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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. OA 1115/89

Date of decision: 29th April, 92
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Shri Satish Kumar Applicant

versus

Lt. Governor and Ors. Respondents

For the Applicant Shri A.S.Grewal,
Counsel.

For the Respondents Shri O.N.Trisal,
Counsel.

CORAM: THE HON'BLE MR. T.S.OBEROI, MEMBER(J)
THE HON'BLE MR. P.C.JAIN, MEMBER(A)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

JUDGEMENT

(OF THE BENCH DELIVERED BY HON'BLE MR.T.S.
OBEROI, MEMBER)

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant is aggrieved by the order dated 13.8.87 (Annexure D) dismissing him from service, order dated 7.9.87 (Annexure H) treating the period of his absence as leave without pay passed by the Disciplinary Authority, and also by the orders dated 15.1.88(Annexure E) and 17.5.88(Annexure F), passed, respectively by the Appellate and the Revisional Authorities, dismissing his appeal and revision and maintaining the orders of the Disciplinary Authority.

2. The applicant's case, in brief, is that during his posting in South district, he developed some disease for which he was undergoing treatment from the Government hospital as well as private Doctor. This necessitated his absence from duty, but the D.C.P South did not grant the requisite leave and instead ordered the applicant to be proceeded against departmentally for such absence. Even though, during the inquiry proceedings, he had produced medical certificates (Annexures G1 to G3), the same were not placed any reliance rather his absence was regarded as unauthorised and the medical certificates treated as having been manipulated. The Inquiry Officer accordingly, gave a finding that the charge regarding unauthorised absence has been proved against him. The Disciplinary Authority gave a show cause notice, provisionally proposing to dismiss the applicant from the Police Force, and after considering the reply furnished by the applicant, and after giving him a personal hearing, the order regarding dismissing the applicant from service was passed on 13.8.87(Annexure D). The appeal as well as the revision were also rejected and thus, having failed to obtain redress from the Departmental authorities, the present OA has been filed.

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3. In the counter filed on behalf of the respondents, the applicant's case was opposed, mainly on the ground that the applicant, being a member of the disciplined force, has shown complete indifference with regard to the requirement of being attentive and punctual to his duty, which are the hall-mark of service in a disciplined force. He abruptly absented himself from the evening roll call on 2.3.84 and in spite of having been served with a notice through the Superintendent of Police, District Mohinder Garh(Haryana), at the applicant's native place, he did not attend/duty till 10.7.84, after absenting himself unauthorisedly for 130 days. He again absented himself without any prior intimation on 27.9.84, from 3.10.84 to 5.10.84, from 7.10.84 to 12.10.84 and again from 17.11.84 to 6.8.85, the last spell alone ranged for 263 days. Besides, according to the respondents, his previous record was also none-too-good and on as many as 15 occasions, the applicant was penalised for his absence, during the period from August 1981 to November 1984. In the circumstances, the respondents contended that the applicant was not a fit person to be retained in the Police force, as he was oblivious to the prime requirement of being dutiful in the matter of his presence and punctuality, and hence, he was rightly dismissed from service.

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4. In the rejoinder filed by the applicant, the earlier submissions in the OA were broadly reiterated.

5. We have also heard the learned counsel for the parties and have carefully perused the material on record.

6. The learned counsel for the applicant pointed out a number of short-falls in the enquiry proceedings, such as the summary of allegations prepared in the case

is not in accordance with Rule 16(i) of the Delhi Police (Punishment & Appeal) Rules, 1980 and even the list of witnesses and gist of evidence to be led, have not been given to the applicant. The learned counsel for the applicant, however, pleaded that the applicant was sick and had produced a medical certificate during the course of enquiry proceedings, but the same was not relied upon, and even second opinion as provided under Rule 19(3) of the C.C.S(Leave) Rules, 1972 was not obtained in the case. He also contended that though the period of absence has been treated as leave without pay, the order of dismissal has also been passed, and both the orders should not have been passed simultaneously or at least, when the period of absence has been treated as leave without pay, no order of punishment, much less of dismissal from service, should have been passed, as held in 1988(3) SLJ 216 (State of Punjab Vs. Chanan Singh).

Lastly, the learned counsel for the applicant pointed out that as per Rule 8(a) of the Delhi Police (Punishment & Appeal) Rules, 1980 dismissal or removal from service should be resorted to only in cases of grave misconduct rendering the Police official as unfit for Police service, which is not available in the instant case, as the applicant was absent from circumstances beyond his control, because of being unwell.

7. The learned counsel for the respondents repelled the above arguments, put forth by the learned counsel for the applicant, by submitting that the applicant's absence was for a substantial period going over an year or so, and during the repeated intervals as he had absented from duty from 2.3.1984 to 9.7.1984 for a period of 130 days, followed with his absence from 27.9.1984, from 3.10.1984 to 5.10.1984, from 7.10.1984 to 12.10.1984 and again for a period of 263 days from 17.11.1984 to 6.8.1985. The applicant should have at least sent prior intimation or asked for appropriate leave in case he was really indisposed. On the contrary, whatever medical certificate he produced during the inquiry proceedings, did not even bear his own signature, nor it appropriately mentioned the details of illness. Further, instead of availing of best possible medical treatment available at Delhi, he chose to go to his native place and in the absence of any application, supported with a mediate certificate, giving any^l the details of the ailment,

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conclusion was rightly arrived at, that he manipulated the medical certificate, later on. Besides, his previous record is also indicative of the same frame of mind, showing utter disregard to the requirement of putting up a disciplined conduct, expected of a Policeman. Even otherwise, the learned counsel for the respondents pleaded that by submitting a medical certificate later, the leave cannot be claimed as a matter of right, as it has to be properly applied for, duly accompanied with a medical certificate from an authorised Medical Officer, whereas in the instant case, no medical certificate was furnished, except during the inquiry proceedings, which, in view of the short-falls, pointed out earlier, smacks of having been manipulated, in order to cover up the period of the unauthorised absence. In the circumstances, the learned counsel for the respondents pleaded that the citation referred to by the applicant is not helpful, in the present case.

8. We have given our careful consideration to the rival contentions, as briefly discussed above. We have also carefully perused the entire material on record. The medical certificates (Annexures G1 to G3) relate to December 1987 and January 1988 whereas the period of absence relates to March 1984 to August, 1985. Hence we find force in the submission of the learned counsel for the respondents that these medical certificates do

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not cover the period involved and, to say the least, cannot help the applicant's case. The period is quite substantial, going, in all, to over an year and the applicant did not feel the necessity of even applying for, or requesting his seniors for leave, if he was really suffering from any ailment. In case of genuine difficulty, the applicant could have sought a personal interview with his superior officers and asked for appropriate medical treatment or leave, rather than absenting himself from duty, without any kind of such request. This factor alone coupled with his past conduct for having suffered punishments on as many as 15 occasions, to our mind, bespeaks of his conduct, not calling for any indulgence or leniency, in his case; rather ^{tells} about the propriety of the punishment meted out to him, in the circumstances of his case. His having been called upon through Superintendent of Police, Mahendergarh(Haryana) to join duty, did not bring about the desired result, or serve any purpose. In the circumstances, we feel that other minor points, mentioned by the learned counsel for the applicant, during the course of arguments, as being the short-falls, in the enquiry proceedings, would, to our mind, be of no vital consequence, against the impugned order challenged in this OA. The fact remains that the applicant's conduct, both past as well as the present, which led to the disciplinary proceedings against him, proved him to be of an incorrigible type of person, in terms of Rule 8 & 10 of Delhi Police (Punishment & Appeal) Rules, 1980, unworthy of

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being retained in Police service. In result, we do not find any merit in the applicant's case and, accordingly, the OA, dismiss without, however, any order, as to costs.

(See 24/4/92
(P.C. JAIN)
MEMBER(A)

Devi 24.4.92
(T.S. OBEROI)
MEMBER(J)