

CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1821/1989

DATE OF DECISION : 6.8.1991

Raj Singh

... APPLICANT

Vs.

Lt. Governor & Others

... RESPONDENTS

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

Shri T. S. Kapoor, Counsel for the Respondents.

CORAM : HON'BLE SHRI G. SREEDHARAN NAIR, V.C. (J)

HON'BLE SHRI S. GURUSANKARAN, MEMBER (A)

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JUDGMENT

G. SREEDHARAN NAIR, V.C. (J) :

The applicant while working as a Constable under the Delhi Police was proceeded against under section 21 of the Delhi Police Act for alleged gross misconduct and negligence in the discharge of official duties. The imputation was that he wilfully absented himself from official duties and submitted forged medical certificates by over-writing. The applicant denied the charges. An inquiry was conducted. The inquiry officer reported that the imputation of submission of forged certificates is not proved. However, it was held that the charge of wilful absence from duty on the pretext of illness or medical certificates, without prior permission of the competent authority stands proved. The disciplinary authority agreed with the findings of the inquiry officer and held that the period of absence gives the impression that the applicant is not interested in serving the Department, and on that basis, by the order dated 16.10.1987 imposed the penalty of dismissal from service. The appeal submitted by the applicant was rejected

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by the order dated 21.4.1988. The revision petition was also turned down on 3.2.1989. The applicant prays for quashing these orders. It is urged that he had proceeded on casual leave on account of sickness and applied for extension of leave on the ground of his illness and as such could not have been treated as having absented from duty. There is also the plea that there has been violation of the principles of natural justice on account of denial of reasonable opportunity of defence.

2. In the reply filed on behalf of the respondents it is stated that the applicant was due on 10.1.1986 on the expiry of the casual leave but he did not turn up till 5.5.1986, and even thereafter he absented himself. It is pointed out that while resuming duty the applicant produced some medical certificates in which there were over-writings and in the circumstances the departmental inquiry was ordered, which was held in accordance with the rules. It is contended that no case is made out for interference.

3. The charge against the applicant was wilful and unauthorised absence from duty by submitting forged medical certificates. It was this act that was described as misconduct, remissness and negligence in the discharge of official duties. This is evident from the summary of allegations, copy of which is at Annexure 'C' and from the memorandum of charges itself which is at Annexure 'D'. In the course of the inquiry the medical officers who issued the certificates were examined as P.W.s 3 and 4. It was sworn ^{to} by P.W.-3 that the applicant was under his treatment during the period from 27.3.1986 to 15.4.1986 and the applicant was advised rest from 16.4.1986 to 9.5.1986. He has admitted the genuineness of the certificate relied upon by the applicant. In the same manner, P.W.-4, the other doctor who issued the certificate dated 6.3.1986

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also testified about the authenticity and correctness of the certificate. Evidently it was in view of this that the inquiry officer categorically reported that the charge against the applicant of presenting forged medical certificates is not proved.

4. The question that remains is only whether it can be said that there was a wilful unauthorised absence on the part of the applicant. When the applicant had proceeded on leave initially by availing casual leave, and thereafter was under continued illness as established by the medical certificates proved in the inquiry, it cannot reasonably be held that there was wilful unauthorised absence warranting the initiation of departmental proceedings and the imposition of the extreme penalty of dismissal from service. Neither the appellate authority nor the revisional authority has considered the issue in the aforesaid perspective.

5. In the result the order dated 16.10.1987 whereby the applicant was dismissed from service, as confirmed by the orders on appeal and in revision, is hereby quashed. The applicant shall be reinstated in service forthwith. He shall be treated as having been continuously in service but shall not be entitled to the back-wages.

The application is disposed as ~~such~~ above.

S. Gurusankaran
6/8/99
(S. Gurusankaran)
Member (A)

G. Sreedharan Nair
6/8/99
(G. Sreedharan Nair)
Vice Chairman (J)