

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

M.A.No.2293/90 in
O.A.No.1915/90

New Delhi, this the 28th day of October, 1994.

HON'BLE SHRI T.L.VERMA MEMBER(J)

HON'BLE SHRI P.T.THIRUVENGADAM MEMBER(A)

Shri Shiv Kumar
Constable No.842/Sec
r/o Qr.No.B-57/C
Police Colony,Model Town,
Delhi.

..Applicant

(By Advocate Shri JP Verghese)

Vs.

1. Delhi Administration, through
Chief Secretary,
Old Secretariat, Rajpura Road,
Delhi.

2. Commissioner of Police,
Police H.Qrs., IP Estate,
New Delhi.

..Respondents.

(By Shri B. Oberoi Advocate
for Shri Anoop Bagai,counsel)

ORDER

HON'BLE SHRI P.T.THIRUVENGADAM MEMBER(A)

M.A.No.2293/90 with a prayer for condoning the
delay in filing O.A. is allowed.

2. This O.A. was filed impugning the order dated
7-9-88 by which two years service of the applicant
was forfeited and order dated 10-8-89 by which the
applicant's name was removed from the promotion list.
While praying for the setting aside of these two
orders, a number of related reliefs have also been
prayed for. The reliefs claimed happen to be plural
remedies which could be entertained only if there is
a single cause of action as per rule 10 of the Central
Administrative Tribunal (Procedure) Rules, 1987.
Accordingly, at the time of admission of the O.A.
this Tribunal passed following order on 28-9-90,
as under:-

"..6. In view of the foregoing discussion

we are of the considered view that the application is hit by the provisions of Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987 and it cannot be admitted as such. However, we can and do hereby admit the application in respect of challenge to the impugned order dated 7-9-88 by which a punishment of forfeiture of two years service permanently entailing reduction in his pay by two stages in the time scale of pay has been imposed and the reliefs connected therewith as contained in para 8(i), 8(iv), 8(v), 8(vii) and 8(viii), subject to the question of limitation being kept open.

7. The applicant would be free to file another application in regard to the impugned order dated 10-8-89 by which his name has been removed from promotion list 'A' and the connected reliefs as in para 8(i), 8(ii), 8(iii), 8(vi) and 8(viii)."

3. Thus the only reliefs which have been allowed for consideration in this O.A. are:

- 8.(i) Set aside the impugned orders dated 7-9-88.
- 8.(iv) Direct the respondents to treat the 40-day period as leave with wages and the said period may be adjusted against the accumulated leave at the credit of the petitioner and accordingly pay him the salary due for the said period.
- 8.(v) Declare the Rules 15 and 16 of the Delhi Police (Punishment & Appeal) Rules, 1980 ultra vires to sections 21, 22, 147 and 148 of the Delhi Police Act and violative of Articles 14, 16 and 311 of the Constitution of India.
- 8.(vii) Allow the cost of the petition to the petitioner.
- 8.(viii) Pass such other further order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

4. At the time of hearing relief regarding declaration

of rules 15 and 16 which deal with the subject of preliminary inquiries and procedures in departmental inquiries, respectively was not argued. Hence we do not propose to consider this relief.

5. Brief facts relating to the case are that the applicant was undergoing lower school course at Police Training School, Jharoda Kalan, New Delhi. At the relevant point of time he proceeded on four days' casual leave with permission to avail intervening weekly holidays dated 26-3-88 and 27-3-88 and was due back on 29-3-88. He did not turn up on this date and ultimately reported for duty only on 10-5-88. He was issued with charge sheet for the alleged act of indiscipline, disobedience of lawful directions and dereliction of duty for various acts mentioned in the charges and for his continued unauthorised absence. An inquiry was conducted and it was held that the charge against the applicant was fully proved. Based on the findings of the inquiry, the disciplinary authority passed an order dated 7-9-88 to the following effect:-

"Under the circumstances discussed in the foregoing paragraphs I am convinced that the E.O. has rightly proved the charge against the defaulter constable that the constable committed acts of indiscipline, wilful disobedience of lawful orders of the superior authority and dereliction of duty. The gravity of the charge proved against the erring constable is such as to warrant the imposition of major penalty upon him to meet the ends of justice. I hereby give the said Shri Shiv Kumar, Const. No. 842/Sec. the punishment of forfeiture of two years approved service permanently entailing reduction in his pay by two stages in the time scale of pay with immediate effect. The period of absence from 29.3.88 to 9.4.88 and from 13.4.88 to 10.5.88 (40 days)

be treated as leave without pay. 4+2 days casual leave from 23-3-88 to 28-3-88 sanctioned to him is hereby cancelled and he is granted six days earned leave from 23-3-88 to 28-3-88 and 2 days earned leave from 11-4-88 to 12-4-88 with permission to prefix holiday dated 10-4-88. However, the service so forfeited will count as qualifying service towards the pensionary benefits."

6. An appeal was submitted by the applicant which was rejected by the appropriate authority on 31-5-88. Revision petition to the Commissioner of Police and further representation to the Lt. Governor of Delhi met with the same fate.

7. The learned counsel for the applicant argued that the applicant was permitted to take four days' casual leave. He sent a telegram from his home town that his father was seriously ill. The applicant had to rush to Gorakhpur from where he had to bring his father to Delhi for admission in the All India Institute of Medical Sciences on 28-3-88. The applicant's father continued to receive treatment upto 30-4-88. After that the applicant had to drop his father back in his home town and was in a position to resume duty only on 10-5-88. Thus the overstay of leave had happened due to circumstances beyond the control of the applicant. It was vigorously argued that overstay has an entirely and differently connotation compared to unauthorised absence. Reference was made to the observation of Punjab and Haryana High Court in State of Haryana Vs. Phularam police constable reported in 1973(1)SLR p.237. The High Court observed that the constable proceeded on leave and thereafter he had been making applications for extension of leave on grounds of illness of his wife and also of himself and the leave was not granted

to him. Under these circumstances he cannot be said to have abandoned his employment. He also cannot be said to have absented himself from work because no work had been assigned to him as he had proceeded on leave and had not joined his duty.

8. Taking the citation first, we note that the High Court had considered the case in the background of the invoking of the East Punjab Essential Services Maintenance Act, 1947. After the observations as quoted above by the applicant, the High Court had added that question of his (police constable) absenting himself from work within the meaning of section 5 Clause (b) of the Act did not arise. Section 5 of the said Act says that "any person engaged in any employment or clause or employment to which this Act applies:-

(a)

(b) without reasonable excuse abandons such employment or absents himself from work, or

(c)is guilty of an offence under this
"Act. The constable therein was arrested and was challaned.

9. Thus we note that the observations of Punjab and Haryana High Court have to be understood in the specific context and would not be of much assistance in this case.

10. As regards the absence of the applicant from 29-3-88, the inquiry report has brought out ~~of~~ the details. The applicant was due back on 29-3-88 but he did not turn up within the stipulated period. He was therefore marked absent in the Police Training School daily. Three absentee notices directing him to resume duty at once were sent and advising that non-resumption of duty would result in disciplinary action being taken. These notices were sent to his

residential address in Delhi as well as his permanent address in district Chhapra (Bihar). The notices were dated 4-4-88, 11-4-88 and 13-4-88. The applicant's case was that he sent a telegram on 29-3-88 requesting for extension of casual leave by 7 days. This was followed up by a letter dated 4-4-88 requesting for the grant of another 15 days' earned leave. The respondents deny the receipt of the telegram. The application dated 4-4-88 was received on 7-4-88 and the Principal, Police Training School had granted two days leave of kind due for 11-4-88 and 12-4-88 with special permission for 10-4-88.

11. After going through the inquiry proceedings, we are convinced that the applicant had overstayed his casual leave and was unauthorisedly absent from 29-3-88 to 10-5-88. Out of this period only for 3 days leave had been sanctioned.

12. It was then argued that the inquiry report is not based on any evidence and there is a great error in the finding that the charge against the applicant was fully proved. The charge was for unauthorised absence for the entire period from 29-3-88 to 10-5-88 and admittedly some period in between had been regularised. Hence it is the applicant's case that the final finding that the charge is fully proved shows non-application of mind.

13. We are not satisfied that this is a case where there is no evidence. Even the applicant had admitted that he had submitted only two requests i.e. initially a telegram for 7 days' casual leave and later a letter for 15 days earned leave. His absence has been for a much longer duration.

14. We are also not impressed by the charge of non-application of mind in the inquiry findings. The

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disciplinary authority has fully gone into the proceedings and has not penalised the applicant for 3 days namely 10-4-88 to 12-4-88, the period for which sanction was granted.

15. The next ground advanced was that the absence was due to genuine reasons and the applicant had adequate leave to his credit. This was rebutted by the learned counsel for the respondents who argued that leave cannot be assumed unless sanctioned. It is not a matter of right. The applicant was admittedly in Delhi throughout the month of April but he never bothered to contact the authorities in the Training School. The conduct of the applicant is totally against the norms expected of a disciplined police force. Even after the discharge of the applicant's father from A.I.I.M.S Delhi on 30-4-88 the applicant took his own time to report back only on 10-5-88.

16. It was then pleaded that the quantum of punishment is excessive. We have, however, observed that it is a well settled position that the Tribunals will not go into the quantum of punishment so long as there is some evidence to substantiate the charges. In any case the punishment is not such as to shock our conscience.

17. In the circumstances, the O.A. is dismissed.
No costs.

P.T.T.

(P.T.THIRUVENGADAM)
Member (A)

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T.L.VERMA

(T.L.VERMA)
Member (J)