

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 689/89

New Delhi this the 17th day of March, 1994.

Shri Justice V.S. Malimath, Chairman.

Shri S.R. Adiga, Member(A).

Nafe Singh,
Constable No. 716/C,
R/o 24/252, Jawahar Nagar,
Sonepat (Haryana).

... Petitioner.

By Advocate Shri M.P. Raju, proxy for Shri J.P. Verghese.

Versus

1. The Delhi Administration,
through its Chief Secretary,
Old Secretariat,
Delhi.

2. Commissioner of Police,
Police Headquarters,
IP Estate,
New Delhi.

... Respondents.

By Advocate Shri Vinay Sabharwal.

ORDER(ORAL)

Shri Justice V.S. Malimath.

The petitioner, Shri Nafe Singh, was a constable. A disciplinary inquiry was initiated against him for the misconduct of unauthorised absence for a period of 87 days from 24.6.1978 to 19.9.1978. The petitioner was held guilty and imposed the penalty of dismissal from service. The said order was confirmed on appeal and the revision petition was rejected as barred by limitation. The petitioner moved a mercy petition which was also rejected on 24.11.1988. It is in this background that the petitioner has challenged the impugned orders in this case.

2. The learned counsel for the petitioner firstly urged that this is a case of double punishment for the same misconduct. It was urged that for the same misconduct the petitioner cannot be punished twice over. It was further urged that ⁱⁿ another disciplinary inquiry which was initiated later, an order of removal from service was made on 16.1.1984 and which was on appeal modified by order dated 7.7.1984 reducing the penalty to forfeiture of three years approved service permanently. It was urged that the very same period of unauthorised absence which is the subject matter of present proceedings was also covered by the disciplinary proceedings which resulted in an order being made on 16.1.1984, as aforesaid. We have perused the chargesheet in the present case as also the impugned orders. We have also perused the order imposing the penalty of forfeiture of three years service on 7.7.1984. The order of penalty of forfeiture of three years service permanently was made in regard to the misconduct charged against the petitioner of his being unauthorisedly absent from 12.3.1982 onwards. The period with which we are concerned in the present case is unauthorised absence for the earlier period from 24.6.1978 to 19.9.1978. It is no doubt true that in both the cases there is advertance to the absence of the petitioner for certain other periods, but then they were not the subject matter of charge in regard to the misconduct which the petitioner was required to answer. It is only to highlight that apart from the misconduct of unauthorised absence which was the subject matter of the respective proceedings, they have stated that the petitioner was absent on other dates also, to show that the petitioner has been a habitual absentee for a long period. That would have bearing only on the question of imposition of penalty.

So far as subject matters of charges are concerned, we are quite satisfied so far as the present proceedings are concerned, that unauthorised absence in respect of which the disciplinary enquiry is held is for the period from 24.6.1978 to 19.9.1978. The misconduct which resulted in imposition of forfeiture of 3 years service by order dated 7.7.1984 pertained to unauthorised absence from 12.3.1982 on-wards. Hence, it is not possible to accept the contention that in respect of the same misconduct of the petitioner, he has been punished twice.

3. Another contention urged is that the impugned orders have been made in a mechanical manner without applying their mind. There is absolutely no basis for this charge. A bare perusal of the impugned orders makes it clear that they are speaking orders and that the respective authorities have applied their mind to the facts and circumstances of the case before recording their findings. There is, therefore, no substance in this contention either.

4. Another contention is that the respondents did not record any evidence to show unauthorised absence of the petitioner in the present proceedings. The impugned orders as also the reply filed in this case make it clear that the petitioner did not participate in the inquiry in-spite of due service on him and repeated opportunities given for that purpose. The petitioner has really not denied the charge of unauthorised absence levelled against him for the period from 24.6.1978 to 19.9.1978. This is, therefore, a case of admission by

non-traverse. There is a report of superior police officer about his absence for that period. That evidence has been relied upon. The petitioner was told when the summary of allegations were served on him that the same is the evidence which would be relied upon. Besides, it is necessary to point out that this is not the case in which the petitioner has been absent for the reasons beyond his control. If he had justifiable reasons for his absence beyond his control, it was for him to place the necessary materials in support of his absence. In spite of opportunities having been given to him, he has failed to establish that his absence was beyond his control. He has to blame himself for this lapse. He cannot, therefore, complain that the findings are not supported by any evidence. It is also not possible to take the view that the punishment imposed on him is excessive and manifestly unreasonable. It is necessary to point out that one cannot fail to note that the petitioner being a police constable is expected to show discipline and utmost devotion to duty. Unauthorised absence for a long spell of time in spite of more than one enquiry held is undoubtedly a serious matter particularly in regard to the police constables of the police force. In the circumstances, we would not be justified in drawing an inference that the punishment imposed on him is excessive and manifestly unreasonable justifying interference.

5. Before concluding we would like to emphasise one point urged by the learned counsel for the petitioner which has not been raised in the petition that having regard to the order of removal made in his case on 16.1.1984 which punishment was modified to forfeiture of 3 years service permanently on 7.7.1984, the present proceedings

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which were during the period from 24.6.1978 to 19.9.1978 must be deemed to have lapsed. It is not possible to accept this contention. The proceedings initiated in this case were suspended during the period when the punishment of removal from service subsisted from 16.1.1984. They, therefore, stood revived and could be continued after the punishment of removal from service was modified to forfeiture of 3 years service permanently. It is not possible to take the view that the present disciplinary proceedings must be deemed to have lapsed.

6. For the reasons stated above, this petition fails and is, therefore, dismissed. No costs.

Adige
(S.R. ADIGE)
MEMBER (A)

Malimath
(V.S. MALIMATH)
CHAIRMAN

'SRD'