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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**OA NO. 1270/2004
MA NO. 1081/2004**

New Delhi, this the 19th day of January, 2005

**HON'BLE MR. JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE MR. S.K. NAIK, MEMBER (A)**

Ex. CT Surinder Singh
S/o Sh. Paraswer,
R/o village Masoud, P.S. Su
Distt. Rohtak.

...Applicant

(By Advocate: Shri Sachin Chauhan)

-versus-

1. Govt. of NCT Delhi,
Through Chief Secretary,
New Sachiwalaya,
I.P. Estate.
New Delhi.
2. Lt. Governor,
Govt. of NCTD
Raj Niwas,
Delhi.
3. Commissioner of Police,
PHQ, I.P. Estate,
MSO Building,
New Delhi.
4. Sr. Add. Commissioner of Police (P&T)
PHQ, I.P. Estate,
MSO Building,
New Delhi.
5. DCP DAP 6th Btn.,
Through Commissioner of Police,
New Delhi.

...Respondents

(By Advocate: Shri Rishi Prakash)

ORDEER (ORAL)**Justice V.S. Aggarwal, Chairman:**

The applicant was a Constable in Delhi Police. He faced disciplinary proceedings and following charges had been framed:

"I, Devi Chand, Assistant Commissioner of Police 6th Bn; DAP, charge you Const. Surender Singh No. 7368/DAP that while posted in 6th Bn; DAP, Delhi you were detailed for refresher course vide DD No. 43 dated 31.3.95, 6th Bn; but you did not report in 4th Bn DAP to undergo the said training and thus you were marked absent vide DD No. 67 dt. 6.6.95, with effect from 31.3.95 and since then you remained absent for 6 months, 8 days and 23 hours continuously. Seven absentee notices were sent to you at your residential address with the direction to report/resume your duty immediately and also directed to report to the Medical Officer Incharge, Civil Surgeon, Civil Hospital, Rohtak, Haryana for medical examination in case of your illness but you neither responded to this office nor you. Finding no other alternative, H.C. Jagpal Singh PW1 No. 7108/DAP was detailed to deliver the 8th absentee notice at your address. H.C. Jagpal Singh brought you in the Bn; and you recorded your arrival in DD Rgr. Vide DD No. 38 dt. 9.10.95 stating that you were ill and you did not produce any medical certificate in support of your illness. You remained absent unauthorisedly without any information or prior permission of the competent authority, your record shows that you are a habitual absentee (Appendix A).

The above act on your part amounts to grave misconduct, carelessness, dereliction of duty unbecoming of a Police Officer, in the discharge of your official duties. This renders you liable for departmental action in accordance with the Delhi Police Punishment and Appeal Rules, 1980 and under Section 21 of Delhi Police Act, 1978."

2. The Enquiry Officer thereupon had held him responsible for the said dereliction of duty. The disciplinary authority on 17.9.1996 imposed



a penalty of removal from service on the applicant. He preferred an appeal, which was dismissed on 30.10.1996.

3. By virtue of the present application, applicant seeks to assail the orders passed, which we have referred to above.

4. Along with the Original Application, a Misc. Application has been preferred seeking condonation of delay mentioning that he had wrongly filed a Civil Suit, which was subsequently withdrawn and, therefore, it is claimed that delay in filing of the present Original Application may be condoned.

5. The Original Application as well as the Misc. Application seeking condonation of delay are being opposed.

6. So far as the Misc. Application filed for condonation of delay is concerned, indeed, at the outset, it is not in dispute that it is highly belated from the date the appeal was dismissed. But the applicant has placed on record the fact that he preferred a Civil Suit challenging the said order. It was only dismissed on 10.02.2003. Thereafter, he had preferred a representation, which was rejected and the present Original Application was filed challenging the said order.

7. We do not dispute the plea raised by the respondents that the Civil Court had no jurisdiction to entertain the suit keeping in view the provisions of the Administrative Tribunals Act, 1985. But the law is well settled that while considering as to if delay has to be condoned or not, substantial justice cannot be lost sight of. If, on wrong legal advice, the applicant had approached the Forum, which had no jurisdiction, and



thereafter he has come to the Forum, where the Original Application necessarily had to be filed, and further that he is a Group-D employee, in these peculiar facts, it is not one of those cases where the person concerned was sleeping over his rights and, therefore, the delay should not be condoned. The matter before us contemplates a fact where he was trying to assail the orders but was advised to go to a wrong Forum. It is in this backdrop that we find that it is a fit case to condone the delay.

8. Learned counsel for the applicant, on merits of the matter, urged that previous bad record has been taken into consideration by the Enquiry Officer and, therefore, the findings are vitiated.

9. We do not dispute the proposition that if previous bad record is taken into consideration while imposing the penalty, which is not a part of the charge, one can obviously complain that prejudice is caused to him because fair opportunity to contest pertaining to the fact not in the charge, has been denied.

10. It is true that the Enquiry Officer has taken into consideration the previous bad record, but this is a reasoning. The findings remain that the applicant had derelicted in his duty. The penalty is finally imposed by the disciplinary authority, and it had recorded:

“ Whether the defaulter abstained from duty for avoiding the refresher course or not is not the central issue of the case. The fact that he remained absent for long without information to authority is the main point of the matter. It incidentally on lead to the inference that the absence was obviously used as an instrument for avoiding the course. The observations of EO rendering the preponderance of probability aspect in departmental proceedings can not be treated as out of context.

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In the light of above, I am of the considered view that the delinquent const-bio violated S.O. No. 111 and CCS (Leave) Rules, by willfully remaining absent from duty for half an year without any valid justification. Police job is an arduous duty and requires continuous presence at assigned duties interests of maintenance of law and order which is basic to any society's stability and order. I, therefore, hold that the coiinquent committed a gross misconduct under Delhi Police (Punishment & Appeal) Rules, 1980. In view of the same, I impose the penalty of removal from service upon the delinquent constable Surender Singh, No. 7368/DAP with immediate effect. The absence period be treated as L.W.P. for all interms and purposes."

11. It is obvious from the aforesaid that the disciplinary authority has not taken into consideration the past bad record of the applicant pertaining to absence from duty. In that view of the matter, the applicant indeed can have no grievance because it is ultimately the order of the disciplinary authority, which matters, and the reasoning of the Enquiry Officer loses its thrust and significance.

12. Order 16(xi) of the Delhi Police (Punishment and Appeal) Rules, 1980 reads as under:-

"(xi) If it is considered necessary to award a severe punishment to the defaulting officer by taking into consideration his previous bad record, in which case the previous bad record shall form the basis of a definite charge against him and he shall be given opportunity to defend himself as required by rules."

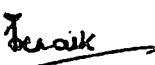
13. Perusal of the same clearly shows that a duty has been cast that if previous bad record has to be considered, it shall form part of the specific charge and the concerned person be given an opportunity to defend himself. Herein, the disciplinary authority, as referred to above


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and re-mentioned at the risk of repetition, has not done so. Resultantly, on that ground, the order of the disciplinary authority does not require to be quashed.

14. In that event, it was urged that the appellate authority has considered the comments of the disciplinary authority without conveying as to what were the same and in that background, prejudice is caused to the applicant. This question has been considered more often than once by this Tribunal and it has been held that comments, which are obtained on the back of the delinquent, could not be considered because the appeal has to be decided on the basis of the material available before the appellate authority. To the same effect, this Tribunal has already passed several orders, one of them being, in the case of **Constable Vijay Kumar vs. Govt. of NCT of Delhi** (OA No. 09/2004) decided on 27.09.2004.

15. For these reasons, though we ~~do~~^{but} have little ground to interfere in the order of the disciplinary authority, the order of the appellate authority is set aside and it is directed that appellate authority may pass a fresh order in accordance with law.


(S.K. Naik)
Member (A)


(V.S. Aggarwal)
Chairman

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