

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

D.A.No.261/93

New Delhi this the 21st day of July, 1999.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN(J)

HON'BLE MR. R.K. AHOOJA, MEMBER(A).

Shri Ashok Kumar (Deceased) Legal Representative
S/o Shri Mangal Singh 2. Surendhar (Minor)
Village & P.O. Tijara Mohalla 3. Raj Bala (Mother)
Kayasthwar, Dt. Alwar 301411
Rajasthan. Applicant

(By Advocate Ms. Yamunah Nachiar proxy for
Sh. E.M.S. Natchiappan, Counsel)

Vs.

1. Lt. Governor of Delhi
Raj Niwas Marg
Delhi-110006.

2. Commissioner of Police
Delhi Police Headquarters
New Delhi-110002

..... Respondents

(By Advocate Shri Vijay Pandita)

ORDER (Oral)

By Reddy J.-

In this case, the applicant died during the pendency of the DA. Thereupon the L.Rs of the applicant were brought on record.

2. The applicant, who was a Constable working in Delhi Police was dismissed from service after a departmental enquiry.

3. The charge against the applicant is that he proceeded on a day Casual Leave on 3.7.1986 but he did not resume his duties. Notice was sent to him which was duly acknowledged by him but he did not resume his duties. Subsequently

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a telegram was received from the applicant wherein it was mentioned that he was suffering from serious ailment. On receipt of the telegram he was awaited for 19 days but he did not resume his duties. Another notice was also sent to his address which was also acknowledged by him but he did not resume his duties. Another notice was also sent but returned stating that addressee was not found. Whereupon he was placed under suspension and a departmental enquiry was initiated against him. The Enquiry Officer who was appointed by the Disciplinary Authority to conduct and enquiry, after holding an enquiry and examining several witnesses, found that the applicant was guilty of the charge. The Disciplinary Authority agreeing with the finding of the Enquiry Officer, dismissed the applicant from service by the impugned order dated 25.6.1986.

4. The applicant filed an appeal against the above order and the appeal was also rejected by an order dated 2.2.1988 thereafter he filed an OA-947/88 before this Tribunal and the Tribunal by an order dated 30.1.1992 while quashing the orders of the Appellate Authority directed the appellate authority to pass appropriate orders with reasons on the grounds raised by the applicant in his memorandum of appeal, within a period of 4 months. The appellate authority accordingly considered the grounds, and rejected the appeal by an order dated 26.5.1992. This OA is filed aggrieved by the above orders of the disciplinary authority and the appellate authority.


5. The learned counsel for the applicant, raised several grounds before us. The first ground was that the enquiry was ordered to be held ex-parte which is wholly illegal. But it is seen from the records that by the time enquiry was conducted the applicant joined duty and he in fact participated in the enquiry, it cannot therefore be said that the enquiry was ex-parte. Secondly, it was contended that the absence of applicant was not wilful. It is the

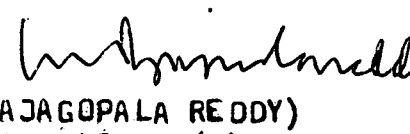
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case of the applicant that he was down with Typhoid fever and he was seriously ill and he could not attend the duty. He therefore submitted the necessary medical certificates to the effect that he was suffering from fever. We are afraid that we cannot go into the area of embarking upon the validity of the finding of fact arrived at by the Enquiry Officer on the consideration of the evidence of the prosecution witnesses as well as the defence witnessess holding that the applicant was wilfully absented himself from duty without reasonable cause. In the circumstances this contentions fails and is rejected. Thirdly, it is submitted by the learned counsel for the applicant that the E.O. has not taken into consideration the documents filed by the applicant. We do not accept this. From a reading of the Enquiry Officer's report it is clear that he has considered the evidence of the defence witness and considered of the documents filed by the applicant. Lastly, the learned counsel for the applicant's contention was as to the severity of the punishment imposed by the disciplinary authority, it is strenuously contended that for mere absence for certain days from duty the punishment of dismissal is wholly disproportionate, it is not commensurate with the offence proved. In this case it is seen that the Appellate Authority has given a finding in his order dated 30.6.1992 that the applicant was a habitual absentee and had absented himself on 12 different occasions during the service for which he was punished. He was, therefore an incorrigible type of man and is completely unfit for police service. The appellate authority has also

considered this objections as to the nature of the punishment and found that the applicant was habitual absentee and was incorrigible type of man and affirmed the punishment imposed by the Disciplinary Authority. The law is well settled that this Tribunal will not normally interfere with the punishment unless it comes to the conclusion that no reasonable man would impose the punishment which was imposed. We do not find such situation in this case.

6. In view of the above discussion, the contentions raised fail. The DA is accordingly dismissed. No costs.


(R.K. AHUJA)
MEMBER (A)


(V. RAJAGOPALA REDDY)
VICE-CHAIRMAN (J)

cc.