

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

DA No.178/88

Date of decision: 26.5.1993.

Shri Raj Kumar

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Applicant

VERSUS

Union of India & Others

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Respondents

CORAM

Hon'ble Shri C.J. Roy, Member (J)

Hon'ble Shri B.N.Dhondiyal, Member (A)

For the applicant

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Shri N. Safaya

For the respondents

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Shri Parasar

JUDGEMENT (ORAL)

{Delivered by Hon'ble Shri C.J. Roy, Member (J)}

This application is filed by the applicant
claiming the following relief:

(i) To call for the records of the case and set aside and quash the impugned order dated 24.11.86 (Annexure D to the application) and also to set aside the order rejecting the appeal passed by the Respondent No.3 on 14.4.87 (Annexure F); and

(ii) to declare the dismissal of the applicant from service as illegal and treat him in service throughout without any break, with all service benefits upto-date.

2. Brief facts of the case are as follows. The applicant was enrolled in Delhi Police as Constable on 21.11.72. Two departmental enquiries against him for absence from duty on various dates were initiated vide orders dated 15.11.83 and 18.9.84 but were dropped as no case was made. Against the same charges a fresh enquiry was initiated vide order 21.3.86. It was entrusted first to one Shri V.P.Jayee, then to one Shri H.K.Vohra, but later on was got completed by Inspector Abhey Ram, who gave his findings on 28.8.86. The applicant alleges that the said Abhey Ram has no authority as no valid

order was passed on by the disciplinary authority to do so. The applicant was not given reasonable opportunity to defend himself and no documents pertaining to the enquiry were supplied to him in spite of his repeated representations. But he was issued with a show cause notice dated 26.9.86 proposing a punishment of dismissal. The applicant represented against the same (Annexure C) but he was issued with the impugned order dated 24.11.86. He alleges that by the impugned order he was awarded two punishments, i.e. absence was treated as leave without pay and dismissal from service.

3. The applicant made an appeal against the above said order, which was dismissed by the appellate authority on 14.4.87. Para 4 of the said order reads as follows:

"I have gone through the papers connected with the DE carefully as also the appeal and para-wise comments thereupon. The contention of the constable that he was not given opportunity to cross examine PWs is wrong as borne out by the scrutiny of the file. Similarly his contention that enough material was not made available to him for his defence under the Indian Evidence Act is wrong since the provisions of Evidence Act do not apply during the departmental proceedings. Regarding other contentions also he has not made any representation either at the DE stage or before the final decision, which would indicate prejudice against him or infringement of rights of the person proceeded against; these appear only as an afterthought. Considering the overall circumstances of the case and that the Constable absented himself for over 2 years and 45 days. I have no hesitation in concurring with the decision arrived at by the disciplinary authority, accordingly the appeal is dismissed".

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4. It has also been observed in para 3 of the above said order that the applicant has put in 14 years of service, he had explained the facts of being absent in his reply to show cause notice which was not taken into account by DCP/Security, no proper procedure was adopted in conducting the DE and he was not given full opportunity to defend himself, no relevant records were supplied to him, he was forced by circumstances to avail leave and submitted medical certificate due to unavoidable circumstances, if the authorities were not satisfied they should have called for second medical opinion. In spite of this, the above said order has been passed.

5. The respondents have filed their counter stating that the dismissal is in order, a combined departmental enquiry was ordered cancelling the earlier two orders, the enquiry officer held the applicant guilty of unauthorised absence and that there was no violation of law and also that the applicant was given proper opportunity to defend himself and denied the other contents raised by the applicant.

6. We find that the show cause notice was issued by the Deputy Commissioner of Police, who is the disciplinary authority, who took into consideration certain matters which are beyond the alleged findings by the enquiry officer who has only mentioned the periods of unauthorised absence by the applicant in a Table form (Annexure B-page 17) and the disciplinary authority cryptically observed that: "I have gone through the finding and other relevant record of the DE file.

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Agreeing with the finding I propose to dismiss him from service being incorrigible and unfit for retention in the department".

7. We have gone through the findings of the enquiry officer, who has charged that "I, Abhey Ram, Inspector, Enquiry Officer charge you Constt. Raj Kumar No.210/Sec. that while posted in Security Unit of Delhi Police you unauthorisedly and deliberately absented yourself from duty on Kothi No.4 South Avenue on 22.2.84 and continuously remained absent upto 8.4.86. You did not join your duties despite issue of absentee notices vide No.907-B dt. 22.1.86, No.2286 dt. 6.3.86 and 29.60/ACIP/DCP(5) dt. 24.3.86. This act on your part amounts to gross misconduct and indiscipline making you liable for departmental action u/s 21 DP Act, 1978".

8. The order of the disciplinary authority simply ^{gone} says that "I have/through his (applicant's) reply. His reply is not satisfactory. The show cause notice is therefore confirmed and Const. Raj Kumar (applicant) is dismissed from the force from the date of issue of this order. The suspension period w.e.f. 10.9.84 to the date of issue of order is treated as period not spent on duty. His said absence period i.e. 2 years 5 months and 24 days is also treated as leave without pay".

9. We have heard the learned counsel for the applicant Shri M. Safaya and the learned counsel for the respondents Shri Parasar and perused the records stated supra. We feel that the appeal was disposed of

without any application of mind which resulted in the denial of natural justice and the applicant was not given the opportunity of being heard. We find that it is a fit case for admission.

10. It appears to us that the charge, as mentioned *supra*, is added with an extraneous material prior and subsequent to the case here, which the respondents are not entitled to do. They had to conduct an enquiry only on the charge issued. After issuing the charge, if the charge is amended, the party is entitled for a notice and also an opportunity of being heard. But when they have traversed asserting prior and subsequent things in the charge, it does not form part of the main charge on which the enquiry was ordered. It caused serious prejudice to the applicant and resulted in flagrant violation of principles of natural justice to the applicant. We decide to reproduce the additional information in addition to the charge, as follows:

S.No.	DD	No. & date	Period(days)	Hrs.	Minutes
1.	30	8.2.82	2	21	16
2.	43B	26.2.82	4	19	-
3.	32B	4.3.82	-	21	-
4.	66B	24.3.82	-	6	10
5.	51B	29.4.82	-	3	5
6.	53B	14.5.82	-	3	5
7.	49B	6.8.82	1	1	38
8.	51B	6.9.82	4	27	-
9.	47B	14.10.82	26	-	-
10.	37B	13.11.82	-	22	-
11.	24B	16.11.82	-	6	10
12.	13B	8.2.83	11	1	30
13.	47B	24.3.83	1	6	5
14.	47B	20.6.83	74	-	-
15.	22.4.84 to 8.4.86 : 2 years, 45 days				

11. It is pertinent to quote here the the case of SLJ 1982(1) SCA No.2429/81 decided on 24.2.82 of Gujarat High Court which held that "Once the leave is sanctioned of whatever character it might be, the sting from that absence is taken away", SLJ 1988(3), RSA 1268/86 decided on 15.1.88 of Punjab and Haryana High Court which held that "once the period of absence is treated as leave of any kind whatsoever, the fact that the delinquent remained absent, no more survives; the charge of absence from duty can not be sustained if the person has been treated on lave of whatsoever kind it may be" and also this Tribunal's judgement in OA 2579/90 dated 16.2.93, in which my learned brother Shri B.N.Doundiyal is also a Member, which held that "the impugned order of removal from service is not legally sustainable and we set aside and quash the same".

12. Under the circumstances, we are persuaded that the applicant has made out a case. We, therefore, quash the impugned order dated 24.11.86 (Annexure D) and order dated 14.4.87 (Annexure F) passed by Respondent No.3. The respondents are directed to reinstate the applicant with effect from 24.11.86, i.e. the date of his dismissal. The applicant shall also be entitled to arrears of pay and allowances from that date.

13. However, the respondents are given the liberty to proceed with the enquiry of the original charges after giving a reasonable opportunity of being heard to the

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applicant and after supply of relevant documents to him in accordance with the law. With this observation, the application is allowed with no orders as to costs, and the judgement shall be implemented within 3 months from the date of communication of this order.

B. N. Dhoondiyal
(B.N.DHOUNDIYAL)
Member(A)
26.5.93

C. J. Roy
(C.J.ROY)
Member(J)
26.5.93

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