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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.1399/2004

New Delhi this the 14th March, 2005

HON'BLE SHRI JUSTICE V.S.AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER(A)

Kanchan Singh (4096/DAP)
S/o Shri Lakhi Singh
R/o A-2/228, Amar Colony,
East Gokulpuri, Delhi-110094
(By Advocate: Shri Shyam Babu)

...Applicant.

Versus

1. Government of NCT of Delhi
through its Chief Secretary,
Players Building, I.P.Estate,
New Delhi.
 2. Joint Commissioner of Police (Armed Police),
Police Headquarters, I.P.Estate, New Delhi.
 3. Deputy Commissioner of Police,
5th Battalion, DAP, Kingsway Camp,
Delhi.
(By Advocate: Shri Ajesh Luthra)
- ...Respondents.

ORDER (ORAL)

By Shri S.A.Singh, Member (A):

The applicant, who is Head Constable in Delhi Police, had been issued a charge sheet by the Respondent No.3. He is aggrieved by the impugned order imposing a penalty of forfeiture of one year's approved service permanently. In addition to the impugned order, he seeks to quash and set aside the enquiry report dated 9.1.2003 with consequential benefits.

2. The main charge against the applicant is that he remained absent from duty on four different occasions willfully and unauthorisedly for a period of about one year.
3. The applicant while not denying his absence from duty has pleaded that his absence was not willful and intentional because he had fallen ill. His absence has been accepted by the respondents because the veracity of the medical certificate has not been questioned by the disciplinary authority nor by the appellate authority. The respondents in their counter have also agreed that on the four different occasions he had submitted the medical papers on resumption of his duties.

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4. The applicant further added that Rule 25(2) of the CCS (Leave) Rules, 1972 is not applicable in his case because it was not willful absence from duty nor would Rule 19 be applicable in his case because he is not seeking regularisation on grounds of medical certificate.

5. The averments of the applicant were vehemently contested by the respondents arguing that he had been punished for not availing prior permission of the competent authority as required by S.O.No.111 and CCS (Leave) Rules, 1972. Further he had absented himself on four different occasions for a long period without any intimation. If he was unwell, he should have informed the Department and got the absence authorized from the competent authority in terms of Rule 19 of the CCS (CCA) Rules to avail of the medical rest at home. The contention of the applicant that as the respondents had not questioned the medical certificate it would amount to condoning the period of absence is incorrect. Absence without permission in a disciplinary force was itself very grave misconduct. However, on the representation of the applicant the appellate authority on its own had reduced the penalty of forfeiture of three years' approved service permanently to forfeiture of one year approved service permanently.

6. We have heard the counsel of the parties and gone through the records. The main argument of the applicant for quashing of the impugned order is that once his medical certificate was not questioned, then he cannot be considered to be unauthorizedly absent because he was prevented to join duty by his illness. Consequently his absence was not willful and his period of absence should be regularized in the normal course and not under Rule 19 because he was not seeking regularization on medical certificate.

7. We cannot accept the logic of the arguments for the reason that the ground for absence is medical incapacitation in support of which he has produced medical certificates. The regularisation of the absence period, has to be on medical grounds, which would be under Rule 19. The competent authority did not regularize the period of absence but decided to proceed under Rule 25 (2) of Delhi Police (Punishment & Appeal) Rules for unauthorized absence. We can see no infirmity in this for the reason that Rule 19(5) stipulates that grant of medical certificate by itself does not confer any right to leave.

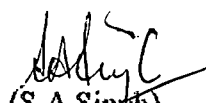


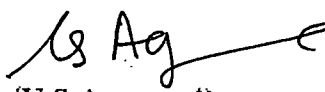
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8. The applicant has also pleaded that he was hit by double jeopardy because the disciplinary authority imposed a penalty of forfeiture of three years approved service in addition to reduction of pay. This argument would not hold because the appellate authority has modified the penalty of forfeiture of three years' approved service permanently ^{to} one year's approved service permanently. The doctrine of merger would apply as the order of the disciplinary authority would merge with the order of the appellate authority.

9. In view of the forgoing, the OA is without merit and is accordingly dismissed.

No costs.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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