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Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1008/90

New Delhi this the 9th Day of November, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Smt. Lakshmi Swaminathan, Member (J)

Ex. Constable Ajit Singh,
14/406, Jhajjar Road,
Bahadurgarh, Distt. Rohtak
(Haryana)

...Applicant

(By Advocate Mrs. Avnish Ahlawat)

Versus

1. Delhi Administration,
through Commissioner of Police,
P.H.Q., I.P. Estate,
New Delhi.
2. Addl. Commissioner of Police,
Southern Range through
P.H.Q. I.P. Estate,
New Delhi.
3. Addl. Deputy Commissioner of Police,
South Distt. through
P.H.Q. I.P. Estate,
New Delhi.
4. Inspector Tek Chand,
Enquiry Officer,
D.E. Cell, Vigilance,
P.H.Q., I.P. Estate,
New Delhi.

...Respondents

(By Advocate Sh. O.N. Trisal)

ORDER(ORAL)

Hon'ble Mr. N.V. Krishnan, Vice-Chairman (A):-

The applicant was a Constable in the Delhi Police under the first respondent. He is aggrieved by the order dated 2.11.88 (Annexure -O) by which in a departmental proceeding instituted against him he has been dismissed from service. The appeal filed by him has also been dismissed by the Annexure-Q order dated 9.6.89.

2. The brief facts of the case are as follows:-

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2.1 The applicant was proceeded against before the Court of the competent Magistrate under Section 122 of the Delhi Police Act for being unauthorisedly absent from 29.10.80 to 9.11.80. The learned Metropolitan Magistrate by his judgement dated 12.7.82 (Annexure A) concluded that the offence punishable under Section 60 readwith Section 122 of the Delhi Police Act has not been proved by the prosecution beyond reasonable doubt and hence the applicant was acquitted.

2.2 Thereupon, the applicant states that he submitted a representation dated 10.1.87 wherein he had also given his address at Bahadurgarh, District Rohtak, Haryana. He addressed this letter to the Deputy Commissioner of Police (South District). Not receiving any reply thereto, a number of representations were made ending with the last letter dated 28.11.87, all exhibited collectively as Annexure B. At last, in response to his letter dated 28.11.87 he was informed by the Annexure C letter dated 16.12.87 that as he did not join duty after his acquittal, inspite of notices sent to him, a disciplinary proceeding has already been initiated against him and he was, therefore, informed that he should participate in those proceedings. It may be mentioned here that this letter 16.12.87 was sent to his Rohtak address, as given by him in his representation dated 28.11.87.

2.3 On receipt of this notice the applicant reported for duty and it was at that time that he was given the summary of allegations. That reads as under:-

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"It is alleged against you Constable Ajit Singh No.350 SD that while posted at P.S. Naraina you absented yourself in an unauthorised manner from 21.10.80 to 9.11.80, and a case u/s 122 D.P. Act was instituted against you and was tried by the Court of Shri K.S. Pal M.M> judgement on 18.12.86 held "Guilt for the accused 122 DP Act has not been proved by the prosecution beyond reasonable doubt" and acquitted you. After the decision of the Court in the case you had been directed twice to resume your duty vide the letters sent by the office bearing Nos 5421-5422/P-BR/SD dated 30.3.87 and No.9245, 46, 47/P-BR/SD dated 3.6.87 but neither you resumed your duty nor sent any information in this regard. Your previous record also shows that you are a habitual absentee and an unwilling Constable.

The above act amounts to grave misconduct and negligence on your part which renders you liable for Departmental Action u/s 21 D.P. Act 1978."

After the examination of witnesses on behalf of department, a charge was framed which was also on identical terms as the summary of allegations (Annexure D). An enquiry was held in which the defence of the applicant was that the letter dated 30.3.87, referred to in the charge was not received by him as it was addressed to him at Najafgarh, Delhi and likewise, letter dated 3.6.87, referred to in the charge was not received by him because of the incorrect address. Copies of the letters dated 30.3.87 and 3.6.87, referred to in the statement of allegations and the charge, have been exhibited at Annexures F and G. Despite this, the enquiry officer has found him guilty of the charge. He has held that when he was acquitted by the trial Court he should have joined the duty himself and in any case the place where he was living is very near to the Delhi. He could have got these matters confirmed on the telephone. Further, the applicant was found to be a habitual absentee.

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2.4 Agreeing with this finding the disciplinary authority dismissed the applicant from service by the impugned order dated 2.11.88 which was also maintained in appeal.

3. The respondents have filed a reply contending that the application has no merit because the respondents tried to serve notices on the applicant at the address available with them in their record, notice was delivered at the Najafgarh address which was available in their record. Therefore, the applicant is deemed to have received notice regarding joining duties.

4. The learned counsel for the respondents also states that, subsequently, when the respondents came to know that the applicant was living in Bahadurgarh they did send him the Annexure G letter dated 3.6.87, which, however, inadvertently, did not carry the full and complete address.

5. We have carefully perused the record and heard the arguments of the learned counsel for the parties. There are three questions involved, viz.:-

- i) whether the applicant had a duty to report, on his own, in his earlier office on acquittal;
- ii) whether he was under suspension till he was acquitted and taken back on duty later on; and

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iii) whether the applicant can be considered to have failed to join duty after being required to join duty by the respondents.

6. It is true that, in the normal circumstance a person who is acquitted would normally report before his head of office to intimate that he has been acquitted and that, therefore, he should be taken back on duty. Be that as it may, that is not the misconduct, alleged, either in the statement of the allegations or in the charge. Therefore, when the enquiry officer came to the conclusion that it was the duty of the applicant to join duty after acquittal, he misdirected himself in regard to the enquiry proceedings.

7. The second is whether the applicant was suspended. The learned counsel for the applicant draws our attention to the judgement of the trial Court wherein it is specifically mentioned that the applicant was under suspension. Normally, if a person is under suspension his headquarter should have been fixed and, therefore, it would not have been difficult to serve any notice on a suspended employee. Apparently, in this case no such order, fixing his headquarter, was passed. The disciplinary authority, however, repudiates the plea of the applicant that he was under suspension. He specifically states that the applicant was not under suspension but remained absent and, therefore, after his acquittal he should have resumed his duty at once. We notice that the offence against him was in respect of his unauthorised absence from 21.10.80 to 9.11.80. Admittedly, the applicant ultimately reported for duty and

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was taken back on duty only on 19.12.87. If he was not really under suspension the allegations and the charge under the above circumstances would have been that he was absent also from 10.11.80 upto 18.12.87, i.e., for about a period of 7 years. The fact that such a charge has not been framed corroborates the plea of the applicant that he was under suspension. That is also confirmed by another circumstance. We also note that while the disciplinary authority states that he was not under suspension the Annexure F notice issued to the applicant directing him to join duties mentions that as he was placed under suspension and the case for his reinstatement was being held up because of his absence after the acquittal. We, therefore, find that he remained suspended. Therefore, he was entitled to an order of revocation of suspension and a consequent direction, asking him to report for duty.

8. The main charge against the applicant is that he did not resume his duties despite the notices dated 30.3.87 and 3.6.87. The notice dated 30.3.87 (Annexure F) is addressed to his Najafgarh address. The applicant had already sent before this date representations dated 10.1.87, 9.2.87 and 11.3.87 to the respondents in each of which he has given his Bahadurgarh address of Rohtak district. The applicant also sent a further application on 25.5.87 (Annexure B) again giving his Bahadurgarh's address. It is in response to this that the second notice dated 3.6.87 was issued to him to report for duties within two days (Annexure G). Unfortunately, that notice admittedly did not contain the most important information

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viz. the particular place in Rohtak district where the applicant lives, i.e., Bahadurgarh. Naturally, this letter was not received by the applicant.

9. As if this was not enough, it would appear that one more attempt was made by the respondents to serve a notice on the applicant in August, 1987. In regard to this notice the respondents committed one more mistake viz. the house number was not given correctly. The Constable who was sent to serve the notice at Bahadurgarh has given a D.D. entry No.49 dated 6.8.87 (Annexure H) stating that he did not find the applicant in house number 460. This is quite natural because the applicant was staying in house number 406.

10. In the circumstances, we are of the view that the charge, as framed against the applicant, cannot be sustained. Any finding to the contrary is, in the circumstances, perverse and without any evidence. That, however, does not mean^u that the applicant is entirely blameless. We are definitely of the view that the applicant ought to have presented himself to his office after acquittal. He should also have properly intimated the change of address to Bahadurgarh to the authorities concerned for correcting the service record. That, in our view, would have avoided the subsequent complications.

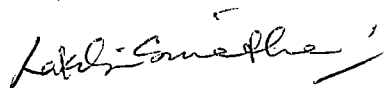
11. In the result, we find that the impugned Annexure O order of dismissal dated 2.11.88 and the Annexure Q order dated 9.6.89, rejecting the appeal deserve to be quashed and we order accordingly. The respondents are directed to reinstate the applicant within

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one month from the date of receipt of this order. It is open to the competent authority to pass appropriate orders as to how the period of absence of the applicant till he is reinstated, in accordance with the above directions, including the period of suspension, should be treated and the emoluments he should get for this period, in accordance with law. This may be done within a period of two months from the date of receipt of this order.

12. The O.A. is disposed of with the above directions. No costs.



(Smt. Lakshmi Swaminathan)
Member(J)

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(N.V. Krishnan)
Vice-Chairman (A)