

5

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA No 2084/88

Date of decision: 26.05.1993.

Shri Jai Nand

...Petitioner

Versus

Union of India & Others

...Respondents

Coram      The Hon'ble Mr. I.K. Rasgotra, Member (A)  
              The Hon'ble Mr. J.P. Sharma, Member (J)

For the petitioner

Shri A.S. Grewal, Counsel.

For the respondents

Shri B.R. Prashar, Counsel.

Judgement(Oral)  
(Hon'ble Mr. I.K. Rasgotra)

The petitioner Shri Jai Nand, Constable in Delhi Police proceeded on sanctioned leave of 30 days on 17.1.1987. He was due to come back on duty on 16.2.19.7. He did not do so but asked for extension of leave for 25 days. The said extension of leave was refused by the respondents. He resumed duty on 14.5.1987 after having overstayed two months and 27 days in excess of the sanctioned leave. He again absented himself from 17.5.1987 without giving any intimation. An absentee notice was sent to him at his home address on 28.5.1987. The petitioner sent an application on 10.6.1987 stating that he was sick. The summary of allegations was issued and a charge was framed thereafter. The charge against the petitioner was that he remained absent after exhaustion of 30 days E.L. on 16.2.1987. He asked for extension of leave for 25 days which request was not acceded to and he was asked to resume duty immediately. He did not report for duty till 14.5.1987 after he had overstayed for a period of 2 months and 27 days unauthorisedly. He again absented himself w.e.f. 17.5.1987 and continued to remain absent. It was further alleged that his record shows that he has habitual absentee having remained absent on 17 different occasions earlier. The

2

unauthorised absence of the petitioner was said to amount to grave misconduct, making him liable for departmental action under Section 21 of the Delhi Police Act, 1978. An enquiry was held against him which according to the learned counsel for the petitioner was exparte. The enquiry officer came to the conclusion that the allegation of absence for a period of two months and 27 days "availed of his own wilfully and unauthorisedly has been proved. The allegations habitual absentee also stand proved against the defaulter."

2. The Deputy Commissioner of Police (DCP) passed an order on 16.10.1987 dismissing the petitioner from the force with immediate effect. He further ordered that the absence of two months and 27 days from 16.2.1987 to 13.5.1987 and 17.5.1987 to the date of issue of this order be treated as leave without pay. The petitioner filed an appeal against the said order which came to be dismissed by the Additional Commissioner of Police (ACP) vide order dated 26.2.1988. The ACP in his order has stated that:

"I have carefully gone through the appeal, parawise comments thereon and other connected papers leading to the abovesaid punishment and also heard the appellant in O.R. on 25.2.88. The pleas put forward by the appellant have already been discussed by the disciplinary authority in his order and there is harly any need to discuss them again. No new point has been raised worth my consideration. The charge of his habitual absentism has been proved. He did not join the DE also, considering all aspects of the matter and his previous

*de*

record, it is evident that he is incorrigible person. His indifferent attitude and wilful absence even during the course of D.E. confirms this. Hence there is no need to change the order of the punishing authority. The appeal is rejected."

3. He also filed a review petition which too was dismissed by the Commissioner of Police. The Commissioner of Police in his decision on the review petition has passed a detailed order touching upon his unauthorised absence, non-production of medical certificate of his personal sickness and past record before rejecting his revision petition.

4. Aggrieved by the impugned orders, adverted to above, the petitioner has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 in which has has prayed that the impugned orders dated 16.10.1987 passed by the disciplinary authority, order dated 26.2.1988 passed by the appellate authority and order dated 30.5.1988 passed by the revisionary authority be quashed.

5. Shri A.S. Grewal, the learned counsel for the petitioner made the following points in support of the case of the petitioner. The petitioner was appointed by D.I.G. (P) whereas his dismissal order has been passed by the DCP whose equivalent rank is that of Superintendent of Police. DCP is an authority lower than the D.I.g. who was the appointing authority of the petitioner. The order of dismissal pass by the DCP cannot be legally sustained. In support of his case the learned counsel relied on the decision of the Tribunal in the case of Lakhi Ram Ex Constable vs. Union of India reported in 1989 (3) SLJ CAT 321. This case, however, is of

d

no help to the petitioner, as Shri Lakhi Ram was appointed as Constable in the Delhi Police sometime in 1949 and his services were terminated on 3.12.1976. Both the events took place before the promulgation of the Delhi Police Act which repeals the Police Act, 1861. According to the Section 149 of Delhi Police Act, all appointments made prior to the promulgation of the said Act are to be deemed as appointments made under the Act. In Section 4 provision has been made for delegating powers of the administrator for appointment of subordinate ranks to the lower authority. In pursuance of Section 21 of the Act Delhi Police (Appointment and Recruitment) Rules, 1980 have been framed and notified in 1980. The powers of appointing authority have been delegated in respect of Constables of Police to the DCP, Additional DCP, Principal/PTS or any other officer of equivalent rank. There is, therefore, no merit in the argument that the petitioner was dismissed by an authority lower than the rank of the appointing authority. The appointing authority in the case of the petitioner is deemed to be DCP or any lower authority as prescribed in Rule 4 of the Delhi Police (Appointment and Recruitment) Rules, 1980. He has been dismissed from service by the DCP who is the competent authority. by the DCP who is the competent authority.

6. The next point urged by the learned counsel for the petitioner is that the petitioner took 30 days earned leave and he sought for extension of leave, as he was suffering from Blood Piles. He was under the treatment of the Government hospital and he has submitted the relevant medical



certificate. The stand of the respondents is that the petitioner has proceeded on 30 days' casual leave on account of the death of his brother. It has nothing to do with his personal infirmity. He sought extension of leave but the same was refused and he was directed to resume duty on the specified date. He did not join duty even after the expiry of 25 days. He joined duty after he had overstayed unauthorisedly for two months and 27 days. After remaining on duty for three days he again proceeded on leave unauthorisedly. Accordingly, he was chargesheeted for grave misconduct and the matter was pursued under Section 21 of the Delhi Police Act. The learned counsel for the petitioner referred to the D.G. P&T's letter dated 5.10.1972, an extract of which has been produced in the O.A. at page 6. This is to the following effect "However, the disciplinary authority should consider the grounds adduced by the Government servant for his unauthorised absence before initiating disciplinary proceedings." These instructions have been issued by the D.G. P&T. They are not relevant in the case of the Police personnel who are governed by the specific Act and the Rules framed thereunder.

7. Lastly, the learned counsel submitted that the petitioner has rendered more than 25 years' of service and this fact has not been taken into account while dismissing him from service. We find from the appellate order that the appellate authority has considered the matter carefully and has given his attention to this aspect in the following words: "He had absented himself on 17 different occasions during about 26 years of his service." In this view of the matter it

*dl*

cannot be said that the competent authority was oblivious of the service which has been rendered by the petitioner. The competent authority has observed that obviously, the service rendered by him was unsatisfactory.

8. In view of the above facts and circumstances of the case, we do not see any merit in the Application for our interference in the orders passed by the disciplinary authority, appellate authority and the revisionary authority. The O.A. is dismissed accordingly. No costs.

*J. P. Sharma*  
(J.P. SHARMA)

MEMBER(J)

*I. K. Rasgotra*  
(I.K. RASGOTRA)

MEMBER(A)