(19)

CAT/1211.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2360/91 199
T.A. No.

DATE OF DECISION 3-6-97

Sh.Jagdish Chander — Petitioner

Mrs Avnish Ahlawat — Advocate for the Petitioner(s)

Versus

Commissioner of Police & Ors — Respondent

Shri Jog Singh — Advocate for the Respondent(s

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member(J)

The Hon'ble Shri K.Muthukumar, Member (A)

1. To be referred to the Reporter or not? Yes

2. Whether it needs to be circulated to other Benches of the Tribunal? X

(Smt.Lakshmi Swaminathan)
Member(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 2360/91

New Delhi this the 3rd day of June, 1997

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Hon'ble Shri K. Muthukumar, Member(A).

Jagdish Chander,
S/o Shri Shish Ram,
R/o Vill & PO - Goele Khurd,
Distt. Karnal (Haryana). ... Applicant.

By Advocate Mrs Avnish Ahlawat.

Versus

1. Commissioner of Police Delhi,
Delhi Police Headquarters,
MSO Building, I.P. Estate,
New Delhi.

2. Additional Commissioner of Police,
Training, Delhi,
Delhi Police Headquarters.
MSO Building, I.P. Estate,
New Delhi.

3. Principal,
Police Training School,
Jharoda Kalan,
New Delhi. ... Respondents.

By Advocate Shri **S.K.** Gupta, proxy for Shri Jog Singh, Counsel.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

This application has been filed under Section 19 of the Administrative Tribunals Act, 1985 challenging the orders initiating departmental proceedings against him and the subsequent penalty order dated 10.5.1990 dismissing him from service and the appellate authority's order dated 5.9.1990 rejecting his appeal.

2. The brief facts of the case are that the applicant while working as Head Constable in Delhi Police had proceeded on 5 days Casual Leave and was due back on duty on 26.6.1989. The applicant states that he applied

for 15 days extension of leave but the same was rejected. Thereafter, he made another application for extension of leave on the ground of domestic problems. The previous service record of the applicant showing that he had been absent from duty on which various punishments had been imposed was also made part of the charges in the departmental inquiry ordered on 18.9.1989. The applicant states that on resuming duties, he had requested the Inquiry Officer to examine the Doctor as an official witness which request was also turned down. One of the main grounds taken by Mrs. Avnish Ahlawat, learned counsel for the applicant, was that since the applicant had produced the medical certificate that he was ill, the Inquiry Officer ought to have called the Doctor, which would have meant that the disciplinary authority could have come to a decision that his absence was unintentional and would have in any case been in compelling circumstances. The learned counsel has relied on the judgements of the Supreme Court in **Mumtaz Hussain Ansari Vs. State of U.P. & Anr.** (1984(2) SLR (SC) 1) and **D.N. Kulshreshtha Vs. State of Rajasthan & Anr.** (1986(4) SLR (Rajasthan High Court) 734). The learned counsel submits that by not calling the Doctor as an official witness, the applicant has been denied reasonable opportunity to defend his case. She further submits that the previous service records which have been taken into account in the chargesheet only shows that he had been absent for certain periods for which he had been awarded minor punishments. In the circumstances, she submits that the punishment of removal from service was excessive.

3. The respondents have filed their reply and we have also heard Shri S.K. Gupta, learned proxy counsel. They have submitted that after proceeding on 5 days Casual Leave which was permitted, the applicant was due back on 26.6.1989 but he did not turn up for duty. His application for extension of leave for 15 days on the ground of alleged urgent work which was received on 30.6.1989 was rejected and he was informed accordingly and he was directed to resume duty at once. Another application for extension of leave was sent on the ground of domestic problems which was also rejected and he was informed that disciplinary action would be taken against him if he did not report for duty which was sent to his home address. Since the postal authority had returned the envelope on the ground that the addressee refused to receive it, the information was sent to the applicant by a special messenger, ASI Ram Niwas, who had delivered the notice to the applicant on 26.8.1989 at his residence. According to them, the previous record of his service also showed that he was prone to absentism and he had been proceeded against on 12 occasions for unauthorised absence which was, however, subsequently regularised and/or he had been given the penalty as detailed in the reply. The learned counsel for the respondents has submitted that the inquiry was held in accordance with the rules and after the prosecution evidence had been recorded ex parte, the applicant reported back on duty only on 24.1.90 and thereafter participated in the DE proceedings. Since the disciplinary authority had found that the applicant had overstayed his leave without valid sanction, he had disobeyed the official communications made to him by the competent authority as also his past record showed that his behaviour was indifferent, he was found

completely unfit for retention in service. Hence, he was removed from service. The appeal preferred by him to the Addl. Commissioner of Police was duly considered but rejected by order dated 5.9.1990. Regarding the submissions of the learned counsel for the applicant that the Doctor who had issued the medical certificate was not called by the Inquiry Officer, the learned counsel submitted that the medical certificate submitted by the applicant dated 23.1.1990 showed that he was ill from 18.10.1989 to 11.11.1989, further extended upto 23.1.1990 and was declared fit to resume duty w.e.f. 24.1.1990. Therefore, the learned counsel has submitted that when the applicant was released on bail on 24.6.1989, he could have reported for duty which he has failed to do; again when he was acquitted by the court on 5.10.1989, he did not report for duty, and as per the medical certificate also, he was sick only from 18.10.1989 which means that he failed to resume his duty from 26.6.1989 to 17.10.1989. They have also submitted that the applicant had never informed them that he was involved in a criminal case when he was on Casual Leave and his subsequent applications for further extension of leave was also on the ground of urgent work and domestic problems. In the circumstances, the learned counsel for the respondents has also submitted that in the representation made by the applicant dated 24.1.1990, he had requested that the statement of DW-4, Doctor R.S. Dahiya, who had issued the medical certificate of his illness from 18.10.1989, may kindly be recorded at the Civil Hospital, Panipat because records of the Hospital were there but he had not actually requested that he may be called as a witness in the DE proceedings.

They have submitted that the other defence witnesses have been examined. The learned counsel submits that since the applicant has not denied that he has been absent from work without any valid sanction even till the date he was declared unfit, this medical certificate will not assist him.

4. We have carefully considered the pleadings and the submissions made by the learned counsel for both the parties.

5. From the facts narrated above, it is seen that the applicant had initially gone on 5 days sanctioned Casual Leave with permission to avail of the holidays and was to return to duty on 26.6.1989 but admittedly he did not turn up on that date. It is also seen that his applications for extension of leave on the grounds of urgent work and domestic problems were not sanctioned by the competent authority and the applicant does not deny that he has received the information that if he did not resume his duty, disciplinary action would be taken against him. The contention of the applicant that since he proceeded on leave duly sanctioned by the competent authority, therefore, his further extenion should also be treated as being authorised is without and is rejected any basis. One of the main contentions of Mrs. Avnish Ahlawat, learned counsel for the applicant was that the applicant was not allowed to examine his defence witness (DW-4) i.e. the Doctor who had issued the medical certificate dated 23.1.1990. In this medical certificate, it is mentioned that the applicant is suffering from - (illegible) vide order No. 42380 dated 18.10.1989.

He was, therefore, advised rest upto 23.1.1990. The charges against the applicant which have been found proved on which the impugned punishment order of removal from service was passed is regarding his non-turning up for duty within the stipulated period i.e. by 26.6.1989. The period of sickness covered by the certificate of Dr. R.S. Dahiya, DW-4 relates to the period from 18.10.1989 to 23.1.1990. Rule 16(v) of the Delhi Police (Punishment and Appeal) Rules, 1980 enables the accused officer to state the defence witnesses whom he wishes to call. The sub-rule further provides that the Inquiry Officer is empowered to refuse to hear any witness whose evidence he considers to be irrelevant or unnecessary in regard to the specific charge. The Inquiry Officer in his report has stated that no medical certificate was submitted by the applicant regarding his illness earlier, except one certificate which he had produced along with his statement of defence. He has further stated that DW-4 was to prove his illness and this fact was already on record and hence this DW was not called.

6. In the facts and circumstances, therefore, the decision of the Inquiry Officer not to summon DW-4 in the DE proceedings as this witness is not material cannot be faulted. It is also relevant to note that in the representation made by the applicant, he had not asked for summoning this witness, but for recording the evidence of DW-4, Dr. R.S. Dahiya, at the Civil Hospital, Panipat because the records of illness of the applicant were available there. In **Mumtaz Hussain Ansari's case (supra)**, taking into account the provisions for payment of travelling allowance to defence witnesses in departmental inquiry, the Court came to the conclusion that if a witness has been permitted

to be produced in defence, it is not open to the Inquiry Officer to lay down a condition that his travelling expenses should be first deposited by the delinquent officer before the witness is examined. It is further observed that the Tribunal had considered the witnesses to be material but has insisted on the appellant depositing initially a sum of Rs.900/- for the travelling expense and daily allowance. In the circumstances, it was held that the principles of natural justice have not been complied with as 'the failure to cause the production of those witnesses at the expense of the Government might have caused prejudice to the appellant'. In another case of **D.N. Kulshreshtha (supra)**, the question was regarding summoning of certain Government officers as defence witnesses which the Court held had to be summoned by the Inquiry Officer. As already mentioned above, the facts in this case are different from the facts in the present case. In this case, on the applicant's own documents, it is clear that he fell sick only from 18.10.1989 and he has not been able to satisfactorily explain his absence for the period prior to that date, when he has been charged that he had unauthorisedly been absent from duty.

In **State Bank of Patiala & Ors. Vs. S.K. Sharma** (JT 1996 SC 722), the Supreme Court has discussed the effect of an order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries. The Supreme Court has held that such an order of punishment should not be set aside automatically and that the Court or the Tribunal should enquire whether the provision violated is of a substantive nature or whether it is procedural in character. ~~In the case of a procedural provision~~, the Court has held

that "in the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are generally speaking conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no intereference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases". (Emphasis added). In the facts and circumstances of the present case and having regard to the judgement of the Supreme Court in **State Bank of Patiala Vs. S.K. Sharma (supra)**, we cannot come to the conclusion that the non-production of DW-4 Dr. Dahiya might have caused any prejudice to the applicant for the period of his absence from 26.6.1989 which is the period for which he has been charged for unlawful absence. The Doctor's certificate itself shows that the period of illness was much later. The Supreme

Court has held that the ultimate test is the test of prejudice or the test of fair hearing which we have no doubt has been complied with in the facts of this case.

7. We are also not impressed by the other submissions of the applicant that his overstay after the duly sanctioned leave expired on 25.6.1989 was neither intentional nor deliberate. He had been informed by the respondents that his applications for extension of leave have not been sanctioned. He cannot take recourse to the medical certificate issued on 23.1.1990 to explain the unauthorised absence earlier. On perusal of the records, we are also satisfied that the applicant has been given reasonable opportunity to defend his case. Even after his acquittal in the criminal case on 5.10.1989, he did not report for duty or inform the respondents.

8. In **Government of Tamil Nadu & Ors. Vs. S. Vel Raj** (JT 1997(1) SC 349), the Supreme Court has held that the Tribunal was not entitled to examine evidence as if it is an appellate authority. In another case **N. Rajarathinam Vs. State of Tamil Nadu & Ors.** (1997(1) SLJ 10), the Supreme Court has held that the Court is not a fact finding body, so long as there was preponderance of probability even on the basis of one witness where 17 others turned hostile, the Court should not interfere. (See also **Union of India Vs. Parma Nanda** (AIR 1989 SC 1185), **Upendra Singh Vs. Union of India**, (JT 1994(1) SC 658). After perusal of the records in this case,

we do not find any justifiable ground to interfere with the findings of the Inquiry Officer or the competent authority and the penalty of removal from service has been lawfully imposed by the respondents after following the procedural rules/law. In this case, the charges also included the previous record of his absences and penalties awarded. In the circumstances of the case, we find no infirmity in the disciplinary authority's order dated 10.5.1990 or the appellate authority's order dated 5.9.1990 which justifies any interference in the matter nor do we find the punishment awarded to be excessive or harsh to warrant any interference in the matter. In **S. Vel Raj's case (supra)**, the Supreme Court has reiterated the law that the Tribunal ought not to re-examine the evidence. It is also stated that 'the police force has to be a disciplined force and a member of the police force has to behave in a disciplined manner' particularly when he is on duty. Taking into account the facts and circumstances of the case, we do not, therefore, think that the punishment is either unreasonable or excessive.

9. We have also considered the other submissions made by the learned counsel for the applicant but do not find any merit to set aside or modify the impugned punishment orders.

10. In the result, the application fails and is dismissed. No order as to costs.

(K. Muthukumar)
Member(A)

(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'