

## CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1733/2000

New Delhi, this 10th day of December, 2001

Hon'ble Dr. A. Vedavalli, Member(J)  
Hon'ble Shri M.P. Singh, Member(A)Brahm Singh  
Village Rampur, PO Bilaspur  
PS Dhankaur, Dt. Bulandshahar (UP) .. Applicant  
(By Shri S.K. Gupta, Advocate)

versus

Govt. of NCT of Delhi, through

1. Chief Secretary  
5, Shamnath Marg, Delhi
2. Commissioner of Police, Police Hqrs.  
IP Estate, MSO Building, New Delhi
3. Joint Commissioner of Police  
Rashtrapati Bhavan Sectt. New Delhi
4. Addl. Dy. Commissioner of Police  
Rashtrapati Bhavan, New Delhi
5. R.N. Vashishtha, Enquiry Officer  
Rashtrapati Bhavan, New Delhi .. Respondents

(By Shri Davesh Singh, Advocate through proxy counsel  
Shri Amit Rathi)

## ORDER

By Shri M.P. Singh, Member(A)

Applicant has filed this OA under section 19 of the Administrative Tribunals Act, 1985 challenging the findings dated 28.5.98, order of dismissal dated 9.7.98, order of appellate authority dated 16.1.99 and order of revisional authority dated 31.5.2000.

2. Brief facts of the case are that the applicant was working as a Constable in Delhi Police. On 31.8.97, he fell ill and had to go to his residence. After availing medical rest for eight days he reported for duty on 11.9.97. He applied for leave on medical ground and the same was sanctioned (A/5). He remained absent from duty from 5.4.97 to 5.6.97 for which he submitted medical



certificates. However, respondents decided to hold an enquiry and framed a charge against him for his absence for the aforesaid period. The summary of allegation is at A/6. This contains previous absence of the applicant on 34 different occasions. Although the entire period of absence was regularised, the enquiry officer submitted his findings concluding that the charge was proved. The disciplinary authority after accepting the findings of the EO passed the punishment order dated 9.7.98 dismissing the applicant from service. Applicant filed an appeal which was rejected by the appellate authority vide its order dated 16.1.99. Thereafter, he preferred a revision which was also rejected by the revisional authority vide its order dated 31.5.2000.

3. The contention of the applicant is that the summary of allegations contained the period of unauthorised absence from 1.9.97 to 8.9.97 although the said period has been regularised by grant of leave to him (A/5). The second contention of the applicant is that previous record of unauthorised absence on 34 occasions also formed part of the summary of allegation but was not mentioned in the relied upon document, although the said 34 occasions were regularised by grant of various kinds of leave under CCS(Leave) Rules. In the absence of a definite charge-sheet in respect of absence on 34 different occasions and the decision thereof, the applicant could not explain the reasons and has thus been denied the reasonable opportunity of being heard and defend himself which is against the principles of natural justice. Aggrieved by this, he has filed this



OA seeking directions to quash the aforesaid impugned orders and to reinstate him in service with all consequential benefits.

4. Respondents in their reply have stated that the applicant was dealt with departmentally on the allegation that he was found absent from duty on the following occasions:

5.4.97 to 5.6.97 - 60 days, 5 hours and 30 minutes  
1.9.97 to 10.9.97 - 8 days, 19 hours and 20 minutes

Applicant was issued absentee notices vide letters dated 5.5.97 and 4.6.97 directing him to resume duty but the applicant neither resumed duty nor sent any intimation regarding his inability to resume duty. On perusal of his previous absence records, it was revealed that he had absented on 34 different occasions unauthorisedly and the punishment so awarded to him had no effect on him. He did not improve his habits despite giving repeated chances which established that he is a habitual absentee, incorrigible type of person and unbecoming of a police officer. An enquiry was held against the applicant and the EO concluded that the charge levelled against him stood proved. A copy of the enquiry report was provided to the applicant through a notice directing him to make representation. He received the findings on 12.6.98 but he failed to submit any representation despite giving him ample opportunities. After taking into consideration all the records of DE file, the disciplinary authority decided to impose penalty of dismissal on the applicant vide order dated 9.7.98. He preferred an appeal to the Joint Commissioner of Police,



which was rejected by him on 16.1.99 as it was time-barred. He filed revision petition and the same was rejected by order dated 31.5.2000.

5. In reply to para 4.5 of the OA, the respondents have admitted that the applicant received a copy of allegation of unauthorised absence on two occasions for a period of 69 days and 50 minutes alongwith the report of his previous absenteeism on 34 different occasions but in the final order disciplinary authority has penalised him only for his two instant absenteeisms i.e. from 5.4.97 to 5.6.97 and 1.9.97 to 10.9.97. In view of these submissions, the OA is liable to be dismissed.

6. Heard both the learned counsel for the rival contesting parties and perused the records.

7. During the course of the arguments, learned counsel for the applicant drew our attention to Annexure A/5 and submitted that absence from 1.9.97 to 10.9.97 was regularised by the respondents by granting him leave. Therefore this period should not have formed part of the charge-sheet. The second ground taken by the applicant was that although respondents have concluded that the applicant remained absent earlier on 34 different occasions, no definite charge has been framed against him and it was not included in the relied upon documents. As per Rule 16(xi) of the Delhi Police (Punishment & Appeal) Rules, if it is considered necessary to award a severe punishment to the defaulting officer by taking into consideration his previous bad record, in that case the previous bad record shall form



the basis of a definite charge against him and he shall be given opportunity to defend himself as required by rules. The third ground taken by him is that Joint Commissioner of Police is not the competent authority to decide the appeal as has been held by this Tribunal in its order dated 6.8.2001 in OA No.1751/2000 and other connected OAs.

8. On the other hand, the learned counsel for the respondents stated that the judgement of the Tribunal dated 6.8.2001 has been stayed by the Delhi High Court and therefore Joint Commissioner of Police is the competent authority to decide the appeal of the applicant.

9. We find force in the contention of the learned counsel for the applicant that when the period of absence from 1.9.97 to 10.9.97 has already been regularised by grant of leave without pay, this should not have formed part of the charge-sheet. The second contention of the learned counsel for the applicant is that with regard to applicant's previous absence on 34 different occasions, respondents should have framed a definite charge against him before imposing the severe punishment of dismissal from service, as required under para 16(xi) of the Delhi Police (Punishment & Appeal) Rules, and the applicant should have been given an opportunity to defend himself. On a perusal of the order passed by the disciplinary authority, we find that the plea taken by the respondents that applicant's previous absence on 34 occasions has not been taken into



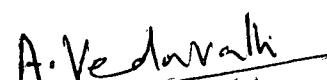
account while imposing the penalty is not correct. The absence on 34 different occasions was taken into account.

10. As has been held by this Tribunal in its order dated 6.8.2001 in OA No.1751/2000 (supra), the Joint Commissioner of Police is not the competent authority to decide the appeal. Although the Delhi High Court has granted stay of the order of the Tribunal dated 6.8.2001, the same has not been set aside. Therefore, the Joint Commissioner of Police is not the competent authority to decide the appeal of the applicant. In view of this position, the impugned orders cited above are quashed and set aside and respondents are directed to reinstate the applicant in service forthwith. The case is remitted back to the respondents who may hold fresh enquiry, if so advised, from the stage of issuing the charge-sheet, in accordance with law and rules on the subject and pass a fresh order.

11. The OA is disposed of on the above lines. There shall be no order as to costs.



(M.P. Singh)  
Member(A)



(Dr. A. Vedavalli)  
Member(J)

/gtv/