

(3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH N:DELHI

O.A.No. 2242/93

New Delhi this the 3th Day of November, 1993.

THE HON'BLE VICE CHAIRMAN MR.N.V.KRISHNAN, V.C. (A)
THE HON'BLE MR. B.S. HEGDE, MEMBER(J)

1. Sh. Jarnail Singh,
Constable
S/o Sh. Mohinder Singh,
Quarter No.G/47, Type-I,
Police Colony, Model Town,
Delhi-110009

.... Applicant

(By Advocate MS Pratima Mittal, proxy
counsel for Sh.K.C.Mittal, counsel for
the applicant)

Versus

1. The Commissioner of Police,
Police Headquarters, I.P.Estate,
New Delhi

.... Respondents

O R D E R

(Hon'ble Sh. N.V.Krishnan, Vice Chairman(..))

The applicant is a constable in the Delhi Police. Disciplinary proceeding was initiated against him for remaining willfully and unauthorisedly absent from duty for a period of 37-days./disciplinary authority, vide order dated 29-7-91(Annexure A-3), imposed the penalty of dismissal from service after agreeing with the findings of the Enquiry Officer. Appeal filed by the applicant was dismissed vide order dated 15.11.91(Annexure A-5). The applicant then

u

(4)

preferred a mercy application to the Commissioner of Police which has been disposed of by the Annexure A-7 dated 25-9-92. Having considered the facts of the case, the Commissioner of Police (Respondent No.1) reduced the penalty to forfeiture of approved service for five years and that this penalty should run concurrently with the earlier one.

2. Aggrieved by the impugned orders Annexure A-3, Annexure-5 and Annexure-7 this O.A. has been filed for the following direction:-

"

a- This Hon'ble Tribunal may be pleased to declare that the enquiry proceedings are vitiated illegal, arbitrary and contrary to law and in violation of principles of natural justice and Rules and the consequential proceedings as well as dismissal orders passed by the disciplinary authority, appellate authority and the Commissioner of Police are liable to be quashed and set aside.

b- This Hon'ble Tribunal may further be pleased to direct the respondents to fix the salary of the applicant in accordance with the Rules and also to pay the arrears to the applicant and reinstate the applicant from the beginning of the enquiry proceedings and pay the consequential benefits."

3. We have heard the learned counsel for the applicant. The disciplinary proceedings have been challenged on a number of grounds. It is alleged that the enquiry officer acted as the complainant prosecutor and judge. He also cross-examined, witnesses

ll

...

4. We notice that the main charge against the applicant is for remaining unauthorizedly absent for the periods 24.1.90 to 28.2.90(37-days), 15.5.90 to 25.7.90(2 months, 10 days) 22.8.90 (one day) 11.9.90 to 15.9.90 (4 days) and from 23.10.90 onwards till 7.1.91, when a decision (Annexure A-1) was taken to initiate a Departmental Enquiry.-The applicant admits in para 4.2 of the O.A. that he was absent for 38 days. He states that he he filed medical certificate of his own illness and sons illness(Para 4.5). There is no avernment that he applied for leave in time and sought sanction. He states that this was appreciated only by the Commissioner of Police, who too, nevertheless chose to impose a severe penalty.

5. We find that the respondents, Commissioner of police, has made the following observation before reducing the penalty:-

" I have carefully gone through the revision petition and other relevant documents available on record. The petitioner was relieved to join duty at I.G.I. Airport on 23.1.90 but he did not report and absented himself unauthorizedly for a period of 35 days and he reported on 28.2.90. He again proceeded on 6 days C.L. with 3 days permission w.e.f. 6.5.90 and was due back on 15.5.90 but he did not turn up and remained absent. Despite acknowledging absentee notices; he did not join duty. He resumed his duty on 24/25.7.90 after absenting himself for a period of 2 months 10 days. He again absented himself w.e.f. 22.8.90 and resumed his duty on the same day after absenting for 10 days and 40 minutes. He again absented

himself on the same day and absented for a period of 98 days 19 hours. This is a horrible conduct of a member of disciplined force who has also contravened rule 19(5) of C.C.S.(Leave) Rules, 1972 and S.O.No.III. Besides this, his past record shows that he earlier remained absent wilfully and unauthorisedly on 16 different occasions for which he was awarded major/minor punishments. He should have narrated his problems to his superiors that his son is a patient of Polio and should have got his leave sanctioned instead of remaining absent unauthorisedly at his will. There is nothing in D.E. file that he applied for leave and was refused the same. In case he was ill, he should have obtained prior permission to avail the medical rest at his home as provided in rule 19(5) of C.C.S.(Leave) Rules, 1972. He thus availed the rest at his own and thereby contravened the rules/instructions issued on the subject.

Be that as it may keeping in view his personal problems relating to his son's illness, I am inclined to take a lenient view and the punishment awarded to him vide order No.4646-4700/HAP(P) P-1, dated 29.7.91 is reduced to that of forfeiture of his five years approved service permanently. As regards currency of this punishment, it will run concurrently with previous one. The period between dismissal to re-instatement may be treated as leave of kind due."

6. The learned counsel for the applicant admits that there were spells of unauthorised absence though, according to her, the applicant was not willfully absent but it was due to circumstances beyond his control.

7. In the light of the observations of the Commissioner of Police and the averments in the O.A. view that we are of the, the alleged irregularities in the enquiry are hardly material, because the applicant remained unauthorisedly absent from duty. He might have had good reasons for his absence, but, as observed by the respondent, he should have applied for leave, on time, being a member of a disciplined force. The highest

ll

7

authority in the department has considered the case and ultimately reduced the penalty to forefeiture of his five years approved service permanently.

8. In the circumstances, we are of the view that the applicant has no case that he was not guilty at all. Therefore, he invited a penalty. We have no reason to interfere with the quantum of penalty. We, therefore, find no merit in the O.A. It is liable to be dismissed at the admission stage.

9. The learned counsel for the applicant submits that the penalty given to the applicant by the Commissioner of Police is still very harsh. We make it clear that this order will not prevent the applicant from making one more representation to the Commissioner of Police in the matter of reduction of punishment, if so advised.

10. The learned counsel for the applicant points out that the pay of the applicant has not been fixed properly after his reinstatement. We are of the view, that in this respect, the applicant should first make a representation to the Department in accordance with

u

law specifically stating his grievance and seek remedy. It is only after he exhausts this remedy that he can agitate the matter before us.

11.. The O.A. is dismissed with the above directions.

B.S. Hegde

(B.S. Hegde)

Member(J)

N.V. Krishnan
3.4.13

(N.V. Krishnan)

Vice Chairman(A)