

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 896/93  
T.A. No.

199

(22)

DATE OF DECISION : 12-2-1999

Ex. Constable Chander Pal Singh .....Petitioner  
Mrs. Avnish Ahlawat .....Advocate for the Petitioner(s)

VERSUS

Commr. of Police, Delhi and Ors. ....Respondents.

Shri Amresh Mathur .....Advocate for the Respondents.

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The Hon'ble Smt. Lakshmi Swaminathan, Member (J)  
The Hon'ble Shri N. Sahu, Member (A).

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

*Lakshmi Swaminathan*  
(Smt. Lakshmi Swaminathan )  
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

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OA 896/1993

New Delhi this the 11th day of February, 1999.

Hon'ble Smt. Lakshmi Swaminathan, Member (J)  
Hon'ble Shri N. Sahu, Member (A)

Ex-Constable Chander Pal Singh  
No.626/P, S/O Sh. Surji Mal,  
Resident of Village Rehadra,  
Post Office Panvarha  
Police Station Parikshitgarh,  
District Meerut, Uttar Pradesh.

... Applicant

(By Advocate Mrs. Avnish Ahlawat )

Versus

1. Commissioner of Police,  
Delhi Police Headquarters,  
M.S.O. Building, I.P. Estate,  
New Delhi-2
2. Additional Commissioner of Police  
(Operations), Delhi Police  
Headquarters, M.S.O. Building,  
I.P. Estate, New Delhi-2
3. Deputy Commissioner of Police,  
Delhi Police, Indira Gandhi  
International Airport,  
New Delhi.
4. Shri Baldev Chander,  
Inspector/Enquiry Officer,  
S.H.O. Police Station  
Mahipalpur, Delhi.

... Respondents

(By Advocate Sh. Amresh Mathur)

O R D E R

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

The applicant, who was working as Constable in Delhi Police is aggrieved by the order passed by Respondent 3 dated 25.11.91 dismissing him from service and the order of Respondent 2 i.e. Appellate Authority dated 20.3.1992 reducing the penalty to that of compulsory retirement.

2. The impugned orders have been passed after holding a disciplinary enquiry against the applicant under Section 21 of the Delhi Police Act, 1978. We have heard Mrs. Avnish Ahlawat,

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learned counsel for the applicant and Shri Amresh Mathur, learned counsel for the respondents and perused the records.

3. Mrs. Avnish Ahlawat, learned counsel for the applicant, has taken a number of grounds in assailing the penalty orders. One of the main ground she has taken is that the disciplinary authority, while passing the impugned dismissal order had in the very next sentence stated that "the period of unauthorised and wilful absence referred to above is treated as L.W.P. (Leave Without Pay)". She has submitted that the disciplinary authority's order is, therefore, unsustainable in view of the fact that the disciplinary authority himself, in the very same order has regularised the period of un-authorised absence by granting him ~~as~~ "Leave Without Pay". Learned counsel has, therefore, submitted that once the un-authorised absence of the applicant has been regularised as leave of any kind, the very foundation of the disciplinary action and the eventual penalty has been knocked out and the impugned order of dismissal from service, which was later converted by the appellate authority to that of compulsory retirement should be quashed and set aside. She has relied on the recent judgement of the Hon'ble Supreme Court in State of Punjab and Others Vs. Bakshish Singh (JT 1998(7) SC 142 which has been followed by the Tribunal in Subhash Chander Vs. Lt. Governor of Delhi and Others (DA 206/97 decided on 13.1.1999) and Ex-Head Constable Ram Piara Singh Vs. Union of India through Govt. of NCT of Delhi and Others (DA 2223/95 decided on 13.1.1999) (Copies placed on record.)

4. The respondents in their reply have submitted that the Disciplinary Enquiry proceedings have been conducted in accordance with the Rules, taking into account the fact that the applicant is a habitual absentee. They have submitted that the punishment order is legal and valid. Shri Amresh Mathur, learned counsel has also made a submission that the above quoted sentence in the disciplinary authority's order had been added after the

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punishment of dismissal had been imposed, only for accounting purposes regarding the leave period. He has also submitted the official records from which it is seen that the disciplinary authority had regularised the absence for which the applicant had been charged by granting him 'Leave Without Pay' in the same penalty order on 25.11.1991.

5. The facts in this case are, therefore, on all fours with the facts in the decision of the Hon'ble Supreme Court in Bakshish Singh's case (supra). This case has been followed by the Tribunal in the cases of Subhash Chander and Ex Constable Ram Piara Singh (supra). As mentioned above, from the records in the present case, it is seen that the disciplinary authority had passed the order of penalty as well as authorised the leave period for which he was charged as being absent unauthorisedly by the same order dated 25.11.1991. The appellate authority in his order dated 20.3.1992 has stated that he has gone through the appeal and the comments in the Enquiry report and he finds no ground for setting aside the punishment. However, taking into account the long service of the applicant, the appellate authority has reduced the penalty of dismissal to that of compulsory retirement. He has also noted that the absence period had been decided by the disciplinary authority as LWP and the suspension period from 16.11.1990 to 14.4.1991 was also decided as period 'not spent on duty'. These later two orders have not been modified by the appellate authority. In the light of the above facts and circumstances of the case, we are in respectful agreement with the judgement of the Hon'ble Supreme Court in Bakshish Singh's case (supra) and the reasoning in the judgements of the Tribunal in the cases of Subhash Chander and Ex. Constable Ram Piara Singh (Supra).

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6. In the result, DA is allowed. The impugned penalty orders dated 25.11.1991 and 20.3.1992 are quashed and set aside. Respondents are directed to reinstate the applicant in service immediately, and in any case within a period of two months from the date of receipt of a copy of this order. Taking into account the peculiar circumstances of the case, while the applicant shall be entitled to continuity in service and seniority, as if the impugned orders had not been passed, he shall not be entitled to any back wages and other benefits for the period he was kept out of service.

No order as to costs.

N. Sahu  
(N. Sahu)  
Member (A)

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

'SRD'