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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 1069 of 1993 decided on 19.11.1998.

Name of Applicant : Sh. Rajbir Singh

By Advocate : Shri N. Safaya

Versus

Name of respondent/s Commissioner of Police & ors

By Advocate : Shri Amresh Mathur

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

Hon'ble Dr. A. Vedavalli, Member (J)

1. To be referred to the reporter - Yes/No
2. Whether to be circulated to the other Benches of the Tribunal. - Yes/No

N. Sahu
(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 1069 of 1993

New Delhi, this the 19th day of November, 1998

Hon'ble Mr. N. Sahu, Member(Admnv)
Hon'ble Dr. A. Vedavalli, Member(J)

Sh. Rajbir Singh, Constable No. 669/NE,
Son of Sh. Katar Singh, R/o Village &
P.O. Kinoni, Distt. Muzafer Nagar
(U.P.)

-APPLICANT

(By Advocate Shri N. Safaya)

Versus

1. Commissioner of Police, Police Headquarters, I.P.Estate, New Delhi.
2. Addl. Commissioner of Police, New Delhi Range, Police Head Quarters, I.P.Estate, New Delhi.
3. Addl. Deputy Commissioner of Police, North East District, Police H.Q., I.P.Estate, New Delhi.

-RESPONDENTS

(By Advocate Shri Amresh Mathur)

O R D E R

By Mr. N. Sahu, Member(Admnv) -

The applicant impugns an order dated 19.8.1991 (Annexure-D) passed by respondent no. 3 dismissing him from service. He also prays for quashing the order dated 15.5.1992 (Annexure-I) passed by respondent no. 2 confirming the order of dismissal.

2. The undisputed facts giving rise to the impugned orders are that while posted at Police Station Seema Puri the applicant absented himself from duty from 19.7.1989. The respondents have sent two notices, intimating him his absence and seeking the reasons therefor, to the home address known to them. There was no response from him. The applicant

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resumed duty on 30.9.1989 at P.P. G.T.B. Hospital Chowk. According to the respondents he unauthorisedly and wilfully absented himself for a period of 70 days and 2 hours. A departmental enquiry was initiated against the applicant. The charge was served on him on 23.9.1990. He again absented himself and did not respond to the charge vide D.D.entry no.35-B dated 1.10.1990 Police station Shahdara. He resumed duty only on 16.1.1991 after absenting himself for a period of three months 15 days and 5 minutes. He was relieved from Police Station Shahdara and was posted to District Lines vide order dated 16.1.1991. In stead of complying with these orders, he absented himself once again till the final order of dismissal was served on him. Even during the course of disciplinary proceedings he did not respond to the charges. A Constable was sent to his native place. He was not traceable at the given address. A ex parte decision was taken on 23.5.1991 by the enquiry officer holding the applicant guilty of the charge. The disciplinary authority noticed his past record. It was found that he absented himself 12 times previously. A copy of the findings of the enquiry report was served on him on 23.7.1991 for representing against the findings of the enquiry officer. There was no response on the due date, namely, 7.8.1991. That the applicant had absented himself even during the disciplinary proceedings showed his contempt for discipline and rules according to the disciplinary authority. The disciplinary authority gave the following finding -

for punishment

"Such an incorrigible type of person like Const. Rajbir Singh, 669 /NE is beyond any scope of improvement. Seeing no option I, hereby order that Constable Rajbir Singh, No. 669/Ne be dismissed from service with immediate effect. His unauthorised absence period for which he has been dealt with departmentally is decided as not spent on duty hence without pay"

3. The appellate authority recorded that he was absent from duty without prior permission of the competent authority. Even at his home he was not present and received the notices. He contravened SO No.111 and sub-rule (5) of Rule 19 of CCS (Leave) Rules, 1972. The appellate authority also arrived at the conclusion that the applicant was an incorrigible type of police officer. He held that the punishment awarded to him was commensurate with his misconduct.

4. The learned counsel for the applicant stated that the appellate order did not deal with the contentions raised by the applicant in his appeal-petition. For this reason he contended that the appellate order was bad in law and relied on the decision of the Hon'ble Supreme Court in the case of Ram Chander Vs. Union of India and others, ATR 1986 (2) 252. Their Lordships held that after the 42nd amendment as interpreted in Tulsiram Patel's case, 1985 SCC (L&S) 672 the appellate authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. The applicant relied on the 9 principles enunciated in a decision of Gujarat High Court in the case of

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R.M. Parmar Vs. Gujarat State Electricity Board

(citation not given) (at page 28 of the OA) wherein for his purpose the following principle is relevant -

"5. When penalties of different categories can be imposed in respect of the alleged fault one of which is dismissal from service, the disciplinary authority per force is required to consult himself for selecting the most appropriate penalty from out of the range of penalties available that can be imposed, having regard to the nature, content and gravity of the default."

5. Shri Safaya, learned counsel for the applicant stated that there should be an enlightened approach because punishment is not an end in itself. There should be every effort to reform an erring employee. In this connection he cited two decisions of this Court in Ex. Const. Jagir Singh Vs. Additional Commissioner of Police & another, O.A. No. 473 of 1992 decided on 21.4.1997 and Shri Prakash Chand Vs. Commissioner of Police & another, O.A. 831 of 1993, decided on 16.10.96. Both the cases dealt with disciplinary proceedings on the ground of unauthorised and wilful absence. This Court held that the extreme penalty of 'removal' was excessive. Rule 8 of the Delhi Police (Punishment & Appeal) Rules, 1980 (in short 'DP (P&A) Rules') lays down principles for inflicting penalties. Clause(a) of the said rule says that the punishment of 'dismissal' or 'removal' from service shall be awarded for the act of "grave misconduct rendering him unfit for police service". As the applicant agreed not to claim back wages in the first case, the O.A. was disposed of by a direction that the

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applicant should be reinstated in service and the period between the date of alleged act of unauthorised absence and date of reinstatement shall be treated as qualifying period of service for the purpose of pensionary benefits. In the second case, this Court held that within terms of Rule 8(a) of DP (P&A) Rules, a specific finding is required to be given to the effect that the misconduct of the official is of such a nature as to render him unfit for police service. Such a finding has to be given in black and white expressly in accordance with the view recorded by this Tribunal in number of cases. Even under Rule 10 of the DP (P&A) Rules, it is only when the previous record of the charged officer is examined which shows misconduct indicating incorrigibility and complete unfitness in police service that the punishment of dismissal from service is ordinarily to be awarded. It is on this ground that the order of dismissal was quashed and a punishment lesser than dismissal was directed to be awarded taking into account the gravity of the offence.

6. Besides, Rules 8 and 10 ibid, the learned counsel for the applicant also referred to Rule 16 (xi) of the DP(P&A) Rules. The said rule is as under-

"If it is considered necessary to award a severe punishment to the defaulting officer by taking into consideration his previous bad record, in which case the previous bad record shall form the basis of a definite charge against him and he shall be given opportunity to defend himself as required by rules."

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Shri Safaya, submits that no such charge was framed for previous acts of misconduct and that the telescoping of earlier charges with the present charge violates the above rule.

7. The learned counsel for the respondents urged that the applicant was found to leave the headquarters without obtaining the permission of the competent authority. In a disciplined force disobedience of orders of superiors is an act of grave misconduct. The respondents could not know from 19.7.1989 to 2.8.1989 as to why the applicant absented himself from duty. His next contention was that the finding of incorrigibility by the disciplinary authority and the appellate authority for reasons recorded by them meets the guidelines of Rule 10 ibid. Thirdly, the learned counsel relied on the decision of State of U.P. Vs. Ashok Kumar Singh and another, 1996 SCC (L&S) 304. Their Lordships were dealing with the case of unauthorised absence of a police constable on several occasions, as in this case. The High Court held that the unauthorised absence was not such a grave charge as to warrant removal. Their Lordships held that when the High Court concurred with the findings of unauthorised absence, it should not have interfered with the punishment of removal passed after departmental enquiry and confirmed by the Tribunal. The principles laid down by their Lordships at para 8 is extracted hereunder -

"8. We are clearly of the opinion that the High Court has exceeded its jurisdiction in modifying the punishment while concurring with

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the findings of the Tribunal on facts. The High Court failed to bear in mind that the first respondent was a police constable and was serving in a disciplined force demanding strict adherence to the rules and procedures more than any other department. Having noticed the fact that the first respondent has absented himself from duty without leave on several occasions, we are unable to appreciate the High Court's observation that "his absence from duty would not amount to such a grave charge". Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that "the punishment is not commensurate with the gravity of the charge" especially when the High Court concurred with the findings of the Tribunal on facts. No case for interference with the punishment is made out."

8. We have carefully considered the rival submissions. We are satisfied that this is a 'fit case which deserves the punishment of dismissal. We have repeatedly questioned the learned counsel for the applicant in the course of hearing as to what prevented the applicant to send a communication to the respondents about his admission in the hospital. He should have at least telephoned the police headquarters or to his immediate superior. He could have sent a relation, a messenger with a leave application. We have carefully gone through the medical reports which indicate only "bloody dysentery". The applicant was not in such a position as to prevent him from intimating about his condition and seeking leave. He had not made any efforts nor had taken the minimum precaution between the period from 2.8.1989 to 11.8.1989 of intimating his condition. There is a medical certificate on 12.8.1989 that he suffered from typhoid fever and he was advised rest for three weeks. There is also a certificate dated 3.9.1989 to the effect that he suffered from fever and requesting rest from 3.9.1989

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to 27.9.1989. The above certificates were not produced to the competent authority at the relevant stage. The applicant was not prevented by any reasonable cause from informing/ intimating or producing these certificates at the relevant time as a contemporaneous document. Even so, till now we do not know as to why he absented himself from 19.7.1989 to 3.8.1989. Secondly, notices were sent to his residence by a special messenger, namely, a constable, on two occasions. Still the applicant did not respond. We notice the attitude of defiance, contumacy, bordering on contempt for authorities. We are satisfied that the previous 12 occasions of absence were only considered by the competent authority to establish on record the conditionality of Rule 8 ibid so as to illustrate that he was an incorrigible police official. The competent authority said as much when he recorded that in a disciplined force this type of behaviour would be demoralizing and would be setting a bad example to others. We are not persuaded to follow the reasoning given by the learned counsel for the applicant in the two CAT Bench orders. The facts may differ. The gravity of the offence depends on the facts of each case. The intensity of the misconduct also depends on the repetition of the offence. Its a question of taking the over all view of the conduct of the delinquent. It is not a decision given in an isolated instance. According to us the disciplinary authority as well as the appellate authority have bestowed their most careful consideration. They have brought out the series of offences. Even if the

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applicant had responded to their notices and prayed for the leniency and if he showed contrition for his misconduct the respondents might have resiled from taking an extreme view of the case. Here is a case of a police officer who had even during disciplinary proceedings defied the orders and did not attend the enquiry. This is certainly a conduct most unbecoming of a police official. Such a conduct is reprehensible even for a civilian official. It is not a case of adjusting leave due to an official against the period of absence. That is an accountant's job to square the leave account. The job of an administrator is to ensure that discipline pervades in his organisation and he should curb any effort to dilute the said discipline. Here is a case where a part of the period is not covered by any reason. Some part of the period is covered by medical certificates which were made part of the file much later. A Government servant and more so a police officer can abstain from duty only at his peril. The law is that he should take prior permission. If he does not, he should immediately inform the organisation about his absence for the day, giving reasons as to why it was not possible for him to attend to his duties. The employer has at least a right to know why the employee did not attend to his job for that day. The money of the public exchequer is spent by way of salary to ensure that the services are rendered for the public and this is the minimum discipline that is expected to be observed in a public office. Soon after he joins the next day, any subordinate official should present an

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application stating reasons as to why he could not attend and praying for leave. The leave has to be sanctioned. It is not a matter of right. Leave can be refused and the official can be compelled to attend unless he finds himself medically incapable of moving to join duties. This is expected of a civilian. The above perception of the role of an official in a police organisation should be all the more rigorous. We are not suggesting that there should be no touch of humanism or sympathy or compassion in inter-personnel relations between a superior and subordinate. The conduct of the applicant, however, has crossed all bounds. It is a case of sheer; deliberate wilful repeated acts of silence and contumacy. Even accepting that the medical certificates are true, the applicant was not in such a condition that he was prevented from informing the authorities about the place where he was hospitalized and the reasons for hospitalization. The conduct of the applicant was such that it raises doubts about the truth of his claim of illness. We are satisfied that the respondents have observed the mandates of Rules 8 and 10 ibid. It is not necessary that the last syllable of the rule must also be recorded in the order. It is enough if description and findings as well as the observations compel one to the inference that the competent authority has reached the conclusion in the way mandated by Rules 8 and 10 ibid. We do not find any infirmity in the order. We also do not have any other option after the Hon'ble Supreme Court's pronouncement in the case cited supra that unauthorised absence in a police

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force amounts to grave misconduct. That being the law of the land, other authorities cited by the applicant are not relevant.

9. In the result the O.A. is dismissed. No costs.

A.Vedavalli

(Dr. A. Vedavalli)
Member (J)

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Member (Admnv)

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