

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 99/93

New Delhi this the 13th day of May 1998

Hon'ble Shri S.R. Adige, Vice-Chairman (A)
Hon'ble Dr. A. Vedavalli, Member (J)

Ex. Const. Man Singh,
No. 728/N.D.,
S/o Shri Jagmal Singh,
Village- Gihaur P.O. Sarfababad,
P.S. Sector-24, Noida,
Ghaziabad (U.P.)

.....Applicant

(By Advocate: None)

Versus

1. Additional Commr. of Police,
New Delhi Range,
New Delhi.
2. Dy. Commissioner of Police,
New Delhi Distt.
New Delhi.

3. Delhi Administration through
Commr. of Police, I.P. Estate,
New Delhi.

.....Respondents

(By Advocate: Shri Ajesh Luthra proxy
counsel for Ms. Jyotsana Kaushik)

ORDER (Oral)

By Hon'ble Shri S.R. Adige, Vice-Chairman (A)

Applicant impugns charge-sheet dated 11.11.91
(Annexure-3), the Disciplinary Authority's order dated
13.3.92 (Annexure-2) dismissing him from the Delhi Police,
and the Appellate Authority's order dated 18.9.92
(Annexure-1) rejecting the appeal.

2. Applicant was departmentally proceeded
against on the charge that he proceeded to avail of 3
day's medical rest w.e.f. 31.1.90 and was due back on
2.2.90 upon which he again brought another certificate for
7 day's further medical rest and proceeded to avail of the

same w.e.f. 9.2.90. He was due back on 16.2.90 but did not resume his duties as such and was marked absent on 17.2.90. It is further stated in the Charge-Sheet ^{that,} ~~L~~ inspite of issuing absentee notice at his home address vide office letter dated 28.3.90, he neither reported to duty nor sent any intimation.

3. Inquiry Officer's report stated that he was sent summons but inspite of reminders at his office and home address he did not join the D.E. Thereafter summary of allegations alongwith the list of witnesses and documents was sent to his home address through special messenger, which he acknowledged receipt of, but did not submit reply to the summary of allegation and also did not join the D.E. proceedings. There upon after obtaining permission from Addl. Dy. Commissioner to conduct ex-parte proceedings against the applicant, ex-parte proceedings were commenced against him, but despite giving him full opportunity to participate in the proceedings, he did not do so.

4. The Inquiry Officer examined various witnesses and concluded that the charge of unauthorised absence against the applicant was established beyond any shadow of doubt.

5. A copy of the Inquiry Officer findings was sent to applicant, which he received on 5.1.92 and he submitted his reply on 10.2.92.

6. After considering his reply and going through the materials on record, the disciplinary authority accepted the Inquiry Officer's report and

holding the applicant to be an incorrigible type of person, whose presence in the police force would affect the discipline of the force and instigate other members of the force also to be indisciplined, he dismissed the applicant from service vide impugned order dated 13.3.92 and further directed that the period of absence from 17.2.90 till the date of issue i.e. 13.3.92 would be treated as leave without pay.

7. Applicant filed an appeal against the aforesaid order to the appellate authority, and also requested for a personal hearing which was granted, but despite two opportunities given by the appellate authority, he did not avail of the same. The appellate authority considered the grounds taken in the appeal and for the detailed reasons spelt out in the appellate order dated 18.9.92 rejected the appeal, against which this O.A. has been filed.

8. None appeared for the applicant even on the second call, although this O.A. has been on the board since 10.3.98. Shri Ajesh Luthra proxy counsel for Ms. Jyotsana Kaushik was present and has been heard. We notice that this O.A. was listed at Sr. No.3 of the regular hearing list. We also note that once before that i.e. on 16.10.97 the O.A. was dismissed for default and non-prosecution. Thereafter MA 3016/97 was filed for restoration of O.A., which was allowed. We also note that in between 16.10.97 when the O.A. was initially dismissed for default and today, on ~~most~~ date some proxy counsel has been appearing on behalf of applicant's counsel Shri Jog Singh except for the date on which Shri Jog Singh appeared and to press MA 3016/97 and under the circumstances we

cannot help but conclude that applicant's counsel is not seriously interested in pursuing this case. We are, therefore, proceeding to dispose of it after hearing Shri Ajesh Luthra and pursuing the materials on record.

10. The next ground taken is that the period of absence has been treated as leave without pay and as such the period of absence of the applicant has been condoned and hence the charge of remaining absent unauthorisedly does not survive. This ground has no merit in the light of the CAT Principal (Full) Bench Judgement dated 4.8.93 in O.A. No. 1344/90 Hari Ram Vs. Delhi Administration & Ors. wherein it has been held that the impugned order has

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to be read as a whole and harmoniously construed to ascertain the real intimation of the author of the impugned order. Merely because in one line of that order, the disciplinary authority has directed the absence period treated to be as leave without pay cannot be read to mean that the disciplinary authority intended that applicant should be continued in service. Hence, this ground is also rejected.

11. The third ground taken is that the impugned dismissal order has violated rule 16(xi) Delhi Police (P&A) Rules the disciplinary authority took into consideration applicant's past record without making it a specific charge. We note that the previous bad record of applicant of unauthorised & wilful absence from duty on 21 previous occasions finds specific mention at para-2 of the charge-sheet, and hence this ground also fails.

12. The next ground taken is that the applicant was compelled to be absent due to medical reasons as he was seriously ill, and was getting medical treatment under Government doctors. It is well settled that no Government servant, much less one belonging to a uniformed force such as the Police can claim leave as of right, and remain absent from duty without authorisation. If applicant indeed was so seriously ill and was unable to perform his duty he should have applied for leave in prescribed ^a ~~performa~~ supported by ^a medical certificate and awaited orders of the same before availing of the leave. In the present case no leave application has been referred to by him and even if applicant was ill as claimed by him

he cannot treat it as a justification for remaining absent from duty, in the absence of filing proper leave application.

13. The next ground taken is that the ex-parte proceedings against him are illegal. This ground has no merit in the light of the fact that applicant himself did not participate in departmental proceedings.

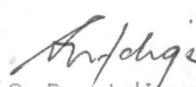
14. The next ground taken is that the punishment is excessive and is disproportionate to the charge. This ground has also no merit. Hon'ble Supreme Court's ruling in Ashok Kumar Vs. State of U.P. 1996 (32) ATC 329 has observed that unauthorised absence of a police constable from duty was wrongly held by the High Court to be not such a grave misconduct as to warrant removal. Further more in U.O.I. Vs. Parma Nanda AIR 1989 SC 1185, Hon'ble Supreme Court has held that the Tribunal cannot go into the quantum of punishment.

15. The last ground taken is that the Appellate Authority's order displays non-application of mind. This ground has no merit as the Appellate Authority has discussed in detail all the grounds taken by the applicant in his appeal.

16. In the result the impugned order warrants no interference. The O.A. is dismissed. No costs.


(Dr. A. Vedavalli)
Member (J)

cc.


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