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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.**

O.A./XXX. No. 579/1992

Decided on: 5-6-97

Shri Jagbir SinghApplicant(s)

(By Shri Shanker Raju Advocate)

Versus

The Additional Commissioner of Police & AnotherRespondent(s)

(By Shri Anoop Bagai Advocate)

CORAM:

THE HON'BLE SHRI B.C. SAKSENA, VICE CHAIRMAN

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter *75*
or not?

2. Whether to be circulated to the other
Benches of the Tribunal?

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(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. 579 of 1992

New Delhi this the 5 day of ~~April~~ ^{June} 1997

HON'BLE MR. JUSTICE B.C. SAKSENA, VICE CHAIRMAN
HON'BLE MR. K. MUTHUKUMAR, MEMBER(A)

Shri Jagbir Singh
S/o Shri Saroop Singh
R/o Village & P.O. Dichaun Kalan
P.S. Najafgarh,
Delhi-110 043.

...Applicant

By Advocate Shri Shanker Raju

Versus

1. The Additional Commissioner of Police,
Armed Police,
Police Headquarters,
M.S.O. Building,
I.P. Estate,
New Delhi.
2. The Deputy Commissioner of Police,
5th BN. DAP,
Kingsway Camp,
Delhi. ...Respondents

By Advocate Shri Anoop Bagai

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Applicant is aggrieved by the impugned order of dismissal from service, Annexure A-6. His appeal against the order also failed. The applicant has, therefore, filed this application under Section 19 of the Administrative Tribunals Act, 1985, with a prayer that the impugned orders of appellate and disciplinary authorities should

be quashed and set aside and he should be reinstated in service along with other consequential benefits.

2. Applicant was a constable in Delhi Police and was involved in a case under the Arms Act and was placed under suspension w.e.f. 24.3.1987. Disciplinary proceedings were initiated against him under the relevant provisions of the Delhi Police Act. The charge was that on his reinstatement in service ordered by the competent authority vide their letter dated 2.11.1989, two officials were deputed to inform the applicant about his reinstatement alongwith the copy of the reinstatement order but the applicant refused to receive the copy on two occasions stating that he would be receiving the said copy on his joining duty at N.P.L. He did not join duty on 8.11.1989 and again on the third occasion another official was detained for the purpose of informing him about his reinstatement but again the applicant refused to receive the copy of the order. The copy of the order was then sent to him by Registered Post but the same was returned undelivered with the report that the applicant was not found available at the address. Finally the applicant resumed duty on 6.12.1989 and received the reinstatement order. He was, therefore, charged that he absented himself for a total period of 433 days 21 hours and 45 minutes on 32 different occasions during the

suspension period. It was also mentioned in his suspension order that his headquarter would be New Police Lines during the suspension period and the applicant should not leave the headquarter without prior permission of the competent authority. Despite this, the applicant remained absent unauthorisedly and wilfully without the permission of the competent authority. On the basis of the above charges, enquiry was conducted and the disciplinary proceedings resulted in the impugned order of dismissal from service.

3. The applicant alleges that when he was placed under suspension, he had not committed any misconduct by not performing any duty including attending roll calls or to mark his presence. The charge that he was absent for 433 days 21 hours and 45 minutes was unfounded as during this period he was under suspension and, therefore, he could not be charged for unauthorised absence in from duty. He also contends that the order placing him under suspension, there was no direction to him to attend the roll calls or to mark his presence at the duty place and he had not left the headquarters during the suspension period. He also contends that according to Rule 27 of the Delhi Police (Punishment & Appeal) Rules, 1980, there is no provision which mandates the personal appearance of the applicant/suspended police official on duty during the period of suspension and contends that there has been no direction or standing order in this behalf.

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Thus the applicant alleges that the dismissal order is illegal as it is in contravention of Rule 28(d) of the Delhi Police (Punishment & Appeal) Rules, 1980. He also contends that the period of suspension on account of a criminal case has been treated as 'dies - non' by the disciplinary authority without the final disposal of the whole case, on the basis of which the applicant had been placed under suspension. Having treated the period as dies non, the alleged unauthorised absence should be construed to have been condoned. The applicant had been imposed the major penalty over and above the treatment and this of period as dies - non/ would amount to double jeopardy. He also alleges that the enquiry has not been conducted in accordance with the procedure laid down inasmuch as the Enquiry Officer had not appraised the evidence and the applicant was not given the opportunity to cross-examine the prosecution witnesses. The other ground taken by the applicant is that the disciplinary authority without recording the finding of 'complete unfitness' for the Police force had dismissed him on the alleged conduct which does not amount to misconduct.

4. The respondents in their counter-reply have submitted that it was clearly mentioned in the suspension order that during the suspension period, the headquarters of the applicant would be New Police Lines, Delhi. Despite unauthorised

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absence during the suspension period, he was reinstated in service w.e.f. 2.11.1989 but he had refused to receive the reinstatement orders and resumed duty on 6.12.1989. They also contend that departmental enquiry was conducted according to the rules and procedure in this behalf and he was provided enough opportunity to defend himself during the DE proceedings and the charge having been proved. the impugned punishment order was passed. His appeal was also considered by the competent authority but was rejected.

5. We have carefully considered the pleadings on either side and have heard the counsel for the parties.

6. The applicant was charged with the following acts of misconduct, Annexure A-3:-

(i) He refused to receive the copy of the reinstatement order on both occasions on 4.11.1989 and 7.11.1989, verbally stating that he would be receiving the copy of the order when he would join duty on 8.11.1989. On his failure to join duty on that day, he again refused to receive the copy of the said order on 15.11.1989.

(ii) He absented himself for total number of 433 days, 21 hours and 45 minutes on 32 different occasions during his suspension period although he was asked not to leave his headquarters during his suspension period without the prior permission of the competent authority and he remained absent

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unauthorisedly during this period without prior permission by the competent authority.

He was, therefore, charged under Section 21 of the Delhi Police Act, 1978. In the enquiry, as far as his refusal to receive the copy of the order of reinstatement on three occasions is concerned, we find that the refusal was confirmed by the prosecution witnesses, i.e. PW-1, PW-4 and PW-7. The applicant alleges that he was not allowed to cross examine the prosecution witnesses, but there is nothing on record to show that he was denied any opportunity in this behalf. This aspect was also considered by the disciplinary authority as detailed in its order. As regards the other charge of his unauthorised absence for 433 days on 32 different occasions during the period of his absence, the applicant relies on Rule 27 of the Delhi Police (Punishment & Appeal) Rules, 1980 under which there was no requirement of personal appearance of the applicant/ suspended police official on duty during the period of suspension. The applicant contends that even if there is any standing order, this will not be consistent with rules and cannot be enforced upon the applicant. We also find that the applicant has justifiably taken the ground that his past bad record for which he was departmentally dealt with and was punished

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for certain other charges, has not been made a specific charge in these proceedings also as is required under Rule 11 of the Delhi Police (Punishment & Appeal) Rules, 1980, before the impugned order was passed. He relies on order passed in O.A. No. 2397 of 1988 of the Principal Bench of the Tribunal and also on **Chittaranjan Ghose vs. I.G. Police West Bengal & Others, 1979**

(2) Vol.29 SLR 194 to contend that a Police Officer will not be compelled to attend roll call and this would not be a part of his duty. In this view of the matter, the applicant's case is that there was no question of his being on unauthorised absence from duty during the period of suspension. We also find that in the impugned orders there is no finding to the "complete unfitness" of the applicant for police service meriting his dismissal. Section 24 of the Delhi Police Act, 1978, reads as follows:-

"Every police officer not on leave or under suspension shall for all purposes of this Act be deemed to be always on duty....."(emphasis added). From this, it would imply that officers under suspension cannot be deemed to be on duty. Besides this, the respondents have not shown any rule or order under which it was mandatory for the police official under suspension to attend the roll call or any other duty during the period of suspension. It is also ruled in O.A. No.

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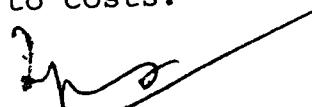
78 of 1992 that no provision of the Delhi Police Act, 1978 or Delhi Police (Punishment & Appeal) Rules, 1980 enjoins the disciplinary authority to require the police officer under suspension to attend the roll call. It has also been ruled in the aforesaid case that the absence on roll call of the suspended police officer cannot be construed as a misconduct. We have also seen the order of **Chittaranjan Ghose** (Supra) wherein, it was decided that the police officer while under suspension cannot be compelled to attend roll call. The aforesaid case also relies on the decision of the Supreme Court in the case of **V.P. Gindroniya Vs. State of Madhya Pradesh and Another, AIR 1970 SC 1495.**

7. We are in respectful agreement with the Tribunal in the aforesaid cases, decisions of the L and, therefore, the contention of the applicant that the charge that the order of dismissal from service on the charge that he was unauthorisedly absent from duty during the period of suspension for 433 days as being illegal has to be upheld. As this was the substantial charge against the applicant on which the impugned order of dismissal had been passed by the disciplinary authority which has also been upheld by the appellate authority, the impugned orders cannot be sustained in the light of the decision in the aforesaid cases and accordingly these orders have to be set aside

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and they are accordingly set aside. The applicant will be reinstated in service forthwith and the respondents are also directed to pass appropriate orders for regularising the period from 30.10.1992 to the date of actual reinstatement in accordance with rules and orders on the subject. We, however, make it clear that in view of the fact that one of the charges regarding his misconduct in refusal to accept the copy of the reinstatement order on more than one occasion has been established, we provide that it will be open to the disciplinary authority to initiate such action as may be necessary and to pass appropriate orders in proportion to this charge and in accordance with rules.

8. The application is allowed subject to the above directions. There shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(B.C. SAKSENA)
VICE CHAIRMAN

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