

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 1337/92
T.A. No.

199

(14)

DATE OF DECISION 14-10-97

Hari Prakash

Petitioner

Shri Shyam Babu

Advocate for the Petitioner(s)

Chief Secretary
Delhi Admn. & Ors

Respondent

Shri Vijay Pandita

Advocate for the Respondent(s)

CORAM

The Hon'ble

Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble

Shri R.K. Ahooja, Member (A)

1. To be referred to the Reporter or not? ☒
2. Whether it needs to be circulated to other Benches of the Tribunal? ☒

L. Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

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O.A. 1337/92

New Delhi this the 14 th day of October, 1997

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri R.K. Ahooja, Member(A).

Hari Prakash,
S/o Shri Hoshier Singh,
R/o Vill & PO - Poothkalan,
PS - Sultanpuri,
Delhi.

... Applicant.

By Advocate Shri Shyam Babu.

Versus

1. Union of India through
Delhi Administration, Delhi
through its Chief Secretary,
5, Sham Nath Marg,
Delhi.
2. Deputy Commissioner of Police,
Police Control Room,
Delhi.
3. Addl. Commissioner of Police
(Operations), Delhi, Police
Headquarters, I.P. Estate,
New Delhi.
4. Commissioner of Police, Delhi,
Police Headquarters, I.P. Estate,
New Delhi.

... Respondents.

By Advocate Shri Vijay Pandita.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the orders passed by the respondents dated 8.2.1990 dismissing him from service and rejection of his appeal by the appellate authority by order dated 18.7.1990 and revision petition by the revisional authority by order dated 22.11.1991.

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2. The brief facts of the case are that the applicant while working in the Delhi Police had applied for two days casual leave from 2.8.1989 to 3.8.1989 and he was due back on 4.8.1989, but he did not turn up and thus he was marked absent. Two absentee notices were sent to the applicant admittedly on 14.8.1989 and 13.8.1989 but he did not report for duty. According to the respondents, third absentee notice of 6.9.1989 was also sent to his residential address as well as by registered post but the notices dated 14.8.1989 and 13.8.1989 were served on the applicant. The applicant was thereafter placed under suspension on 20.10.1989 and disciplinary proceedings under Section 21 of the Delhi Police Act, 1978 were ordered to be conducted against him.

3. The applicant submits that on 30.10.1989, Shri Om Prakash, Inspector was appointed as Inquiry Officer to conduct the disciplinary proceedings against the applicant. He has submitted that the Inquiry Officer served upon him a memo of Inquiry and the summary of allegations dated 29.11.1989 and required him to appear before him on 1.12.1989 which was in total disregard of Rule 16(i) of the Delhi Police (Disciplinary and Appeal) Rules, 1980 (hereinafter referred to as 'the 1980 Rules') as seven days time had not been given for his first appearance before the Inquiry Officer. He has also assailed the ex-parte order passed against the applicant which he claims is arbitrary and against the provisions of the 1980 Rules. He submits that the Inquiry Officer ought to have given him another opportunity to appear before him and thereafter conduct the inquiry. He has also submitted that on 1.12.1989 the Inquiry Officer had examined three prosecution witnesses (PWs) and he had not been given reasonable opportunity to produce his defence witnesses and, therefore, the learned counsel has submitted that the principles

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of natural justice have been violated in addition to Rule 16(i) of the 1980 Rules. Regarding the ex-parte proceedings held by the Inquiry Officer, it has also been stated that this is not in accordance with Rule 18 of the 1980 Rules. The other main allegation against the Inquiry Officer is that the charge against the applicant was one of unauthorised absence from duty whereas the Inquiry Officer had gone beyond that and had used his personal knowledge when he inspected the applicant's home regarding his running an office as property dealer which also the learned counsel for the applicant submits is improper and against the rules. He has relied on **Satbir Singh Vs. Delhi Administration & Ors.** (1996(3) SLJ (CAT) 388) **State of Punjab Vs. M.S. Cheema and Ors.** (1992(1) SLR 137 (P&H High Court)).

4. The respondents in their reply have controverted the above allegations. They have also taken a preliminary objection that the O.A. is hopelessly time barred. They have submitted that after two days' casual leave, the applicant was due back on 4.8.1989. As he had not turned up, three absentee notices were sent, out of which two dated 14.8.1989 and 13.8.1989 were served upon the applicant against proper receipts. However, the applicant did not report for duty nor send any information to the Department in this regard. They have submitted that the DE proceedings were entrusted to Shri Om Prakash, Inspector who summoned him several times but he did not join the DE proceedings nor resumed his duty. The Inquiry Officer then contacted him personally at his place to find out the truth and under what circumstances the applicant had not resumed his duty. They have submitted that the Inquiry Officer had noticed that the applicant had started a business as 'property dealer' along with his younger brother and had office furniture, etc. They have further submitted that the Inquiry Officer had verbally asked him to join

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the DE proceedings and resume his duty and the applicant had promised to follow the directions by stating that he would be present on 1.12.1989 but he did not turn up. They have stated that the summary of allegations had been served upon the applicant on 29.11.1989 and under Rule 16(i) of the 1980 Rules, he should have submitted his written statement within seven days. He had admitted his fault and given his written statement to the Section Officer on the same date. After receiving the written statement, the Inquiry Officer had fixed next date i.e. 1.12.1989 as per the written statement of the applicant.

5. The respondents have produced the DE file pertaining to the applicant in which we find that there is a statement of the applicant dated 29.11.1989 that he will be present in the office of Shri Om Prakash, Inspector/Inquiry Officer on 1.12.1989. There is also a statement of the applicant dated 29.11.1989 in which he has stated that ~~निवेदन है कि मेरे से गलती हो गयी है~~ (It is submitted that I have committed a mistake). In this statement, he has gone further to state that after his leave, he had not sent the medical certificate and his left hand was injured on 21.9.1988 in a gas cylinder explosion which was operated. The respondents have submitted that the Inquiry Officer had verbally asked the applicant to join the DE proceedings and resume his duty and he had promised to do so, but he did not turn up on 1.12.1989. On that date, the Inquiry Officer had obtained the orders of the disciplinary authority and completed the DE proceedings holding the defaulter guilty of the charge. The disciplinary authority in the impugned order dated 8.2.1990 has also stated that the applicant has committed gross misconduct being a member of the disciplined force by the above acts and he has also violated the CCS (Conduct) Rules, 1964 by indulging in a business as property

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dealer and running absent from duty. He has also stated that moreover he is no more interested to serve in Delhi Police. In the circumstances, the disciplinary authority dismissed the applicant from service. The appellate authority in his order dated 18.7.1990 has stated that he has considered the entire records of the disciplinary proceedings and found that the applicant had been given opportunities to initially report for duty and thereafter to join the proceedings but he did not avail of the same. The appellate authority has, therefore, dismissed the appeal upholding the punishment of dismissal passed by the disciplinary authority. Shri Vijay Pandita, learned counsel, has, therefore, submitted that the disciplinary proceedings have been held in accordance with the rules and the applicant had been given reasonable opportunity to defend his case which he had not availed of. He relies on the judgement of the Supreme Court in **S.K. Singh Vs. Central Bank of India** (1996(6) SCC 415 and **B.C. Chaturvedi Vs. Union of India** (1995(6) Scale 188).

6. We have carefully considered the records and the submissions made by the learned counsel for the parties as well as the cases relied upon them.

7. The first ground taken by Shri Shyam Babu, learned counsel for the applicant is that there is violation of Rule 16(i) of the 1980 Rules inasmuch as the applicant had not been given seven days time to submit a written report indicating whether he admits the allegations or not. In this case, the applicant has himself stated that the Inquiry Officer served upon him a memo of inquiry and the summary of allegations to appear before him on 1.12.1989. From the DE proceedings file submitted by the respondents it is seen that the applicant had submitted a note on 29.11.1989 that he will appear on 1.12.1989 before the

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Inquiry Officer. Further, as mentioned above, on the same date the applicant had also given a statement which is available on the record in which he has stated that he has committed a mistake. He has also referred to the fact that his left hand was injured by the explosion of a Gas cylinder on 21.9.1988. It is relevant to note that in the summary of allegations as well as in the facts submitted by the applicant himself, it is stated that he had proceeded for two days casual leave w.e.f. 2.8.1989 and he was due back on 4.8.1989. However, admittedly he had not turned up for duty upto 19.10.1989 and he had been placed under suspension from 20.10.1989. The fact that he had got injured on 21.9.1988 does not appear to be relevant or in any way absolve him from reporting for duty after the leave period on 4.8.1989. In the summary of allegations issued to the applicant on 29.11.1989, it has been stated by the Inquiry Officer that he had been informed by the applicant that he will appear before him on 1.12.1989. This fact has also been found correct from the statement given in writing by the applicant on 29.11.1989. Rule 16(i) of the 1980 Rules provides that the contents of the summary and other documents shall be explained to the defaulter and he shall be required to submit to the Inquiry Officer a written report within seven days, indicating whether he admits the allegations and if not, whether he wants to produce defence evidence to refute the allegations against him. Taking into account the provisions under Rules and the facts in the present case, we do not find any merit in the submissions made by Shri Shyam Babu, learned counsel for the applicant, that the applicant has not been given the statutory seven days time to submit his defence. The applicant has himself submitted in writing that he would appear in the disciplinary proceedings on 1.12.1989. From the records, it is also evident that the applicant was aware that the inquiry proceedings were being held against him. He

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Therefore, it cannot be held that he had not been afforded ample opportunities to be heard before the Inquiry Officer which he did not choose to avail of. There was nothing wrong in ~~in~~^{the} the Inquiry Officer's report where he has stated the facts and that on receiving the summary of allegations on 29.11.1989, the applicant had handed over his admission in writing to him. It was vehemently argued by the learned counsel for the applicant that even if there is an admission, the respondents cannot rely upon it which also cannot be accepted. However, In this case, ex-parte departmental proceedings have been held against the applicant under Rule 18 of the 1980 Rules. Therefore, even if the statement made by the applicant that he had made a mistake is not taken as an admission, the Inquiry Officer had proceeded with the case ex parte after taking the prior approval of the disciplinary authority, when the applicant failed to show up for duty ~~and~~^{of at 12.} of the disciplinary enquiry and there is no legal infirmity on this account also.

8. In this case, the main charge against the applicant was that he had been absent from duty after taking leave for two days w.e.f. 4.8.1989. Shri Shyam Babu, learned counsel, has strenuously argued that because the applicant had got injured by the explosion of the Gas cylinder on 21.9.1988, therefore, on medical grounds he was unable to resume his duty. There is, however, no doubt also from the records that the applicant had himself agreed that he would appear before the Inquiry Officer on 1.12.1989 and he was on duty prior to his taking two days Casual Leave in August, 1989. As the applicant had been charged for being unauthorisedly absent for the period from 4.10.1989 to 19.10.1989, the contention of the learned counsel that the applicant could not resume his duty because he was injured on

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21.9.1988 due to the explosion of the Gas cylinder, ²² which incident took place more than one year before the applicant had proceeded on two days casual leave with effect from 2.8.1989 is without any basis and merit. This argument is rejected.

9. Shri Shyam Babu, learned counsel, has submitted that the charge was only that of unauthorised absence whereas the inquiry officer had gone beyond that and used his personal knowledge about the applicant running a business as a property dealer. The Inquiry Officer has no doubt referred to the fact that he had found the applicant involved in property business along with his younger brother during his visit to the village of the applicant and had referred to it in the report that the applicant was not in a mood to serve in Delhi Police and, therefore, he had recommended that his name be struck off from the roll of the Police department. The impugned order passed by the disciplinary authority has also referred to the applicant indulging in property business which had resulted in his being absent from duty. From the facts narrated above, it is seen that there is no explanation, let alone satisfactory explanation from the applicant himself as to why he did not report back for duty after his leave w.e.f. 4.8.1989. It is settled law that the Court/Tribunal may interfere where the disciplinary proceedings held against the delinquent officer are, inter alia, inconsistent with the Rules or in violation of the principles of natural justice or perverse, but the Tribunal cannot embark upon appreciation of evidence to substitute its own finding of fact for that of the disciplinary authority. In this case there is sufficient evidence to show that the applicant was unauthorisedly absent from duty. Merely because the Inquiry Officer has stated that when he had visited the applicant's village he had found the

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applicant in his office dealing with property business and ~~then~~ that as a reason as to why he thought the applicant was not in a mood to serve in Delhi Police, cannot, in the circumstances of the case, vitiate the entire disciplinary proceedings. As mentioned above, the applicant himself has not given any reason as to why he did not resume duty. Considering the explanation given by the applicant and the totality of the facts and circumstances of the case, including the nature of the charges, we are not inclined to interfere in the matter on this ground alone, especially when no prejudice is caused. (see the observations of the Supreme Court in B.C. Chaturvedi Vs. Union of India (Supra), Orissa Mining Corporation and Ors. Vs A.C. Prusty (JT 1996(10) SC 571), N. Rajarathnam Vs. State of Tamilnadu (1993(1) SLJ 10), State Bank of Patiala Vs. S.K. Sharma (1996(3) SCC 364)). In the circumstances of the case and in the light of the Supreme Court cases, the cases relied upon by the applicant cannot assist him, nor do we find any merit in the other arguments advanced on behalf of the applicant. The observations of the Supreme Court in State of U.P. and Ors. Vs. Ashok Kumar Singh & Ors. (1996(1) SLR 291) that the High Court had exceeded its jurisdiction in modifying the punishment order of removal from service imposed on the respondent, where the respondent had absented himself from duty without leave on several occasions are also relevant to the facts in the present case.


10. Apart from the merits of the case, we find that the appellate authority had dismissed the applicant's appeal by order dated 18.7.1990. Thereafter, the applicant had filed a revision petition which has been referred to in the impugned order dated 22.11.1991. The revisional authority has stated that the

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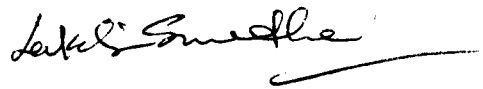
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revision petition has been filed after the period of limitation as provided in P.P.R 16.32 and the revision petition was dismissed. This O.A. has been filed impugning the disciplinary authority's order and the appellate authority's order in May, 1992. Therefore, in the facts of the case, the application is also liable to be dismissed on the ground of limitation u/s 21 of the Administrative Tribunals Act, 1985.

11. For the reasons given above, we find no good grounds justifying any interference in the matter and the application is dismissed both on merits and limitation. No order as to costs.


(R.K. Anooja)
Member (A)

SRD


(Smt. Lakshmi Swaminathan)
Member (J)