

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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OA No. 3089/91

NEW DELHI THIS THE 12th DAY OF MAY, 1997.

HON'BLE SHRI JUSTICE K.M.AGARWAL, CHAIRMAN
HON'BLE SHRI S.R.ADIGE, MEMBER(A)

Applicant

vs.

1. Commissioner of Police
Delhi Police
M.S.O.Building, IP Estate
New Delhi-2

2. The Dy.Commissioner of Police
Delhi Police
I.G.I.Airport
New Delhi.

3. Union of India
Ministry of Home Affairs
Government of India
New Delhi, through its Secretary

Respondents

(SHRI D.S. OBEROI, PROXY COUNSEL FOR
SHRI ANOOP BAGAI, COUNSEL FOR THE RESPONDENTS)

ORDER

JUSTICE K. M. AGARWAL, CHAIRMAN:

By this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has made a prayer for quashing the impugned order of removal from service(Annexure A/3) passed on 27.12.1989 by the Disciplinary Authority and those dated 2.5.1990(Annexure A/6) and 30.10.1990 (Annexure A/7) passed by the Appellate and Revisional Authorities, confirming the order of removal from service, with a further prayer for reinstatement with full back wages from the date of removal and till the date of reinstatement.

2. The applicant was appointed as a Constable in Delhi Police w.e.f. 6.8.1975. On 22.6.1989, he was chargesheeted

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for unauthorised and wilful absence for a period of 69 days, 23 hours and 55 minutes between 13.1.1989 and 23.3.1989 and further absence for the period of 63 days, 19 hours and 55 minutes between 2.4.1989 to 5.6.1989. The charge was found proved and accordingly he was served with the impugned order of removal from service, which was affirmed in appeal and also in revision filed by him. Hence, he has filed this said application for the said reliefs.

3. The learned counsel for the applicant argued that the applicant was not supplied with a copy of the report of the Enquiry Officer, though it was necessary to do so before imposing the major penalty of removal from service. The learned counsel for the respondents could not show from the materials on record that the copy was so supplied to the applicant before imposition of the penalty of removal from service.

4. On going through the records and perusing the order of punishment, we find no infirmity in the finding of misconduct recorded against the applicant by the disciplinary authority except that of procedural defect of non-supply of a copy of the report of the Enquiry Officer. Ordinarily, in this background, we would have been inclined to remand the case with a direction to proceed with the enquiry afresh from the stage of supply of a copy of the report of the Enquiry Officer. However, looking to the delay in disposal of this application under Section 19 of the Administrative Tribunals Act, 1985, and the long period that has elapsed between the date of chargesheet and the date of disposal of this Original Application, we are of the view that it would be just and expedient if we direct reinstatement of the applicant without granting him back wages for the period between the date of dismissal and the date of reinstatement and further without safeguarding his seniority on the basis of his past service.

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We also find from the impugned order of the disciplinary authority that the plea of mother's death, wife's ill health and his own illness raised by the applicant was not rejected as false, but it was reasoned and rejected by observing:

"These grounds, even if true, cannot however justify such long and frequent absences without information, permission or sanction of leave of any kind."

It also appears from what has been pleaded in para 4(iii) of the application that the applicant had met with an accident resulting in various injuries on his person and fracture on his right foot and on the left side of the temple of the face. Further, it appears that his family members received bullet injuries at the hands of dacoits and his first wife succumbed to the injuries sustained by her during encounter with the dacoits. The illness of second wife and the death of his mother added to the miseries of the applicant. In the context of these facts, we feel that it would meet the ends of justice if the penalty of removal from service is set aside and the applicant is directed to be reinstated in service without any back wages and seniority on the basis of his past service.

5. It was brought to our notice that in the State of **Punjab & ors. Vs. Dr. Harbhajan Singh Greasy, JT 1996(5) S.C. 403**, it was held by the Supreme Court that when the enquiry was found to be faulty, it could not be proper to direct reinstatement with consequential benefits, to submit that it was a case where reinstatement could be directed.

6. In the case before the Supreme Court, the charge against the delinquent official was not only absence from duty but also other charges of dereliction of duty. Further, the absence from duty was in an emergency of attending on the flood victims. Under these circumstances, the Supreme Court was of the view that reinstatement with consequential benefits could not

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be directed. The present case is quite distinguishable on facts. The absence was not from emergency duties. The charge against the applicant only consists of absence from duty in 1989. He was in service since 1975 but there was no such absence during the years 1975 to 1988. The absence was only in the year 1989 and, therefore, it could not be said that the applicant was in the habit of remaining absent without permission. Further, by directing reinstatement, we are depriving the applicant of his back wages and seniority on the basis of his past service. This will be sufficient to give a lesson to the applicant.

7. In the other judgement of the Supreme Court in the **State of U.P. and Others vs. Ashok Kumar Singh and anr., (1996) 32 ATC 239** brought to our notice, it was held that the High Court exceeded its jurisdiction in modifying the punishment while concurring with the findings of the Tribunal on facts. The Supreme Court also observed that the delinquent/ was a Police Constable and was serving in a disciplined force demanding strict adherence to the rules and procedures more than any other department and having noticed the fact that the delinquent official had absented himself from the duty without leave on several occasions, the Supreme Court did not appreciate the observation of the High Court that his absence from duty would not amount to such a grave charge. However, the present case is quite distinguishable. It appears only that the procedural defect is / of non-supply of a copy of the report of the Enquiry Officer. In the case before the Supreme Court, the delinquent official was found to have absented himself on several occasions totalling to 251 days during the year 1981-82, for 93 days in 1982 and from 28.2.1984 onwards. In the present case, the absence was only during the year 1989 and more or less in continuity / without past record of similar absence . We have further noticed in some such

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cases, the delinquent Constables were not removed from service but were subjected to reduction of certain years of service. In the context of these facts and the facts and circumstances of the present case, we are of the view that it would be just and equitable if the applicant is directed to be reinstated in service without back wages or seniority on the basis of the past service. The applicant has also filed an affidavit stating that he would not claim or insist for back wages for the period between the date of dismissal and the date of reinstatement, if he was reinstated in service.

8. For the aforesaid reasons, this application partly succeeds and it is hereby partly allowed. The impugned orders of the Disciplinary Authority, the Appellate Authority and the Revisional Authority, imposing the penalty of removal from service on the applicant are set aside and the respondents are directed to reinstate the applicant within a period of two months from the date of receipt of a copy of this order. The applicant shall not be entitled to back wages for the period between the date of his dismissal and the date of his reinstatement or seniority over others on the basis of his past service, because by this time so many persons must have been promoted and it would not be proper to make any order, in their absence, affecting their seniority. However, the period between the date of dismissal and the date of reinstatement may be considered as qualifying service for the limited purposes of pensionary benefits, if any payable to the applicant after the date of ^{retirement} ~~dismissal~~. No costs.

JK


(K.M. AGARWAL)
Chairman


(S.R. ADIGE)
Member(A)