Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No.1133/2013

Reserved on 30th August 2018

Pronounced on 28th September 2018

Hon'ble Mr. K.N. Shrivastava, Member (A)
Hon'ble Mr. Ashish Kalia, Member (J)

Vipin Kumar
Const. 6742/DAP (PIS No.289504117)
Age 37 years
s/o Shri Vijaipal Singh
r/o VPO Johri, Police Station Binoli
District Bagpat, UP

..Applicant

(Mr. Sachin Chauhan, Advocate)

Versus

1. Govt. of NCTD through
The Commissioner of Police
Police Headquarters,
IP Estate,
MSO Building, New Delhi

2. The Special Commissioner of Police
Armed Police
Police Headquarters,
MSO Building, IP Estate
New Delhi

3. The Dy. Commissioner of Police
1st BN DAP Through
Police Headquarters, IP Estate
MSO Building, New Delhi

..Respondents

(Mrs. P K Gupta, Advocate)

O R D E R

Mr. K.N. Shrivastava:

Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main reliefs:-

> "i) To quash and set aside order dated 20.7.2011 whereby punishment of forfeiture of 5 years approved service permanently entailing proportionate reduction in his pay was imposed upon the applicant and order dated 23.03.2012 whereby the statutory appeal of the applicant is rejected by the Appellate Authority at A-2 and to further direct the respondent that the forfeited years of service be restored as it was never forfeited with all consequential benefit including seniority & promotion and pay and allowance.
>
> ii) To set aside the findings of the Enquiry Officer."

2. The factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant joined Delhi Police as a Constable in the year 1995. He was subjected to departmental enquiry (DE) proceedings for unauthorized absence in 11 different spells between April 2009 to February 2011. He remained unauthorized absent for 383 days 7 hours 15 minutes during these different spells. DE was conducted by appointing Inspector Diwan Chand Sharma as enquiry officer (EO).

2.2 The applicant had filed his defence statement (Annexure A-4) dated 04.06.2011 to the EO.

2.3 The EO, vide his report dated 13.06.2011 (pp.38 to 35), has held that the charge against the applicant is proved beyond doubt. The relevant portion of the EO's report is extracted below:-

> "Conclusion: As per the DE conducted, statements of PW's recorded and their examination, all the relevant documents exhibited as exhibits, testimony of the defence statement of the delinquent Ct Vipin No 6742/DAP and the papers sub mitted by Ct Vipin No 6742/DAP, I, Insp. Diwan Chand Enquiry Officer 1st Bn DAP CC "J" Coy CPR, PPL reached the conclusion that the charge framed against the Ct. Vipin Kumar No 6742/DAP is proved beyond doubt."

A copy of the EO's report, together with a covering letter, was served upon the applicant by the disciplinary authority, namely, the Deputy Commissioner of Police, 1st BN. DAP, Delhi vide Annexure A-3 order dated 15.06.2011

2.4 The applicant submitted his representation dated 13.07.2011 against the findings of the EO. He was granted personal hearing by the disciplinary authority on 19.07.2011, but he failed to avail that purportedly due to his illness.

2.5 The disciplinary authority was not convinced with the explanation of the applicant and vide its impugned Annexure A-1 order dated 20.07.2011, imposed the punishment of forfeiture of 5 years approved service permanently upon the applicant entailing proportionate reduction in his pay with immediate effect. It was also ordered in the Annexure A-1 order that the entire period of absence would be treated as period 'not spent on duty' on the principle of 'no work no pay'.

2.6 The applicant challenged Annexure A-1 of disciplinary authority in his Annexure A-5 appeal dated 29.08.2011 before the departmental appellate authority, namely, Special Commissioner of Police, Armed Police, Delhi, who, vide his impugned Annexure A-2 order (pp.30-31), dismissed the appeal and upheld the order of the disciplinary authority.

Aggrieved by the Annexures A-1 & A-2 orders of disciplinary authority and appellate authority respectively as also the findings of the EO, the applicant has approached this Tribunal in the instant O.A. praying for the reliefs as indicated in paragraph (1) above.

3. The main contention of the applicant in support of the reliefs claimed is that he was not well and that he had furnished medical certificates from a private doctor Manchvir Singh (Annexure A-6 (colly.), but the same have not been accepted by the respondents, and that the punishment imposed on him is disproportionate to the alleged charge.

4. The respondents, in their reply, have broadly stated that the applicant has been perpetually indulging in unauthorized absence and has not been following the office disciplines and that perusal of the medical certificates submitted by him from a private doctor would indicate as though all the certificates were written on a single day without any substantiation.

5. The applicant has filed rejoinder, in which he how, more or less, re-affirmed the pleadings in the O.A.

6. On completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 30.08.2018. Arguments of Mr. Sachin Chauhan, learned counsel for applicant and Mrs. P K Gupta, learned counsel for respondents were heard.

7. Mr. Sachin Chauhan, learned counsel for applicant, besides reiterating the averments made in the O.A., stated that in terms of Rule 19 of CCS (Leave) Rules, 1972, in case of non-gazetted official, private doctors can also issue medical certificates and they have to be accepted by the authorities concerned.

8. Mr. Chauhan also placed reliance on the judgment of this Tribunal in **Sohan Lal** v. **Union of India & others**, 2006 (2) AISLJ (CAT) 88, wherein it has been held as under:-

> "10.....A medical certificate unless proved to be fictitious, forged and procured to make a pretext of illness, the competent authority in its discretion cannot hold such a view without subjecting the person to a second medical examination, as being a non-expert competent authority cannot decide the reliability or genuineness of the certificate...."

9. *Per contra*, Mrs. P K Gupta, learned counsel for respondents submitted that the applicant has a history of unauthorized absence and during the period of less than 2 years, he was unauthorizedly absent for as many as 383 days 7 hours 15 minutes.

10. We have considered the arguments of learned counsel for the parties and perused the pleadings.

11. It is not in dispute that the applicant was unauthorizedly absent in 11 different spells between April 2009 to February 2011, totaling 383 days 7 hours 15 minutes. The contention of the applicant that he was ill and that he has submitted Annexure A-6 (colly.) medical certificate issued by a private doctor is to be taken with a pinch of salt. A mere perusal of the medical certificates would give an impression to anyone that the certificates have been issued on a single day.

12. Be that as it may, the scope of judicial review in the matter of DE proceedings is highly limited. Judicial review is normally resorted to only in following circumstances:

(a) Principles of natural justice have not been followed in the conduct of DE proceedings,

(b) Incompetent authorities have issued the charge memorandum and passed the penalty orders,

(c) The penalty orders have been passed in violation of relevant laws/rules; and

(d) The punishment inflicted is disproportionate to the offence committed.

13. The above principles have been enshrined in the following judgments of Hon'ble Supreme Court:

(i) **Union of India** v. **P. Gunasekaran**, (2015) 2 SCC 610

(ii) **Ranjit Thakur** v. **Union of India & others**, (1987) 4 SCC 611; and

(iii) **Kuldeep Singh** v. **Commissioner of Police & others**, JT 1998 (8) SC 603.

14. The penalty of forfeiture of five years approved service permanently upon the applicant entailing proportionate reduction in his pay with immediate effect, in addition to denial of regularization of the period of unauthorized absence by way of sanctioning leave, appears to be too harsh. The Hon'ble Apex Court in **Ranjit Thakur's** case (supra) has held as follows:

> "9. Re: contention (d): Judicial review generally speaking, is not directed against a decision, but is directed against the "decision making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-

Martial. But the sentence has to suit the offence and the offender. It should not be A vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court- Martial, if the decision of the Court even as to sentence is an outrageous defiance of B logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. In Council of Civil Service Unions v. Minister for the Civil Service, [1984] 3 Weekly Law Reports 1174 (HL) Lord Deplock said:

> "... Judicial Review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground l would call 'illegality'. the second irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community ..... E In BhagatRam v. State of Himachal Pradesh, A.I.R. 1983 SC 454 this Court held:
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> > "It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution.
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> The point to note, and emphasise is that all powers have legal limits.
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> In the present case the punishment is so strikingly disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review."

15. In view of the law laid down by the Hon'ble Apex Court in **Ranjit Thakur's** case (supra), we set aside the orders of disciplinary and appellate authorities and remit the matter back to the disciplinary authority for granting lesser punishment in terms of reduction in number of years of forfeiture of approved service.

16. Accordingly, the O.A. is disposed of. No order as to costs.

(Ashish Kalia)
Member (J)

(K.N. Shrivastava)
Member (A)

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