

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

Ex-Const. Rajesh Kumar No. 722/E,
Delhi Police,
R/o Vill. Gari Rithala,
P.O. Nizampur,
P.S. Sultanpuri, West Dist.,
Delhi. ... Applicant

(By Advocate: Ms. Vibha Mahajan proxy
counsel for Mrs. Avnish Ahlawat)

Versus

1. Government of NCT of Delhi through
Commissioner of Police, Delhi
Police Headquarters,
M.S.O. Building,
New Delhi-110002.
2. The Addl. Commissioner of Police (ND Range),
Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi.
3. The Dy. Commissioner of Police (East Dist.),
Delhi Police, Shalimar Park,
Shahdara, Delhi.
4. Inspector B.L. Meena,
Enquiry Officer,
Special Staff, East. Dist.,
through Dy. Commissioner of Police (East Dist.),
Delhi Police, Shalimar Park,
Shahdara,
Delhi. ... Respondents

(By Advocate: Shri Vijay Pandita)

ORDER (Oral)

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

Applicant impugns the Disciplinary
Authority's order dated 25.1.94 (Annexure A)
dismissing him from service and the Appellate
Authority's order dated 31.3.94 (Annexure B)
rejecting the appeal.

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2. Applicant was proceeded against departmentally on the allegation that he absented himself wilfully, deliberately and without any intimation/permission of the competent authority on as many as eight occasions totalling 103 days 9 hours and 10 minutes, the last being from 27.5.93 to 9.6.93. He was directed twice to attend the Civil Hospital, Delhi in case he was ill but neither did he report there nor did he resume his duty.

3. The E.O. in his finding dated 28.10.93 (Annexure C) has stated that the charges levelled against applicant were substantiated.

4. A show cause notice was issued to applicant on 25.11.93 as to why he should not be dismissed from service and the aforesaid period be treated as leave without pay.

5. Applicant did not submit any reply to the same despite reminders, upon which the Disciplinary Authority after agreeing with the finding of the E.O. dismissed the applicant from service vide impugned order dated 25.1.94 against which an appeal was filed which was dismissed by the Appellate Authority vide order dated 31.3.94.

6. We have heard Ms. Vibha Mahajan, proxy counsel for Mrs. Avnish Ahlawat for applicant and respondent's counsel Shri Vijay Pandita.

7. Ms. Mahajan has taken various grounds in the O.A. including the contention that applicant was unable to attend the duty because of illness for which he had submitted medical prescriptions from the Delhi Municipal Corporation Hospital. It is also

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submitted that applicant had 106 days E.L. and 100 days of HPL/Medical Leave to his credit which was not granted to him.

8. In this connection Ms. Mahajan has also invited our attention to the Disciplinary Authority's order dated 25.1.94 wherein the aforesaid period of absence have been ordered to be treated as leave without pay. She has contended that as the aforesaid absence has been regularised by granting of leave without pay, the charge against applicant does not survive, and hence the impugned orders require to be quashed and set aside. In this connection she has relied upon the Hon'ble Supreme Court's judgment 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. UOI 71 (1998) Delhi Law Times 68 wherein it has been held that where the period unauthorised absence has been regularised by grant of leave, the charge does not survive.

9. In the light of the aforesaid judgments cited by Ms. Mahajan this O.A. succeeds and is allowed to the extent that the impugned Disciplinary Authority's order dated 25.1.94 and the Appellate Authority's order dated 31.3.94 cannot be sustained in law and therefore they are quashed and set aside. Respondents are directed to reinstate applicant within two months from the date of receipt of a copy of this order. The intervening period from the date of dismissal till the date applicant rejoins duty upon reinstatement and the consequential benefits that flow upon his reinstatement shall be regulated by respondents in accordance with

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rules, instructions and the judicial pronouncements on the subject. No costs.

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(KULDIP SINGH)
Member (J)

Antal Singh
(S.R. ADIGE)
Vice Chairman (A)

/GK/