

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./T.A. No. 1250/91 /19 Decided on: 9.4.96

Bhagat Ram APPLICANT(S)
(By Shri Shyam Babu Advocate)

VERSUS

Delhi Admn. & Anr. RESPONDENTS

(By Shri Vijay Pandita Advocate)

CC RAM

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

THE HON'BLE ~~XXXXXX~~ DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal ? No

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

(2)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No. 1250/91

New Delhi: this the 9th ~~March~~ ^{April}, 1996.

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

HON'BLE DR.A.VEDAVALLI, MEMBER(J).

Shri Bhagat Ram(64-P), ex-Constable,
Son of Shri Swarup Chand,
R/o House No.1561,

8-Visva, Gurgaon,
P.S. & District Gurgaon,
Haryana.

By Advocate Shri Shyam Babu.
Versus

.....Applicant.

1. Delhi Administration, Delhi
through its Chief Secretary,
5, Nath Marg, Delhi.

2. Addl. Commissioner of Police (Operations),
Delhi Police Headquarter,
I.P.Estate, New Delhi.

3. Dy. Commissioner of Police IGI Airport,
New Delhi.Respondents.

By Advocate Shri Vijay Pandita..

JUDGMENT

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

In this application, Shri Bhagat Ram has impugned the enquiry report dated 14.6.90 (Annexure-D); the Disciplinary Authority's order dated 1.11.90 (Annexure-G) removing him from service; and the appellate order dated 15.3.91 (Annexure-I) rejecting the appeal.

2. The applicant was proceeded against departmentally vide order dated 12.1.90 (Annexure-A) on the ground that on 24.11.89 while detailed for duty at C & D Gate of IGI Airport between 7 p.m. to 8 a.m. he did not return for duty and was marked absent. Subsequently an absentee notice was sent to

his village address vide registered letter dated 30.11.89 with a direction to resume duty at once but the same was returned by the postal authorities with the remark that he refused to take the delivery of the letter. It is further alleged that he did not resume his duties and continued to remain absent. Again another absentee notice was sent at his village address vide Office Memo dated 7.12.89 under registered post but the same was returned by the postal authorities stating that "PANE WALA DUTY PAR RAHTA HAI". However, neither he resumed his duty nor informed the department about his absence till date. He thus disregarded all rules and instructions regarding leave and also Standing Order No.111/88. On scrutiny of his past record it was revealed that he was a habitual absentee as he had absented himself on 25 occasions in the past for which he was punished earlier. Since the past punishments obviously had no effect on him and he continued to be indisciplined and absented himself wilfully and unauthorisedly, disciplinary action was required to be taken against him. The conduct of the applicant thus amounted to grave indiscipline, misconduct, irresponsibility which was violative of Rule 3(i) and (iii) CCS (Conduct) Rules and was punishable under Section 21 Delhi Police Act, 1978.

3. The enquiry Officer in his enquiry report dated 14.6.90 (Annexure-D) held the charge against the applicant as fully proved. Accepting these findings of the Enquiry Officer, the D.A. issued a notice to the applicant on 20.8.90

calling upon him to show cause why he should not be removed from service. The applicant replied to the show cause notice on 27.9.90, and after considering the same the Disciplinary Authority vide his order dated 1.11.90 (Annexure-G) removed the applicant from service which order was upheld in appeal vide impugned order dated 15.3.91.

4. We have heard Shri Shyam Babu for the applicant and Shri Vijay Pandita for the respondents.

5. The first ground pressed by the applicant was that the copy of Standing Order No.111/88 referred to in the body of charge was not supplied to the applicant, nor was proved by any PW.

6. We note that if the applicant was unaware of Standing Order No.111/88, it was open to him to have asked for a copy of the same during the course of D.E., but he did not do so. We also note that in his reply to show cause notice, the applicant has at no stage mentioned that prejudice was caused to him as he was not supplied with a copy of Standing Order No.111/88, or because it was not proved by any PW. The respondents in their reply have stated that the copies of all relevant documents were supplied to the applicant and in any case we are not prepared to hold that even if the Standing Order 111/88 was not supplied to the applicant or was not proved by the PWs, the entire proceedings were vitiated because Standing Order 111/88 merely reiterates those provisions of CCS (Leave) Rules which every Govt. servant including Delhi Police Personnel are required to know, namely that no leave can be claimed as a right; grant of leave cannot be anticipated, and leave prayed for on medical certificate

has to be accompanied by a medical certificate unless the competent authority decides to waive the same. Furthermore, the respondents have filed an additional affidavit stating that in the normal course all standing orders are being issued by the Head of the Department/Commissioner of Police and sent to all Head of the Officers for informing all the staff working under them.; they are being circulated to all Asstt. Commissioners of Police, SHOs and other branch Incharges to inform the staff working under them; and they are being displayed on the notice boards of the Police Stations, AGsP Offices and other offices of the Police Department, besides informing the officials on every Roll Calls etc. The additional affidavit further states that during the course of SAMPARK SABHA held by the Head of Office , all the staff have been advised to obtained prior permission of the competent authority before availing the medical rest as envisaged in CCS(Leave) Rules and Standing Order 111/88. The applicant has no doubt filed a counter affidavit to the effect that the official who sworn the affidavit ^{+ of the above} could not have had personal knowledge, and has denied that the Standing Order No.111/88 was placed on the notice board of his Unit or was brought to his knowledge, but we must record that there is a strong presumption of the correctness of Govt. actions performed in the course of official duty, and unless the applicant can produce tangible evidence to the contrary, *prima facie* we have no reason to disbelieve the contention of the respondents that the contents of the Standing Order No.111/88 were brought to the notice of all concerned in the manner prescribed,

and the applicant cannot therefore dis-claim knowledge of its contents, just as ^{he} cannot disclaim knowledge of the contents of CCS(Leave) Rules and the Delhi Police Act. In this connection, we must further record that in Managing Director, ECIL, Hyderabad & others Vs. B. Karunakar & others- 1993(25) ATC 704 the Hon'ble Supreme Court have observed that

"The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore even after the furnishing of the report no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

7. In the light of the above, this ground fails, and the case of Kashi Nath Dixit Vs. UOI AIR 1986 SC 2118 relied upon by Shri Shyam Babu does not help the applicant.

8. The only other ground taken is that the Enquiry Officer has not acted as a quasi-judicial authority and has jumped to conclusions. Support has been sought from the ruling of the Hon'ble Supreme Court reported in AIR 1975 SC 1121. A perusal of the enquiry report makes it clear that the findings are reasoned and well-considered ones, and are not based upon surmises and conjectures. The Disciplinary Authority in the

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impugned order has also discussed the findings and has given reasons for coming to his conclusion. Hence this ground is also rejected.

9. No other ground has been pressed by Shri Shyam Baid. In this connection, a perusal of the materials on record makes it abundantly clear that this is not a case where the action of the respondents is arbitrary, illegal, malafide, perverse or based upon no evidence.

10. In the result, the OA fails and is dismissed. No costs.

A. Vedavalli

(DR. A. VEDA VALLI)

MEMBER (J)

S. R. Adige

(S. R. ADIGE)

MEMBER (A).

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