

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(5)

Regn. No. OA 746/91

Date of decision: 21.02.1992.

Shri Attar Singh

...Applicant

Vs.

Commissioner of Police & Others

...Respondents

For the Applicant

...Shri Shankar Raju,
Counsel

For the Respondents

...Shri Dinesh Kumar,
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. S. GURUSANKARAN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? No
2. To be referred to the Reporters or not? No

JUDGMENT

(of the Bench delivered by Shri S. Gurusankaran,
Administrative Member)

The brief facts of the case are that the applicant was appointed in Delhi Police on 30.9.1975 and was proceeded

against in departmental proceedings for unauthorised

absence vide order dated 3.2.1989 (Annexure A-1), after

being placed under suspension with effect from 19.1.1989.

The Enquiry Officer (E.O.) had come to the conclusion "The

photostat copies of medical papers submitted by the wife

of the defaulter appears to be genuine, but the allegation

that he did not inform the department is proved in ditto

against the defaulter beyond aby doubt. As such the

charge against the defaulter is proved partially*. The

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Disciplinary Authority (D.A.) issued a show cause notice to the applicant along with a copy of the E.O's report. After receiving the reply of the applicant, the D.A. imposed the penalty of dismissal vide order dated 9.7.1990 (Annexure A-5). The applicant submitted an appeal dated 14.7.1990 (Annexure A-6) to the Appellate Authority (A.A.) and the same was rejected by A.A. vide his order dated 14.12.1990 (Annexure A-8). Aggrieved by the same, the applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing the impugned orders of D.A. and A.A. and directing the respondents to reinstate him in service with effect from 6.7.1990 with all consequential benefits including seniority, promotion and continuity of service and to treat the suspension period as spent on duty for all purposes.

2. In his application, the applicant has stated that while posted in Ist Bn. DAP, he was granted medical rest for 10 days with effect from 24.10.1988. However, his condition became critical and he underwent treatment at a Government Hospital with effect from 2.11.1988 to 5.1.1989. But before the applicant could get his fitness certificate from the hospital, the applicant was taken into judicial custody due to being falsely implicated in two criminal cases at Police Station Srinivaspuri and Paharganj. He remained in judicial custody till 18.10.1989 and resumed

duty on 20.10.1989. He was placed under suspension on 19.1.1989 and a departmental enquiry was initiated against him on 3.2.1989 vide Annexure A-1. After examination of 4 P.Ws, charges were framed vide Annexure A-2 alleging that the applicant absented himself with effect from 2.11.1988 without any intimation and the medical papers submitted by him indicated that the same had been managed by him. The applicant's case is that the E.O. has only proved the applicant guilty of not informing the department and as such, partially proved the charges against him. He has submitted that his absence was due to mitigating circumstances and it is apparent from the records that the information about the illness had been communicated to the department along with the medical certificates. He has stated that the competent authority did not make orders regarding grant of medical leave on production of medical certificate, contravening clause 8 of the standing order No.111. The applicant has specifically pointed out that the D.A. had acted illegally by imposing the punishment after agreeing with the findings of E.O., wherein the charge has been partially proved. He has further stated that the D.A. has relied upon the previous record without affording him an opportunity to defend and it has not figured in the charge itself. It is also his case that the D.A. has taken into consideration extraneous matters like the involvement of the applicant in criminal

cases. The other important aspects high-lighted by him are: (1) the D.A. has relied upon the fact of non-submission of fitness certificate by the applicant, when the same has not been made a specific charge in the proceedings (2) the D.A. has presumed that during the period of absence, the applicant was involved in criminal cases and to shield it, he remained on medical rest. (3) the non-production of fitness certificate is barred by estoppel as the applicant had been allowed to rejoin duty. (4) he had not been imposed any minor or major penalty during his 15 years of service.

3. The respondents have filed reply contesting the application. They have taken a preliminary objection that the application is not maintainable as the mandatory provision has not been complied with. They have pointed out that the applicant was warned to be careful/awarded P.D. on as many as 26 occasions, on account of his absence and misconduct. They have also stated that even the wife of the applicant did not know as to which hospital he had gone and the applicant went underground to escape arrest. Further, the applicant did not take any treatment while in jail. They have admitted that the E.O. concluded that the medical papers were genuine, but these papers had been managed to cover his absence since the circumstances do not

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support the conclusion of the E.O. as far as the applicant being sick is concerned. It is their submission that the photo copy of the prescription slips were only received through local police from his wife and no medical certificate had been submitted by the applicant during the proceedings of the D.E. They have stressed the fact that it was actually proved during the D.E. that the applicant was not actually ill and his involvement in a number of cases indicated that during the absence, he was active in pursuing his criminal activities.

4. Both the counsel have given brief written submissions and we have gone through the same. Even though the respondents have taken a preliminary objection about not complying with the statutory provisions, they have not indicated as to what statutory provision has been violated and hence we reject the preliminary objection. The applicant has stated that his previous record has been taken into consideration without making a definite charge. Both in the order (Annexure A-1) initiating the D.E. and the summary of allegations extracted in the findings (page 3 of the Annexure A-3), the fact of his previous record indicating punishment on account of absence on several occasions has been specifically brought out. It is seen from the E.O.s report that the details of his previous absence have been introduced in evidence and PW 1 was also specifically cross-examined on this point. However, we have to agree

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with the contention of the applicant that there has been no specific charge about his past record and there is no finding of the E.O. also on this aspect. The other important aspect brought out in the written submission of the counsel for the applicant is that the D.A. has punished the applicant after disagreeing with the E.O without affording an opportunity to the applicant. We find lot of force in this argument. The D.A. has stated in the show cause notice (Annexure A-4) that he is tentatively agreeing with the findings of the E.O. This amounted to agreeing with the findings of the E.O. that the medical papers submitted by the wife of the defaulter appears to be genuine. Hence, if at all the D.A. wanted to disagree with the findings, he should have given an opportunity to the applicant after indicating the reasons for his disagreement. The failure to do so vitiates the enquiry proceedings and on this score alone, the orders of the D.A. are liable to be set aside. Similarly the orders of the A.A. are also liable to be set aside since this aspect specifically brought out by the applicant in his appeal has been rejected. In view of this, we are not going into the other points raised by the applicant.

5. In the result, the application is allowed and the orders of the D.A. and the A.A. (Annexures A-5 and A-7) are

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set aside. The applicant should be reinstated in service within one month from the date of receipt of a copy of this order. ~~However, this will not preclude the~~ ^{in accordance with law} respondents from proceeding with the enquiry ^{in accordance with law} from the stage of issuing of show cause notice, if they so desire. However, if the respondents decide to proceed with the enquiry, the proceedings shall be completed within a period of 4 months from the date of receipt of a copy of this order. The treatment of period of suspension and the period from the date of dismissal to the date of ~~and other consequential benefits~~ ^{and other consequential benefits} reinstatement ^{shall be decided in accordance with the} rules by the respondents depending upon the outcome of the enquiry, in case they decide to continue the same; otherwise, they will be treated as duty.

There will be no order as to costs.

Gurusankaran
(S. GURUSANKARAN)
MEMBER (A)
21.02.1992

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(P.K. KARTHA)
VICE CHAIRMAN (J)
21.02.1992

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