

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. DA-219/90

Date of decision: 12.3.1992

Shri Mange Ram Applicant

Versus

Commissioner of Police Respondents
and Another

For the Applicant Shri Shyam Babu, Advocate

For the Respondents Ms. Gesta Luthra, Advocate

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. D.K.Chakravorty, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *No*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The applicant, while working as a Constable in the Delhi Police, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing the impugned order dated 26.10.1987 and the order in appeal dated 18.7.1988. He has also prayed for directing the respondents to give him promotion to the post of Head Constable and fix his pay correctly.

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2. The impugned order dated 26.10.1987 was passed by the Deputy Commissioner of Police, whereby the penalty of one year permanent forfeiture of approved service with cumulative effect, was imposed on the applicant after holding an inquiry against him. The impugned order also stated that "the period during which he remained absent, will be treated as Leave Without Pay".

3. The charge brought against the applicant was that while he was posted at Police Station, Shakerpur, he was granted two days' casual leave w.e.f. 18.2.1985. He was supposed to report on duty after casual leave on 20.2.85. He did not turn up and was marked absent. He reported for duty on 6.6.1985. The allegation against him was that he absented himself for 107 days, 10 hours and 45 minutes despite issue of absentee notices. Thus, he absented himself unauthorisedly.

4. The applicant has contended ^{withheld, &} that the findings recorded by the Enquiry Officer are perverse, ^{and} that he was not directed to undergo second medical examination through an authorised doctor in order to ascertain whether the cause of sickness alleged by him was true or not. The respondents have denied the aforesaid contentions. According to them, there was no point in obtaining a second medical opinion as the applicant had submitted the medical certificates only at the time

2

of joining on 6.6.1985. He had also not obtained permission of the competent authority to avail the medical rest. They have also denied the charge that the findings recorded by the Enquiry Officer are perverse.

5. We have gone through the records of the case carefully and have considered the rival contentions. During the final hearing of the case, the learned counsel for the applicant produced before us a copy of the Enquiry Officer's Report from which it is seen that the Enquiry Officer had cross-examined defence witnesses. In our opinion, there is no infirmity in the cross-examination by the Enquiry Officer. In our view, the Enquiry Officer can put questions to witnesses to discover or to obtain the relevant facts.

6. It is clear from the impugned order of punishment dated 26.10.1987 that the disciplinary authority, while imposing the punishment of one-year permanent forfeiture of approved service with cumulative effect, also directed that the period during which the applicant remained absent, will be treated as 'leave without pay'. In *G. Papaiah Vs. Assistant Director (Medical Services)*, A.I.R. 1976 A.P.75 at 77, it has been held that when once leave is granted to a public servant, in respect of a particular period, it must be considered that he is permitted to absent himself from duty for that period. In such a case,

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it is not permissible or open to the employer or any other authority to proceed against him for absents from duty for the same period and punish him.

7. In Bhur Singh, Ham Singh Rajput Vs. the State of Gujarat, 1982 (1) SLJ 697 at 698, it was held that once the leave is sanctioned of whatever character it might be, the sting from that absence is taken away. It was held that in such a case, the disciplinary authority cannot impose punishment on the Government servant concerned.

8. In the instant case, though the disciplinary authority has found that the applicant had unauthorisedly absented from duty, he decided to treat the period during which the applicant remained absent, as 'leave without pay'. In view of this decision, we are of the opinion that the impugned order of punishment of one-year permanent forfeiture of approved service with cumulative effect, is not legally sustainable.

9. In the conspectus of the facts and circumstances of the case, we are of the opinion that the impugned order of punishment to the extent of imposition of the penalty of one-year permanent forfeiture of approved service with cumulative effect, is not legally sustainable. We, therefore, set aside and quash the same. The respondents shall consider the case of promotion of the applicant as

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Head Constable by constituting review DPC[✓] as expeditiously as possible, but preferably within a period of three months from the date of communication of this order. In case the review D.P.C. finds him suitable for promotion, he shall be promoted from the date his immediate junior was promoted as Head Constable. In that event, he would also be entitled to arrears of pay and allowances from the date his immediate junior was promoted. There will be no order as to costs.

D.K. Chakravorty 12/3/92
(D.K. Chākṛavorty)
Administrative Member

P.K. Kartha 12/3/92
(P.K. Kartha)
Vice-Chairman(Judl.)