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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No.317/2004

This the 28th day of July, 2004

HON'BLE SHRI V.K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Ex. HC Bal Mukund Meena No.1145/Comm.
S/O Parama Nand Meena,
R/O V. & P.O. Mandholi,
P.S. Neem Ka Thana,
Distt. Sikar, Rajasthan.

... Applicant

(By Shri U.Srivastava, Advocate)

-Versus-

1. Govt. of NCT of Delhi through
Chief Secretary, Govt. of NCT of Delhi,
5, Sham Nath Marg, New Delhi.
2. Commissioner of Police,
Police Headquarters,
I.P.Estate, New Delhi.
3. Addl. Commissioner of Police,
Police Control Room & Communication,
Delhi.
4. Deputy Commissioner of Police,
Communication,
Delhi.

... Respondents

(By Shri Om Prakash, Advocate)

ORDER (ORAL)

Hon'ble Shri V.K. Majotra, Vice-Chairman (A)

Applicant has challenged penalty of dismissal imposed upon him in disciplinary proceedings against him. The brief facts of the case are that while the applicant was supposed to report for duty on 8.10.2000 at North East District Control Room, he neither resumed duty nor did he send any information about remaining absent. An absentee notice was sent to his residence, Village & Post Office Mandholi, which returned with the remarks, "PRAPT KARTA GHAR PAR NAHIN MILA ATHAWAPIS". Applicant resumed

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duty on 30.11.2000 after an absence of 54 days. He submitted an application dated 30.11.2000 stating that on 8.10.2000 he fell seriously ill, went to his native place and informed the PA to DCP/N-East Distt. on telephone about his illness on 9.10.2000. He submitted medical papers issued by a private doctor Naimuddin Khan, Neem Ka Thana after resuming duty. In the chargesheet respondents have described several episodes of applicant's absence from duty to indicate that he was a habitual absentee and did not bother to inform the department about his whereabouts and remained absent at his own will from time to time.

2. The learned counsel of applicant Shri U.Srivastava submitted that prior to initiating the departmental enquiry proceedings against the applicant, a show cause notice dated 22.6.2000 was issued to the applicant with the proposal why the absence period should not be treated as not spent on duty. It was later on withdrawn by the respondents on 6.2.2001 on administrative grounds only by a non-speaking and non-reasoned order. Later on respondents issued the chargesheet on the basis of which he has been imposed the punishment of dismissal from service treating the absence from 8.10.2000 to 30.11.2000 as period not spent on duty. The learned counsel submitted that when the earlier show cause notice has been withdrawn without specification of any reasons and without prejudice to further action, a fresh chargesheet could not have been issued to him. He further relied on Amar Chand & Ors. v. Joint Commissioner of Police & Ors., 2002 (3) SLJ (CAT) 448.

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3. The learned counsel of respondents stated that there was no bar against proceeding against the delinquent in such a case when he has been given full opportunity of defence in the disciplinary proceedings against him.

4. Admittedly, respondents had withdrawn the earlier show cause notice dated 26.12.2000 on administrative ground vide order dated 6.2.2001. Thereafter the disciplinary proceedings against the applicant were resorted to. Respondents have also admitted the contents of respondents' circular dated 28.4.1993 to the following effect :

"The disciplinary authorities while withdrawing or dropping penalty proceedings do not specify reasons for the decision. Such order devoid of cogent reasons for withdrawing or dropping the action has resulted in benefit to the defaulter. Your attention is invited to decision of the CAT which reads that "the stipulation in the CCS (CCA) rules, 1965, that a fresh charge sheet can not be issued against the defaulter unless reasons for cancellation of the original charge sheet are appropriately mentioned and it is duly stated in order that the proceedings were being dropped without prejudice to further action, which could be taken in the case, hold good even for inquiries under the Delhi Police (Punishment & Appeal) Rules, 1980."

5. We have considered the rival contentions.

6. While respondents had withdrawn the earlier show cause notice on the same charge as contained in the disciplinary proceedings against the applicant without indicating that the same was being withdrawn without prejudice to any further action, yet the applicant was

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proceeded against and imposed upon the severest penalty of dismissal from service, the case is fully covered by respondents' own instructions dated 28.4.1998 and the orders in the case of Amar Chand (supra). In that case, it was held as follows:

"17. On the facts and circumstances of this case and in the light of the foregoing discussion, we are of the considered view that the fresh departmental enquiry conducted against the applicants after withdrawing the show cause notice without giving specific reasons and without reserving the right or liberty to order fresh enquiry is patently violative of the provisions of the aforesaid note No.9 below Rule 15 of the CCS (CCA) Rules, 1965 which are made applicable to the departmental enquiries under the Delhi Police (Punishment & Appeal) Rules, 1980 by the decision of this Tribunal dated 31.1.1992 in Harbhajan Singh's case (supra) and the respondents' own circular dated 28.4.1993 in (Annexure F) noted earlier. Such an action is not sustainable under the law."

7. In result, the impugned orders dated 9.10.2001 and 23.12.2003 awarding penalty of dismissal from service, are quashed and set aside. Respondents are directed to reinstate the applicant forthwith. He shall be entitled to consequential benefits such as, seniority and consideration for due promotions, but not arrears of pay.

8. The OA is allowed in the above terms. No costs.

S. Raju
(Shanker Raju)
Member (J)

V. K. Majotra
(V. K. Majotra)
Vice Chairman (A)
28.7.04

/as/