

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.4088/2013

This the 10th day of April, 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

Shri Bhagwan
through Legal Heir Prem Lata
W/o late Shri Bhagwan,
Aged 59 years,
R/o 120-B, Gali No.9,
Nathu Colony, Nathu Pura,
Burari, Delhi-84.

... Applicant

(By Mr. Anil Singal, Advocate)

Versus

1. Government of NCT of Delhi
through its Commissioner of Police,
PHQ, IP Estate,
New Delhi.
2. Joint C.P. (Security),
Security Main Lines,
Vinay Marg,
New Delhi.
3. DCP/Operations
through Commissioner of Police,
PHQ, IP Estate, New Delhi.
4. Shri Braja Kishore Singh (DANIPS),
DCP/Operations,
through Commissioner of Police,
PHQ, IP Estate, New Delhi.

... Respondents

(By Mr. Amit Anand, Advocate)

ORDER

Justice L. Narasimha Reddy, Chairman :

The applicant (who has since died, and is represented by his legal heir) was working as a Constable in Delhi Police. A departmental inquiry was ordered against him vide order dated 28.01.2011. The allegation against him was that he remained unauthorisedly absent from duty on 14.06.2009 when he was deployed to perform Commando duties with the Governor of Jharkhand, and resumed duty only on 01.09.2009 after absenting himself for a period of 79 days. He is also alleged to have remained absent from duty on several subsequent occasions between 14.09.2009 and 28.07.2010. The applicant submitted a representation denying the allegations. Further proceedings were conducted in accordance with the procedure prescribed under Delhi Police (Punishment and Appeal) Rules, 1980. The inquiry officer framed the charge, and ultimately held the same as proved.

2. Through an order dated 01.07.2011, the Deputy Commissioner of Police (DCP), Security (Operations) imposed the punishment of dismissal from service upon the applicant. The appeal preferred by him was also rejected by the Joint

Commissioner of Police, Security, on 17.11.2011. This OA is filed challenging the order of dismissal, as confirmed by the Appellate Authority. The applicant prayed for quashing of the order of dismissal, or in the alternative, to convert the punishment of dismissal into one of compulsory retirement, or to grant compassionate allowance, with all consequential benefits, as per Rule 41 of the CCS (Pensions) Rules, 1972.

3. The applicant pleaded that the charge was without any basis, and in respect of each allegation of absence, he had given explanation, and that his unblemished service spread over a period of three decades was not taken into account at all. He further submitted that the authority, who passed the order is not competent, and thereby the entire proceedings are vitiated. Reliance was also placed upon an order dated 15.02.2007 passed by this Tribunal in OA No.102/2006 - *Ex. Constable Subhash v Lt. Governor, Delhi & others*.

4. The respondents filed a counter-affidavit opposing the OA. It is stated that on 14.06.2009 the applicant was put on duty as Commando with the Governor of Jharkhand, and though he was supposed to report on duty at 08:00 a.m., he remained absent, and reported for duty only on 01.09.2009 after

absenting himself for a period of 79 days. It is also alleged that he remained unauthorisedly absent from duty on several subsequent occasions between September, 2009 and July, 2010. The details of the absence are also furnished. As regards the competence of the officer who passed the order of punishment, it is stated that the Additional DCP (Security) is conferred with the power of the Disciplinary Authority, and that no illegality can be said to have taken place.

5. We heard Shri Anil Singal, learned counsel for the applicant, and Shri Amit Anand, learned counsel for the respondents.

6. The applicant was deputed to perform Commando duties with the Governor of Jharkhand. It was alleged that he absented from duty. The record of the applicant was otherwise clean. The period of absence was in the years 2009 and 2010. The proceedings before the inquiry officer were almost in default, since the applicant did not examine the defence witnesses, nor did he file any written statement. The extent of absence is in fact on the higher side. It is said to be 298 days spread over two years.

7. Whatever be the nature of allegations against the applicant, the proceedings were required to be conducted in accordance with law. The Disciplinary Authority for the applicant, as per the service rules, is the DCP (Ops.). The order of punishment against the applicant was passed by the Addl. DCP, holding the post of DCP, Security (Ops.) in-charge. Though the applicant made an effort to contend that the concerned officer was from The Delhi, Andaman & Nicobar Islands Police Service (DANIPS) and not the Indian Police Service (IPS), we are not impressed by that argument. However, the question as to whether an officer holding the additional charge of the office of the Disciplinary Authority, is competent to pass an order of punishment, needs attention.

8. In the counter-affidavit filed in this OA, the respondents stated as under:

“...It is submitted that Sh. B. K. Singh, (Respondent No.4), who was transferred from 4th Bn. DAP as Addl. Deputy Commissioner of Police, Security vide GNCT, Delhi's order No. F.5/88/2007/HP-1/Estt.-537-54 dated 8.10.2009 r/w PHQ's endst. No.A/1/2(1)/209/59067-16/CB-1/PHQ dated 8.10.2009 (Annexure R/1). He was also looking after the work of Deputy Commissioner of Police (Ops.) Security w.e.f. 16.12.2010 and drawing his pay in the scale of Rs.15600-39100+Grade Pay Rs.7600/-. Since, the Respondent No.4 who was holding post of Addl. DCP/Security on 1.07.2011 (the date of dismissal

order of the applicant) was competent disciplinary authority to exercise statutory powers....”

From this, it is clear that the officer who passed the order of punishment was “looking after” the work of DCP (Ops.). This very issue was dealt with by a Division Bench of this Tribunal in OA No.102/2006 in the case of *Ex. Constable Subhash*. In that OA, the office memorandum dated 24.01.1963 issued by the Ministry of Home Affairs was referred to, and it was held as under:

“13. Insofar as the person holding a current duty charge of a post is concerned, G.I., MHA, OM No.F/7/14/61-Ests.(A) dated 24.1.1963, which is decided in consultation with Ministry of Law, provides that an officer appointed to perform the current duties of an appointment can exercise administrative or financial powers vested in the full-fledged incumbent of the post, but he cannot exercise statutory powers. Moreover, we in agreement with the decision in Const. Suresh Kumar’s case (supra), which has been implemented by the respondents, find that a JAG officer still remains as a DANICS officer and as such has no jurisdiction to act as a disciplinary authority or to exercise statutory powers. In such view of the matter, an order passed by the disciplinary authority in the present case initiating the inquiry by another disciplinary authority to impose upon the applicant a major penalty under Rule 8 of Delhi Police (Punishment & Appeal) Rules, 1965 is without jurisdiction and incompetent.”

9. It is not even mentioned that the order passed by this Tribunal in the said OA has been varied or reversed. Once

the facts and the law is clear, namely, that the officer who passed the order of dismissal against the applicant, was holding the post on “look after” basis, and that the Government clearly directed that an officer appointed to perform ‘current duties’ cannot exercise administrative or financial powers vested in the full fledged incumbent, the order impugned in the OA becomes vitiated. On this ground, the order of dismissal passed against the applicant is liable to be set aside.

10. In the normal course, it must be left open to the competent authority to pass a fresh order in accordance with law. However, in view of the fact that the applicant is no more, the respondents can be directed to extend the benefit of compassionate allowance, as prayed for in the OA.

11. The OA is accordingly allowed, and the order of dismissal from service is set aside. In the peculiar facts and circumstances of the case, the respondents are directed to grant the compassionate allowance to the legal heir of the deceased applicant, calculated with effect from the date on which the OA was instituted, i.e., 19.11.2013. The family pension with effect from the date on which the applicant died, shall also be granted. If these benefits are extended within a period of three

months from the date of receipt of a copy of this order, the respondents need not pay arrears of family pension or interest thereon. If they fail to do so, the feasibility of extending the benefit of interest and arrears would be considered. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/as/