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Central Administrative Tribunal, Principal Bench

Original Application No.1364 of 2003

New Delhi, this the 13th day of November, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K. Naik, Member (A)

Shri Pushpender Singh,
S/o Shri Kartar Singh,
R/o B-43/2, Village Samaipur Badli,
P.S. Alipur,
Delhi

....Applicant

(By Advocate: Shri D.R. Singh)

Versus

1. Union of India,
through its Secretary,
Ministry of Home Affairs,
New Delhi.
2. Commissioner of Police, Delhi Police,
Police Head Quarters,
I.P. Estate, New Delhi-2
2. Deputy Commissioner of Police,
P & L Delhi,
5, Raj Pur Road, Delhi

....Respondents

(By Advocate: Shri Rishi Prakash)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The applicant was a Constable in Delhi Police.
He was served with the following summary of allegations:

"It is alleged against you Const. Pushpender No. 522/L (now 156/L) (PIS No. 28840033) that while posted in P&L Unit you were detailed for Quarter Guard duty on 2.7.99, but you did not report for said duty and absented yourself at your own sweet will. Therefore, you were marked absent vide D.D. No. 28 dt. 2.7.99. You resumed your duty vide D.D. No. 28 dt. 13.7.99 after absenting your self willfully and unauthorisedly for a period of 11 days 2 hours and 30 minutes.

You again absented yourself on 5.4.2000 and as such were marked absent vide D.D. No. 10 dt. 5.4.2000, you resumed your duty vide D.D. No. 12 dt. 10.4.2K after absenting your self willfully and unauthorisedly and without any information to the Department for a period of 5 days one hour and 30 minutes.

Third time you absented your self on 14.4.2K and as

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such you were again marked absent vide D.D.No.10 dt.14.4.2K and absentee Notice was issued to you Const. Pushpender Singh No.156/L vide this Office No.1901/S.I.P./ AC/P&L dt. 8.5.2000 directing you to join your duty immediately failing which disciplinary action will be initiated against you but you did not join your duty even after the receiving the said absentee notice on 18.5.2K. Thereafter another absentee notice was issued to you vide this office No.2382/SIP/(AC)/P&L dt.31.5.2K which was also duly served upon you on 1.6.2000 against your proper receipt but even then, you did not bother to join/resume you duty. However, you told SI Mam Raj of this Unit who was directed to serve the said absentee Notice at your home and also to verify the cause of your absence, that you will join your duty as and when you will be declared fit for duty by the doctors of Institute of Human Behaviour Allied Sciences as you were taking treatment there and also would submit your medical papers at that time, but you failed to submit the medical papers pertaining to said period i.e. 14.4.2000 to 20.8.2K. You submitted your medical papers only for a period from 16.5.2000 to 29.5.2K (two weeks) and 18.7.2K to 31.7.2K (two weeks) while your absence pertains to the period from 14.4.2K to 20.8.2K i.e. 128 days, 2 hours and 20 minutes.

Not only you failed to submit your medical papers for the absence said period but also absented willfully and unauthorisedly again on 23.8.2K and again you were again marked absent vide D.D.No.16 dt.23.8.2k. An absentee Notice No.79/SIP/P&L dt. 7.9.2K was issued to you directing you to join your duty immediately failing which disciplinary action would be taken against you. But you did not come to join your duty. Thereafter another absentee Notice was issued to you vide this office order NO.5639-40/SIP/P&L dt.23.10.2K. which was served upon you on 29.11.2K against your proper receipt but even then you did not resume your duty. You only resumed your duty on 19.2.2001 vide D.D.No.--absenting yourself for a period of 2 months and 26 days.

Your previous record shows that you were enlisted in Delhi Police on 12.1.84 and during 17 years of your service you have absented your self 68 times and despite award of various punishments including major punishment of forfeiture of your one year approved service temporarily, you have not mended yourself, which indicates that you are an habitual absentee and incorrigible type of person.

The above act on the part of you, Const. Pushpender Singh No.156/L amounts to grave misconduct, negligence, carelessness, dereliction in the discharge of your official duties habitual absentee, incorrigible type of person, violation of S.No.111 as well as C.C.S. (Leave) Rules 1965 and unbecoming of a police officer, which renders you liable to be dealt with departmentally under the

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provisions of Delhi Police (Punishment & Appeal) Rules, 1980.

Sd/-
R.I./P&L
E.O."

2. The report was against the applicant and the disciplinary authority accepting the same pertaining to wilful absence of the applicant and his past record, dismissed him from service vide order of 5.2.2002. He preferred an appeal which was dismissed. By virtue of the present application, the applicant seeks to assail the orders so passed.

3. In the reply filed, the application has been contested. The assertion pertaining to the allegations against the applicant have been reiterated. It has pointed that the applicant had wilfully absented on 68 occasions and he was again absent on many occasions referred to above and, therefore, the penalty so imposed was justified.

4. We have heard the parties counsel.

5. So far as the applicant is concerned, the arguments proceeded on the basis:

(a) the applicant was unwell and, therefore, could not attend the duties and he has been informing the respondents about his sickness supported by the medical certificates: and

(b) the procedure in the departmental enquiry has not been adopted in accordance with Delhi



Police (Punishment and Appeal) Rules.

6. At the outset, we deem it necessary to mention that basically on facts, it is the domain of the disciplinary and the appellate authority to arrive at certain findings. This Tribunal will not sit as a court of appeal and re-appreciate the evidence. The limited scope for interference would be only where the findings are totally erroneous or perverse or when no reasonable person would come to such a finding.

7. In the present case before us, record does indicate that on many occasions as indicated in the summary of allegations, the applicant did not attend the duty and on 68 earlier occasions also, he abstained from duty. The question as to if the applicant was unwell or not, would ordinarily fall within the purview of the disciplinary authority and the appellate authority for consideration. Suffice to say that when the applicant had been called upon to resume duty, he could not do so. Even when he was declared fit to join the duty, he did not join. The medical certificates so produced also do not indicate that for such a long continuous period, the applicant was not in a position to join duty. Therefore, on facts, there is precious little for this Tribunal to interfere.

8. As regards the procedural flaw in the departmental enquiry, we were informed that the applicant was not allowed a defence assistant. The record reveals that in fact the applicant himself had refused for the

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defence assistant. On the contrary, he took part in the proceedings. These facts clearly show that there was no procedural flaw while conducting the enquiry.

9. In that event, it was urged that the applicant had two children and, therefore, the penalty imposed is too harsh.

10. Keeping in view the disciplined force like Delhi Police, it would be improper for this Tribunal to give a direction to continue the applicant in service. ^{in the facts indicated} No further argument was raised. ^

11. For these reasons, the O.A. being without merit must fail and is dismissed.

S.K. Naik
(S.K. Naik)
Member (A)

V.S. Aggarwal
(V.S. Aggarwal)
Chairman

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