

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.
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Date of Decision: 23.4.93

OA 2630/90

SHRI NAGENDER SINGH ... APPLICANT.

VS.

UNION OF INDIA & ORS. ... RESPONDENTS.

CORAM:

HON'BLE SHRI J.P. SHARMA, MEMBER (J).

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

For the Applicant ... SHRI N.S. BHATNAGAR.

For the Respondents ... SHRI SURENDRA ADLAKHA.

J U D G E M E N T

(DELIVERED BY HON'BLE SHRI S.R. ADIGE, MEMBER (A).)

This is an application dated 10.12.90 u/s 19 of the Administrative Tribunals Act, 1985, filed by Shri Nagender Singh, a dismissed Constable of the Delhi Armed Police, praying for setting aside the order of dismissal dated 14.12.89 (Annexure 'A'), as well as the Appellate Order dated 8.5.90 (Annexure 'B'), and the Revisional Order dated 23.8.90 (Annexure 'C') and his reinstatement together with arrears of pay etc.

2. The charge against the applicant is that during his posting in the 1st Bn. DAP, he was performing duty in the Police Control Room temporarily, and was granted six days' C.L. w.e.f. 29.10.87. He proceeded on C.L. on 28.10.87 from

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the PCR, and was due back on 4.11.87, but did not return for duty in spite of issue of six absentee notices. He resumed his duty only on 13/14.6.88 after absenting himself for a period of 7 months, 9 days, 11 hours and 42 minutes. The Departmental Enquiry was initiated against him, and subsequently he was placed under suspension as he absented himself from duty once again. The Enquiry Officer completed the departmental enquiry and submitted his findings holding the petitioner guilty of the charge. Aggr^meeing with the findings of the EO, the Disciplinary Authority issued a show cause notice to the applicant proposing therein punishment of dismissal. Meanwhile, the applicant was transferred to New Delhi District and was relieved on 15.6.88, but he never reported for duty at New Delhi District. The transfer order finally was cancelled on 16.8.89. The applicant also did not resume his duty in the 1st Bn. DAP and remained continuously absent from 15.6.88 and as such the show cause notice was sent to him at his village home, which was received, as per his signature, on 30.8.89. In response to the show cause notice, he submitted his reply dated 11.11.89 and also submitted a Medical Certificate from a private Doctor showing him to be a T.B. patient. After hearing him and considering his reply, ^{which} ~~it~~ was held to be unsatisfactory, the Disciplinary Authority confirmed the proposed punishment of dismissal from service vide order dated 14.12.89, which was upheld in appeal on 8.5.90 and was confirmed in revision on 23.8.90.

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3. The grounds taken in this application are much the same as those taken in the appeal as well as the Revision Petition viz;

i) That at the time he was ordered to be dealt with in the departmental enquiry, he was serving in the Police Control Room and, therefore, under Rule 14.4 of the Delhi Police (Punishment & Appeal) Rules, 1980, he was supposed to be dealt with by the DCP/PCR, DCP/New Delhi District where he was transferred after being relieved from the 1st Bn. DAP.

ii) The summary of allegation was not served on the applicant personally but was sent to him by post to his address, which was never received by him. Rule 16(1) of the Delhi Police (Punishment & Appeal) Rules, 1980, was not followed.

iii) That the charge served on the applicant did not bear signature ~~of the applicant~~ or approval of the Disciplinary Authority.

iv) Consideration was not given to the fact that the applicant was a T.B. patient and the Medical Certificate issued in his favour by the registered Medical Practitioner was rejected illegally.

v) The punishment was excessive.

4. Regarding the first ground, the Appellate as well as the Revisionary Authority have discussed this in detail in

their respective orders and have clearly held that the applicant's contention was not correct as he was only temporarily working in PCR and was not posted there. He continued to draw his salary from the 1st Bn. DAP, who for all practical purposes was the Disciplinary Authority in his case and, ^{there was} therefore, no infirmity in the order of Disciplinary Authority. The question of initiating the departmental enquiry by the DCP, New Delhi District, did not arise and the applicant never reported to the New Delhi District. Hence the order of the DCP, 1st Bn. DAP, was fully in order. We have examined the relevant record and we see no reason to take a different view.

5. The second ground, also has no force because the departmental enquiry record clearly shows that the applicant received the summary of allegation and other connected documents free of cost.

6. Coming to the third ground, it appears that the charges were approved on the file by the Disciplinary Authority and under the circumstances, ^{even if} if a copy of the same did not bear the Disciplinary Authority's signature, it is by no means of infirmity serious enough to vitiate the department enquiry, particularly as the applicant has failed to establish that any prejudice was caused to him merely because of the absence of the Disciplinary Authority's signature on the charge sheet.

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7. In so far as the claim of the applicant to be a T.B. patient is concerned, the Appellate Authority, as well as the Revisionary Authority have correctly held that the grant of a Medical Certificate does not in itself confer upon the Govt. servant any right to leave. The Medical Certificate has to be forwarded to the authority competent to grant leave and orders of that authority have to be awaited. In case, the applicant wanted treatment for sickness he could very well availed of this facility in Delhi itself, or at least inform the department in time rather than remaining absent unauthorisedly and later on claiming with these unauthorised absences were necessity by his medical treatment.

8. In so far as the excessiveness of the punishment is concerned, it is well settled that this Tribunal cannot go into the quantum of punishment inflicted upon a Govt. servant in consequence of a departmental enquiry which has been conducted after observing of the rules prescribed.

9. Under the circumstances, we see no reason to interfere with the impugned orders and this application is accordingly dismissed. No costs.

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

J.P. Sharma
23.4.93
(J.P. SHARMA)
MEMBER (J)