

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. No. 84/89

DATE OF DECISION... 6¹⁵ March, 92

JAGDISH SINGH

APPLICANT

V/s

LT.GOVERNOR OF DELHI AND OTHERS RESPONDENTS

CORAM :

HON'BLE MR. T.S. OBEROI, MEMBER(J)

HON'BLE MR. P.C. JAIN, MEMBER(A)

FOR THE APPLICANT SH.A.S. GREWAL, COUNSEL

FOR THE RESPONDENTS MS. ASHOKA JAIN, COUNSEL

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)

JUDGEMENT

In this O.A., filed under Section, 19 of the Central Administrative Tribunal Act, 1985, the applicant has challenged his dismissal from service as a constable in Delhi Police, vide disciplinary authority's order No dated 4-12-87(Annexure-E), ^{order} dated 8-4-1988 passed by the Appellate Authority(Annexure-F), and order of the revisional authority dated 5-8-1988(Annexure-G).

2. The applicant's case briefly is that he had joined in Delhi Police on 1-11-1972, and during the relevant time in May, 1987 was posted in Police Station, Nangloi, Delhi. He was granted C.Leave for 5-days and 5th May, 1987 was his rest day(Off duty). However, during night between 5/6 May, 1987, he fell ill, and sought permission to go to the new Police lines, CGHS Dispensary, as he had CGHS card for that

dispensary. He also later on went to M.C.D. dispensary situated nearby Police Station, Nangloi, Delhi, where Medical Officer concerned advised him 5-days medical rest, upon which after recording an entry in Daily diary, he went to his residence. The SHO, Nangloi, however, took affront to this, and taking that he apparently had managed to get medical rest for 5-days, directed him to remain within the premises of the Police Station, during the period of rest recommended.

The applicant's case further is that as he was un-well he could not stay in the Police Station, un-attended by any one, and therefore, had to go to his residence. After the recommended rest for 5-days, he continued to be unwell, and was advised further rest by his family doctor till 29-5-37, and therefore, resumed duty on 30-5-37. This resulted in initiation of disciplinary proceeding against him, and Inspector Yashvir Singh was appointed the enquiry officer in the case. According to the applicant, no proper enquiry proceedings was held, rather the enquiry officer got his signatures on some blank papers and thereafter recorded the statement of the witnesses in his absence.

PWs were also not recalled for cross-examination on behalf of the applicant and charge was framed on the basis whatever was recorded as an incorrect version of PWs, as stated above. No proper chance to adduce defence evidence was given, and the Enquiry Officer, in his report held the charges against the applicant as proved, and disciplinary authority issued a show-cause notice and later imposed a penalty of dismissal from service

Seen

as per Annexure-E. The period involved was also treated as leave without pay. The appeal as well as revision filed were also dismissed, and hence, this O.A.

3. In the counter filed on behalf of the respondents, the applicant's case was opposed. Their contention was that the applicant, under the pretext of being indisposed managed to get leave on medical grounds, the purpose of which was to participate in the marriage of his brother-in-law. They also took up the plea that being a member of the disciplined force, this was an act of gross indiscipline on the part of the applicant, and hence the extreme penalty of dismissal from service was rightly awarded to him. As regards recording of statements of witnesses on blank papers in the absence of the applicant, the same was vehemently denied. Similarly, allegation regarding not giving of adequate opportunities to adduce defence evidence, was also refuted.

4. In the rejoinder filed on behalf of the applicant, the contentions put forth in the O.A. were broadly reiterated.

5. We have also heard the learned counsel for the parties. The learned counsel for the applicant pleaded that even if there was any doubt about the applicant having falsely arranged the certificate regarding his indisposition, he could have been referred to the Civil Surgeon, for second medical opinion, in terms of Rule 19(3) of Central Civil Services leave Rules. The learned counsel for the applicant also pleaded that Rule 8(a) of Delhi Police (Punishment & appeal) Rules, 1980 provide for an act of gross mis-conduct rendering a Police employee unfit for police service, before an order of punishment of dismissal or removal from service is passed. The learned counsel for the applicant also, by referring to Rule, 10 of the Leave Rules *ibid*, pleaded that for

arriving at a decision in this regard, the previous conduct of the official concerned is also required to be looked into to ascertain if he had been behaving likewise in the past as well, showing incorrigibility and complete unfitness for police service, which have not been looked into the present case, by the disciplinary authority as well as by the appellate and the revisional authorities. The learned counsel for the applicant also cited in SLR, 1984(2) page-149 (Sukhbir Singh V/s Dy. Commissioner of Delhi & others) and SLJ, 1988(III) page-216 (State of Punjab V/s Chanan Singh), in support of his contentions, urging that once the period of absence has been regularised, by grant of whatever leave due, the order of dismissal was uncalled for, and hence not sustainable in law. He, therefore, prayed for an appropriate order, on the same lines, in the present case as well.

6. We have also heard the learned counsel for the respondents who pleaded that the applicant in order to attend the marriage of his brother-in-law, took recourse to availing of leave on medical grounds, and in view of the service to which he belonged, the action taken against him by the disciplinary authority, and confirmed by the appellate as well as revisional authorities, was justified. As regards allegations regarding obtaining of signatures of witnesses on blank papers, or copies of the documents having not been supplied to the applicant, it was contended on behalf of respondents that such allegations are often levelled by an employee, who is dealt with rather sternly, in a case of this nature. This seems to be result of after-thought, as the applicant did not agitate about the same earlier, nor did he ask for copies of the requisite documents, from the enquiry officer, at the appropriate stage.

Seen

9

7. We have given our careful consideration to the rival contentions, as briefly discussed above. We have also carefully considered the facts and circumstances of the case, and also the citations referred to by the learned counsel for the applicant, in support of his contentions.

8. Rule 8(a) and Rule 10 of the Delhi Police (Punishment & Appeal) Rules, 1980, may, for benefit, be reproduced as under:-

" 8(a) Dismissal/Removal - The punishment of dismissal or removal from service shall be awarded for the act of grave misconduct rendering him unfit for police service.

" 10 Maintenance of discipline - The previous record of an officer, against whom charges have been proved, if shows continued mis-conduct indicating incorrigibility and complete unfitness for police service, the punishment awarded shall ordinarily be dismissal from service. When complete unfitness for police service is not established, but unfitness for a particular rank is proved, the punishment shall normally be reduction in rank."

Viewing the facts and circumstances of the present case in the light of the above provisions, we are of the view that the Disciplinary Authority as well as the Appellate and Revisional authorities have not touched this aspect, in their respective orders, and so, the same are not sustainable in law, and, ^{we} therefore, set aside the same. We have, however, kept in view the submissions of the learned counsel for the respondents that the Police being a Disciplined Force, the desirability of maintaining strict discipline, cannot be over-emphasised, and from that angle, the applicant's conduct in proceeding on leave, on medical grounds, in order to participate ⁱⁿ his brother-in-law marriage, should be viewed seriously. However, the fact remains that inspite of the applicant having not joined after availing of 5 days medical leave, he was not

referred to any other doctor for second medical opinion, in accordance with the provisions contained in Rule 19(3) of the Central Services Leave Rules, 1972. Balancing the facts and circumstances of the case, in the light of the submissions made by the learned counsel for the applicant, and also the learned counsel for the respondents, and keeping in view the findings held in the two citations relied upon the applicant, in support of his case, we are of the view that, in the peculiar facts and circumstances of the case, while holding the impugned orders passed by the Disciplinary Authority, as well as by the Appellate and the Revisional Authorities, being not sustainable, we direct that the applicant be taken back in service in the same capacity in which he was serving at the time of his dismissal from service, and the period of his absence from the date of his dismissal till the date of his being taken back on duty, should be regularised by grant of whatever leave due to him, including leave without pay. The period from the date of dismissal till he is taken back on duty will, however, be not treated as break in service & will also count for increments as per rules. We order accordingly and the respondents shall comply with these orders, within a period of two months from the date of receipt of a copy of this judgement. There shall, however, be no order as to costs.

Decd 6/3/92
(P.C. JAIN)
MEMBER(A)

Decd 6.3.92
(T.S. OBEROI)
MEMBER(J)