

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI
O.A. NO. 947 of 1989

This 17th day of March, 1994

Hon'ble Mr. J.P. Sharma, Member (J)
Hon'ble Mr. B.K. Singh, Member (A)

Suresh Kumar,
S/o Shri Ran Singh,
Village Madanpur Dabbas,
P.O. Madanpur Dabbas Rani Khera,
Delhi.

Applicant

By Advocate: Shri A.S. Grewal

VERSUS

1. Lt. Governor of Delhi, through
Chief Secretary,
Delhi Administration,
Delhi.

2. The Commissioner of Police,
Police Headquarters,
MSO Building, IP Estate,
New Delhi.

3. The Addl. Commissioner of Police,
(A.P.), Police Headquarters,
MSO Building, IP Estate,
New Delhi.

4. The Deputy Commissioner of Police
Xth Bn. DAP,
Pitampura Police Lines,
Delhi.

Respondents

By Advocate: None.

Shri Bahadur Singh, SI
Departmental Rep.

O R D E R (Oral)

(By. Hon'ble Mr. J.P. Sharma, M(J))

The applicant was appointed as Constable in Delhi Police. He took permission on 10.9.87 to go to the hospital as he got certain injuries by falling from a bus. He was granted permission but he did not join his duties on the next day. He was served with a show-cause notice for not joining his duties on 11.9.87 but he was not found at his residence. The applicant finally joined his duties on 29.9.87 and from 30.9.87 he was placed under suspension. He was served with a summary of allegations that he committed grave misconduct, negligence and carelessness in the discharge of his duties by not reporting for his duties in spite of absentee notice

sent to him on 11.9.87.

2. A departmental inquiry was therefore initiated against him under Section 21 of Delhi Police Act, 1978 read with Delhi Police (Punishment & Appeal) Rules 1980 and Inspector Ram Kishan was appointed as Inquiry Officer who completed the inquiry after examining the prosecution witnesses as well as the witnesses produced by the applicant in his defence and submitted the report and findings to the Disciplinary Authority. The Disciplinary Authority imposed punishment of dismissal from service on the applicant by the order dated 15.12.87 and the period from 10.9.87 till 29.9.87 was declared to be treated as period not spent on duty. The Addl. Commissioner of Police, as appellate authority, dismissed the appeal filed by the applicant vide his order dated 21.4.88 as the same was not within time. The appeal had been filed after the expiry of a period of 30 days from the date of receipt of the order dated 15.12.87. The request for condonation of delay was therefore not found reasonable and the appeal was dismissed. However, the applicant filed revision petition to the Commissioner of Police who after considering the whole matter dismissed the revision petition vide his order dated 3.11.88 upholding the order of the appellate authority.

3. A notice was issued to the respondents who contested this application and opposed the grant of reliefs claimed in it. The reliefs claimed by the applicant in this application filed in May 1988 is for quashing the order of punishment imposed by the Disciplinary Authority and upheld by the appellate and revisional authorities, and that the applicant be reinstated in service.

4. We have heard Shri AS Grewal, learned counsel for the applicant. No lawyer is present on behalf of the respondents but Shri Bahadur Singh, SI is present as departmental representative. The departmental representative produced departmental file before us and we as well as the learned counsel have perused the same.

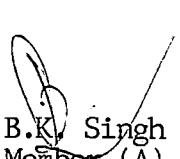
5. The contention of the learned counsel is that the applicant was actually ill and he had filed certain CGHS prescription slips whereby the doctor has recommended rest on medical ground. He argues that in case those slips were not to be relied upon as the genuine medical opinion, then the respondents should have called for the second medical opinion.

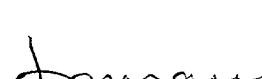
6. Firstly, we have found that the applicant absented himself with permission to get himself treated at the hospital for the said injury, while the prescription goes to show that he was treated for Malaria. The prescription also does not bear any stamp on 10.9.87 which in usual course should have been fixed by the pharmacist/clerk registering the applicant as an outdoor patient in the Kingsway Camp Dispensary. The applicant visited the doctor on 14.10.87 and continued to be under his treatment for Malaria. Further in October 1987 the disease of the applicant has been diagnosed as jaundice and loose motions, though when he had reported about his illness on 30.9.87, 15 days earlier, he had no symptoms of jaundice. Jaundice is a disease which manifests itself after a particular period rendering the patient dormant because of malfunction of the liver. The I.O. therefore found that the opinion of the doctor either is incorrect or that the prescriptions do not tally with the treatment which the applicant sought at the hospital for which he had taken permission on 10.9.87. The revisional authority has also considered this aspect. The applicant has admitted his absence from duty and his only defence was that he was ill. The defence taken by the applicant has not been accepted by the I.O. in his findings and this court cannot sit as an appellate authority to give its own findings after appreciating the documents and oral testimony of the witnesses produced and examined before the I.O.

7. The punishment awarded to the applicant is dismissal from service. In normal course, under Rule 8 of the Delhi Police (Punishment & Appeal) Rules 1980 this sort of punishment is inflicted only when ~~the~~ the misconduct is of grave ~~order~~ order. However, when ~~when~~ we go through the record of the applicant's service which he has put

in with the respondents, i.e. only $6\frac{1}{2}$ years, we find that he absented himself on 50 occasions, sometimes for hours and sometimes for days. Though that period has been condoned by inflicting punishments but while awarding punishment the respondents have taken into account that the applicant has been habitual absentee on earlier occasions also. This fact is also mentioned in the summary of allegations as well as the charges served upon the applicant. The applicant has not produced any specific defence in this regard. In the reply filed by the respondents, at page 28 of the counter under items 45, the services of the applicant appear to have been terminated once but subsequently that order was modified taking a lenient view. Even thereafter the applicant did not take proper precautions and absented himself without legitimate excuse. In normal course even if the applicant was confined due to Malaria, being stationed at Delhi he should have sent a registered letter enclosing the application and medical certificate to the respondents asking for the medical leave which is normally due to a government servant. He has not adopted that practice either by ignorance or deliberately. But it cannot be said that he was unaware of this procedure having faced such situations on earlier 50 occasions when he absented himself in his short span of service.

8. We do feel that by dismissal the applicant cannot be employed in any of the government service. But we are constrained because of our limitation to interfere in the order of punishment in view of the authority on Union of India Vs. Perma Nand reported in 1989 AIR (1989) SC 1185. However, the applicant shall be free to make a representation to the respondents to take a lenient view if he so wishes. This application is therefore dismissed as devoid of merit leaving the parties to bear their own costs.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J)