

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA 1220/1991

Date of decision: 31.07.1992

Shri Rajbir Singh

...Applicant

Vs.

Lt. Governor, Delhi & Another

...Respondents

For the Applicant

...In person

For the Respondents

...None

CORAM:

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

The Hon'ble Mr.B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *Y*

2. To be referred to the Reporters or not? *N*

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

We have heard the applicant in person and have gone through the records of the case carefully. Despite service of notice on the respondents and adequate time given to them to file counter-affidavit, none appeared on their behalf and no counter-affidavit has been filed. This application has been listed as one of the cases peremptorily posted for final hearing today. None appeared on behalf of the respondents.

2. The applicant who is working as a Sub Inspector in the Delhi Police, is aggrieved by the impugned order of

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punishment dated 11.7.1989 passed by the Deputy Commissioner of Police whereby it has been ordered that one increment in the pay of the applicant be withheld for a period of 3 years, having the effect of postponing future increments. The impugned order proceeds to say that "his periods of absence will be treated as leave without pay".

3. The Appellate Authority has upheld the order of disciplinary authority on 05.02.1990.

4. This application could be disposed of on the short ground that when the unauthorised absence from duty has been regulated by the grant of any kind of leave, no punishment can be imposed on the Government servant concerned. In the instant case, though the disciplinary authority has found that the applicant had unauthorisedly absented himself from duty, he decided to treat the period during which the applicant remained absent as leave without pay. In such a case, we are of the opinion that the impugned order of punishment is not legally sustainable.

5. In this context, reference may be made to the Judgment of the A.P. High Court in G. Papaiah Vs. Assistant Director (Medical Services), AIR 1976 AP 75 at 77 where it was 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, it is not permissible or open to the employer

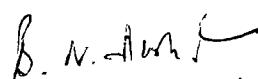
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or any other authority to proceed against him for absence from duty for the same period and punish him.

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 concerned.

7. In the light of the foregoing, we set aside and quash the impugned order passed by the disciplinary authority on 11.07.1989 and the impugned order passed by the appellate authority on 05.02.1990. The application is disposed of on the above lines. The applicant would be entitled to all service benefits as if no such punishment had been imposed on him.

There will be no order as to costs.


(B.N. DHOUDIYAL)
MEMBER (A)
31.07.1992


(P.K. KARTHA)
VICE CHAIRMAN(J)
31.07.1992

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