

In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No.: OA-2579/90

Date: 16.2.1993.

Shri Mahinder Singh

.... Applicant

Versus

Union of India and Ors.

.... Respondents

For the Applicant

.... Shri N. Safaya, Advocate

For the Respondents

.... Shri Jagdish Vats, Advocate

CORAM: Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Mr. B.N. Dheundiyal, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the judgement? *Yes*

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

We have gone through the records of the case and have heard the learned counsel for both the parties. The grievance of the applicant, who has worked as a Constable in the Delhi Police, relates to the impugned order dated 2.6.1989 passed by the respondents, whereby he has been removed from service after holding an enquiry against him under the provisions of the Delhi Police (Punishment & Appeal) Rules, 1980.

2. The facts of the case in brief are that a departmental enquiry was conducted against the applicant for his remissness, negligence and dereliction in the discharge of his official duty in that on the night between 31.7.1988/1.8.1988, while posted at P.S. S. Badli, he was detailed for night patrolling

duty from 12.00 midnight to 5.00 a.m. at Nangli Poona to Kadi Pur, but he did not turn up and as such, his absence was recorded vide D.D. No.41-B dated 31.7.1988. He reported for duty after absenting himself for a period of three days, 16 hours and 40 minutes vide D.D. No.42 dated 3.8.1988. He again absentated himself vide D.D. No.25-B dated 15.8.1988 P.S. S. Badli and resumed duty vide D.D. No.18-B dated 25.9.1988 after an absence of 40 days, 16 hours and 15 minutes.

3. Scrutiny of the previous service record of the applicant showed that he had absentated on as many as 19 occasions from 1982 to 1988.

4. The disciplinary authority has stated in the impugned order dated 2.6.1989 that the scrutiny of the previous service records of the applicant showed that he was a habitual absentee and an incorrigible type of officer and could not mend himself even after awarding punishments for the absence. In view of this, he imposed on the applicant the penalty of removal from service and at the same time, decided that "the period of absence shall be treated as leave without pay".

5. In G. Paoaiah Vs. Assistant Director (Medical Services), A.I.R. 1976 A.P. 75 at 77, it has been held that 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, it is not permissible

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or open to the employer or any other authority to proceed against him for absenting himself from duty for the same period and punish him.

6. In Bhur Singh, Hari 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.

7. In State of Punjab Vs. Chanan Singh, 1988 (3) SLJ 216, it has been held that once the period of absence is treated as leave of any kind whatsoever, the fact that the delinquent remained absent, no more survives. The charge of absence from duty cannot be sustained if the person has been treated on leave of whatsoever kind it may be.

8. In view of the aforesaid judicial pronouncements, we are of the opinion that the impugned order of removal from service is not legally sustainable and we set aside and quash the same. The respondents are directed to reinstate the applicant as Constable expeditiously and preferably, within a period of three months from the date of communication of a copy of this order. The applicant would be entitled to full pay and allowances from 2.6.1989 to the date of reinstatement. There will be no order as to costs.

B.N. Dholiyal
(B.N. Dholiyal) 16/2/93
Administrative Member

Carried *16/2/93*
(P.K. Kartha)
Vice-Chairman(Judl.)