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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1997/2000

New Delhi this the 29th day of August, 2001

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Shri Govindan S.Tampi, Member (A)

Ex.Constable Kushpal Singh
S/O Shri Bhaupat Singh,
R/O Vill.& P.O. Rarah, PS- Kumhar,
District, Bharat Pur, Rajasthan.

..Applicant

(By Advocate Shri Rajeev Kumar)

VERSUS

1.Union of India,through its
Secretary,Ministry of Home
Affairs, North Block, New Delhi.

2.Addl.Commissioner of Police,
Rastrapati Bhawan and Security,
Rastrapati Bhawan, New Delhi.

3.Dy.Commissioner of Police,
Rastrapati Bhawan and Security,
Rastrapati Bhawan, New Delhi.

.. Respondents

(By Advocate Shri A.K.Chopra,learned
counsel through proxy counsel
Shri R.K.Singh)

O R D E R (ORAL)

(Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)

In this application,the applicant has impugned the punishment orders issued by the respondents removing him from service i.e. the disciplinary authority's order dated 5.2.1999 and the appellate authority's order dated 7.1.2000.

2. The above punishment orders have been issued by the respondents after holding a Departmental enquiry against the applicant. The relevant portion of the charge levelled against the applicant reads as follows:-

"I Inspr.Yad Ram charge you Ct.Khuspal Singh No.1/RB that you proceeded on 3+2 days casual leave vide DD No. 37 dt.23.12.97 and as such you were due

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back on 29.12.97 but you did not turn up. As such you were marked absent vide DD No.33 dated 29.12.97, P.P.G.Line R.P.Bhawan, New Delhi. During the period of absent 3 absentee notices vide No.1288/ASIP/DCP/RB dt.12.2.98, 1896/ASIP/DCP/RB/dt.5.3.98 2442/ASIP/DCP/RB dt.25.3.98 were issued to you at your permanent residential address, with the direction to resume your duty at once otherwise disciplinary action would be taken against you. But you neither resumed your duty nor sent any information/intimation regarding your inability to resume your duty. Ultimately you resumed your duty vide DD No.53 dated 18.4.98 after absenting yourself for a period of 110 days 5 hours and 50 minutes wilfully and unauthorisedly. You are running absent continuously vide DD No. 62 dated 1.5.98 and did not resume your duty so far four absentee notices vide No.4932/ASIP/DCP/RB dt.24.6.98, 3957/ASIP/DCP/RB dt.23.5.98, 4446/ASIP/DCP/RB dt.12.6.98, 5454/ASIP/DCP/RB dt.16.7.98 were issued at your permanent residential address with the direction to resume your duty at once otherwise disciplinary action would be taken against you but neither you sent any information regarding your inability nor you resume duty."

In the charge it was further mentioned that on perusal of the past service record of the applicant, it is seen that he had absented himself on 11 occasions earlier, details of which are given in the charge itself.

3. We have heard Shri Rajeev Kumar, learned counsel for the applicant. At this stage, Shri R.K.Singh, learned proxy counsel appeared on behalf of Shri A.K.Chopra, learned counsel for the respondents and started reading certain portions of the counter affidavit which we have already perused before he had come to Court. We are constrained to note that learned proxy counsel for the respondents has not been able to assist the Court in the manner expected from the learned counsel.

4. One of the contentions raised by Shri Rajeev Kumar, learned counsel, is that the impugned orders have been passed without taking into consideration the fact that the applicant had sent postal communications to the Department that he was ill and taking treatment at Aligarh, UP. According to him, he had sent this postal

communication to the Department on 30.4.1998 regarding his absence from duty from 29.12.1997. This shows that for nearly four months, the applicant had not cared to inform the respondents his whereabouts. Admittedly, the native address of the applicant is in a Village in ^{the} State of Rajasthan whereas, according to his own averment, he was taking treatment at Aligarh, UP. The respondents have clearly stated in their reply that they had sent 3 absentee notices to the applicant in Feb. and March, 1998 to his permanent residential address directing him to resume his duty at once, otherwise disciplinary action would be taken against him. From the facts mentioned by the applicant himself it is, therefore, evident that the applicant neither intimated the respondents nor resumed his duty after he was sanctioned leave for 5 days which expired on 29.12.1997, when he was expected back on duty. The respondents have also stated that the applicant had himself absented continuously again from 1.5.1998 to which also learned counsel for the applicant submits that he had informed the respondents on 31.7.1998 that he was undergone treatment for health problems. This action shows that the applicant himself absented ^{from} from duty and thereafter, after several months informed the respondents that he is under medical treatment and so on. In the second spell of absence of the applicant w.e.f. 1.5.1998, it is again relevant to note that the respondents have issued four absentee notices in June and July, 1998. From 1.5.1998 the applicant has remained absent from duty continuously till the date of the dismissal order dated 5.2.1999 was passed. From these facts we are, therefore, not satisfied with the contentions of the learned counsel for the applicant that the applicant has in any way acted in a reasonable manner by intimating the respondents of his whereabouts on he is

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under- going treatment, which he ought to have done in time, but he takes action after several months on his own sweet will. This action of the applicant cannot, therefore, be either considered reasonable or something which should be accepted, particularly having regard to the fact that the applicant was working as Constable in a disciplined force in Delhi Police who are entrusted with the functions of law and order in Delhi.

5. Another ground taken by the learned counsel for the applicant is that in the above circumstances the proceedings were held ex- parte in the disciplinary proceedings. From the relevant facts mentioned above, we do not find any infirmity on the part of the respondents in proceeding ex- parte against the applicant because the applicant neither intimated his whereabouts or reasons for his absence in spite of several absentee notices having been issued by the respondents to his native village in Rajasthan. It is not the contention of the applicant that he had at any time during the relevant period intimated the respondents about the change of his address to Aligarh, UP. Admittedly, he had only intimated his change of address to Aligarh after the disciplinary proceedings were initiated on 25.6.1998 whereas the charge of unauthorised absence is for a period prior to this date. Therefore, in the facts and circumstances of the case, this application is liable to fail. We have also perused the orders of the disciplinary authority as well as the appellate authority and find that there is no illegality or infirmity in the orders, ¹³ since the applicant had been absent from duty for a long period and that too without proper intimation to the respondents. The disciplinary proceedings held against him which resulted in the punishment orders have been taken in

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accordance with the provisions of law. The decision taken by the respondents to proceed in the Departmental proceedings ex- parte cannot also be faulted as he was absent. There is no ground made out by the applicant to justify any interference in the matter by the Tribunal in exercise of the power of judicial review.

6. In the result, for the reasons given above, we find no merit in this application. Accordingly, OA is dismissed. No order as to costs.

(Govindan S. Tampi)
Member(A)

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Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman(J)