

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 1651/94

New Delhi this the 7th day of February 2001

(51)

Hon'ble Shri S.R. Adige, Vice Chairman (A)
Hon'ble Dr. A. Vedavalli, Member (J)

Ex. Const. Vijay Pal singh
No. 443/NE(1030/NE),
Son of Shri Harsharan Singh,
R/o M-115 Shahadatpur Extension,
Pushta Area,
P.S. Gokulpuri, Delhi-110 094.

Applicant

(By Advocate: Shri Sachin Chauhan)

Versus

1. Lt. Governor of NCTD,
Through Commissioner of Police,
Police Headquarters, MSO Building,
IP Estate, New Delhi
2. Addl. Dy. Commissioner of Police,
(North-East District), Bhajanpura,
Shahdara, Delhi. Respondents

(By Advocate: Shri Ajesh Luthra)

O R D E R (Oral)

Hon'ble Shri S.R. Adige, VC (A)

Applicant impugns the disciplinary authority's order dated 13.7.1993 (Annexure A-1) and the appellate authority's order dated 8.9.1993 (Annexure A-2). He seeks a direction to Respondents to reinstate him in service w.e.f. 13.7.1993 alongwith all consequential benefits, such as pay and allowances, continuity of service, seniority and promotion.

2. Applicant was proceeded against departmentally vide Annexure A-7 order on the allegation of wilful and unauthorised absence from duty on several occasions. Details of applicant's previous absences from duty were specifically mentioned in the aforesaid order.

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3. The Enquiry Officer in his findings dated 18.6.1993 (Annexure A-10) held the charge against the applicant as proved and further observed that applicant was a habitual absentee and incorrigible type of person. A copy of the Enquiry Officer's report was served upon the applicant for representation, if any.

4. Applicant submitted his representation, upon which the disciplinary authority after giving him a personal hearing and perusing the available material on record, agreed with the Enquiry Officer's findings. He held that applicant was a habitual absentee whose continued retention in the force would cause immense corrosion of morale and discipline. He accordingly held that applicant deserved the extreme punishment of dismissal from the service for his repeated, willful and habitual absences from duty. Accordingly by impugned order dated 13.7.1993 applicant was dismissed from service and his periods of absence were ordered to be treated as dies non.

5. Applicant filed an appeal which was rejected by order dated 9.3.1993 (Annexure A-3) giving rise to the present OA.

6. We have heard applicant's counsel Shri Sachin Chaudhary and Respondents Counsel Shri Ajesh Luthra.

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7. Shri Chaudhary has submitted that applicant was unable to attend duty for the aforesaid periods on account of being unwell and he has invited our attention to various medical certificates, copies of which have been filed with the O.A.

8. No satisfactory reasons have been given as to why applicant could not apply to the authorities for leave for the aforesaid periods in accordance with rules and instructions. It is well settled that no Government employee can claim leave as a matter of right, and even if he was unwell and therefore unable to attend duty, he should have applied for leave before availing of the same. Hence, this contention is rejected.

9. It has also being contended that the dismissal order has been passed by the Additional Deputy Commissioner of Police who is junior in rank to the appointing authority i.e. Deputy Commissioner of Police and hence the dismissal order was illegal. In this connection Respondents counsel, Shri Ajesh Luthra has invited our attention to the ruling of the Hon'ble Supreme Court in *Ram Kishan Vs. Union of India and Others* 1995 SCC (L&S) 1357 in which the same question arose and was decisively answered by the Hon'ble Supreme Court holding that under Rule 4, Delhi Police (Appointment and Recruitment) Rules, 1980, the Additional Deputy Commissioner of Police is also one of the appointing authorities; and by the force of Section 19 of the General Clauses Act, he can exercise the powers of the Deputy Commissioner of Police.

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10. In the light of the above, we find ourselves unable to intervene in this O.A. which is accordingly dismissed. No costs.

A. Vedavalli
(Dr. A. Vedavalli)
Member (J)

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

Mittal