

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1912/1993

199

T.A.No.

DATE OF DECISION 14.7.99

....Petitioner

Shri Satpal

Shri Ajesh Luthra

....Advocate for the
petitioner(s)

VERSUS


Delhi Adm. through Secretary,Respondent
Home Department, DA and Grs.

Sh. SK. Gupta proxy counsel forAdvocate for the
Sh. Amresh Mathur. Respondents.

CORAM

The Hon'ble Shri S.R. Adiga, Vice Chairman (A) (J)
The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not? YES
2. Whether it needs to be circulated to other
Benches of the Tribunal? No.


(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

12

O.A. 1912/93

New Delhi this the 14th day of July, 1999

Hon'ble Shri S.R. Adige, Vice Chairman.
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Shri Satpal,
S/o Shri Gopi Singh,
R/o Vill - Daroli, PO-Keshavpur Satla,
Distt. Bulandshahr (UP). ... Applicant.

By Advocate Shri Ajesh Luthra.

Versus

1. Delhi Administration through
Secretary, Home Department
Delhi Administration, Delhi.
2. Commissioner of Police,
Police Headquarters,
MSO Building,
I.P. Estate, New Delhi.
3. Addl. Commissioner of Police,
(Operations),
Police Headquarters, MSO Building,
IP Estate, New Delhi.
4. Dy. Commissioner of Police,
IGI Airport,
New Delhi. ... Respondents.

By Advocate Shri S.K. Gupta, proxy counsel for Shri
Amresh Mathur.

O R D E R

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

The applicant is aggrieved by the order of the respondents removing him from service dated 31.12.1990 against which the appeal and revision petition filed by him were also rejected by orders dated 18.7.1991 and 21.10.1992, respectively.

2. The brief facts of the case are that the applicant joined Delhi Police as Constable on 25.1.1975 and he was last posted at Shift 'A' I.G.I. Airport, New Delhi from

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1987. The applicant has submitted that because of hard and strenuous duties, he became ill for which he took treatment. He has also submitted that during the month of August, 1989, he had been occasionally running high fever because of which he had to remain absent from his duty, but he had submitted medical certificates for the said period. He submits that in the beginning he was treated for Jaundice which later on turned to be a case of Pulmonary Tuberculosis. He has further submitted that he was served with a charge-sheet for his unauthorised absence for the periods from August, 1989 to December, 1989. He has submitted that during the preliminary inquiry, four prosecution witnesses were examined and he was thereafter served with a charge-sheet under the signature of Inspector of Police who was not competent to do so as the said Inspector also acted as an Inquiry Officer and submitted his report on 20.9.1990. The applicant has also stated in the application that as he was bed ridden during the course of the inquiry, he was not in a position to attend the proceedings and he was proceeded ex-parte, despite the fact that he had intimated to this effect by letter 18.5.1990 followed by several letters. He has submitted that ultimately he was removed from service after holding the disciplinary proceedings. The applicant has prayed for a direction to the respondents to quash the aforementioned impugned orders and take him in service with all consequential benefits from the date of his removal to the date of reinstatement. The applicant has relied on the judgements of the Supreme Court in *The State of Punjab & Ors. Vs. Bakshish Singh* (JT 1998 (7) SC 142), High Court of Delhi in *Satya Pal Yadav Vs. Union of India & Ors.* ^{Order P2} (71) (1998) ¹⁸ Delhi Law Times, 68, and the Tribunals in *Ex. Constable Karan Singh Vs. Union of India & Anr.* (OA 2117/98), decided on 8.4.1999.

3. The respondents have filed the reply controverting the averments in the application. They have submitted that a departmental enquiry under Section 21 of the Delhi Police Act, 1978 was ordered against the applicant. The enquiry was entrusted to Inspector Ved Prakash, on the allegations that on 11/12.8.1989 the applicant was detailed for patrolling duty at Apron West Side from 7 p.m. to 8 a.m. but he did not turn up for duty and, therefore, he was marked absent vide Daily Diary No. 13 of Shift 'C' NITC. An absentee notice was also sent to the applicant to resume his duty, but he did not turn up. They have submitted that another notice was sent on the same address on 20.9.1989 which was also returned by the postal authorities with the remarks that 'the addressee was out of station without giving address'. Thereafter, one more absentee notice was sent at his address through a Constable but the applicant was not found present and as such the notice was served on his cousin. In spite of that, the applicant did not turn up to resume his duty. Thereafter, Supdt. of Police, Bulandshahr, was requested to direct the applicant to join his duty who replied that the applicant has not been living with his family for the last 5-6 years. Ultimately, he resumed duty on 2.12.1989 after absenting himself unauthorisedly and wilfully at his own sweet will for a period of 113 days. They have also submitted that the applicant had managed medical papers from some private doctors and Primary Health Centre. The respondents have further submitted that again on 17.12.1990 he was found absent from Post No. 5 when checked by ACP Shift 'C'. Thus, he was marked absent vide DD No. 15 and returned to the post on the same day vide DD No. 17 for which he was awarded 10 days Punishment Drill. They have submitted that in the evening he left his duty point without handing over the charge of the post to his reliever. They have also submitted that the W.T. Set

15

which was in exclusive charge of the applicant was deliberately damaged by him. The applicant did not join his duty in the next shift also and he resumed his duty only on 20.12.1989 (evening) after absenting himself from duty for a period of 45 hours. They have further submitted that on scrutiny of his past record, it was revealed that he remained absent on seven occasions for which he was punished. The applicant was adopting dilatory tactics and was avoiding to join D.E. proceedings and ultimately the Inquiry Officer completed the inquiry ex-parte holding the charge fully proved against him. A copy of the findings was sent to the applicant at his address under registered post but the applicant failed to submit his representation though he was given full opportunity. The respondents have, therefore, submitted that the applicant was removed from service by order dated 31.12.1990.


4. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.


5. The applicant has taken a number of grounds challenging the aforesaid ^{penalty} orders. One of the main grounds taken by Shri Ajesh Luthra, learned counsel for the applicant, is that in the impugned order dated 31.12.1990, the disciplinary authority, while holding that the applicant was incorrigible and indisciplined Constable for his unauthorised and wilful absence for the periods from 11.3.1989 to 1.12.1989 and 18.12.1989 to 20.12.1989, which was subject matter of the disciplinary proceedings, awarded the penalty of removal from service but at the same time treated that very periods of unauthorised absence as 'Leave Without Pay', which he states he could not have done in the same breath. Having regard to the judgement of the Supreme Court in Bakshish Singh's case (supra), since the period of

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unauthorised absence from duty for which the charge-sheet had been given to the delinquent official, has been regularised by the competent authority, the charge does not survive. This has also been held by the Delhi High Court in Sat Pal Yadav's case (supra). These cases have also been followed by the Tribunal in Ex-Constable Karan Singh's case (supra) (OA 2117/98) (copies placed on record). Therefore, in the facts and circumstances of the case and following these judgements, since the disciplinary authority himself has treated the period of unauthorised absence as 'Leave Without Pay' he could not have awarded the punishment on those very facts of wilful absence from duty and the impugned orders passed by the disciplinary authority and upheld by the appellate and revisional authority cannot be sustained and are accordingly quashed and set aside.

6. In view of the above, the O.A. is allowed with a direction to the respondents to reinstate the applicant within one month from the date of receipt of a copy of this order. Taking into account the facts and circumstances of the present case, including the fact that the applicant had been absent for more than nine months and in the light of the orders passed above, we are of the view that the applicant will not be entitled to any pay and allowances for the intervening period i.e. from the date of removal from service and date of reinstatement. Parties to bear their own costs.


(Smt. Lakshmi Swaminathan)
Member(J)
'SRD'


(S.R. Adige)
Vice Chairman (A)