

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.2411/2008

Order Reserved on: 15.03.2016

Pronounced on:12.05.2016.

Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Kundan Singh,
Ex. Ct. Of Delhi Police,
PIS No.28940921
R/o VPO & Manvat,
Distt. Parbhani, Maharashtra.

-Applicant

(By Advocate Shri Anil Singhal)

-Versus-

1. Govt. of NCT of Delhi
Through Commissioner of Police,
Police Headquarters,
I.P. Estate, New Delhi.
2. Joint Commissioner of Police,
Armed Police,
PHQ, I.P. Estate,
New Delhi.
3. Shri P. Dass (Then DANIPS)
Then DCP (3rd Bn. DAP)
Through Commissioner of Police,
PHQ, I.P. Estate,
New Delhi.
4. DCP (3rd Bn. DAP)
Through Commissioner of Police,
PHQ, I.P. Estate,
New Delhi.
5. DCP (West Distt.)
PS Rajouri Garden,

New Delhi.

-Respondents

(By Advocate Shri N.K. Singh for Mrs. Avnish Ahlawat)

ORDER

Mr. K.N. Shrivastava, Member (A):

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985. The specific reliefs prayed for read as under:-

“1. To call for the records of the case and quash/set aside the impugned orders as mentioned in Para-1 of O.A., direct the respondents to reinstate the applicant in service with all consequential benefits including promotion/seniority & arrears of pay.

2. To award costs in favour of the applicant and pass any order or orders which this Hon'ble Tribunal may deem just & equitable in the facts and circumstances of the case.

2. The brief facts of this case are as under.

2.1 The applicant was a constable in Delhi Police. For his unauthorized absence from 26.11.2002 to 27.02.2003, 17.04.2003 to 27.09.2003 and from 04.11.2003 to 07.11.2003 a Show Cause Notice (SCN) was issued to him by the respondents asking him to explain within 15 days as to why the three break ups in the said spells should not be treated as not spent on duty. Another SCN was issued to him on 05.12.2004 for his unauthorized absence from

06.03.2004 to 15.03.2004. The applicant did not reply to the SCNs. The SCNs were withdrawn vide respondents' order No.8553/SIP(West) dated 16.09.2004 and office order no.8552/SIP(West) dated 16.09.2004 on administrative grounds. The Disciplinary Authority (DA) decided to start a disciplinary inquiry against the applicant and accordingly issued Annexure A-1 order dated 13.05.2005 for the charge of unauthorized absence of the applicant. The charge against the applicant reads as under:

“Whereas, Const. Kundan Singh , No.552/W (now 2770/DAP) (PIS No.28940921) while posted in P.S. Paschim Vihar, West District has absented himself from duty willfully and unauthorisedly on the following occasions:-

| Sl.No. | DDNo. & date of absence | D.D.No. & date of arrival | Days | <u>Period of absence</u> | |
|--------|----------------------------|------------------------------|------|--------------------------|-------|
| | | | | Hrs. | Mints |
| 1. | 13-B, 26.11.02 | 18-B, 27.02.03 | 94 | 22 | -- |
| 2. | 22-B, 17.04.03 | 30-B, 27.09.03 | 162 | 23 | -- |
| 3. | 34-B, 04.11.03 | 55-B, 07.11.03 | 03 | 12 | -- |
| Total | | | 261 | 10 | -- |

Therefore, the following absentee notices were sent at his permanent address through Regd. Post with the direction to resume his duty at once failing which disciplinary action will be taken against him.

| Sl.No. | Absentee notices | Remarks |
|--------|---------------------------------------|---|
| 1. | 12928-30/SIP (West) dt.24.12.02 | A copy of absentee notice was sent at his residence through Regd. Post which was received by the Const. personally on 3.2.03. |
| 2. | 220-22/SIP (West) dt.10.1.03 | A copy of absentee notice was sent at his residence through Regd. Post which was received by the Const. personally on 3.2.03. |

| | | |
|----|----------------------------------|--|
| 3. | 1411-13/SIP (West) dt/13.2.03 | A copy of absentee notice was sent at his residence through Regd. Post which is deemed to be served upon the Const. otherwise the same would have been returned to this office undelivered with the remarks of postal authority. But it is not received back in this office. |
| 4. | 1787-90/SIP (West)dt.25.2.03 | A copy of absentee notice was sent at his residence through Spl. Messenger which was received by the Const. personally on 6.3.03. |
| 5. | 6883-85/SIP (West) dt. 4.5.03 | A copy of absentee notice was sent at his residence through Regd. Post which is deemed to be served upon the Const. otherwise the same would have been returned to this office undelivered with the remarks of postal authority. But it is not received back in this office. |
| 6. | 4439-41/SIP (West) dt.23.5.03 | A copy of absentee notice was sent at his residence through Regd. Post which was received by the Const. personally on 24.6.03. |
| 7. | 5267-68/SIP (West) dt.12.6.03 | A copy of absentee notice was sent at his residence through Regd. Post which is deemed to be served upon the Const. otherwise the same would have been returned to this office undelivered with the remarks of postal authority. But it is not received back in this office. |

In this regard a show cause notice for treating the absence period as notice for treating the absence period as not spent on duty was issued to him vide No.1776/SIP (West) dated 20.2.04 and the same has been withdrawn on administrative grounds vide his office order No.8553/SIP (West) grounds vide his office order No.8553/SIP (West) dated 16.9.04.

It is further alleged that while posted in P.S. Paschim Vihar, West District he was required for duty on 6.3.04 but he did not turn up and was marked absent vide DD No.9-B dated 6.3.04. He resumed his duty vide DD No.54-B dated 15.3.04 after absenting himself for a period of 10 days and 30 minutes willfully and unauthorisedly. In this regard a show cause notice for treating the absence period as not spent on duty was issued to him vide No.4547/SIP (West) dated 12.5.04 and the same has been withdrawn on administrative grounds vide his office order No.8552/SIP (West) dated 16.9.04.

It is also further alleged that while posted in P.S. Paschim Vihar, West District he was required for duty at Summon Warrant Cell on 4.4.04 at 500 P.M. but he did not turn up and was marked absent vide DD No.7 dated 5.4.04. During his absence period the following absentee notices were sent at his residence through Regd. Post with the direction to resume his duty at once failing which disciplinary action will be taken against him:-

| Sl. No. | Absentee Notices | Remarks |
|---------|-------------------------------|--|
| 1. | 4047-49/SIP (West) dt.21.4.04 | A copy of absentee notice was sent at his residence through Regd. Post, which is deemed to be served upon the Const. otherwise the |

| | | |
|----|-------------------------------|--|
| | | same would have been returned to this office undelivered with the remarks of postal authority. But it is not received back in this office. |
| 2. | 5744-46/SIP (West) dt.24.6.04 | A copy of absentee notice was sent at his residence through Regd. Post which is deemed to be served upon the Const. otherwise the same would have been returned to this office undelivered with the remarks of postal authority. But it is not received back in this office. |

His past absentee record also shows that he is a habitual absentee and incorrigible type of person as has absented himself on 15 different occasions in the past and despite award of various punishments, he did not mend himself.

The above acts on the parts of Const. Kundan Singh, No.552/W (now 2770/(DAP) amounts to gross misconduct, negligence, carelessness and dereliction in the discharge of his official duties which tender him liable for disciplinary action and punishment as envisages in Rule, 21 of Delhi Police Act, 1978.”

2.2 An inquiry was conducted by appointing an Inquiry Officer (IO). The applicant did not participate in the inquiry despite several attempts made by the IO to summon him. The IO submitted his report on 24.12.2005 in which he held that the charge of unauthorized absence against the applicant **as proved beyond doubt.**

2.3 The respondent No.3, i.e., DA, accepting the report of IO, vide Annexure A-3 order dated 28.02.2006 imposed the penalty of dismissal from service on the applicant with immediate effect. The said order also stipulated that his absence period prior to 05.03.2005 shall be treated as ‘period not spent on duty for all intents and purposes.’ The applicant filed an appeal before the departmental appellate authority, i.e., the Joint Commissioner of Police,

respondent No.2, who vide his Annexure A-4 order dated 16.07.2008 rejected the appeal.

2.4 The applicant approached this by filing, Tribunal the instant OA-2411/2008, which was dismissed by the Tribunal on 18.03.2010, as the Tribunal did not find any substance in the OA.

2.5 Aggrieved by the order of the Tribunal, the applicant went in appeal before the Hon'ble High Court of Delhi in W.P. (C) no.1837/2011, who vide order dated 30.08.2013 set aside the order of the Tribunal, remanded the case to the Tribunal with the following two directions:

- i) To look into applicability of OM dated 07.08.1959 on the issue of no.2 (the inquiry was initiated by an incompetent authority); and
- ii) The effect of withdrawal of SCNs without reserving any liberty to issue them afresh.

3. The case was taken up for final hearing on 15.03.2016. Shri Anil Singhal, learned counsel for the applicant and Shri N.K. Singh, for Mrs. Avnish Ahlawat, learned counsel for the respondents argued the case.

4. The learned counsel for the applicant submitted that this Tribunal in the case of **Ganesh Prasad v. Union of**

India, OA No.2534/2005 vide its order dated 13.12.2006, taking note of judgment of a coordinate Bench of the Tribunal in the case of **Amar Chand & Ors. v. Joint Commissioner of Police and others** has observed that a departmental enquiry conducted against the applicant after withdrawing the SCN without giving specific reasons has prejudiced the defence of the applicant and is patently violative of Government of India instruction no.9 below Rule 15 of the CCS (CCA) Rules, 1965, which has been made applicable to Delhi Police (Punishment & Appeal) Rules, 1980 by the respondents' own circular dated 28.04.1993 noted earlier. Such action is not sustainable under law.

5. The learned counsel further submitted that the Government instructions contained in the OM No.44/6/59-Disc., dated the 7th August, 1959 have not been followed by the respondents in imposing the punishment upon the applicant. It was submitted that in the said OM, it is clearly laid down that *"the authority who has been prescribed in the schedule to CCS (CCA) Rules, as the disciplinary authority for imposition of major penalties in respect of a grade shall not impose any of these penalties on an official of that grade if he was actually appointed to that grade by an authority who is higher in rank or grade than the former authority."* The learned counsel said that the

applicant was appointed by an IPS officer but the punishment order has been passed by a junior officer belonging to DANIPS. The learned counsel vehemently argued that the punishment order passed by the lower authority is thus void and is liable to be set aside. The learned counsel submitted that the impugned Annexure A-4 order passed by the departmental Appellate Authority (AA) is also bad in law, as the AA did not consider the medical certificate submitted by the applicant in support of his absence, on the ground that the same is unbelievable and is not authentic. Concluding his arguments, the learned counsel for the applicant submitted that the show cause notice issued on 20.02.2004 and 12.05.2004 have been withdrawn by the respondents on the basis of unspecified administrative grounds and without reserving any right for further departmental action vide order dated 16.09.2004. Hence, they were embargoed for initiating any disciplinary enquiry against the applicant for the same charges. Hence, the impugned Annexure A-1 order dated 13.04.2005 initiating the DE proceedings, Annexure A-2 findings of the EO dated 24.12.2005, Annexure A-3 punishment order dated 28.02.2006 passed by the DA and Annexure A-4 order dated 16.07.2008 passed by the AA

should be quashed and set aside and the applicant may be reinstated in service.

6. Per contra, the learned counsel for the respondents submitted that the applicant had remained unauthorizedly absent for which DE proceedings were started against him. If the applicant was not well, he ought to have applied for sanction of medical leave as per Rule 19 (5) of CCS (Leave) Rules, 1972, if indeed he was not well. On the issue of competency of the DA, who has passed the Annexure A-1 punishment order, the learned counsel submitted that the Deputy Commissioner of Police was fully competent to award punishment to the applicant as per the existing rules/instructions as well as under the provisions contained in Section 21 of the Delhi Police Act, 1978. On the second issue of effect of withdrawal of show cause notices issued earlier without any liberty to issue them afresh, the learned counsel drew our attention to the judgment of the Hon'ble Supreme Court in the case of **Union of India and Others v. Bishamber Das Dogra**, [(2009) 13 SCC 102] and submitted that the applicant has to explain as to what kind of prejudice has been caused to him by withdrawing the show cause notices and by issuing him a charge-sheet for the offence committed by the

applicant. The relevant paras from the said judgment are extracted below:

“33. Admittedly, the respondent employee has not completed the service of six years and had been imposed punishment three times for remaining absent from duty. On the fourth occasion when he remained absent for 10 days without leave, the disciplinary proceedings were initiated against him. The show cause notice could not be served upon him for the reason that he again deserted the LINE and returned back after 50 days. Therefore the disciplinary proceedings could not be concluded expeditiously. The respondent submitted the reply to the show cause notice and the material on record reveal that during the pendency of the enquiry he further deserted the LINE for 10 days. There is nothing on record to show any explanation for such repeated misconduct or absenteeism. The Court/Tribunal must keep in mind that such indiscipline is intolerable so far as the disciplined force is concerned.

34. The respondent was a guard in CISF. No attempt had ever been made at any stage by the respondent-employee to explain as to what prejudice has been caused to him by non-furnishing of the enquiry report. Nor he ever submitted that such a course has resulted in failure of justice. More so, the respondent employee had never denied at any stage that he had not been punished three times before initiation of the disciplinary proceedings and deserted the LINE twice even after issuance of the show cause notice in the instant case. No explanation could be furnished by the respondent-employee as under what circumstances he has not even consider it proper to submit the application for leave. Rather, the respondent thought that he had a right to desert the LINE at his sweet will. It was a case of gross violation of discipline. Appeal filed by the respondent employee was decided by the Statutory Appellate Authority giving cogent reasons.

35. The facts of the case did not present special features warranting any interference by the Court in limited exercise of its powers of judicial review. In such a fact situation, we are of the view that the High Court should not have interfered with the punishment order passed by the disciplinary authority on such technicalities.

7. Concluding his arguments, the learned counsel for the respondents submitted that the applicant has been absenting unauthorizedly for longer durations without applying for leave and as such he has been rightly punished by the DA and AA,

and hence the OA may be dismissed being devoid of substance.

8. We have considered the arguments put-forth by the learned counsel for the parties and have also perused the pleadings and the documents annexed thereto. The impugned orders were earlier upheld by this Tribunal vide order dated 19.03.2010 and the OA was dismissed. The Hon'ble High Court has remanded the case to this Tribunal for reconsideration on just two grounds, as mentioned at para-2.5 supra. We would, therefore, confine our discussion to the said two points only, viz.

i) **Applicability of OM dated 07.08.1989:**

The OM dated 07.08.1959 states very clearly that the authority who has been prescribed in the schedule to CCS (CCA) Rules, as the DA for imposition of major penalties in respect of a grade shall not impose any of these penalties on an official of that grade if he was actually appointed to that grade by an authority who is higher in rank or grade than the former authority. The applicant claims that he was appointed by an IPS officer whereas the punishment order has been passed by a DANIPS officer, lower in rank than the IPS officer and as such Annexure A-1 punishment order is null and void in the eyes of law. In this regard we would like to state that it

is the position held by an officer is important to understand as to whether he was indeed the DA authorized to pass the punishment order and not the service to which he belonged. There are umpteen instances where one would see that the same position has been held by the officers belonging to different services. In the instant case the applicant was appointed by an officer holding the position of Deputy Commissioner of Police and the punishment order has also been issued by an officer holding the same rank. As such, we hold that the punishment order has been passed by the competent authority and that there has not been any violation of the instructions contained in OM dated 07.08.1959.

ii) **The effect of withdrawal of show cause notices without reserving any liberty to issue them afresh:**

Admittedly, the applicant was issued two show cause notices on 20.02.2004 and 12.05.2004. The show cause notice dated 20.02.2004 pertains to the unauthorized absence of the applicant from 26.11.2002 to 27.02.2003, 17.04.2003 to 27.09.2003 and 4.11.2003 to 7.11.2003 in three break-ups whereas the second show cause notice dated 12.05.2004 was for his unauthorized absence from 06.03.2004 to 15.03.2004. It is seen from the record that the applicant has unauthorizedly absented himself again for the third period from 4.11.2003 to 7.11.2003. The DA in its wisdom thought

to withdraw the earlier two show cause notices and issue a charge-sheet for the unauthorized absence in three break-ups. The applicant had the liberty to reply to the charge-sheet. He failed to convince us as to how withdrawal of the earlier show cause notices and issuance of the charge-sheet for all the three spells of his unauthorized absence has prejudiced his case. The Hon'ble Supreme Court in **Bishamber Das Dogra** (supra) has placed the onus of proving prejudice on the Government servant concerned. We feel that the applicant had full opportunity of replying to the charge-sheet and explaining to the DA the reasons for his unauthorized absence in three spells. The applicant has not availed the said opportunity as he did not participate in the enquiry. He, therefore, cannot take the plea that withdrawal of the show cause notices has prejudiced his case.

9. In view of the foregoing discussion, we are of the view that the respondents have not violated the instructions contained in OM dated 07.08.1959 nor any prejudice has been caused to the applicant by the respondents withdrawing the two show cause notices issued to him earlier and in their place issuing a composite charge-sheet. As such, we do not find any merit in the OA and the same is dismissed.

10. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice M.S. Sullar)
Member (J)

‘San.’