CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.1217/2013

New Delhi this the 12th day of May, 2016

HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. V.N. GAUR, MEMBER (A)

Bhinwa Ram
HC in Delhi Police,
PIS No.28891305
Aged about 50 years
S/o Shri Ganpat Ram Meena
R/o VPO: Dariba
Tehsil: Neem Ka Thana
District: Sikar, Rajasthan. ...Applicant

(Argued by: Mr. Anil Singhal, Advocate)

Versus

1. GNCT of Delhi
   Through Commissioner of Police,
   PHQ, I.P. Estate,
   New Delhi.

2. Joint Commissioner of Police,
   (Southern Range),
   I.P. Estate,
   New Delhi.

3. Additional Deputy Commissioner of Police
   (West District),
   PS Rajouri Garden,
   New Delhi. ....Respondents

(By Advocate : Ms. Sumedha Sharma)

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

The challenge in this Original Application (OA), filed by applicant, HC, Bhinwa Ram, is to the impugned, enquiry report dated 28.09.2010 (Annexure A-1), and an order dated 13.01.2011 (Annexure A-2) by virtue of which, a

penalty of forfeiture of 3 years approved service permanently with immediate effect, was imposed upon him and his period of absence was treated as period not spent on duty, by the disciplinary authority (DA). He has also assailed the impugned order dated 05.04.2011 (Annexure A-3), whereby Appellate Authority (AA) has modified the punishment order and reduced the punishment to forfeiture of 3 years approved service temporarily for a period of 3 years entailing reduction in his pay by three stages, instead of 3 years approved service permanently.

2. The crux of the facts and material, relevant for deciding the instant OA, and emanating from the record is that, applicant while working as HC in Delhi Police, remained on unauthorized absence with effect from 22.05.2008 to 17.09.2008 (199 days) and 29.03.2009 to 04.08.2009 (127 days) without informing his superior officers.

3. As a consequence thereof, he was charge-sheeted in the following manner:-

> "It is alleged against you HC Bbinwa Ram, No.533/N (Now 252/W) while posted in North District, you made your departure of 5 days Medical rest w.e.f. 16.5.2008. You were due back on 21.05.2008 but you neither turn up nor sent any information regarding medial rest etc. Your were marked absent vide DD No.14B dated 22.05.2008 PS Gulabi Bagh, Delhi. In the meantime, you had been transferred from North to West Distt. Vide No.14533-90P. Br. PHQ, dated 17.6.2008. You were stand relieved by DCP/North District. You resumed your duty in West District lines vide DD No.18 dated 17.09.2009 after absenting yourself for a period of 119 days wilfully and unauthorizedly. An absentee notice was issued by DCP/North District vide No.9109-11/SIP(AC) North dated 10.06.2008 at your residence with the directions to resume your duty at once, failing which the departmental action will

be taken against you. Despite issuing absentee notice you did not resume your duty.

On 29.03.2009, you HC Bhinwa Ram, No.533/N (Now 252/W) were detailed for Anti Snatching duty at PS Tilak Nagar, but you did not turn up as such you were marked absent vide FFNo.34B dated 4.8.2009 PS Tilak Nagar, after absenting yourself for a period of 127 days 5 hours 35 minutes wilfully and unauthorizedly. An absentee notice was issued at your residence with the direction to resume your duty vide office letter No.12159-62/SIP (W) dated 9.7.2009 and the same was delivered by Constable Vijay Singh, No.1921/W PS Tilak Nagar to your son Rajesh Kumar Meena. Despite serving the absentee notices you did not resume your duty on both occasions.

The above act on the part of you HC Bhinwa Ram, No.533/N (Now 252/W) amounts to gross misconduct, negligence, carelessness and dereliction in discharge of your official duty and unbecoming of a Police Officer, which renders you liable for departmental action under the provision of DP (Punishment & Appeal) Rules, 1980".

4. In pursuance thereof, the EO was appointed, who concluded that the charges framed against the applicant stand fully proved beyond any doubt vide impugned enquiry report dated 28.09.2010 (Annexure A-1).

5. Agreeing with the findings of the EO, the DA awarded the indicated punishment to the applicant (Annexure A-2). But for the indicated reduction in punishment, the appeal filed by him was also dismissed by the order of the AA (Annexure A-3).

6. Aggrieved thereby, the applicant has preferred the instant OA, challenging the impugned enquiry report and orders, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

7. The applicant claimed that he was granted 5 days leave w.e.f. 16.05.2008 but due to continuous illness, he could resume duty only on 17.09.2008 when he was declared fit

to resume duty by the doctor. Thereafter, he had again remained absent from duty due to illness with effect from 29.03.2009 to 04.08.2009.

8. According to the applicant, there was no cogent evidence on record regarding his wilful absence before the Enquiry Officer (EO). Although the medical papers submitted by him justified his absence, but he was punished on account of unauthorized absence. The authorities have illegally ignored the medical certificate/papers submitted by him. He could only be punished for his wilful absence and not on account of absence due to illness. He could not attend his duties as doctors have advised bed rest. The enquiry report and impugned orders were termed to be illegal, arbitrary, whimsical, without jurisdiction and against the principles of natural justice. On the basis of aforesaid grounds, the applicant has sought quashing of the enquiry report as well as the impugned orders, in the manner indicated hereinabove.

9. The respondents refuted the claim of the applicant and filed their reply wherein, it was pleaded that it stands proved on record that applicant remained on wilful absence with effect from 21.05.2008 to 17.09.2008 at the first instance and thereafter from 29.03.2009 to 04.08.2009 without informing any superior officers. An absentee notice dated 10.06.2008 was issued at his residential address

with the direction to resume his duty, failing which departmental action was proposed to be taken. He did not resume his duty, despite notice. Another absentee notice dated 09.07.2009 was delivered to his son Rajesh Kumar Meena by Constable Vijay Singh. Despite serving absentee notices, the applicant did not resume his duty.

10. According to the respondents, the applicant remained wilful absent from duty for a considerable long period of 119 days (21.05.2008 to 17.09.2008) at the first instance and thereafter for 127 days (29.03.2009 to 04.08.2009), without any information or prior approval of the competent authorities. In case he was ill, he should have followed the procedure laid down in SO No.111 of Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter referred to "D.P. Rules") as well as Rule 19(5) of the Central Civil Services (Leave) Rules, 1972 [hereinafter to be referred as "CCS(Leave) Rules"], which provides that the grant of medical certificate under this rule does not in itself, confer upon the Government servant concerned any right, to avail the medical rest and his request shall be forwarded to the authority competent to grant leave and orders of that authority should be awaited.

11. It was explained that the authorities have rightly rejected the private medical prescriptions. During the course of DE proceedings, applicant was afforded ample opportunity to produce his defence evidence, but he did not

avail this opportunity and only submitted his defence statement, which was duly considered and negated by the EO.

12. In all, the respondents claimed that the long absence from duty of the applicant was wilful and without any information to the authorities. The EO has dealt with the matter extensively. The Disciplinary and Appellate Authorities have followed the due procedure, provided adequate opportunity of being heard to the applicant and rightly passed the impugned orders. It will not be out of place to mention here, that the respondents have stoutly denied all other allegations contained in the OA and prayed for its dismissal.

13. Having heard the learned counsel for the parties, having gone through the record with their valuable help, we are of the firm view that there is no merit and the instant OA deserves to be dismissed for the reasons mentioned herein below.

14. Ex-facie, the arguments of learned counsel that there was no evidence of wilful absence, the medical papers were ignored by violating the Circular dated No.F.XVI/63/97/8464-74/P-1 dated 23/07.1997 (Annexure A-7) of Delhi Police and since the absence of the applicant was not wilful and was on account of illness, so the impugned orders are liable to be quashed, are neither tenable nor the observations of a Coordinate Bench of this

Tribunal in ***OA No.3115/2012*** titled ***Sushila Devi Widow of Shri Madho Singh Vs. Govt. of NCT of Delhi and Others*** decided on 13.03.2013, are at all applicable to the facts of the present case, wherein the services of Ex-Constable Madho Singh, (Deceased) applicant (therein) were terminated on account of his absence due to illness. He was suffering from deadly disease "Hepatitis" culminating into his death. He produced the medical record/certificates, but the Disciplinary Authority did not bother to verify whether the claim of the applicant was genuine or not. Moreover, the EO has simply stated that the applicant (therein) had absented himself from duty and was granted LKD commuted leave etc. So on the peculiar facts and in the special circumstances of that case, while deciding the OA of Legal Heir of Madho Singh, (Deceased) applicant, it was observed that all unauthorized absence/leave cannot be treated as a misconduct and if the Government servant absent himself from duty for reasons beyond his control, then such absence cannot be treated as wilful.

15. There can hardly be any dispute with regard to the above said observation, but the same would not come to the rescue of the applicant in the present controversy for the following reasons.

16. As is evident from the record, that applicant proceeded on leave for 5 days with effect from 16.05.2008. He was required to resume duty on 21.05.2008. He remained

absent from duty without any intimation to his superior officer till 17.09.2008. Not only that, he again absented himself from duty from 29.03.2009 to 04.08.2009 without intimation or getting the leave sanctioned. He, being a member of the disciplined force, like Delhi Police, is required to observe the relevant rules, before taking any kind of leave.

17. Keeping in view his wilful absence from duty, DE was initiated against him. In order to substantiate the charges against the applicant, the prosecution has examined PW-1 HC Mahesh Kumar, PW-2 HC Rajpal, PW-3 Constable S. Venkatesh, PW-4 HC Jagbir, PW-5 HC Suman and PW-6 Constable Vijay Singh, who have duly supported the charges and maintained that applicant remained absent from his duty. They have duly proved and exhibited the DD entries at Exhibit PW-1/A, PW-2/A, PW-3/A, PW-3/B, PW-4/A, PW-4/B, PW-5/A, PW-5/B and PW-6/A in this regard. They were cross examined by the applicant, but nothing substantial material could be elicited in the cross-examination to dislodge their testimony. The EO has based his findings on the basis of oral as well as documentary evidence brought on record by the parties. However, the applicant did not plead guilty and was directed to produce his defence witnesses. He did not produce any witness in his defence. The explanation, put forth by him, was found

to be unsatisfactory and vague. The EO ignored the private medical prescription submitted by the applicant.

18. As indicated herein above, even the applicant has not produced a single witness, in his defence to rebut, the cogent oral as well as documentary evidence produced by the department. No cogent evidence is forthcoming on record that the applicant was actually ill/bed ridden and was unable to resume his duty, despite issuance of absentee notice and specific directions in this regard.

19. What cannot possibly be disputed here is that as per Rule 7 of the CC(Leave) Rules, leave cannot be claimed as a matter of right. Rule 19 (1)(ii) postulates that in respect of a non-Gazetted Government servant, an application for leave on medical grounds shall be accompanied by a medical certificate Form 4 given by a CGHS doctor. According to Rule 25(2) of CCS(Leave) Rules, the wilful absence from duty after the expiry of leave, renders a Government servant liable for disciplinary action.

20. Moreover, if applicant was seriously sick, even then he has to inform the department and ought to have got his leave sanctioned from the competent authority as per relevant rules in view of the ratio of judgment of this Tribunal in ***OA No.1320/2013*** decided on 28.02.2014 titled as ***Ramesh Kumar Vs. The Commissioner of Police and Others***.

21. It cannot possibly be disputed that wilful absence from duty by a Government servant, is a serious misconduct. The Hon'ble Apex Court in the case of ***Mithilesh Singh Vs. U.O.I. & Others AIR 2003 SC 1724*** has ruled that absence from duty without prior intimation is a grave offence warranting removal from service. Similarly, the Hon'ble Supreme Court in the case of ***State of U.P. and Others Vs. Ashok Kumar Singh (1996) 1 SCC 302,*** held that absence of the respondent from duty would amount to grave misconduct and there was no justification for the High Court to interfere with the punishment holding that the punishment was not commensurate with the gravity of the charge.

22. Meaning thereby, the EO has evaluated the evidence on record, in the right perspective and concluded that charge framed against the applicant was fully proved beyond any reasonable doubt. He has discussed all the points contained in the reply of the applicant. The DA and AA have rightly accepted and appreciated the report of EO in the right perspective.

23. Moreover, the jurisdiction of judicial review of this Tribunal in such disciplinary matters is very limited. The Hon'ble Apex Court while considering the jurisdiction of judicial review and rule of evidence in the case of **B.C. Chaturvedi Vs. U.O.I. & Others AIR 1996 SC 484** has ruled as under:-

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. ***Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding.*** When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent office is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H. C. Goel (1964) 4 SCR 718 : (AIR 1964 SC 364), this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued".

24. Sequelly, the Hon'ble Apex Court in the case of **K.L. Shinde** v. **State of Mysore**, **(1976) 3 SCC 76**, having considered the scope of jurisdiction of this Tribunal in appreciation of evidence has ruled as under:-

"9. Regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can re-examine and re-assess the evidence in writ proceedings.

Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case reliance was placed by the Superintendent of Police on the earlier statements made by the three police constables including Akki from which they resiled but that did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act. That apart, as already stated, copies of the statements made by these constables were furnished to the appellant and he cross-examined all of them with the help of the police friend provided to him. It is also significant that Akki admitted in the course of his statement that he did make the former statement before P. S. I. Khada-bazar police station, Belgaum, on November 21, 1961 (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that statement, he expressed his inability to do so. The present case is, in our opinion, covered by a decision of this Court in State of Mysore v. Shivabasappa, (1963) 2 SCR 943 = AIR 1963 SC 375 where it was held as follows:-

> "Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against who it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.
>
> 2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him ,and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

25. Therefore, taking into consideration the material and evidence on record and the legal position, as discussed herein above, we are of the considered opinion that the EO has correctly evaluated the evidence of the prosecution. The DA has rightly imposed the punishment of forfeiture of 3 years approved service permanently with immediate effect and the Appellate Authority has recorded valid reasons to reduce the punishment of forfeiture of 3 years approved service permanently to that of temporarily. The Disciplinary as well as Appellate authorities have recorded cogent reasons and examined the matter in the right perspective. We do not find any illegality, irregularity or any perversity in the impugned orders. Hence, no interference is warranted in this case by this Tribunal.

26. No other point, worth consideration, has been urged or pressed by learned counsel for the parties.

27. In the light of the aforesaid reasons and thus seen from any angle, there is no merit and hence the OA deserves to be and is hereby dismissed as such in the obtaining circumstances of the case. No costs.

(V.N. GAUR)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Rakesh