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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.2252 of 1990

New Delhi: January /6th, 1995.

HON'BLE MR.JUSTICE S.C.MATHUR, CHAIRMAN.

HON'BLE MR.S.R.ADIGE, MEMBER (A).

Shri Phool Kumar
s/o Shri Diwan Singh,
r/o Village Madana Khurd, P.O.Madana Kallan,
P.S.Beri, Distt. Rohtak (Haryana),
(ex-Constable No.3568/DAP, and 555/DAP)

.....Applicant.

By Advocate Shri K.S.Chhillar.

Versus

1. Commissioner of Police,
Police Headquarters, MSO Building,
I.P.Estate, New Delhi -110002;

2. Addl.Commissioner of Police,
Armed Police, PHQ, MSO Building,
I.P.Estate, New Delhi -110002;

3. Dy. Commissioner of Police, IV Bn.
D.A.P.Kingsway Camp, Delhi -110009.
(New Police Lines)

.....Respondents

By Advocate Shri O.N.Trishal.

JUDGMENT

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

In this application, Shri Phool Kumar, Ex.Constable, Delhi has impugned the order dated 16.1.90 (Annexure-A) dismissing him from service, as well as the order dated 14.6.90 (Annexure-B), rejecting his appeal.

2. Shortly stated, the applicant, who joined the Delhi Police as a Constable on 15.2.73, was charged under section 21 Delhi Police Act,1978 for his grave misconduct in that while temporarily attached with Police Control Room from IV Bn, Delhi Armed Police, he absented himself from duty as many

as on 9 occasions totalling a period of 108 days, 2 hours and 54 minutes. The charge-sheet (Annexure-E) further goes on to state that he reported in IV Bn. DAP from PCR on 28.2.88 but again absented himself from duty unauthorisedly on 11.4.88 and resumed duties only after an absence of 99 days 2 hours and 20 minutes. It is also mentioned in the charge sheet that the applicant's previous record showed him to be a habitual absentee, who had absented himself from duties unauthorisedly on as many as 36 occasions in the past, which showed him to be an incorrigible type of person.

3. The Enquiry Officer, who conducted the departmental enquiry, submitted his findings dated 5.12.89 holding the applicant guilty of the charge framed against him. Agreeing with these findings and considering the other relevant materials on record, a show cause notice was issued to the applicant as to why he should not be dismissed from service, together with a copy of the Enquiry Officer's findings. The applicant upon receipt of the show cause notice, submitted his reply to the same. He was also heard in the Orderly Room by the Disciplinary Authority on 15.1.90, and the applicant's written reply as well as his verbal submissions being found unsatisfactory, he was ordered to be dismissed from the service by the impugned order dated 16.1.90, and the period of his absence was directed to be treated as leave without pay. Thereupon, the applicant filed an appeal, which was considered and rejected vide order dated 14.6.90 and he was informed of the decision rejecting his appeal vide forwarding memo dated 19.6.90. It is against

the dismissal order and the appellate order rejecting his appeal that this O.A. has been filed by the applicant.

4. The first ground taken by the applicant's counsel Shri Chhillar is that the alleged misconduct in the Police Control Room could not be clubbed with the alleged misconduct in the IV Bn. DAP and the Disciplinary Authority, namely, the Deputy Commissioner of Police, IV Bn. DAP could not punish the applicant for his absences from duties while posted in Police Control Room. Shri Chhillar has, however, been unable to cite any ruling or executive instructions in support of this assertion. The departmental proceedings were initiated against the applicant when he was serving in the IV Bn. DAP under the Disciplinary Control of the Deputy Commissioner of Police, IV Bn. DAP. The requirement of Rule 14 (4) Delhi Police (Punishment & Appeal) Rules, 1980 has thus been fully complied with, and in the absence of any rule or instruction to support Shri Chhillar's contention, this argument fails.

5. The next argument advanced is that there was a breach of Paragraph VIII of Standing Order No.111, in as much as the applicant had absented himself from duty on medical grounds and had filed medical certificates in support of the same, and if the Disciplinary Authority was not satisfied with those medical certificates, he could have sought for a second medical opinion instead of taking the extreme step of dismissing the applicant. In this connection, it has also been urged that as the Deputy Commissioner of Police had already expressed his opinion that the applicant had filed the

medical certificates in support of his absence from 11.4.88 to 17.7.88, issued by the Medical Officer Incharge, M.C.Chandrawati Unani Dispensary, Narela to save himself from departmental action, nothing remained to be decided by the Enquiry Officer, who was only of a rank of the Police Inspector. Neither of these arguments have merit. Paragraph VIII of Standing Order No.111 relied upon by Shri Chhillar, itself requires the medical certificate to be accompanied by a proper application for leave and makes it clear that the grant of the medical certificate does not by itself confer upon the individual concerned, any right to leave. In each and every case, the final orders of the authority competent to grant leave have to be awaited. In the present case, however, the applicant has not made any averment that he filed any application for leave. It requires no reiteration, that leave cannot be claimed as a right and no Government servant who serves in a disciplined force such as the Police, is permitted to absent himself from duty for long stretches of time, and then claim regularisation for each of these absences by filing some medical certificates long after. Under the circumstance, if the Disciplinary Authority concluded that these medical certificates were filed by the applicant hoping that it would save him from departmental action, such a conclusion can under no circumstance be said to be unwarranted or to have prejudged the issue. In this background, the question of seeking a second medical opinion also does not arise, and these arguments fail.

6. It was next urged by Shri Chhillar that the respondents could very well have regularised the applicant's absence from duties by granting him commuted leave or extra-ordinary leave or any other type of leave including medical leave, instead of dismissing him from service. Having regard to the repeated acts of the misconduct on the part of the applicant, reference to which has been made in the impunged order, the respondents concluded that the applicant was not fit to be retained in service and on the basis of materials on record, it cannot be said that their conclusion is unwarranted. Under the circumstances, the question of retaining the applicant in service, if necessary by giving him a lesser punishment, and at the same time regularising his repeated absences from duty by granting leave whatever sought that was admissible to him, does not arise and this argument also, therefore, fails.

7. Shri Chhillar also alleged certain infirmities in the conduct of the proceedings, namely that the relevant documents were not supplied; the absentee notice said to have been despatched by the respondents when the applicant's absence came to light, was not sent to his home address; the charge sheet contains no date; and the applicant was not given any opportunity to lead his defence. These averments have been denied by the respondents. They have stated that the absentee notices were sent to him by post as well as through local police, and in any case it is not denied that the applicant did absent himself from duty. The applicant has failed to name a single document which

was not supplied to him and whose non-supply was serious enough to vitiate the entire proceeding. In so far as the charge sheet not having any date is concerned, the respondents in their reply have pointed out that the charge was prepared on 25.8.89 and was got approved from the competent authority on 27.8.89 and was served on the applicant on 12.9.89 against his proper signature and this position has not beencontroverted by the applicant in his rejoinder. Although every opportunity was given to the applicant, he did not extend full cooperation in the conduct of the departmental proceeding. The four prosecution witnesses were examined and he was given full opportunity to cross- examine them, but he did not do so and signed on the statements of the witnesses. He was given several opportunities to submit his list of defence witnesses but he failed to do so at which the Enquiry Officer was permitted on 1.11.89 to complete the departmental enquiry exparte. On the same date i.e. 1.11.89, the applicant gave in writing that he did not want to produce any defence witness and would submit his final statement on 6.11.89, but he did not do so either, and the Enquiry Officer thus completed the departmental enquiry and submitted his findings on 5.12.89. Thus, we have no reason to hold that full opportunity was not given to the applicant to lead his defence, and hence these arguments also fail.

8. Shri Chhillar has also urged that the punishment of dismissal was undly harsh. He has argued that the previous punishments inflicted upon the applicant and referred to in Paragraph 4 of the impugned order are inclined to paint a picture

of the applicant being utterly incorrigible. Shri Chhillar has tried to argue that the punishments such as punishment drill, warning, leave without pay are actually no punishments at all, and there was no proof that the warnings were ever communicated to the applicant. We are not impressed by these arguments. From the impugned order, it appears that the applicant absented himself on 36 previous occasions and did not mend himself despite several opportunities being given to him, including major punishment of forfeiture of five years of approved service permanently, censure (3times, warnings (9 times), punishment drill (18 times) and leave without pay (5 times). If this type of repeated misconduct does not establish the applicant to be an incorrigible type of person who is thoroughly unfit to serve a disciplined force such as the police, we fail to see what further evidence was required to prove the applicant's incorrigibility.

9. On the wording of the impugned dismissal order, Shri Chhillar has advanced two-fold arguments. Firstly, he contends that the order of dismissal also directs the period of absences to be treated as leave without pay which constitutes double jeopardy, and in this connection has cited the ruling in the case 'Anwar Khan & others Vs. Administrator of Goa, Daman and Diu & others', (SCA(WP) Nos.85/73, 115/73 and34/74) decided by the Judicial Commissioner on 10.4.78. The second limb of this argument is that by directing the period of absences to be treated as leave without pay, the Disciplinary Authority must be deemed to have condoned the various absences of the applicant and under the circumstances, he cannot be punished with the order of dismissal. Neither of these

arguments bear scrutiny. In 'Hari Ram Vs. Delhi Administration & others' bearing O.A.NO.1344/90 decided on 4.3.93, the Full Bench of this Tribunal has held that in accordance with the well settled rules of construction of statutes which are equally applicable in respect of orders and documents as well, the real intention of the author of the impugned order has to be ascertained. In Hari Ram's case (Supra) on a plain reading of the entire order , the Full Bench had no hesitation 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 and the insertion of the latter part of the direction, namely to treat the absences as leave without pay was only to convey in clear and specific terms that the applicant was not entitled to any emoluments for the period of unauthorised absences.

10. In the case before us also, we are clear in our view that the Disciplinary Authority had definitely intended to terminate the services of the applicant having regard to his misconduct, namely, repeated unauthorised absence, and the direction to treat the period of his absence as leave without pay, was only to specify that he was not entitled to any emoluments for these periods. As it did not constitute a punishment the doctrine of double jeopardy is not attracted and the ruling in Anwar Khan's case, does not help the applicant and it does not have the effect of condoning the punishment of dismissal either.

11. In passing, Shri Chhillar has also argued that due weightage was not given by the Disciplinary Authority

to the evidence furnished by the applicant in terms of medical certificates about his illness and has cited the case of Randhir Singh Vs. Delhi Administration & others (O.A.No.357/90) decided by this Tribunal on 25.11.94, wherein it has been held that the authorities concerned had not gone into the defence of the applicant that he was confined to the hospital between 21.11.88 and 9.11.89 which had resulted in miscarriage of justice. The facts of that case are distinguishable from the one before us in as much as in the present case, it is not that the applicant's medical certificates were not considered. In fact, it is only after considering these medical certificates that the Disciplinary Authority had observed that they have been filed by the applicant to help him to save him from the departmental action, as no applications for leave were filed by him as per Rule 19(5) CCS(Leave) Rules,1972 read with S.O.No.111 of Police Department. Hence this judgment of the Tribunal does not help the applicant.

12. Lastly, in regard to the punishment of dismissal from service, it has been argued that before such punishment is inflicted, a finding has to be recorded that the person was guilty of misconduct and was unworthy and unfit for retention in police service, and in the absence of such finding, the impugned order was fit to be struck dow n.In this connection, reliance was placed upon the Tribunal (Division Bench) decision in O.A.No.802/90 Dalip Singh Vs. L.G.Delhi & others, decided on 23.9.94. However, from a perusal of the judgment in Hari Ram's case, cited above, it is clear that the Full Bench was of the opinion

that if the tenor of the punishment order reflected the fact that the delinquent was guilty of grave misconduct rendering him unworthy and unfit for police service, it would be sufficient, and it was not necessary that a positive finding should be recorded that the person was unworthy and unfit for retention in police service. This was also the view taken in the Tribunal (Division Bench) judgment dated 14.11.90 in O.A.No.2096/90 Randhir Singh Vs. Delhi Administration, wherein, inter alia, it was pointed out that the Full Bench decision will prevail over that of any Division Bench decision. In the present case, as the Disciplinary Authority has categorically held that the applicant is a habitual absentee and an incorrigible type of Constable and the entire tenor of the punishment order reflects his unsuitability for retention in police service, it must he held that the finding of grave misconduct is implicit in the order and is, therefore, sufficient compliance of Rule 8(a) Delhi Police (Punishment & Appeal) Rules.

13. In the result, therefore, the applicant has failed to make out any case to warrant our interference with the impugned dismissal and appellate orders. This application, therefore, fails and it is dismissed. No costs.

(S.R.ADIGE)
MEMBER(A)

(S.C.MATHUR)
CHAIRMAN.

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