

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA 835/2000

New Delhi, this the 2nd day of March, 2001.

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

1. Shri Sudesh Kumar, Constable  
Delhi Police, No. 1466/SD  
(PIS No. 28890218)  
Village & P.O. Adinpur  
P.S. D.P.O. Doghat, MEERUT,  
Uttar Pradesh.

...Applicant.

(None present)

V E R S U S

Union of India : Through

1. Commissioner of Police  
Police Head Quarters  
M.S.O. Building, I.P.Estate  
New Delhi - 110 002
2. Addl. Commissioner of Police  
Armed Police,  
Police Head Quarters  
New Delhi.
3. Deputy Commissioner of Police  
5th Battalion, DA  
Police Head Quarters  
New Delhi.

...Respondents

(By Advocate: Ms. Neelam Singh)

O R D E R (ORAL)

Smt. Lakshmi Swaminathan, Vice-Chairman (J)

In this application, the applicant has challenged the impugned punishment orders dated 7-3-98 and 01.12.1998 passed by the respondents dismissing him from service, as they had found him totally incorrigible and not fit to be continued in a disciplined force, based on the findings of the Enquiry Officer in the disciplinary proceedings.

2. None has appeared for the applicant even on the second call and it is noticed that even on the previous date when the case was listed none had appeared for the applicant. In the circumstances, the

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OA could have been dismissed for default and non-prosecution, but this is not being done as we have considered the pleadings on record and heard Ms. Neelam Singh, learned counsel for the respondents. On 29-11-2000, the Tribunal had allowed the applicant ten days to file rejoinder, if he had wanted to. This has also not been done till date.

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3. From the pleadings on record, it is noted that the applicant was alleged to have been absent from duty for a period of 3 years 27 days 4 hours and 5 minutes, for which departmental proceedings have been held against him. According to the applicant he was ill during this period and was not in a position to present himself before the departmental authorities to seek medical leave.

4. The applicant has further submitted that he had informed by telephone to the Daily Diary Writer on 9-3-1994 about his medical condition and according to him he had also spoken to other authorities seeking permission to avail of medical rest. He has also alleged that the impugned orders passed by the disciplinary authority dated 7-3-1998 and the appellate authority dated 11-12-1998 dismissing him from service is malafide and in violation of the principles of natural justice. He has also submitted that the punishment of dismissal from service can be granted only for acts of gravest mis-conduct, which according to him does not apply to his case of absence from duty for the above period. He has contended that his absence cannot be construed as mis-conduct which requires the punishment of dismissal to be imposed against him and thus the order of punishment is not proportionate to the alleged mis-conduct.

Ys

5. The respondents in their reply have controverted the above submissions made by the applicant. They have stated that the applicant, while posted in P.S. Greater Kailash was due to resume duty on 9-3-94 after availing of C.L., but he did not turn up and was marked absent vide D.D.No.56-B. They have submitted that two absentee notices were sent to him at his village and he was directed to report for duties at once failing which departmental action will be taken against him. According to them he did not resume duty nor informed the Department of his whereabouts as well as the reasons of his absence. They have also submitted that the applicant did not obtain permission to avail of the medical rest under the provisions of the CCS (Leave) Rules, 1972. Therefore, Ms. Neelam Singh, learned counsel has submitted that the relevant facts of the alleged mis-conduct of the applicant has been fully proved in the departmental proceedings held against him. The applicant resumed duty on 5-3-1997 and had also participated in the departmental proceedings. Learned counsel has submitted that the disciplinary authority, after perusing the statement of PWs, DWs and the findings of the Enquiry Officer and other relevant materials brought on record in the departmental enquiry file, found the applicant totally incorrigible and not fit for retention in a disciplined force like the Delhi Police. Therefore, they had dismissed the applicant from service vide order dated 7-3-1998. Learned counsel has further submitted that although the disciplinary authority has later on added a sentence "his absence period from 9-3-94 to 5-3-97 is hereby treated as leave without pay for all purposes",

Ys.

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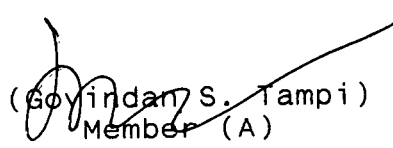
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that action will not have the effect of nullifying the disciplinary proceedings or the punishment order passed by the competent authority. She has relied on the judgement of the Hon'ble Supreme Court in State of Madhya Pradesh Vs. Harihar Gopal (1969 SLR SC (3) 274) and decision of Delhi High Court in Deputy Commissioner of Police Vs. Karan Singh, (CWP No.4883/99) decided on 18-4-2000. In the facts and circumstances of the case, relying on these judgements, learned counsel has submitted that there is no legal infirmity in the order passed by the disciplinary authority. Similarly she has submitted that there is also no infirmity in the appellate authority's order which is a reasoned and speaking order. As mentioned above, no rejoinder have been filed by the applicant in this case. 11

6. We are unable to agree with the contentions made on behalf of the applicant in the OA that the impugned punishment orders have been passed either malafide or in violation of the principles of natural justice. From the documents on record, it is clear that a reasonable opportunity had been given to him to put forward his case in the enquiry held in the departmental proceedings. He has not denied the fact that he has remained absent from duty w.e.f. 9-3-94 to 5-3-97, that is for more than three years without obtaining any permission from the competent authority in accordance with the provisions of the Leave Rules. The respondents have stated that he had not been permitted to avail of medical rest. Therefore, their stand cannot be faulted as unjustified in the circumstances of the case.

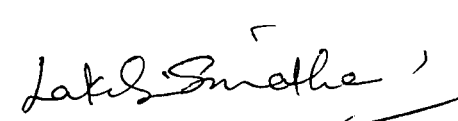
7. The other main ground taken by the applicant is that the punishment of dismissal from service is disproportionate to the act of mis-conduct alleged and proved against him. He has contended in para 6 of the OA that his absence from duty with reason or no reason cannot amount to an act of grave mis-conduct to attract the punishment of dismissal, with which we cannot agree. The applicant has been absent from duty for more than three years without proper intimation to the authorities or obtaining their permission for the leave. In the circumstances, the conclusions arrived at by the disciplinary authority that the applicant need not be retained in a disciplined force as he has set a very bad example to others is neither arbitrary nor illegal justifying any interference in the matter. The order passed by the appellate authority is also a reasoned and speaking order.

8. In the facts and circumstances of the case, we find no good grounds either on substantive law or on procedure to interfere in the matter in exercise of the powers of judicial review. The conclusions arrived at by the competent authorities are neither perverse, illegal, arbitrary or against the principles of natural justice which justifies setting aside the impugned orders.

9. As there is no merit in this application, the OA is accordingly dismissed. No order as to costs.

  
(Goyindan S. Tampi)  
Member (A)

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