

Central Administrative Tribunal,
Principal Bench

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OA No.2791/91

New Delhi, this day of 7th December, 1995.

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)
Hon'ble Sh.R.K. Ahooja, Member (A)

Subhash Chand
No.1128, West Delhi
Police,
P.O. Majra Dabas
Delhi.

.. Applicant

(By Sh.Shankar Raju Advocate)

vs.

Delhi Administration through
Commissioner of Police,
Police Headquarters
Delhi.

Respondents

(By Sh.B.S.Oberoi and
Sh.Anoop Bagai, Advocates)

ORDER (Oral)

Hon'ble Sh. R.K. Ahooja, Member (A)

The applicant in this case who was
working as a constable in Delhi Police is
aggrieved by the order of disciplinary authority
dt. 13.8.90 whereby the penalty of dismissal
from service was imposed on him and the

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order dt. 13.4.90 whereby the appeal filed by him against the order of dismissal was rejected.

2. The facts of the case in brief are that the applicant was appointed as a constable in Delhi Police w.e.f 15.1.66. He fell ill on 6.6.89 and was medically treated by the Medical Officer of CGHS, Naraina who recommended him 7 days rest. The applicant presented this Medical Certificate to the reserve Inspector, old Police Lines for granting him leave on medical grounds but the said Inspector ordered for a second medical opinion from the Medical Officer, Police Lines Delhi. The applicant states that in compliance of this order he went to Civil Hospital and was medically examined by one Dr. Ashok Bhangotra who prescribed medical treatment and also recommended 2 days rest whereupon the applicant returned to his residence the next day, that is, 9.6.89. The applicant was served with a letter on 9.6.89 through a constable informing him that Dr. Bharat Singh, Medical Supdt. of the Civil Hospital was of the opinion that the applicant was fit for duty and on that basis he was asked to report back. The applicant

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claims that he was seriously ill and was under the treatment of the local Dr. Balraj Nayar of Nangloi and could not go back to Police Line and was able to join his duties only on 21.6.89 when he was declared fit by the said Medical Officer. As a result of these events, the applicant was treated on unauthorised absence for 11 days and 50 mts . He was served a show cause notice on 10.7.89 and after his reply was considered, DCP (P&L) passed an order dt. 28.9.89 imposing the penalty of censure and treating period of absence as leave without pay. Thereupon the applicant filed an appeal against the said order of punishment to the Addl. Commissioner (Operation) ^{or ~~not~~} instead of confirming or enhancing the punishment, set aside the orders of DCP and ordered for initiating Departmental enquiry for major penalty. The Enquiry Officer submitted his report on 24.8.90 and on considering the same the Additional DCP South District, New Delhi imposed the punishment of dismissal from service and the applicant was dismissed vide his first impugned order of 13.8.90. The applicant filed an appeal ^{order of} against the/dismissal before the Additional Commissioner of Police under section 23 of the ^{a.}

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Delhi Police Act but the same was also rejected by the second impugned order dt. 13.12.90. The applicant also filed ^{a n} revision petition which also was rejected by the Commissioner of Police on 11.6.91.

3. The applicant has assailed the impugned order on a number of grounds. The first main ground was taken by him that enquiry was not conducted properly in as much as the main witness Dr. Bharat Singh who had written the letter declaring him fit for duty was not examined. The second ground taken by him ^{or} that his ^{or} appeal against the order was disposed of by the Appellate Authority in a summary fashion and gave no ^{reasons} ~~reasons~~ for rejecting the reasons given by him against the order of dismissal. The applicant has also alleged that he was denied an opportunity to be heard in person which he had claimed before the Appellate Authority. The above contentions of the applicant have been controverted and denied by the respondents.

4. We have heard the learned counsel of both sides. The ld. counsel for the applicant has argued that the applicant had been examined by ^a qualified MBBS Doctor ~~and~~ when he had reported to the reserve Inspector who sent him to civil

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hospital for ²second opinion. The Examined ²Doctor in civil hospital also found him ill and had accordingly recommended two days rest. In the circumstances, when the applicant had not been examined at all by Dr. Bharat Singh, Medical Supdt. there could be no ground for the latter to give a different opinion that the applicant was fit for duty. The ld. counsel has also submitted that on being given a medical advice for rest for two days, he had gone back to his native place and since he was ill he could not rejoin duties as instructed. He ^{was} also recommended further rest by a qualified Dr. of his ^{native} place and he rejoined his duties on being declared medically fit. He urged that it was essential that Dr. Bharat Singh, Medical Supdt. should have examined him to give a different opinion that the applicant ^awas fit to join his duties instead ^{of} without examining the applicant at all.

5. The ld. counsel for the applicant has also drawn our attention to the second impugned order of the Appellate Authority and has pointed out that despite the detailed reasons given by the applicant, no reference has been made in the appellate order nor any reason given for rejecting the same. As regards the plea that the applicant had not been given an opportunity to be heard, the ld. counsel fairly admitted

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that the amendment of the relevant rule 17(2)² of Delhi Police (Punishment and Appeal) Rules, 1980 has taken away the earlier mandatory requirement of granting personal hearing but all the same in the interest of justice the Appellate Authority ^{could have &} given him this opportunity. In this respect he relied on the case of Ram Chander vs. UOI - 1986 (3) SCC 103 in which it has been held that personal hearing should be given as part of a reasonable opportunity.

6. The ld. counsel also referred to the charge, against the applicant, of incorrigibility on account of repeated absence from duty on 55 previous occasions which was established against him. He drew our attention to the list attached to the chargesheet, of instances of previous punishment and pointed out that last punishment was imposed in 1986 which showed that the applicant had made improvement and had been careful and given no cause for complaint continuously for a period of three years. In conclusion the ld. counsel emphasised the ground of long service of 24 years which was not at all taken into consideration by

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disciplinary authority by imposing the major penalty of dismissal from service, depriving him as a result of pensionary and terminal benefits. Relying on a recent judgement of the Hon'ble Supreme Court, *UOI and others vs. Giri Raj Sharma* - 1995 SCC (L&S) 290, he urged that absence of 11 days or so could not be a fair basis for awarding major penalty of dismissal from service. He therefore urged that penalty of dismissal should at least be modified to a lesser punishment.

7. The ld. counsel for the respondents argued in reply that the fact of unauthorised absence has been established on the admission of the applicant himself. He drew our attention to the fact that the applicant had reiterated for grant of leave on medical grounds but in terms of ^{Standing Order No. 111} ~~Order No. 111~~ ^{or} had been referred for second opinion to the civil hospital where he was advised two days medical rest. Even if it was accepted that Dr. Bharat Singh should not have given this recommendation without examining the applicant, the applicant was duty bound to report back for duty in 2 days time but did not do so for 11 days. As regards the speaking order of the Appellate Authority, he pointed out that all the ^{main} grounds taken by the applicant in his appeal ^{including} the absence of Dr. Bharat Singh from enquiry and the severity of punishment had

been duly dealt with in the appellate order.

It was not necessary in view of the detailed orders given by the disciplinary authority to go into the ^{same} grounds in detail once again.

8. We have considered the arguments

advanced by ld. counsel of both sides and

perused the records. There is no dispute

regarding the fact that the applicant was

absent from duty for the period mentioned

in the Memorandum of charge nor that he had

been given punishment for unauthorised

absence on 55 occasions as per his record.

The non-appearance of Dr. Bharat Singh in

the enquiry is, in our view, immaterial

since the applicant was in any case required

to report back for duty at the expiry of two

days medical rest. As regards the plea

taken by the ld. counsel for the applicant

that absence ^{for} 11 days or so could not

^{or result in a}

severe punishment like dismissal

from service in terms of Supreme Court order

in UOI vs. GR Sharma (supra) we find that this

case has no relevance. In the aforementioned

order the case was of a single incidence of

absence which resulted in direction for a lesser

punishment by the Hon'ble Supreme Court. In

the present case the applicant had a long record of

frequent absence ^{from duty and the absence} which led to the impugned order

was by no means a solitary instance. As for the appellate authority is concerned we find that it is admitted that the applicant's ^{he} had ^{not} made a ^{written} request for personal hearing ~~was not granted~~ ^{he} at the time disciplinary authority had proposed the penalty of dismissal. In view of the circumstances, we do not propose to go into every ground taken by the applicant and we find that the impugned order cannot be interfered and set aside on grounds of infirmity.

9. While we dismiss the application in terms of the aforesaid paragraphs, we would like to ^{make the} ^{or} following observations ^{before} ^{he} parting with the case. The applicant's ^{counsel} drew our attention to the fact that the applicant had put in approximately 24 years of service and the present order ~~on dismissal~~ ^{or} does not seem to have taken into account this fact while imposing the penalty of dismissal by the Competent Authority. He also drew our attention to rule 41 of CCS(Pension) Rules 1972. This rule provides that a Govt. servant who is dismissed or removed from service shall forfeit his pension and gratuity. However, the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of pension

or gratuity or both which would have been admissible to him if had retired on compensation pension. The ld. counsel for the applicant admits that the representation in terms of rule 41 has not been made by the applicant. We therefore direct ^{that if} the applicant ⁿ ^{a n} makes representation under this rule to the competent authority within one month from today, the latter will consider it ^{carefully} ⁿ and take ^a decision within a period of three months, thereafter. No orders as to costs.

R. K. Ahuja

(R.K. Ahuja)
Member (A)

Lakshmi Swaminathan

(Mrs. Lakshmi Swaminathan)
Member (J)