

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 3464/2011

Reserved on 22.09.2016
Pronounced on 06.12.2016

Hon'ble Mr. V.Ajay Kumar, Member (J)
Hon'ble Mr. V.N.Gaur, Member (A)

Harender Singh,
PIS No. 28900839
Aged about 46 years
S/o Shri O.P. Chaudhary,
R/o House No. 29/149,
Vill. & PO-Kewal Park, PS-Adarsh Nagar,
North West Dist. Delhi-33

... Applicant

(By Advocate: Mr. Nilash Gaur)

VERSUS

1. Govt. of NCT of Delhi & Ors through
Commissioner of Police,
Police Head Quarters, IP Estate,
New Delhi.
 2. Joint Commissioner of Police,
Northern Range, Delhi Police,
Delhi.
 3. Dy. Commissioner of Police,
North West District,
Ashok Vihar, Delhi.
- ... Respondents

(By Advocate: Mrs. Rashmi Chopra)

ORDER

Hon'ble Mr. V.N.Gaur, Member (A):

The applicant has filed this OA challenging the order of dismissal passed by respondents after a DE proceedings

conducted against him on the charge of misconduct, indiscipline, disobedience and insubordination in the discharge of his official duties. The prayer of the applicant in the OA reads as under:-

“1. To quash and set aside the impugned orders mentioned in Para 1 of OA and direct the respondents to reinstate the applicant in service with all consequential benefits including promotion/seniority and 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 & circumstances of the case.”

2. The OA was dismissed by this Tribunal vide order dated 20.11.2014 by passing the following order:-

“After considering the foregoing discussion and for the reasons stated, we are of the view that the order of the DA and AA are confined to the issue of misconduct of unauthorized absence, and therefore, the fact whether the transfer order was issued in writing or verbally would not make any difference to the conclusions arrived at by the authorities. If the case of the applicant is that there were no orders of transfer at all, even then the misconduct of unauthorized absence would stick. We are, therefore, not persuaded to interfere in the orders passed by the DA and the AA as prayed for by the applicant. The OA is dismissed as devoid of merit. No costs.”

3. The applicant thereafter filed RA 238/2014 on the ground that the aforementioned order of the Tribunal did not consider the plea of the applicant regarding proportionality of the order. It was also stated that the review applicant had got some important documents and judgments in the meantime which he was not able to file along with the main OA. The RA was allowed vide order dated 10.03.2016. The applicant thereafter filed MA 1451/2016 with a prayer to take on record

certain additional documents which was allowed vide order dated 25.07.2016 with the following order:

“Learned counsel for the parties were heard on MA No.1451/2016 in OA No.3464/2011 wherein applicant had made a prayer to place on record certain documents in support of his prayer in the main OA.

2. OA No.3464/2011 was dismissed by this Tribunal vide order dated 20.11.2014. The applicant filed RA No.238/2014 which was allowed vide order dated 10.03.2016.

3. The Tribunal in para 2 of the order had noted the ground given by the review applicant in support of his prayer. The review applicant had stated that he got hold of some important documents that were not made available at the time of filing of the OA. One of the documents was second medical opinion of the hospital and a copy of the entry DD no.15 dated 20.12.2006 showing that the applicant had joined his duties as a special staff and was a part of a special assignment relating to the theft of antiques. Documents also contained number of official duties done by the applicant where the FIR was lodged under the Income Tax Act. The Tribunal dealt with these contentions in the following manner:

“4. We have considered the submissions made by the learned counsel for the applicant. The new documents that have been annexed to the review application do not add to the defence already taken by the applicant before the enquiry officer or in OA No.3464/2011. The fact of his second medical examination conducted at Aruna Asaf Ali Hospital on 10.11.2006 has been discussed in para 12 of the order. Similarly, the fact that the applicant assisted the department in connection with FIR no.988 of P.S. Shalimar Bagh even when he was officially not on duty, has been noted in para 13 of that order.

5. With regard to the proportionality of quantum of penalty it is found that contrary to the submission made in para 3 of the review application, we do not find any such ground taken in the OA. However, we find that Rule 8 (a) & 10 of the Police Rules, 1980 provides that extreme penalty of dismissal could be imposed upon a Police Officer if the continued misconduct indicates incorrigibility. From the record it appears that the respondents in the OA have not dealt with this point either during the inquiry or in orders passed by the disciplinary authority or appellate authority.

Rule 10 of Delhi Police (Punishment & Appeal) Rules, 1980 is reproduced below:

“10. Maintenance of discipline – The previous record of an officer, against whom charges have been proved, if shows continued misconduct indicating incorrigibility and complete unfitness for police service, the punishment awarded shall ordinarily be dismissal from service. When complete unfitness for police service is not established, but unfitness for a particular rank is proved, the punishment shall normally be reduction in rank.”

6.

7. Thus, though the review applicant has neither been able to show that he has raised this ground in the OA and the same has not been dealt with in the final order of the Tribunal, nor there is any error apparent in the order passed in the OA, we find that the above mentioned issue is a sufficient ground to have a re-look at order passed in the OA.”

4. It is apparent that the Tribunal had allowed the RA with the limited scope of considering the contention of the applicant that the aspect of disproportionality was not considered in that order. It may be placed on record that no such plea/ground was taken by the applicant in the OA, however, taking into account Rule 10 of Delhi Police (Punishment and Appeal) Rules, 1980 and the judgment of Hon'ble Supreme Court in **Bhagwan Lal Arya vs. Commissioner of Police**, 2004 (4) SCC 560, this Tribunal allowed the OA to consider the plea of the applicant with regard to proportionality.

5. With these observations, the MA is allowed. Documents annexed to the MA are taken on record. List the OA on 24.08.2016.”

4. The matter was heard on 22.09.2016. The learned counsel for the applicant arguing on the point of proportionality submitted that Rules 8 and 10 of Delhi Police (Punishment and Appeal) Rules, 1980 clearly envisage that the punishment of dismissal or removal from service is to be awarded only in

the case of proven grave misconduct rendering a person unfit for police service or in the event of continued misconduct indicating incorrigibility and complete unfitness for police service. In the present OA, it is not the case that he was habitual absentee and that despite repeated warnings issued, he has not improved. In fact, the applicant has an exemplary record and he has played important role in nabbing of many criminals, though it was never recognized and awarded by the concerned authorities. In the disciplinary proceedings, the aspect of incorrigibility and complete unfitness of police service has not been dealt with. The absence of the applicant has also been proved without taking cognizance of the fact that the services of the applicant in December, 2012 was requisitioned to include him in a raiding party that was sent to Mainpuri in connection with FIR No.988 /2006 of PS Shalimar Bagh. A copy of the FIR and the relevant DD entries has been filed along with MA 1451/2016. The conclusion of the inquiring authority, therefore, is not based on facts. With regard to proportionality, learned counsel submitted that once the conditions mentioned in Rules 8 and 10 of Delhi Police (P&A) Rules have not been met, the DA should not have imposed an extreme penalty of dismissal. The applicant is a man with family responsibilities and rendering him jobless is going to affect several lives. Learned counsel referred to the

Hon'ble Supreme Court judgment in **Bhagwan Lal Arya Vs. Commissioner of Police and Ors** (AIR 2004 SC 2131) and Hon'ble Delhi High Court dated 20.07.2016 in WP (C) 3952/2015 (**Shiv Karan Singh Vs. Govt. of NCT of Delhi & Ors.**)

5. The learned counsel for the respondents submitted that firstly it was wrong to say that any fresh evidence has been produced to prove that the applicant was not absent from 16.11.2006 till the date of dismissal. The representation filed by the father of the applicant and the fact that the applicant assisted the police team that went to Mainpuri in connection with FIR 988/2006 was on record and was dealt with in the order of this Tribunal dated 20.11.2014. The learned counsel further argued that in a disciplined force, it is a well settled law that an unauthorized absence of even a few days can attract the extreme penalty of dismissal. In the present case, the applicant despite the fact that he was declared medically fit by Aruna Asaf Ali Hospital and the fact that he attended the disciplinary enquiry throughout proved beyond doubt that his absence from duty was willful and without any cogent reasons.

6. We have heard the learned counsel for parties and perused the record. The limited issue before us is regarding the proportionality of punishment awarded on the applicant.

The RA was allowed in the background that the respondents had not considered the proportionality of punishment in terms of Rules 8 and 10 of the Delhi Police (P&A) Rules, 1980. The learned counsel for the respondents has rightly pointed out that the charge against the applicant was not confined to willful absence but the charge against the applicant was of “grave misconduct, indiscipline, disobedience and insubordination in the discharge of” his official duties. It can be seen that unauthorized absence was only one of the factors that led to the aforementioned charge against the applicant. The additional documents that have been filed do not in any way throw any fresh light on the reasons for his unauthorized absence. The points now raised by the learned counsel for the applicant during his argument with regard to applicant’s participation in one of the raids conducted by Delhi Police at Mainpuri had already been considered in our earlier order dated 20.11.2014. The relevant portion of that order is reproduced below:-

“13. It is seen that the Aruna Asaf Ali Hospital had come to a conclusion that the applicant was fit to resume duty after examining the patient as well as his papers from BJRM Hospital and thus it cannot be stated by the applicant that his certificates from BJRM Hospital were not taken into account. It was in the fitness of things that the medical papers of BJRM Hospital were examined by the medical officers and not by non-medical officers working under the Police Department while the nature of ailment of the applicant has not been brought on record either by the applicant or by the respondents, a perusal of the above letter of Aruna Asaf Ali Hospital would show that he was probably suffering from high blood pressure and the same was under control on the day of examination. This is relevant for the reason that the applicant continued to absent himself even after being served

notices that disciplinary action will be taken against him for his continued absence. If the applicant could assist the respondents on 23.12.2006 in connection with FIR no.988 of P.S.Shalimar Bagh as admitted in the OA, it defies logic as to why he could not resume duty at his place of posting. We also do not find any substance in the submission of the applicant that in the absence of any written order of transfer he did not know where to join for duty. The applicant who is aware of the rule position that the competent authority should have issued a written order and that he was under no obligation to comply with a transfer order issued verbally, ought to have known that after the expiry of the leave as applied for, irrespective of the fact that it was sanctioned or not, he should have reported back for duty either at the new station or at least at the old station. In response to a question put by him to PW-4 the PW clarified that after the receipt of opinion as "fit to resume duty" the absentee was to join duty at the same place from where he had absented himself. It is not the contention of the applicant that he had tried to go to his old station for duty but he was prevented from doing so. In our view even if there was a confusion, he had the option of approaching higher levels to ascertain where he should join instead of taking the excuse of 'not knowing where to join' for his indefinite absence from duty."

7. We have considered the judgment of Hon'ble Supreme Court in **Bhagwan Lal Arya** (supra), but we do not find the judgment to be of any assistance to the applicant. The facts of that case are quite different as the applicant in that case had fallen sick on parade ground during training and was absent thereafter for two months and 8 days. His absence was regularized on the basis of medical certificates by sanctioning leave without pay as no other leave was due to him. He was subsequently charge sheeted for unauthorized absence and his services were terminated. In this background, the Hon'ble Supreme Court held that the punishment of dismissal/removal from service can be awarded only for the acts of grave nature or as cumulative effect of continued misconduct proving incorrigibility or complete unfitness for police service.

Merely one incident of absence and that too because of bad health and valid and justified grounds/reasons cannot become basis for awarding such a punishment.

8. In the present case the charge as mentioned earlier in this order is not 'one incident' of unauthorized absence. The charge involves misconduct, insubordination and indiscipline which has been proved in a disciplinary enquiry and only thereafter the disciplinary authority passed order. The question of proportionality would have arisen had the penalty being imposed only on the basis of the charge of unauthorized absence. In the background of the facts of the present case, there is no ground for challenging the proportionality. It is settled law that it is the prerogative of the disciplinary authority to determine the quantum of punishment and it is not for the Courts to interfere in the same unless the quantum of punishment is such that it shocks the judicial conscious. In **Shiv Karan Singh** (supra), the petitioner was absent for a period of 254 days. After considering the facts of the case, the disciplinary authority, following the due procedure, imposed the penalty of dismissal on the petitioner. In the background of the facts of the case and law, Hon'ble High Court of Delhi modified the quantum of sentence by reducing it from dismissal to compulsory retirement. However, in our view the case of **Shiv Karan Singh** (supra) is not comparable with the

present case as it was a case of simple unauthorized absence and there was no element of misconduct, indiscipline, disobedience and insubordination as proved against the present applicant. The disciplinary authority in his order dated 30.09.2009 has considered the misconduct of unauthorized absence and insubordination on the part of the applicant while imposing the penalty of dismissal. There cannot be two opinions about the importance of discipline in a uniformed force and there can be no more serious charge than insubordination in police. We are, therefore, of the view that the present case would not fall in the category of exception where the Court may resort to the extraordinary step of interfering in the quantum of punishment.

9. Taking into account the aforementioned discussions and for the reasons stated, the OA is found to be without merit and is dismissed as such. No costs.

(V.N.Gaur)
Member (A)

(V.Ajay Kumar)
Member (J)

‘sk’

06th December, 2016