

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench
New Delhi

O.A. No.1753/90

Date of decision 28.3.95

HON'BLE MR. S.R. ADIGE, MEMBER (A)
HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri Rajbir Singh,
S/o Shri Khacheru Singh,
Vill. Laharara,
P.O. Sehdpur,
Distt. Bulandshahr,
UTTAR PRADESH

(By Advocate Shri ^{Mr} S.S. Charya) APPLICANT

VERSUS

1. Commissioner of Police,
Delhi Police,
Police Headquarters,
MSO Building, I.P. Estate,
NEW DELHI

2. Union of India,
Ministry of Home Affairs,
Government of India,
New Delhi

(By Advocate Shri ^{Mr} D.N. Tripathi) RESPONDENTS

JUDGEMENT

(Delivered by Hon'ble MR. S.R. Adige, Member (A))

In this application Shri Rajbir Singh, dismissed constable, Delhi Police, has impugned his dismissal order dated 1.6.85 (Annexure P-1) and the appellate order dated 22.8.86 (Annexure P-7) rejecting his appeal, and has prayed for reinstatement in service with back wages and interest thereon. He has also impugned Rules 16(iii) & (iv) Delhi Police (P&A) Rules as being arbitrary, unreasonable and ultra vires Article 14 of the Constitution.

2. The applicant who joined the Delhi Police as a constable on 14.6.58, was proceeded against departmentally on the charge dated 23.2.85 (Annexure P-5) that while posted in the Counter Espionage Section of the C.I.D./ Spl. Branch, he proceeded on 3 days Casual Leave w.e.f. 5.1.84 with permission to avail of Sunday 8.1.84. He was due back on 9.1.84, but did not report for duty, consequently he was marked absent vide D.D. Entry No. 18

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dated 9.1.84. On 19.1.84, 18.2.84, 3.3.84 and 15.3.84 he sent application/medical certificates issued from the private doctors of Bulandshahr and Paharganj, Delhi, but no recommendation for medical rest was made by the Bulandshahr doctor for the period 9.1.84 to 12.2.84. In response to the application, the defaulter was directed through registered letters dated 28.2.84 and 7.3.84 to report to the Superintendent of Police, Bulandshahr immediately for medical examination through the Police Surgeon, but the applicant did not comply with these instructions and the registered letters were received back undelivered with the following report of the Postman.

"Pans Wala Bahar Gaya Hai, Gharwalon Ne
Pata Nahin Batlaya atah Wapis".

which showed that the letter was not accepted by the applicant's family at his direction. The applicant finally resumed duty on 14.3.84 after absenting himself for 65 days without seeking permission of the competent authority to avail the medical rest and leave the Headquarters. The charge sheet further went on to say that the applicant's previous record shows that he was a habitual absentee. On 19.2.83 he had been removed from service for unauthorised absence from duty, but subsequently on appeal he was reinstated w.e.f. 1.7.83 and the punishment was reduced to the period of 5 years permanent forfeiture of service. Similarly, he was granted 30 days leave without pay for unauthorised absence from 21.10.83 to 20.11.83, and on 9 previous occasions, the applicant had absented himself, details of which were mentioned in the charge sheet.

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3. In the Departmental Enquiry, the E.O. held the applicant guilty of the charge. Tentatively, agreeing with the findings, the Disciplinary authority asked the applicant to show cause why he should not be removed from service. He submitted his written reply on 21.5.85 and was also heard in person by the Disciplinary Authority who confirmed the penalty of dismissal, which was upheld in appeal. The applicant's revision petition addressed to the Commissioner of Police was rejected on ²¹18.12.86, and his memorial addressed to the Lieut. Governor, Delhi was likewise rejected on ²¹9.3.90.

4. The first ground taken is that he was not supplied ^{with} the documents he had asked for, and was neither given time to submit his written defence, nor was he asked whether he wanted to produce any ⁱⁿ evidence in defence. The respondents in their reply have stated that copies of ^{the} relevant documents requested by the applicant in his application dated 4.9.84 was given to him under proper receipt. Copies of documents considered not relevant was not supplied, and he was given full opportunity to produce his defence. There is no specific denial ^{to} his assertion in the rejoinder. The applicant has not indicated which particular document(s) were denied to him which prejudiced him in his defence. As mentioned above, the gravamen of the charge is that the applicant was unauthorisedly absent from duty from 9.1.84 to 14.3.84. The applicant does not deny he was absent from duty. His defence is that he could not report for duty because he was unwell, and he sent applications/medical certificates issued ^{by} doctors from Bulandshahr (U.P.) and Paharganj, Delhi.

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These certificates are from private doctors and furthermore ^{AM} ~~the~~ the private doctor in Bulandshahr did not recommend medical rest to the applicant for the period 9.1.84 to 12.2.84. If the applicant were so unwell as to be unable to attend duty, he has failed to explain why he did not report to the police hospital or to the concerned C.G.H.S. dispensary. The E.O. has correctly pointed out that if the defaulter could come to Delhi and obtain a medical certificate recommending medical rest from a private doctor in Paharganj, and later even from the Ram Manohar Lohia Hospital he could easily have reported to the Police Hospital or to the concerned C.G.H.S. dispensary for treatment, but he failed to do so. Hence no ⁱⁿ ~~defence~~ defence could be given to the medical certificates issued by the private doctors and further more, inspite of being specifically directed to report to the S.P., Bulandshahr for medical examination. by the Police Surgeon, he did not comply with these instructions. The applicant has not specified which particular document(s) were denied to him which prejudiced him in his defence in respect of this aspect, which ^{indeed is} ~~is~~ is the gravamen of the charge. Further more, it is clear that the applicant was given full opportunity to produce his defence, and defence witnesses were ~~indeed~~ examined. Hence this ground fails.

5. The next ground taken is that the E.O. was wrong in holding that merely because the applicant was not present at his residence when the postman came with the registered letter and the same was not accepted by his family, ⁱⁿ ~~it~~ it was at the instance of the applicant. The fact that the applicant admits that he was

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not ⁱⁿ present at his residence when the postman came with the letter itself ~~totally~~ weakens his claim that he was so unwell that he could not rejoin duty after vailing of the C.L. If indeed he were so ill, he has not satisfactorily explained why he was not found in his residence. Hence this ground also fails.

6. Next^{ly}, it has been prayed that the allegations are vague, because it is not disclosed whether the leave applications which admittedly were sent by the applicant, were accepted or rejected. If rejected whether their rejection was communicated to the applicant. Even if the rejection of the leave applications was not communicated to the applicant, it did not entitle him to abstain from duty. It is well settled that leave is not a right but a privilege, and no Govt. servant, much less a member of a uniformed force such as the police, posted in a ^{sensitive} ~~sensitive~~ section like the Counter Espionage Section, can stay away from duty month after month without authorisation. Mere despatch of a leave application with or without medical certificate issued by private doctors did not automatically entitle the applicant to anticipate its approval and stay away from duty. Till such time as the leave was sanctioned by the competent authority the applicant must be considered as absent from duty without proper authorisation. Hence this ground also fails.

7. The next ground taken is that the applicant's previous record could not form the basis of any inquiry, more particularly because after reinstatement from 1.7.83 and sanction of leave for the period October-November, 83 any default stood condoned/waived. It is contended that the inclusion of the applicant's alleged ^{past} ~~past~~ misconduct has prejudiced him. This ground is wholly without merit

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because as correctly pointed out by the respondents, the applicant's previous record was mentioned in the charge sheet to prove that he was a habitual absentee and Rule 16(xi) Delhi Police (P&A) Rules specifically provides that where a severe punishment is proposed to be inflicted, by taking into account a defaulter's previous bad record, such bad record shall form part of the charge against him, and he shall be given an opportunity to defend himself against the same as required under rules.

8. Next^{ly}, it has been prayed that the applicant was not provided the opportunity to be represented through another person; and no presenting officer was appointed to present the department's case. The respondents have denied this in their reply. It is noticed that these pleas were not taken by the applicant either before the Disciplinary Authority or the appellate authority; nor indeed before the ^{revisionary} authority either. This clearly appears to be ^{an} ~~because~~

^{an} ~~after~~ thought, hence rejected, ^{and is} more particularly because in the ^{an} summary of allegations he was informed he could avail of the services of a defence assistant, and it was for him to avail of the offer.

9. The next ground advanced is that Rules 16(i)

to (iv) Delhi Police (P&A) Rules are unreasonable, invalid and violative of Article 14 of the Constitution.

It is argued that these Provisions are based on

analogous provisions of the Cr. P.C. but Rule 16(iv)

makes a substantial departure from the provision.

Thus under the Cr.PC when the accused pleads not guilty

to the charge the ^{prosecution} ~~prosecution~~ is required to

summon the witnesses and give opportunity to the

accused to further cross examine them, but under Rule

16(iv) Delhi Police (P&A) Rules, where the ^{an} ~~diligent~~

denies the charges, he is called upon straight away to

produce his defence, without further opportunity

being given to cross examine the PWs again, which

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amounts to denial of the fullest opportunity to the accused persons and ⁱⁿ hence ~~derives~~ the principles of natural justice. This ground is wholly baseless because the ⁱⁿ status of person accused of a crime in a criminal case, is wholly different from that of a person accused of misconduct in a departmental proceeding. The preponderance and quality of evidence in a criminal case, where the offence has to be proved beyond all reasonable doubt is also different from that of a departmental proceeding, where the balance of ^{probabilities} ~~prohibiting~~ is sufficient to establish the misconduct of the ⁱⁿ ~~officer~~. ^{within} ~~Whether this~~ ^{parameters,} ~~procedures~~ the existing procedure as prescribed under Rule 16 Delhi Police (P&A) Rules gives ample opportunity to any alleged defaulter to be heard and defend himself and applies to all members of the Delhi Police Force who form a ^{class} ~~class~~ by ⁱⁿ ~~themselves~~ ^{themselves}. Hence it cannot be ^{Said} ~~found~~ that these rules violate Art. 14 of the Constitution and hence this ground is rejected.

10. The next ground taken is that the E.O's report does not contain the reasons ^{on} which he has based his findings. This argument has no force. In the light of the evidence the E.O. has categorically held that the applicant failed to give ^{any} ~~any~~ plausible explanation for his absence from 9.1.84 to 14.3.84 and if as claimed by him, he was under treatment of private doctors at Bulandshahr and Paharganj, Delhi he could easily have gone to either the Police Hospital or the concerned CGHS Dispensary. The E.O. has disbelieved the applicant's defence, and has noted that the applicant failed to get permission of the prescribed authority to avail medical rest as required under S.O. III. The E.O's report is, therefore, a reasoned one, and this ground fails.

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11. The next ground taken is that the disciplinary authority was not empowered to delegate his power to the E.O. of issuing of charge sheet. This ground is equally without merit because under Rule 16(4) Delhi Police (P&A) Rules it is the E.O. who is required to frame the charges and call upon the delinquent to answer them.

12. The next ground taken is that on subsequent occasion, the alleged period for which the applicant had not applied for leave has been treated to be period for which leave without pay has been sanctioned, and in view of this position no cause for action remains against the applicant. The applicant has not specified what these 'subsequent occasions' were. In any case he absented himself from duty for the period 9.1.84 to 14.3.84, and his explanation that he was so unwell that he could not report for duty for this period, has not been believed by the respondents, after weighing the evidence for and against him in the D.E., and giving him full opportunity to defend himself there. This finding cannot be said to be based on ^{no} evidence, or is arbitrary, ^{perverse} or mala fide, ⁱⁿ compliance with the applicants past record of absence from duty, the respondents have inflicted the impugned punishment. This ground therefore, also fails.

13. The next ground taken is that the E.O. and the Disciplinary Authority acted beyond the scope of the summary of allegation. In fact it is the charges contained in the charge sheet which are more relevant, and the charges against the applicant are essentially that of absence from duty without authorisation from 9.1.84 to 14.3.84 ⁱⁿ compliance with similar instances in the past of such delinquency. Both the E.O. as well as the

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Disciplinary Authority have confined the ^{man} ~~man~~ ^{himself} ~~himself~~ ^{vers} ~~vers~~ within the scope of the charges, and this ground fails.

14. The next ground taken is that the evidence of P.W Dr. S. Das (and not Dr. S. Ali as mentioned in paragraph 5 (m) of the DA) should not have been discarded by the E.O. Even if the ^{man} ~~man~~ ^{himself} ~~himself~~ ^{vers} ~~vers~~ evidence of Dr. S. Das is accepted in full, he examined the applicant ^{man} ~~man~~ ^{himself} ~~himself~~ ^{vers} ~~vers~~ only on 9.3.84 and found him suffering from fever and pain and accordingly recommended 5 days rest but that still does not explain why the applicant remained absent from duty from 9.1.84 to 8.3.84 and if indeed he were that ill, why he did not get himself treated in the Police Hospital or the concerned CGHS Dispensary.

15. The next ground taken is that the impugned orders of the Disciplinary authority and the appellate authority are not ^{reasonable} ~~reasonable~~ ^{man} ~~man~~ ^{vers} ~~vers~~ ones. A bare perusal of both the orders makes it clear that this ground has no basis.

16. Lastly it has been argued that the action taken against the applicant is malafide and vindictive. It is contended that he was extremely sick and was being treated in hospital, and these reasons which were beyond his control compelled him to remain away from duty.

As has emerged from the discussions, if the applicant indeed were that such he has not explained satisfactorily how and under what circumstances he was away from his residence when the postman visited it with the registered letter ^{man} ~~man~~ ^{himself} ~~himself~~ ^{vers} ~~vers~~ dated 28.2.84 and 7.3.84 ^{man} ~~man~~ ^{himself} ~~himself~~ ^{vers} ~~vers~~. If indeed the applicant were that sick he has not explained satisfactorily how he could come to Delhi and obtain a certificate for medical rest from a private doctor in Paharganj and even from the RML Hospital but did not report either to the Police Hospital or to his concerned CGHS dispensary.

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No evidence produced by the applicant supports his case that he was so unwell that for reasons beyond his control he was unable to perform his duties and even report to the Police Surgeon for examination, when specifically called upon to do so by the respondents. This ^{coupled} ~~combined~~ with his past record of absence has invited the impugned punishment, which has been upheld in appeal with which we see no ground reason to interfere ^{there}.

17. This application, therefore, fails and is dismissed. No costs.

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Lakshmi Swaminathan

(Mrs. LAKSHMI SWAMINATHAN)
Member (J)

S.R. Adige

(S.R. ADIGE)
Member (A)