



Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1991/88

New Delhi this the 3rd Day of February, 1994.

Shri N.V. Krishnan, Vice-Chairman (A)
Shri B.S. Hegde, Member (J)

Gopal Singh s/o Sh. Fauja Singh
Vill. & P.P. Pabba-Rali
Distt. Gurdas Pur (Punjab) ...Applicant
(By Advocate Shri A.S. Grewal)
Versus

1. Union of India through
the Secretary, Ministry
of Home Affairs, Govt.
of India, New Delhi.
 2. Lt. Governor, Delhi through
Chief Secretary, Delhi
Administration, Delhi.
 3. Commissisoner of Police,
Delhi Police Headquarters
M.S.O. Building, I.P. Estate,
New Delhi.
 4. Addl. Commisioner of Police,
Police Headquarters,
M.S.O. Building,
I.P. Estate, New Delhi.
 5. D.C.P./Provision & Lines,
Old Police Lines,
Rajpur Road, Delhi. ...Respondents
- (By Advocate Sh.Kamal Chowdhary, proxy for Mr.
Madan Ghera, Counsel.)

ORDER(ORAL).

(Mr. N.V. Krishnan)

The applicant is aggrieved by the order dismissing him from service after following the due procedure in respect of the following charge framed on 29.11.80 (Annexure D):-

"I, Inspector Jagmal Singh, charge you constable Gopal Singh No.543/L (under suspension), U/s 21 D.P. Act, 1978 for gross negligence and remissness in the discharge of your official duty, which may render you unfit for the same in that while posted in lines unit, you proceeded

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to hospital for treatment vide D.D.No.17, dated 12.6.80, but did not report there and were marked absent vide D.D.No.87 on the same date. You returned back vide D.D. No.5 dated 24.6.80 after absenting yourself unauthorisedly without getting the leave sanctioned from the competent authority for a period of 12 days and 6 minutes. You are a habitual absentee and your present and previous record indicate continued misconduct proving incorrigible and unfit for police service." review have

2. His appeal and/ been rejected. The representation to the Delhi Administration has been rejected by the letter dated 14.10.1987, addressed to the Commissioner of Police (Annexure P).

3. The learned counsel for the applicant submits that the charge on the face of it is not maintainable, because, admittedly, the applicant was under suspension during that period and he has been charged for remaining absent during that period while he was posted in the lines during the period of suspension. He draws our attention to the orders of the Government of India with reference to suspension under CCS (CCA) Rules at serial No.15 in Chapter 2 'Suspension - General Principles' of Swamy's Compilation on the CCS (CCA) Rules (18th Edition). That clarification reads as follows:-

"(15) Illegal to compel an employee under suspension to attend office and mark attendance.--In the judgment of the Andhra Pradesh High Court v. Khaled Ahmed Siddiqui (1982 Lab IC 1140), it has been held

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that during the period of suspension, a direction to the employee to attend office and mark attendance at the office daily during working hours, is illegal."

4. As the charge is that he remained absent during this period, it is contended that the charge cannot be maintained because during the period of suspension there is no question of taking any attendance or marking attendance.

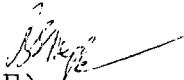
5. The learned counsel for the respondents submitted that the OA is barred by limitation. We, however, find that this ground is baseless in view of the fact that the last representation was rejected only on 14.10.87.

6. He was unable to meet the point relating to the marking of attendance or marking of absent during the period of suspension. He did not cite any rule applicable to police which has been contravened by the applicant. There is no such allegation in the charge.

7. We are, therefore, of the view that during the period of suspension there is no question of anybody being marked present or absent at any place and hence, this charge is not maintainable. Accordingly, the OA is allowed. The order of the disciplinary authority dated 5.11.81 (Annexure H), order of the appellate authority dated 9.3.82 (Annexure J), the order of revision dated 21.8.84 (Annexure 'O') and the order of the Delhi Administration dated 14.10.87 (Annexure 'P') are quashed. The applicant is directed to be reinstated within a period of one month from the date of receipt of this order. The services from the date he was dismissed till he was reinstated and the wages payable to him shall be decided in accordance with the provisions of law.

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8. The O.A. is allowed, as above. No costs.


(B.S. HEGDE)
MEMBER(J)


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(N.V. KRISHNAN)
VICE-CHAIRMAN

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