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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**PRINCIPAL BENCH: NEW DELHI**

O.A. No. 1234/93

Date of Decision: 09.7.1993

Shri Jarnail Singh

...Applicant

Versus

Government of India  
Delhi Administration

...Respondents

CORAM :-

Hon'ble Mr I.K. Rasgotra, Member (A)  
Hon'ble Mr C.J. Roy, Member (J)

For the Applicant : Shri Shankar Raju, Counsel  
For the Respondents : None

JUDGEMENT

(Delivered by Hon'ble Mr I.K. Rasgotra, Member (A))

This O.A. has been filed under Section 19 of the Administrative Tribunal Act. The petitioner Shri Jarnail Singh, Head Constable, Delhi Police has assailed the Order dated 6.11.1992 whereby the Respondents have revived the Departmental Enquiry that was dropped consequent to acceptance of his resignation. The said order has been passed in consequence of judgement dated 8.5.1992 of the Central Administrative Tribunal passed in O.A. 917/86. The Tribunal set-aside Order dated 16.8.1985 and 21.8.1986 and the petitioner was ordered to be allowed to join the duty forthwith. The Tribunal had further directed, that the period from 16.8.1985 "to date of joining duty shall be treated as duty for all purposes in respect of the applicant except that he shall not

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be entitled for arrears of wages for the said period."

In this O.A. now before us the petitioner has prayed for the following reliefs :-

(i) To quash the order of the Departmental Enquiry dated 6.11.92 and to direct the respondents to restore the order of dropping of the departmental enquiry and treatment of period of absence as 'leave of kind due' issued on 18.9.1985;

(ii) To set-aside the Summary of Allegations and further to restrain respondents to take further action in pursuance of their Order dated 4.12.1992 (Page 14 of the Paper Book).

The learned counsel Shri Shankar Raju who appeared for the petitioner submitted that the enquiry proceedings now revived had been dropped in 1985.

The respondents cannot reopen the enquiry proceedings on the reinstatement of petitioner in consequence of the judgement of the Tribunal dated 8.1.92. These proceedings were the subject matter of the O.A. 917/86.

Further the respondents vide order dated 18.9.85 had already sanctioned the leave of the kind due for the periods during which he had remained absent.

The said order is reproduced below :-

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"Ex. Head Constable Jarnail Singh No.80/Crime  
(Min.) remained absent from duties on medical grounds

for the period mentioned below :-

53 days from 10.12.84 to 5.2.85  
43 days from 12.5.85 to 26.3.85  
56 days from 15.4.85 9.6.85  
32 days from 19.6.85 to 20.7.85  
18 days from 29.7.85 to 15.8.85

95 days Earned Leave and 12 days  $\frac{1}{2}$  pay leave is at the credit of the Ex. H.C. upto 15.8.85. Keeping in view the entitlement of leave Ex. H.C. Jarnail Singh No. 80/Crime (Min.) is hereby granted the leave for the absence period mentioned above, as under :-

- (i) 58 days E.L. on MCM from 10.12.84 to 5.2.85
- (ii) 37 days E.L. on M.C. from 12.2.85 to 20.3.85
- (iii) 6 days  $\frac{1}{2}$  pay leave from 21.3.85 to 26.3.85
- (iv) 6 days  $\frac{1}{2}$  pay leave from 15.4.85 to 20.4.85
- (v) 50 days leave without pay from 21.4.85 to 9.6.85
- (vi) 52 days leave without pay from 19.6.85 to 20.7.85
- (vii) 18 days leave without pay from 29.7.85 to 15.8.85"

Having thus regularised the period of leave on Medical Certificate etc the respondents cannot reopen this issue and issue charge memo to this petitioner for absence for the periods of absence which stand regularised. The initiation of departmental proceedings, therefore, is void ab initio. The Tribunal had also not given any liberty to the respondents to restart the departmental enquiry consequent to his reinstatement vide judgement dated 8.5.92. The petitioner represented to the respondents to not proceed with the enquiry vide his representation dated 1.1.93 but his request has been turned down vide order dated 4.12.92. The petitioner preferred an appeal against the said order to the Additional

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Police Commissioner on 20.1.92 but the same has not been disposed of even after the expiry of more than 6 months. It was further contended that the petitioner had remained continuously sick and he was mentally perturbed. It was under these circumstances that he was compelled to resign from the Force in 1985. He had also under-gone medical examination as directed by the Department. The next point urged by the learned <sup>2</sup> counsel was that no 'Show Cause Notice' was given to the petitioner before cancelling orders regularising his periods of absence. The action of the respondents, therefore, is in violation of the principles of natural justice. Learned counsel, therefore, averred that <sup>2</sup> the action of the respondents was arbitrary and mala fide.

We have considered the matter carefully. As far as the judgement of the Tribunal dated 8.5.92 is considered. it is observed that the <sup>2</sup> Tribunal had not expressed any <sup>2</sup> opinion in regard to the disciplinary proceedings which were pending against the petitioner when he tendered his resignation in 1985. In fact, while reproducing the record of the case pertaining to the acceptance of his resignation the Tribunal has noted that the Departmental Proceeding came to be dropped vide order of the DCP dated 19.7.85 <sup>2</sup> as the petitioner <sup>had</sup> tendered his resignation and it was not considered in the circumstances to pursue departmental enquiry for his continued absence over a long period. The <sup>2</sup> reinstatement in service in these <sup>2</sup>

circumstances does not give him any immunity from the disciplinary proceedings which were pending against him when he resigned from service. With the reinstatement in service of the petitioner status quo ante gets restored. While the reinstatement gives him the benefit of service, he is also to carry burden of liabilities incurred before he resigned. In the circumstances he cannot make any grievance against the revival of disciplinary proceedings. He can approach the Tribunal when the disciplinary proceedings are concluded and if he is aggrieved by the order finally passed by the concerned authorities on the conclusion of the proceedings. No provision of law has been brought to our notice which would restrain the respondents from pursuing disciplinary proceedings dropped consequent to the resignation of the petitioner. The next point urged by the petitioner is that the respondents should not have cancelled the order regularising the period of absence be sanctioned "leave of kind due" without issue of 'Show Cause Notice' in accordance with the principles of natural justice. Application of principles of natural justice depend to a great extent on the facts and circumstances of a given case, the framework of the law under which enquiry is held and the constitution of the board of enquiry appointed for the purpose. We have, therefore, to examine if there has been violation of any principle of natural justice

by the cancellation of the regularising period of absence without giving him show cause notice. Prof. Wade in his Administrative Law has succinctly summarised the principle of natural justice to the following effect :

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"It is not possible to lay down rigid rules as to when the principles of natural justice are to apply: not as to their scope and extent. Everything depends on the subject matter, the application for principles of natural justice, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject matter of the case. In the application of the concept of fair play there must be real flexibility. There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirement of natural justice depends on the facts and circumstances of the case, the nature of the enquiry, the rules under which the Tribunal is acting, the subject-matter to be dealt with, and so forth." (emphasis ours) (JT 1993 (3) SC 487 **Shri Rattan Lal Sharma v. Managing Committee Dr. Hari Ram**).

The period of absence was earlier regularised by the respondents in consequence of the resignation of the petitioner and more likely for the reason that the final settlement of the petitioner was to be processed. After he was reinstated in service in accordance with the order of the Court the reasons and the considerations which led the respondents to regularise the period of absence ceased to exist. Therefore, status quo ante gets restored not only in regard to the service but also in regard to the liabilities incurred. Further, by the impugned order

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of cancellation no real prejudice is caused to the petitioner, as he will have adequate opportunity to defend himself in the disciplinary proceedings.

In the above facts and circumstances of the case, we are not inclined to issue notice to the respondents in this case and dismiss the petition as premature at threshold. The petitioner shall, however, be at liberty to approach the Tribunal if and when final order is passed after the conclusion of the disciplinary proceedings, if he is aggrieved, in accordance with law.

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(C.J. ROY) 9/7/93  
MEMBER(J)

*Malhotra*  
(I.K. RASGOTRA)  
MEMBER(A) 9/7/93

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