

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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O.A.No. 2695/93

New Delhi this the 15th Day of July 1999

Hon'ble Mr. V. Ramakrishnan, Vice Chairman (A)
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

Jagdish S/o Sh. Rameshwar Dayal
H.No. 17 Sec - 12 Police Colony
R.K. Puram, New Delhi - 22.

Applicant

(By Advocate: Shri V.P. Sharma)

Versus

1. National Capital Territory of Delhi
through the Chief Secretary,
I.T.O. New Delhi
2. The Commissioner of Police,
Delhi Police Headquarters
I.P.Estate, New Delhi.
3. The Additional Commissioner of Police
(AP & Trg) Delhi Police Hqs
I.P. Estate, New Delhi.
4. The Deputy Commissioner of Police
No. 7th Bn. D.A.P. Delhi.

Respondents

(By Advocate: Shri Anil Singal, proxy counsel
for Shri Anoop Bagai)

ORDER (Oral)

Hon'ble Mr. V. Ramakrishnan, Vice Chairman (A)

We have heard Shri V.P.Sharma, counsel for the applicant and Shri Anil Singal proxy counsel for Shri Anoop Bagai for the respondents and have also gone through the departmental file made available to Court by the counsel.

2. The applicant, who was working as Sweeper in the office of Deputy Commissioner of Police, 7th Bn. from 8.10.1982, is aggrieved by the order of the disciplinary authority dated 5.7.1993 as at Ann. A-1 which dismissed him from service and also the orders

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of the appellate authority dated 16.11.93 which confirms the orders of the disciplinary authority.

3. The applicant was working as a Sweeper from 1982 and he had absented himself from 30.12.91 without any prior permission and he was issued with a memo dated 29.1.92 directing him to report for duty failing which departmental action would be taken against him. He resumed his duty on 31.1.92. Again on 3.3.92 he was absent from duty from 7 AM and was marked absent in the relevant register and an absentee notice was sent to him by letter dated 9.3.92 directing him to report for duty. Even after noting this, he did not report for duty on 11.3.92. He however, reported for duty on 12.3.92. The Department served him with a charge sheet containing three charges including the two referred to above and an additional charge to the effect that on scrutinising his past record, it was found that he remained absent on as many as 88 occasions showing that he has habitually absent. The applicant gave a reply to the charge memo and a regular enquiry was conducted and the enquiry officer submitted his report on 16.3.93. A copy of the enquiry report was given to him. The applicant then made a request that all the relevant papers pertaining to the enquiry report were lost by him while travelling in a Bus and a copy of the relevant documents may be furnished to him at his own cost as per his request in letter dated 4.5.93 as at Annexure A-10. This was rejected by the respondents. He gave a representation dated 20.5.93 where also he had referred to his contention that he had lost his documents in the Bus and submitting that he had not remained absent wilfully and unauthorisedly for the period of 32 days from

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December 1991 to January 1992 as also during the period of March 1992. He also contended that as regards the third Article of charge ~~namely~~ ^{or} absence for a period of 88 occasions the same was not unauthorised and the relevant period of absence had been regularised as leave without pay. After getting this reply the disciplinary authority proceeded to issue the impugned order dated 5.7.93 dismissing him from service ~~holding~~ that the charges against him had been fully proved. The same was confirmed by the appellate authority and these are challenged in the present O.A.

4. Mr. Sharma for the applicant submits that the absence for a period of 32 days from 30.12.91 to end of January 1992 was on account of his sickness. The applicant had also produced a medical certificate in support of his ~~illness~~ even though it was from a private doctor but the same was summarily rejected. According to him, it is not open to the E.O to take a view regarding his illness when a competent medical authority had given a medical certificate. More importantly he submits that the applicant had lost the relevant documents and he could not give an effective reply to the enquiry report in the absence of the copies of the enquiry proceedings including the enquiry report. When he made a request for supply of the same at his own cost, the same was rejected without assigning any reason. He relies in this connection on the decision of the Supreme Court in the case of Kashinath Dixit V. Union of India and Ors., ATR 1986 (2) SC 186. He submits that the refusal to supply copies of documents had seriously prejudiced the applicant and has resulted in violation of the principles of natural justice.

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Mr. Sharma goes on to submit that the charge of wilful absence for 88 occasions is not at all established as on these occasions the absence was regularised by grant of leave without pay. The applicant has given copies of a few letters from the Dy. Commissioner of Police 7th Bn. which had granted leave without pay for certain periods. These are as many as 15 occasions as is seen from the enclosure at Annexure A-9 collectively. He says that in such a situation ^{the} charge of unauthorised absence cannot be sustained.

Mr. Sharma submits that the applicant is a poor employee and that he is interested in getting himself reinstated and he does not claim any backwages. He seeks a direction accordingly.

5. Shri Anil Singal for the respondents resists the O.A. He contends that the stand of the applicant that the absence had been regularised by grant of leave without pay is not correct. In respect of the period from 30th December, 1991 to 30.1.92 and also for the period from 3.3.92 to 11.3.92 no leave was granted and the applicant was treated as absent and there has been no reference to leave. Mr. Singal goes on to submit that if the applicant was aggrieved by the refusal of the respondents to give a copy of the enquiry report, he should have approached higher authorities against such refusal but he had not bothered to do so. It is also his contention that from the various materials on record it is clear that the applicant had been representing in English and also submitting his reply and has been taking the assistance of someone and it is difficult to believe his version that he had lost his document. He contends

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that it is in the nature of an after thought. However, he is not able to explain as to what ~~were~~ the difficulties on the part of the Department to furnish copies of the documents and that too at the cost of the applicant.

As regards ^{the} period of absence for 88 days which according to the applicant had been regularised by the competent authority as leave without pay. Mr. Singal's contention is that even if the period of absence had been regularised the fact remains that he was in the habit of being absent regularly and ^{during} a period of 11 years he was absent on as many as 88 occasions. Mr. Singal does not dispute the position referred to ⁱⁿ the reply statement that the period of absence on 88 occasions had been regularised by the competent authority as leave without pay. According to him, the proper procedure has been followed and there is no justification for the Tribunal to interfere with the order in exercise of its powers of judicial review.

6. We have carefully considered the rival contentions. We note from the memo of charges that Article 3 reads as follows:

"On scrutiny of his past record it has been found that he remained absent on as many as 88 occasions which shows that the said Sweeper Jagdish No.19/S is habitual absentee".

This gives an impression that the absence is unauthorised where the same has in fact been admitted to be regularised from time to time. If so, there was no need for framing this charge. We also note from the file that 88 occasions on which the applicant had been absent had not been listed out either in the charge memo or in the statement of imputation.

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Shri Singal says that the same is borne out from the service book of the applicant and in any case the applicant has not denied that he was absent. We do not agree with the submission that he was unauthorisedly absent. His contention is that period of absence has been regularised by grant of leave without pay as he did not have any leave at his credit. In the light of the admission by the respondents where they have not denied the averment of the applicant that during the 88 occasions he was infact on leave without pay, such a period cannot be treated as unauthorised absence. We find from the order of the disciplinary authority that while passing this order he has taken into account what he regards as unauthorised absence on these 88 occasions. The relevant portion of the order of the Disciplinary Authority reads as follows:

"I have seen his entire record, sweeper Jagdish is a habitual absentee. It is a matter of record as he had absented himself from the duty unauthorisedly in the past on as many as 88 occasions. He is totally careless person who has no regard for his job. Keeping in view of his bad record, I have no option but to dismiss him from service. He is, therefore, dismissed from service with immediate effect. His entire absence period from 30.12.91 to 30.1.92 and from 3.3.92 to 11.3.92 will be treated as not spent on duty, hence without pay."
(emphasis supplied)

It is clear from the order of the disciplinary authority that he proceeded on the basis that the absence of 88 occasions was unauthorised. This is contrary to the pleadings on record and the admission of the respondents themselves that the period of absence had been regularised by grant of leave

(3)

without pay.

7. We also do not find ^{convincing} the explanation given by the respondents in refusing to supply the copies of enquiry proceedings along with enquiry report which the applicant says that he had lost in Bus. The applicant is a sweeper and while he might have take the assistance of another to prepare his defense, the concerned person would require the relevant documents. No explanation whatsoever has been forthcoming for rejecting the request of the applicant to supply copies of the relevant **records** at his own cost. The applicant apart from representation as at Annexure A-10 has referred to this alleged loss of the documents even in his reply and in his subsequent appeal etc.

In our view, taking into account the facts and circumstances of the case, the respondents' failure to supply copies of relevant documents and refusing to acced to his request **has** resulted in violation of principle of natural justice as it would have caused problem to the applicant in submitting an effective defense after getting the enquiry report.

8. For the reasons brought out above, we hold that the order of the disciplinary authority as at Annexure A-1 confirmed by the appellate authority as at Annexure A-3 cannot be sustained. We accordingly quash the same and we direct the respondents to reinstate the applicant in service within one month from the date of receipt of a copy of this order. He however ^{shall} not be given any backwages during the period from the date of dismissal till the date of reinstatement. We grant liberty to the respondents that if they so desire, they may

proceed with the enquiry again after furnishing a copy of the enquiry proceedings and enquiry report and getting the reply to such enquiry report and take whatever action is permissible in accordance with the relevant rules and instructions in respect of the first two charges.

9. The O.A is allowed to the extent indicated above and is finally disposed of with no order as to costs. The relevant file of the Department is returned to Shri Singal.

Lakshmi Swaminathan

(Mrs. Lakshmi Swaminathan)
Member(J)

V. Ramakrishnan

(V. Ramakrishnan)
Vice Chairman (A)

vtc.