

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

(9)

O.A./T.A. No. 1055/1994

Decided on: 20.5.99.

Shri Har Lal Singh ....Applicant(s)

(By Shri Kirpal Singh Advocate)

Versus

Commissioner of Police ....Respondent(s)

(By Shri Girish Kathpalia Advocate)

CORAM:

THE HON'BLE SHRI JUSTICE K.M. AGARWAL, CHAIRMAN

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter *yes*  
or not?

2. Whether to be circulated to the other  
Benches of the Tribunal?

*W*  
(K. MUTHUKUMAR)  
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1055 of 1994

New Delhi this the 20 day of May, 1997

HON'BLE MR. JUSTICE K.M. AGARWAL, CHAIRMAN

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri Har Lal Singh  
R/o 3-D-373, Shahid Sukhdev Nagar,  
A-Block, Group Industrial Area,  
Wazirpur,  
DELHI.

...Applicant

By Advocate Shri Kirpal Singh

Versus

Commissioner of Police, Delhi,  
Police Headquarters,  
Indraprastha Estate,  
New Delhi.

...Respondent

By Advocate Shri Girish Kathpalia

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

This application is directed against the impugned order of the respondent dismissing the applicant from service in Delhi Police following a departmental enquiry. His appeal against this order also failed. Departmental proceedings were initiated against him on the charge that he, while working in the P&L Unit, absented himself wilfully and unauthorisedly from 21.5.1992 and after remaining absent for 123 days resumed duty on 21.9.1992. He was also charged for habitual

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absence from duty on 16 occasions between 1976 to 1991 and also on 18 occasions between 25.3.91 to 18.5.92 for different spells. The Enquiry Officer returned the finding that the charge against the applicant stood proved. Agreeing with the finding of the Enquiry Officer, the disciplinary authority passed the impugned order dismissing the applicant from service.

2. Applicant contests the action of the respondent mainly on the ground that there was no proof of unauthorised and habitual absence and the enquiry was based on no evidence. It is also contended that there had been no wilful and unauthorised absence but his absence was due to the fact that on 21.5.92 he suddenly took ill and had applied for leave on medical grounds, which was rejected by the respondents. He alleges that the Enquiry Officer had not considered the medical certificates produced by him and, therefore, his finding of his unauthorised absence would not be sustainable. The applicant also contends that he had duly notified about his illness to the respondent and, therefore, his absence could not be considered as unauthorised or wilful.

3. The respondent in his reply statement has contended that the applicant remained absent wilfully and unauthorisedly for 123 days and when he reported for duty on 21.5.1992, he was placed under suspension. The applicant was served

with the copy of the findings of the Enquiry Officer but he did not make any representation against such findings. The respondent's main <sup>is</sup> contention/that the postal certificates and medical certificates have all been fabricated with back dates. He avers that the applicant did not get the leave properly sanctioned by the competent authority in accordance with the S.O. No.III but simply chose to abstain from duty. It is only after joining on 22nd May, 1992, he produced the certificates with fabricated back dates. The applicant also did not join the departmental proceedings despite service of several summons in this behalf. As the applicant has been continuously absent, the summary of allegations and other documents were served on him by Registered Post besides delivering one duplicate set of documents at the residence of the applicant on 4.8.92. Whe he was summoned for oral hearing on 4.11.92, the competent authority found him quite defiant and obstinate. In the light of this, enquiry was proceeded with ex-parte but from the proceedings of the enquiry and the enquiry report, we find that prosecution witnesses were cross-examined by the applicant in the enquiry on certain dates. He did not join the D.E. proceedings later nor did he submit any list of defence witnesses after the charge-

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sheet was served on him. Respondent maintains that the applicant was given all the opportunity for defence but he neither produced defence witnesses nor submitted defence statements. Thereafter, the proceedings were concluded and the impugned order was passed. Respondent further maintains that the applicant by his habitual absence was found to be incorrigible and the disciplinary authority held that the retention of such a person in the uniformed disciplined force would be detrimental to the maintenance of the discipline in the Force. His appeal was given due consideration by the appellate authority but was rejected by a reasoned and speaking order.

4. We have heard the learned counsel for the parties. We have also perused the departmental record including the relevant departmental file produced by the respondents.

5. In cases relating to departmental proceedings against Government servants and consequential orders thereon, the scope of judicial review is very limited. Courts and Tribunals cannot sit in appeal against such orders as a courts of appeal. From the proceedings and the departmental records, we find that there is no infirmity in the departmental proceedings. The habitual absence of the applicant in the past on several occasions has been made

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as a part of the charge and the matter has been gone into in detail by the Enquiry Officer. The applicant did not participate in the enquiry after the service of the charge-sheet on him nor had he produced any defence witness nor filed the defence statement and the respondent has not denied him any opportunity of defence. Orders of the disciplinary/appellate authority also indicate that there has been a proper application of mind by these authorities before passing such orders. Judicial review in such cases is not an appeal from a decision but the review of the manner in which the decision is made. As observed by Hon'ble Supreme Court in H.B. Gandhi, Excise and Taxation Officer Vs. Gopinath and Others, 1992 Supplementary 1(2) SCC 312, "it is erroneous to think that court sits in judgment not only on the correctness of the judicial process but also on the correctness of the decision itself." As far as the decision making process is concerned in this case, we do not find any infirmity and, therefore, we do not find any justifiable ground to interfere with the impugned orders.

6. The application, therefore, lacks <sup>in</sup> merit and is accordingly dismissed. There shall be



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(A)

no order as to costs.

*Km*

(K.M. AGARWAL)  
CHAIRMAN

*[Signature]*

(K. MUTHUKUMAR)  
MEMBER (A)

Rakesh