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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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O.A. No. 216 of 1990

Dated at New Delhi, this the 8th day of July, 1994

Hon'ble Shri S. R. Adige, Member (A)

Hon'ble Mrs Lakshmi Swaminathan, Member (J)

Shri Inder Pal Singh
S/o Shri Sardar Singh
R/o Village & P.O. Sankrout
P.S. Khekhra, Dist. Meerut
U.P.

... Applicant

By Advocate: Shri A. S. Grewal

VERSUS

1. Lt. Governor of Delhi through
Chief Secretary
Delhi Administration
DELHI

2. Commissioner of Police Delhi
Delhi Police Headquarters
M.S.O. Building, I.P. Estate
NEW DELHI

3. Additional Commissioner of Police (A.P.)
Delhi Police Headquarters
M.S.O. Building, I.P. Estate
NEW DELHI

4. D.C.P. 10th Bn D.A.P. Pitampura Lines
DELHI ... Respondents

By Advocate: Mrs Avnish Ahlawat

JUDGEMENT

Shri S. R. Adige, Member (A)

In this application, Shri Inder Pal Singh, Constable Delhi Police, has impugned the order dated 7.4.88 (Annexure 'C') dismissing him from service and treating the period of suspension from 15.9.86 to 7.4.88 to the date of his dismissal as period not spent on duty, which has been upheld in appeal vide order dated 1.11.88 (Annexure 'D').

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2. The applicant was proceeded against departmentally on the charge that after being arrested in case FIR No.152 dated 4.7.86 u/s 307/302/120B I.P.C. and 27/25/59 Arms Act P.S. Tughlak Road, New Delhi, and after being placed under suspension on 15.9.86, he proceeded to avail of medical rest for one month with effect from 3.12.86, while he was under suspension with due permission of the competent authority. He was due back on 2.1.87, but he did not turn up in time and was marked absent vide D.D. No.23 dated 2.1.87. Two absentee notices dated 8.1.87 and 20.2.87 were sent to the applicant at his permanent home address through registered A.D. directing him to resume his duties immediately, but nothing was heard from him. The third absentee notice dated 12.3.87 was sent to the local police for delivery to the applicant and copy was endorsed to him through registered A.D. directing him to resume his duties, but this was also not responded.

3. In the departmental enquiry against the applicant, the charge of unauthorised absence from duty was fully proved. In the Enquiry Officer's findings, it was noted that after the absentee notices 20.2.87 dated 8.1.87 and / remained unresponded, a further

letter dated 12.3.87 was sent to him through a special messenger Shri Kundan Singh who delivered the same to the applicant on 22.3.87 against proper receipt. Meanwhile, the copy of the letter dated 12.3.87 which had been sent to him by registered post, was received back undelivered with the remarks: "Addressee not available despite several visits, he has gone out. Hence sent back." It appears that having been informed personally by special messenger, Shri Kundan Singh to report for duty, the applicant failed to do so and only sent photostate copies of medical rest through post i.e. for three months with effect from 1.1.87 and for one month with effect from 1.4.87 issued from the Government Allopathic Hospital, Kirthak, Meerut (UP) without any formal request, upon which the Civil Surgeon, Meerut was requested for second medical examination of the applicant vide office memo dated 21.5.87, a copy of which was also sent to the applicant through special messenger directing him to appear before the Civil Surgeon, Meerut. It appears that this letter also could not be delivered to the applicant as he was not available at his home and the same was delivered to his brother Shri Mohinder Singh against proper receipt. Despite this, the applicant failed to report to the Civil Surgeon for medical examination nor did he report for duty and instead

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sent another copy of medical rest with effect from 11.4.87 to 8.8.87 issued by a private medical practitioner. Thereupon another registered letter dated 17.6.87 was sent to the applicant at his permanent home address directing him to report to the Civil Surgeon, Meerut but that too was received back undelivered with the remarks: "Addressee not available despite several visits. Hence returned." Thereafter he was again directed to report to the Civil Surgeon, Meerut vide office memo dated 7.7.87 which was delivered to him on 24.7.87 through a responsible officer against proper receipt, but again the applicant failed to report himself to the Civil Surgeon, Meerut and sent photostate copy for medical report.

4. Keeping in view the applicant's misconduct as discussed above and accepting the findings of the Enquiry Officer, the disciplinary authority held that the applicant's behaviour was thoroughly undisciplined and imposed the impugned penalty upon him, which was upheld in appeal. It is against that penalty, that this OA has now been filed.

5. We have heard Shri A. S. Grewal who appeared for the applicant and Mrs Avnish Ahlawat, counsel for the respondents.

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6. Shri Grewal has argued that the applicant never absented himself from duty unauthorisedly. It has been urged that he was under suspension for having been arrested in a criminal case and he was advised by the Doctor for medical rest for one month initially and he was permitted to avail the same by the competent authority. Since he had not recovered, he was advised medical rest for a further period and the medical certificates advising him rest by the Government Doctor as well as by the family Doctor are on record of the departmental enquiry. It has been urged that a Government servant who has been under suspension in a criminal case or departmental proceedings, cannot be called upon to attend the roll call as per various decisions of the courts, and the applicant cannot be held to have absented himself from his duties in any manner. Moreover, he produced medical certificates in support of his illness. As he had proceeded on leave duly sanctioned by the competent authority and sought extension on the ground of his illness, he could not be said to have absented himself in any manner. It has also been argued that curfew was clamped in Meerut city during this period and the applicant could not visit Meerut to get himself examined by the Civil Surgeon as per the respondents' direction.

7. The rules are clear on the subject that whenever a Government servant is suspended, his headquarters during the period of suspension is fixed, and he is required to take permission of the competent authority before leaving the headquarters. In the present case, admittedly, the applicant while under suspension, did proceed on one month's medical rest with effect from 3.12.86 and was due back on 2.1.87, but he did not report back on the due date and was marked absent. His defence that he was sick and was not in a position to report back on the due date and he sent medical certificates in support of his illness, is not sufficient to exonerate him from the charge of misconduct. Repeated notices were sent to him to report back, but he failed to do so. Mere sending of medical certificates by the applicant claiming illness, even if one or two of certificates are issued by Government Doctors, does not absolve the applicant of his responsibility of applying for extension of absence from headquarters on ground of continued medical rest. It cannot be presumed by a Government employee that merely by sending the medical certificate he can extend his absence as if no application is necessary. In the instant case, the applicant should have applied for permission to extend his absence from headquarters stating ^{the} ~~such~~ reasons why such extension had become necessary, and furnishing such evidence by way of medical certificate, as was required in support of the reasons given, and he was to await the orders of the competent authority thereon, which he failed to do. Successive absentee notices

10. In the result, the impugned order warrants no interference and this application is accordingly dismissed. No costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
Member(J)

S.R. Adige
(S.R. ADIGE)
MEMBER(A)

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