CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1344/90 DECIDED ON : 04.08.1993

HARI RAM ... PETITIONER

VS.

DELHI ADMINISTRATION & ORS. ... RESPONDENTS

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN
THE HON'BLE MR. JUSTICE S. K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. B. N. DHOUNDIYAL, MEMBER (A)

Shri Shyam Babu, Counsel for the Petitioner

Mrs. Avnish Ahlawat, Counsel for the Respondents

J U D G M E N T (ORAL)

Hon'ble Mr. Justice V. S. Malimath, Chairman :-

This case has come on a reference made by the Division Bench consisting of Hon'ble Shri J. P. Sharma, Member (J) and Hon'ble Shri S. R. Adige, Member (A). While referring the entire case for disposal by the Full Bench, they have highlighted the following question to be answered by the Full Bench :-

> "Where after the conduct of departmental proceedings in the manner prescribed under rules, agreeing with the E.O's findings, the Disciplinary Authority comes to a clear and categorically finding that the charge of willful and unauthorised absence from duty against the proceedee is fully established and the proceedee is an incorrigible type of constable who is unfit to be retained in service, and where this order is fully upheld in appeal by the Appellate Authority, whether a sentence in the Disciplinary Authority's order which goes uncommented upon in the appellate order that the period of absence will be treated as leave without pay, completely absolves the delinquent of the charge of wilful and unauthorised absence from duty by regularising his absence."

2. For appreciating the contentions raised in this case, it is necessary to briefly state the facts as follows.

The petitioner was working as a Constable in the Delhi Police. A disciplinary inquiry was initiated against him wherein the following charge was framed :-

> "I Inspector Rohtash Singh No. D-1[372 7th Bn DAP Delhi, charge, you Const. Hari Ram No.8343/DAP that while you were posted in 7th Bn DAP proceeded on 6 days Casual Leave w.e.f. 5.12.88 and were due back on 12.12.88 but you did not turn up in time and absented yourself, unauthorisedly and wilfully. You were marked absent vide D.D. No. 49 dated 12.12.88 7th Bn D.A.P. You did not resume your duties inspite of issuing absentee notice at your permanent residential address through S.P. Alwar (Raj). You resumed your duties after absenting yourself for a period of 80 days 7 hours and 55 minutes vide D.D. No.89 dated 1.3.89 daily diary 7th Bn DAp, Delhi. You again absented yourself unauthorisedly and wilfully vide DD No.71B dated 29/30-4-88 daily diary P.S. C. R. Park South, Delhi. You resumed your duty after absenting yourself for a period of 4 months 7 days 9 hours and 25 minutes vide D.D. No.10B dated 26.9.88 daily diary P.S. Chittranjan Park, Delhi.
>
> You are therefore, liable for departmental action u/s 21 Delhi Police Act, 1978 for your negligent and unbecoming of a Police Officers Act."

The charges levelled against the petitioner not having been admitted, an inquiry officer was appointed, who after holding a regular inquiry in which the petitioner did not adequately participate, recorded a finding holding the charge levelled against him duly proved, by order dated 21.9.1989. Accepting the finding of the inquiry officer, the disciplinary authority passed the order Annexure-E dated 12.10.1989, the operative portion of which may be extracted as follows :-

"I have carefully gone through the D.E. file, documents, brought on D.E. file record, finding submitted by the E.O. and the statement recorded therein. Reasonable opportunities were given to the defaulter to defend his case but on his own he did not co-operate. The charge is fully proved. I find the delinquent Const. Hari Ram, No. 8343/DAP (PIS No.28750565) un-worthy and unfit for retention in service. Considering that he is a habitual absentee and incorrigible type of constable the punishment for removal from service is inflicted on Const. Hari Ram, No. 8343/DAP (PIS No.28750565) with immediate effect. The period of his absence will be treated as leave without pay."

The petitioner challenged the said order by way of appeal and the appellate authority after considering the grounds raised in the appeal, passed order dated 26.2.1990 (Annexure-G) dismissisng the said appeal. It is in this background that the petitioner has approached this Tribunal for quashing the order of the disciplinary authority and that of the appellate authority.

3. The principal contention of Shri Shyam Babu, learned counsel for the petitioner, is that the latter part of the order of the disciplinary authority by which the period of petitioner's absence is treated as leave without pay has the effect of knocking away the basis for the order dismisssing the petitioner from service for unauthorised absence. The foundation for dismissal of the petitioner is the finding recorded to the effect that the petitioner was unauthorisedly absent for the specified periods. In the latter part of the impugned order leave without pay is granted thus regularising the unauthorised absence. It is in this background that it was urged that what was once unauthorised absence has now become authorised absence, leave for the said period having been duly granted by the disciplinary authority, who, it is assumed, was competent to grant leave

to the petitioner. It is obvious that the two directions in the order of the disciplinary authority are apparently in conflict with each other. When an order contains directions which are mutually conflicting the principle of harmonious construction has to be adopted. For that purpose we have to ascertain the real intention of the author and interpret the conflicting ~~the~~ directions consistent with the intention. Our attention was drawn by the learned counsel for the respondents to the decision of the Supreme Court reported in (1981) 4 SCC 173 between K. P. Verghese vs. Income Tax Officer, Ernakulam & Anr. In paragraph 6 of the said judgment, this is what the Supreme Court has said :

> "...It is now a well-settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the court may modify the language used by the legislature or even 'do some violence' to it, so as to achieve the obvious intention of the legislature and produce a rational construction (vide Luke v. Inland Revenue Commissioner)1.....1. 1963 AC 557."

Though the principle laid down is in regard to construction of statutes, the said principle would govern construction of orders and documents as well. We shall therefore, ascertain the real intention of the author of the impugned order. The background leading to the passing of the impugned order is of importance. The disciplinary inquiry was initiated against the petitioner for his unauthorised absence for the specified period. The disciplinary proceedings ultimately culminated in a finding being recorded by the inquiry officer and accepted by the disciplinary authority to the effect that the misconduct of unauthorised absence was duly proved. The sole purpose of conducting the disciplinary inquiry was to punish the petitioner for the misconduct. The

disciplinary authority having held the charge proved, addressed itself to the question of awarding appropriate punishment. It is in this background that the disciplinary authority has stated that 'Const. Hari Ram is unworthy and unfit for retention in service and considering that he is a habitual absentee and incorrigible type of constable the punishment of removal from service is inflicted on Const. Hari Ram.' The intention of the disciplinary authority is, therefore, to terminate the services of the petitioner, it having found that he is unworthy and unfit for being retained in service. We have no doubt in our mind on a plain reading of the entire order, in coming to the conclusion that the intention of the disciplinary authority in passing the impugned order was to terminate the services of the petitioner having regard to the proved misconduct, namely, unauthorised absence. It is impossible to infer that the intention of the disciplinary authority was to continue the petitioner in service by condoning his unauthorised absence by granting him leave without pay. Apart from the one sentence which reads 'the period of absence will be treated as leave without pay', there is nothing to suggest that the disciplinary authority intended that he should be continued in service. As, in our opinion, the intention of the disciplinary authority was clearly to terminate the services of the petitioner, the direction to treat the period of absence as leave without pay has to be harmoniously construed. Rule 25 of the C.C.S. (Leave) Rules, 1972, which admittedly governs this case, deals with unauthorised absence after expiry of leave reads :-

> "(1) Unless the authority competent to grant leave extends the leave, a Government servant who remains absent after the end of leave is entitled to no leave salary for the period of such absence

and that period shall be debited against his leave account as though it were half-pay leave, to the extent such leave is due, the period in excess of such leave due being treated as extraordinary leave.

(2) Wilful absence from duty after the expiry of leave renders a Government servant liable to disciplinary action."

The latter part of the direction on which the learned counsel for the petitioner heavily relies, has obviously been issued bearing in mind the provision of Rule 25. Clause (1) of Rule 25 makes it clear that in the absence of a specific order by the competent authority extending the leave, absence after the end of leave would result in no leave salary for the period of such absence. This is a statutory consequence that flows when a Government servant remains absent after the expiry of the leave granted to him. He would not be entitled to salary for the said period. That is precisely what is sought to be conveyed by the latter part of the directions in the impugned order, which says the period of his absence will be treated as leave without pay. The dominent intention of the disciplinary authority in making this direction was to convey in clear and specific terms that the petitioner is not entitled to any emoluments for the period of unauthorised absence. It would have been appropriate if the disciplinary authority had said that for the period of absence the petitioner will not be entitled to any emoluments. As a matter of fact, such a consequence would have flown even if there was no direction in the impugned order. Such a direction was not really called for. The latter part of the direction in our opinion, is inartistically worded, the intention of the disciplinary authority being really to convey that the petitioner is not entitled to emoluments for the period of his absence. If that is how the latter part of

the order is understood, there will be no conflict between the two directions. That is how they should be harmoniously construed.

4. We are fortified in our view by the decision of the Supreme Court reported in *1969 SLR 274 between State of Madhya Pradesh vs. Harihar Gopal*. That was a case in which the Government servant was dismissed from service for being absent without leave. By another order passed on the very same day, leave was also granted to him for the period of absence. The supreme Court examined the question as to whether the second order has the effect of nullifying the termination brought about by the first order. The Supreme Court after examining the rival contentions held that the order granting leave was made only for the purpose of maintaining the correct record of service and cannot have the effect of invalidating the first order of termination. Learned counsel for the petitioner, however, maintained that the principle laid down by the Supreme Court in the said case cannot govern the present case on the ground that the facts are clearly distinguishable. He maintains that in the present case dismissal and granting of leave are by the same order made by the disciplinary authority, whereas in the case dealt with by the Supreme court, separate orders were passed, the termination order having been passed first and the order granting leave have been passed later. The facts in this case are also comparable. In the matter of consequence, the order of termination has been ordered first and the order granting leave without pay has been made later. Whether the two directions are contained in the same order or are contained in two separate orders passed one after the other, does not really make any difference so far as the principle

laid down is concerned. What the Supreme Court has held is that for proper construction one has to ascertain the intention of the authority making the order. The intention of the authority making the order being clearly to terminate the services of the Government servant, it was held that it is inconcievable that the very same authority could have passed an order granting leave which has the effect of nullifying the order of termination. We have, therefore, no hesitation in holding that the principle laid down by the Supreme Court fully governs the present case as well. Following the said decision, it has to be held that the latter part of the direction granting leave without pay cannot have the effect of nullifying the earlier direction in the impugned order dismissing the petitioner from service.

5. We shall now advert to some of the decisions the learned counsel for the petitioner has relied upon. As the question is fully covered by the decisions of the Supreme Court, no elaborate discussion of the judgments is felt necessary. The first judgment relied upon is reported in *AIR 1976 AP 75 between G. Papaiah vs. Assistant Director, Medical Services.* That was a case in which extraordinary leave was granted to cover the period of alleged unauthorised absence. After grant of such leave, disciplinary action was taken on the ground of unauthorised absence for the same period. It was held that the very granting of extraordinary leave has taken away the basis for later disciplinary action. As that was a case of granting leave first and thereafter initiating disciplinary action in respect of the absence for the very same period, it is obvious that the said decision is not of assistance as in the present case, no leave was granted before initiating disciplinary action. The next

decision is one reported in *1988 (3) SLJ 216 between State of Punjab vs. Chanan Singh* of the Punjab & Haryana High Court. The learned single judge has after adverting to the decisions of different courts where leave was granted first and thereafter disciplinary action was taken for unauthorised absence in respect of the same period applied the principle laid down therein to the case where trmination and grant of leave were directed by the same order. There is hardly any distinction and no reasons have been stated as to how the principle laid down in those cases was applicable to that case. Besides, it is obvious that the view taken by the learned single judge is clearly inconsistent with the law laid down by the Supreme court. The next case relied upon is the one decided by the Tribunal in O.A. No. 219/90 with which view the referring Bench has expressed its disagreement. That was also a case in which the direction regarding termination as also the direction regarding grant of leave for the very same period of unauthorised absence were contained in the same order of the disciplinary authority. For the reasons stated earlier,with respect, this decision does not not lay down the law correctly and is inconsistent with the law laid down by the Supreme Court. Hence, the decision in O.A. 219/90 is hereby reversed.

6. For the above reasons, we answer the question referred to us as follows :

"In the circumstances narrated in the order of reference, the direction granting leave in respect of the period of absence which has been treated as unauthorised and order of dismissal has been passed, cannot have the effect of nullifying the order of dismissal from service."

7. We shall now examine the other contentions urged by Shri Shyam Babu, learned counsel for the petitioner, on merits.

8. It was submitted that the petitioner had submitted medical certificate explaining his absence after the expiry of the leave granted and the disciplinary authority has not applied its mind to the same before holding the absence of the petitioner as unauthorised. We do not find any finding in this behalf either in the report of the inquiry officer or in the order of the disciplinary authority, though some reference has been made to the same in the order of the appellate authority. The reason is obvious. The petitioner did not participate in the inquiry. He did not examine himself in the inquiry nor did he produce any evidence in support of this contention. There is, therefore, no substance in this contention.

9. It was next urged that the inquiry officer's report was not furnished to the petitioner before the disciplinary authority passed the impugned order. It was stated that the inquiry officer's report was furnished to him along with the order of the disciplinary authority imposing the penalty of dismissal from service on him. The order of disciplinary authority was passed on 12.10.1989. The Supreme Court has in *S. P. Vishwanathan vs. Union of India : 1991 (2) Supp. SCC 269* held that no such infirmity can be pressed into service in a case where the order was passed before 29.11.1990. The order in this case was passed on 12.10.1989.

Non-supply of the inquiry officer's report before the decision of the disciplinary authority cannot be accepted as a ground for interfering with the order.

10. It was lastly urged by the learned counsel for the petitioner that the disciplinary authority has not applied its mind to the provisions of Rule 8 (a) of the Delhi Police (Punishment & Appeal) Rules, 1980 which says that the punishment of dismissal or removal from service shall be awarded only for the act of grave misconduct rendering him unfit for the police service. The impugned order does indicate that the mandate of this statutory provision was borne in mind by the disciplinary authority. We say so for the reason that the disciplinary authority has in categorical terms recorded a finding to the effect that the petitioner is unworthy and unfit for retention in service. It is further recorded that the petitioner is a habitual absentee and an incorrigible type of constable the punishment of removal from the service being the most appropriate punishment. Having regard to these findings we have no hesitation in holding that the disciplinary authority was ssatisfied that the petitioner was guilty of grave misconduct rendering him unworthy and unfit for retention in service. Hence, there is no substance in this case.

11. For the reasons stated above, this application fails and is dismissed. No costs.

(B. N. Dhoundiyal)
Member (A)

(S. K. Dhaon)
Vice Chairman (J)

(V. S. Malimath)
Chairman

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