

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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O.A. No. 473/92

New Delhi, this the 21st day of April, 1997.

Hon'ble Mr. Justice K.M. Agarwal, Chairman
Hon'ble Mr. K. Muthukumar, Member (A)

Ex. Const. Jagir Singh, No. 1345/N, (880/P),
S/o Shri Pyare Lal Talee,
R/o Village: Baroli P.O. Narain Garh,
Distt. Ambala (Haryana). Applicant
(By advocate: Shri Shankar Raju)

Versus

1. Additional Commissioner of Police,
Northern Range, Delhi,
Police Headquarters, M.S.O. Building,
New Delhi.
2. Additional Deputy Commissioner of Police,
North District,
Civil Lines, Delhi. Respondents

(By advocate: Shri Arun Bhardwaj)

O R D E R (ORAL)

HON'BLE MR. JUSTICE K.M. AGARWAL, CHAIRMAN

By this application under Section 19 of the Administrative Tribunal's Act, 1985, the applicant prays for reinstatement in service as a constable after quashing the impugned order of removal dated 20.2.90 (Annexure A-4) and the appellate order confirming the same.

The applicant was appointed as a constable in Delhi Police. Learned counsel for applicant orally submitted that it was in the year 1967. He was placed under suspension on 10.1.89 and subjected to departmental inquiry for unauthorised and wilful absence

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✓ during the year 1988 and during 1989. The charge was found proved and accordingly punishment of removal from service was imposed by the disciplinary authority, which was affirmed in appeal by the appellate authority. Being aggrieved, the applicant has preferred this application for the aforesaid relief.

During the course of arguments today, an undertaking has been submitted by the applicant in the form of affidavit saying that if he is offered reinstatement in service, he would not insist for back wages from 20.2.90 till today i.e. 21.4.97, except reserving his right to seniority and pension.

Ld. counsel for respondents resisted the prayer for reinstatement on the ground that the period of unauthorised absence was very long and on the further ground that the applicant was habitual absentee.

On going through the findings (Annexure A-3) recorded by the Inquiry Officer, we find that on the basis of daily diary, the period of applicant's absence between 26.10.88 and 31.10.88, the applicant remained absent for 6 days and 15 minutes, between 2/3.11.88 and 9/10.12.88, the period of absence was that of one month, 6 days, 19 hours and 5 minutes and between 10/11.12.88 and 24.1.89, the period of absence was one month, 15 days, 2 hours and 30 minutes and from 28.1.89 till the date of recording the finding, he continued to remain absent. We are informed that after being suspended on 10.1.89, the applicant continued to remain under suspension till the conclusion of inquiry and, therefore, the period of absence between 28.1.89 till the date of findings recorded in the inquiry report, deserves to be overlooked. The total period of unauthorised absence between 26.10.88 and 24.1.89 does not appear to exceed

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a period of three months. As informed by the ld. counsel for applicant, the applicant was continuously in service since the year 1967. It also does not appear that any time before 26.10.88, the applicant used to remain absent unauthorisedly. May be, due to some compelling reasons, he could not be regular in service between 26.10.88 and 24.1.89. In fact, the period between 10.1.89 and 24.1.89 also deserves to be overlooked because this period of absence might be due to the fact that the applicant was under suspension.

In the light of these facts, we are of the view that the extreme penalty of removal from service is excessive, looking to the gravity of the misconduct alleged. Rule 8 of Delhi Police (Punishment and Appeal) Rules, 1980 lays down the principles for inflicting penalties. Clause (A) of rule 8 says that the punishment of dismissal or removal from service shall be awarded for the act of grave misconduct rendering him unfit for police service. In view of this and in the light of the fact that the applicant has given before us an undertaking today that he would not claim back wages, we are of the view that it would serve the unserved justice if the applicant is directed to be reinstated in service without any back wages from the date of suspension till the date of his reinstatement. So far as seniority is concerned, we are of the view that by now so many constables might have been promoted and if the original seniority of the applicant is restored, it may lead to unnecessary complications and upsetting of the promotions already made and, therefore, we do not think it proper to give any direction as to seniority of the applicant. However, for purposes of pension, the period between the date of suspension to the date of reinstatement shall be regularised and treated as

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qualifying service for purposes of pension.

In the result, this application partly succeeds and it is hereby partly allowed. The applicant shall be reinstated in service within a period of two months from the date^{of} receipt of copy of this order. The applicant shall not be entitled to any back wages for the period between 10.1.89 to the date of reinstatement nor is he entitled to claim any seniority so as to upset the promotions etc. made in the meantime by the department. However, for purposes of pension, the period between 24.1.89 to the date of reinstatement shall be treated as qualifying period of service for the purpose of pensionary benefits.



(K.M. AGARWAL)
CHAIRMAN



(K. MUTHUKUMAR)
MEMBER (A)

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