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**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**OA No. 1563/2004**

New Delhi, this the 18<sup>th</sup> day of February, 2005

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

Ex. Const. Mohd. Sahun No. 828/West,  
Son of Sh. Naseeba,  
R/o Vill. Buraka, P.S. & P.O. Hathin,  
Distt. Faridabad, Haryana.

...Applicant

(By Advocate: Sh. Sama Singh)

-versus-

1. Govt. of NCT of Delhi through  
Chief Secretary,  
Delhi Secretariat,  
New Delhi-110 002.
2. Commissioner of Police,  
Delhi Police Headquarters,  
M.S.O. Building, I.P. Estate,  
New Delhi - 110 002.
3. Jt. Commissioner of Police (Southern Range),  
Delhi Police Headquarters,  
MSO Building, I.P. Estate,  
New Delhi - 110 002.
4. Addl. Deputy Commissioner of Police,  
West District, New Delhi  
Rajouri Garden,  
New Delhi.

...Respondents

(By Advocate: Shri Ram Kwar)

**ORDER**

**Justice V.S. Aggarwal, Chairman:**

The applicant was a Constable in Delhi Police. He was served with




the following charge:

"I Inspr. Dharm Vir, charge you Constable Mohd. Sahun, No. 828/W PIS No. 28940787 that you were supposed to report for duty at 8.00 AM on 25.04.2000 but you did not report for duty nor sent any information about your whereabouts to the police station. You were marked absent vide D.D. No. 8-B, dated 25.4.2000, PS Hari Nagar. Three Absentee Notices vide No. 10107/-9 SIP/West, dated 31.08.2000, 120201/SIP/West dated 12.10.2000 and 12946-47/SIP/West dated 02.11.2000 were issued to you with the direction to report for duty at once failing which departmental action will be initiated against you. Out of three absentee notices. Notice dated 01.11.2000 was served upon you through S.P. Faridabad, Haryana on 27.11.2000, but even after the receipt of the absentee notice you neither bothered to resume duty nor sent any intimation/information regarding your unauthorized absence and you remain absent till 05.04.2001 after absenting your self for 11 months 20 days 9 hrs. and 30 minutes.

Your previous absentee record also shows that you are a habitual absentee and an incorrigible type of constable. You remained absent earlier on seven occasions and did not mend your ways of being absent unauthorisedly even after warning, censure, one major punishment and dies non.

The above act on the part you constable Mohd. Sahun, No. 828/W amounts to gross misconduct, negligence, carelessness, towards official duties and unbecoming of police officer which render you liable to the dealt with departmentally under the provision of Delhi Police (Punishment and Appeal) Rules, 1980."

2. Enquiry Officer had submitted a report. On appraisal of the same, the disciplinary authority, vide order of 15.12.2001, recorded that the applicant is not fit to be retained in a disciplined Force like Delhi Police.



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He was dismissed from service. He preferred an appeal, which was dismissed by the Joint Commissioner of Police on 17.6.2003.

3. By virtue of the present Original Application, the applicant seeks to assail the orders passed by the disciplinary authority as well as the appellate authority.

4. The Original Application is being contested.

5. We have heard the parties' learned counsel and have seen the relevant records.

6. Learned counsel for the applicant asserted that he had applied for the supply of documents, which were not supplied. Resultantly, prejudice has been caused to the applicant. He drew our attention towards the application of 3.2.2003. In the said application, copy of which is on record, the applicant had stated that he wants to file an appeal but no documents relating to departmental enquiry, excepting two documents, have been supplied, therefore, they should be supplied.

7. At the outset, this contention has to be rejected because normally documents, if any, required should be asked for during the course of the disciplinary proceedings. Otherwise also, no details of the documents required and their relevancy has been mentioned as to how the same are required so as to facilitate filing of the appeal. In the absence of any such facts having been mentioned, we have no hesitation in rejecting the said contention.

8. In that event, it was asserted that the past conduct of the applicant has been taken into consideration, which could not have been



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so considered. Resultantly, the penalty order should be quashed. However, as referred to above, as is apparent from perusal of the charge that has been framed, it is clear that the past conduct has been mentioned in the charge that he is a habitual absentee. It is not shown that any prejudice, in this regard, is caused to him. Resultantly, even on this contention, the applicant cannot be permitted to succeed.

9. The main submission made was that the father of the applicant had died in January, 2000. He fell sick and, therefore, was absent from duty. Learned counsel, in support of his argument, relied upon the medical certificates that have been produced on record. One such medical certificate is at page 30 of the record. This certificate indicates that the applicant is shown to be suffering from 'Kshaya Rog', which is seemingly indicating tuberculosis. Another certificate, copy of which is dated 7.8.2001 issued by the Medical Officer, Govt. Ay. Dispensary, Malai (Faridabad), indicates that he suffered from 'Jwar miyadi' i.e. Typhoid. The third medical certificate is of 5.1.2002 issued by Dr. M.S.Khan, U.R.M.P. Reg. No. 10369, Hathin (Faridabad), which indicates that applicant suffered from 'Mirgi Daura' i.e. Epilepsy. These medical certificates clearly show that inconsistent versions are forthcoming from the applicant. In the grounds of appeal before the appellate authority, the applicant had only pleaded that he suffered an attack of Epilepsy. Taking stock of the inconsistent versions that have been put forward by virtue of the medical certificates, indeed, one has no hesitation in concluding that the applicant is suppressing the truth and cannot be looked upon as a person who would do anything for the interest of justice.



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10. Otherwise also, there was no leave application that has been produced. A person cannot continuously absent and that too for almost a year without the leave being sanctioned. The applicant made no attempt in that direction.

11. The only other submission made was that the penalty awarded is disproportionate to the alleged dereliction of duty.

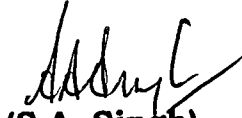
12. Learned counsel, in this regard, relied upon the decision of the Supreme Court in the case of **Ex-Naik Sardar Singh vs. Union of India & Ors.**, AIR 1992 (SC) 417. Therein the Army Jawan had extra 7 bottles of rum within the area under prohibition. The Supreme Court held that the penalty should be awarded proportionate to the dereliction of duty. That was not a case of continuous absence for a long period and, therefore, it must be held to be distinguishable. In fact, in this regard, one can conveniently state that it goes with the facts and circumstances of each individual case. A few copies of the orders passed by the Commissioner of Police in certain other cases have also been pointed to indicate that in those cases, lesser penalty had been awarded.

13. We have no hesitation in concluding that it is the facts of each particular case that matters. There is no hard and fast general rule that can be provided in this regard. It cannot be that a constable, who remains absent for more than a year, can still contest that penalty awarded is excessive. In a disciplined Force, long absence, particularly keeping in view the past record, cannot be just but viewed seriously. It was a grave dereliction of duty/misconduct. Therefore, we find no reason to conclude that in the facts of the case, the penalty awarded was excessive.

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14. No other argument was advanced.

15. For these reasons, Original Application, being without merit, fails and is dismissed.



**(S.A. Singh)**  
Member (A)



**(V.S. Aggarwal)**  
Chairman

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