

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.No.451/91

New Delhi this the 18th Day of May, 1995.

Hon'ble Sh. J.P. Sharma, Member(J)
Hon'ble Sh. B.K. Singh, Member(A)

Sh. Gaya Pershad,
Constable 487/W,
Care of Shri Jagdish Pershad,
Village Rampur Kondhola,
Post Office Rampur,
P.S. Sujanganj,
Distt. Jaunpur(UP). Applicant

(through Sh. Mahesh Srivastava, advocate)

versus

1. The Commissioner of Police,
Police Headquarters,
Inderprastha Estate,
New Delhi.
2. The Addl. Commissioner of Police,
New Delhi Range,
New Delhi.
3. The Dy. Commissioner of Police,
West District,
New Delhi. Respondents

(through Sh. Girish Kathpalia, advocate)

ORDER(ORAL)
delivered by Hon'ble Mr. J.P. Sharma, Member(J)

The applicant was selected and appointed as Constable in Delhi Police on 04.01.1982. He continued to work on the same post while summary of allegations proposing an enquiry was given to the applicant under Section 21 of Delhi Police Act, 1972 for unauthorised absence of the applicant for certain periods, for 15 days in April, 1986, for 8 days in May, 1986, for 11 days in September, 1986; for 32 days in September and October, 1986 and 21 days in November, 1986. This absence from duty is also in addition to certain hours during which the applicant remained

(56)

absent from his regular duty and the summary of allegations served upon this period as 6 months 19 hours 15 minutes. The respondents also commenced ex parte proceedings after appointing an Enquiry Officer as he failed to join duty. The applicant, however, thereafter joined the enquiry on 30.06.1987. Since the applicant pleaded guilty to the aforesaid summary of allegations, the examination of the prosecution witnesses were dispensed with by the Enquiry Officer and on the basis of plead guilty by the applicant a charge was framed on 07.07.1987 with regard to the above period of absence which was of 6 months and 19 hours and including another period of 5 months and 15 hours. The applicant also to rebut the charge examined Sh. Bhagwan Parshad Mishra, advocate as a defence witness and also given the names of two other witnesses one Sh. Jagdamba Parshad Dubey and another but subsequently after examining one witness he did not produce the other two witnesses. He submitted an application on 18.8.87 showing his inability to produce the witnesses. The enquiry officer held the applicant guilty of unauthorised absence holding that the charge has been proved on which the Disciplinary Authority Dy. Commissioner of Police on 12.11.87 gave a show cause notice proposing that why the applicant should not be dismissed from service. The Disciplinary Authority after considering the representation of the applicant imposed the punishment of dismissal from service by the order dated 15.1.88. An appeal against this order was dismissed by the Addl. Commissioner of Police by the order dated 27.9.88. The applicant filed this application on

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16.10.89 but the Registry returned it for removing certain objections and it was refiled on 12.02.91 alongwith an application for condonation of delay giving reasons in MP-1511/91 supported by an affidavit of the applicant.

The reliefs prayed for by the applicant are to quash the order of punishment imposed upon the applicant and that he should be reinstated in service with all consequential benefits.

The respondents on notice contested this application and stated that because of unauthorised absence of the applicant from duty for a number of months, disciplinary departmental proceedings were drawn. The applicant has been fully heard by the Enquiry Officer giving him adequate opportunities as prescribed under Rule 16 of the Delhi Police (Punishment & Appeal) Rules, 1980 and thereafter the Enquiry Officer recorded the finding of guilt against the applicant which was accepted by the Disciplinary Authority and the Appellate Authority passing the impugned orders imposing the punishment of dismissal from service.

The applicant has also filed rejoinder reiterating the facts already stated in the O.A.

We heard the learned counsel for the parties.

MP-1511/91 is for condonation of delay. We have gone through the grounds taken in the M.P. and the affidavit filed by the applicant and we are satisfied that there was sufficient and reasonable cause for the applicant in not refiling this application in the Registry within time. So, the delay in refiling the application is condoned.

On merits the learned counsel for the applicant has taken us to certain facts that there is a violation of principles of natural justice and the interpretation of Rule 16 of the Delhi Police (Punishment and Appeal) Rules, 1980. The learned counsel for the applicant argued that adequate opportunities to produce the defence evidence were not given and that there is nothing on record to justify that the applicant has moved an application in August, 1987. May be, he has right to produce the defence evidence to rebut the charge framed against him. It is also argued by the learned counsel for the applicant that the applicant was not sent for second medical opinion in June, 1987 when he joined in May, 1987 producing a certificate of a private medical practitioner in support of his illness.

We have considered all these points. Firstly, we find that inspite of our order to the respondents, the departmental file has not been produced. The learned counsel for the respondents gave a statement at the Bar that the said departmental file is missing. In view of this, we have to rely on the pleadings on record and the averments made by the

learned counsel for the applicant when the original departmental file is not available. However, we find that though the applicant has taken certain grounds but he has not taken specific plea that how the principles of natural justice have been violated, as to which of the rules or sub-rule of the Delhi Police (Punishment & Appeal) Rules, 1980 has been violated and that the applicant was denied the due opportunities to rebut the charge framed against him. The vague allegations mentioned in the O.A., therefore, cannot help the applicant at all. We find that there is a letter of 24.6.1987 written to the Civil Surgeon, Civil Hospital, 5 Rajpur Road, O.P.L. Delhi to the second medical opinion about the applicant and the medical certificate filed by the applicant was also enclosed with the letter addressed to the Civil Surgeon by the Competent Authority. The contention of the learned counsel for the applicant is that the applicant was not sent for second medical opinion. In view of this, the applicant avoided the second medical opinion himself. Regarding non-examination of certain defence witnesses, the applicant himself on 16.8.87 moved an application to release the two other witnesses who were produced one for want of address and the other unwilling witness. In the original application, there is no averment to the effect that the applicant was forced to move such an application as has been referred to in the Enquiry Officer's report. This contention, therefore, cannot be accepted. The argument should be based on the pleadings made in the O.A.

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There is no violation of principles of natural justice as the applicant has been fully heard even in the orderly room and the detailed orders have been passed by the Disciplinary Authority as well as Appellate Authority covering every point raised by the applicant in the memo of appeal or in reply to show cause notice served upon him. The orders, therefore, are speaking orders.

The learned counsel for the applicant has also stressed that there is violation of Rule 8 of the Delhi Police (Punishment & Appeal) Rules, 1980 inasmuch as an unauthorised absence from duty cannot be deemed to be such a serious misconduct to warrant dismissal. We do agree with the learned counsel on this aspect. The learned counsel rightly tried to explain his unauthorised absence and the charges. He argued that there should have been a second medical opinion regarding the alleged absence due to illness for the period he was away from duty in an unauthorised manner. It may be due to certain failings with the applicant regarding his lack of understanding or may be after affects of illness said to have inflicted the applicant when it is stated that he was mentally deranged. In such a state of affairs it was expected from the respondents particularly with the Appellate Authority to see that the punishment imposed by the Disciplinary Authority should be commensurate with the misconduct established by the Enquiry Officer and accepted by the Disciplinary Authority against the applicant.

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We are also on another point. The summary of allegations is for a period of 6 months and some hours. It means the punishing authority has swayed not only of unauthorised absence but also subsequent to that as held in the charge. Had the punishing authority taken into account a period of 5 months only then there was every probability that the punishment of dismissal may not have been passed by the competent authority. That point has to be reconsidered.

We are also fortified by the judgement of the Full Bench of the Tribunal Volume III page No. 367 in case of K.L. Gupta Vs. U.O.I.&Ors. (OA-2014/90) decided on 21.3.94 where also after considering the matter, the matter was remanded to the Appellate Authority to reconsider the quantum of punishment imposed upon the applicant. There is another case decided by the Hon'ble Supreme Court in case of State Bank of India Vs. & Ors. Vs Samarendra Kishore Endow & Ors. reported in 1994(27) ATC 149. In that case the Hon'ble Supreme Court while considering the gravity of the punishment imposed held that if the punishment is severe against the delinquent then competent authority can review the punishment. We are also on the point that the applicant is a young man of stout health and would have been strayed at particular point of time by certain illness and that his absence might not be deliberate.

In view of the above facts while holding the applicant guilty of the unauthorised absence we remit the matter to the Appellate Authority to consider the quantum of punishment imposed in the light of the above discussion and observations made and the law laid down by the Full Bench of the Tribunal as well as Hon'ble Supreme Court and consider the same sympathetically. In case the Appellate Authority is convinced that a lesser punishment can be made that can be imposed upon the applicant giving him another chance of continue in service without back wages.

With these observations, the application is disposed of with no order as to costs.

(B.K. Singh)

Member(A)

Sharma,

(J.P. Sharma)

Member(J)

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