

Central Administrative Tribunal
Principal Bench

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OA.3069/91

New Delhi, the 18th September, 1996.

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

Constable
Ex./ Sh. Virender Singh,
No. 1293/W
S/o Sh. Ram Singh
r/o Village Kharawal,
P.O. Sampla Distt. Rohtak
(Baryana).

.. Applicant

Advocate: Mrs Aynish Ahlawat

vs.

1. Commissioner of Police,
Delhi Police,
Police Headquarters,
New Delhi.

2. Addl. Commissioner of Police,
Southern Range,
Police Headquarters,
New Delhi.

3. Additional Dy. Commissioner of
Police, West Distt.
New Delhi.

... Respondents

By Advocate: Sh. Amresh Mathur

ORDER

Hon'ble Shri R.K. Ahooja, M(A)

This application was filed against the
order of dismissal from service dated 25.5.1990
and appellate order dated 28.11.90. During the

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pendency of the application, the applicant has died. Thereafter, the legal heir of the deceased was taken on record as applicant.

2. The applicant who was a constable in Delhi Police posted at PS Nangloi met with an accident on 20.6.1988. He was initially advised rest for 17 days by the doctor in RML Hospital. Since he did not rejoin duty after the expiry of rest period, he was marked absent on 8.7.1988. Again, the applicant on 15.7.88 submitted an application alongwith medical advice for rest for 15 days. He was again marked absent on 22.7.1988 though he claimed that he was advised rest by Dr. RML Hospital. He finally reported for duty on 1.9.1988. He further claimed that again he was admitted to hospital on 22.12.88 and was advised three weeks bed rest. The applicant rejoined duty on 5.1.1989 with the medical certificate in which he was advised three weeks rest whereas on 9.1.89 he was marked absent. The applicant reported for duty on 10.2.89 and submitted a medical prescription for rest upto 9.2.89 and extension of rest for seven days was also advised by the doctors. Therefore, he finally rejoined his duty on 3.3.89. He again fell sick on 11.8.89

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and was admitted to hospital but he could inform the respondents only on 29.8.1989.

He finally reported for duty on 28.9.1989.

3. The respondents, however, chargesheeted him for his various absences from duty which resulted in the order of dismissal.

4. The case of the applicant in^a nutshell is that he was absent from duty for the periods mentioned in the chargesheet on account of medical advice. ^{fact was} This /not only in the knowledge of the respondents but they had also accorded approval for medical rest from time to time. He could not obtain prior permission when he had to be admitted to hospital. Hence, there was no basis whatsoever for the conclusion of the Disciplinary Authority that he was wilfully absent from duty.

5. The respondents submitted that initially the applicant proceeded on medical rest and as he did not report back for duty on the expiry of the initial period of rest he had to be marked absent. Furthermore, ^{the} record showed that he was absent from duty wilfully and unauthorisedly on various earlier occasions during the year 1981-88 for which he was awarded minor punishment.

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They have justified the conclusion of the disciplinary authority on the ground that the applicant absented himself on medical rest on his own accord without obtaining prior permission and submitting information to the competent authority. They also contend that since the applicant was always claiming fake illness, he was asked to take bed rest in the barracks if advised but he disappeared without the permission of the supervisory officers.

6. We have carefully considered the arguments on both sides and the pleadings on record. The allegation as mentioned in the enquiry report against the applicant was that he was absent on eight different occasions between 8.7.88 and 27.9.88 for differing periods of eight days to 41 days. Apparently, all these periods were covered by the medical advice for rest which was placed on the file. The Enquiry Officer in the penultimate para of his report has observed as under:

"I have also perused the medical rest slips placed on the file and pointed out that the defaulter has obtained medical rest from CGHS Dispensary as well as from Dr. Ram Manohar Lohia Hospital, New Delhi on 21.7.88, he obtained medical rest for 7 days on slip No. 10806/88 and on 22.7.88 he again obtained medical rest for 7 days on another slip No. 10806/88 when he has already obtained medical rest for 7 days on 21.7.88, then why he again obtained medical rest for 7 days on 22.7.88. On the other hand, he was obtaining medical rest from two different hospitals i.e. Dr. RML Hospital and CGHS Dispensary. Further, neither he obtained permission for availing medical rest from the competent authority nor sent any intimation about his medical rest. It is clear that Ct. Virender Singh No. 1293/W absented himself wilfully and unauthorisedly and availed the medical rest at his own accord without obtaining prior permission/information of the competent authority. As such he contravened the provision of standing order No. 111 and rule 19(5) of CCS revised Rules, 1972".

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7. It is clear from the above that neither the absence nor the duration of the period of absence covered by medical advice is disputed. What is, however, found by the Enquiry officer is that the applicant either did not obtain prior permission for medical rest or in some cases did not give any intimation. For this reason, he has been taken to be wilfully and unauthorisedly absent. There is no whisper in the whole record or in the reply of the respondents that medical advice was disputed or the applicant was referred to any other medical authority for a review of his condition. The medical advice had also been admittedly obtained either from CGHS dispensary or from RML Hospital. In these circumstances, it is a clear case of no evidence in so far as allegation of wilful absence is concerned. As far as unauthorised absence is concerned, the only evidence on record is that the applicant failed to give prior intimation regarding the medical rest. It is however not the conclusion of the Enquiry Officer that medical rest per se had been refused by the respondents.

8. It has been held by the Hon'ble Supreme Court in UOI Vs. Parmananda (AIR 1989 SC 1185) that the Tribunal cannot interfere with the findings of the Enquiry Officer or competent authority where they are not arbitrary or utterly perverse. It was held that Tribunal cannot interfere with the penalty if the conclusion of the Enquiry Officer is based on evidence even if some of it is found to be irrelevant or extraneous to the matter. The same conclusion has been reiterated in B.C. Chaturvedi Vs. UOI 1996(32)ATC 44. In State of UP

UP Vs. Ashok Kumar Singh, the Hon'ble Supreme Court held that absence of police constable from duty amounts to a grave charge as police is a disciplined force. Thus, if there had been any evidence, even if the same was partly extraneous or irrelevant, to indicate wilful and unauthorised absence on the part of the applicant, there would have been little scope for our interference. What however we find is that the total absence is on medical ground adequately supported by advice from authorised medical attendant which has not been controverted by the respondents. On the other hand there is not even an iota of evidence whatsoever to show that the applicant was feigning illness. In these circumstances, we have no hesitation in concluding that the findings against the applicant by the disciplinary authority are perverse and arbitrary. On the other hand, as has been held in Malkiat Singh Vs. State of Punjab & Ors. JT 1996(2)SC 648 that while discipline is required to be maintained, however, absence may sometimes be inevitable. In the facts of the present case absence from duty was inevitable even if we were to ignore the argument of the learned counsel of the applicant that the latter ultimately succumbed to the after effects of the injuries suffered in the accident.

9. In the facts and circumstances of this case, we therefore set aside the impugned order of dismissal. The applicant would be treated to be in service and his

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legal representative would be entitled to back wages due to the applicant as also to other benefits eg. family pension etc. which would be ordinarily due to them under the rules. The Oⁿ is disposed of accordingly. No order as to costs.

R.K. Ahooja
(R.K. Ahooja)
Member(A)

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member(J)
18/9.