

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A. NO. 1446/2003

Friday, this 5th day of December, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.A. Singh, Member (A)

Constable Bali Ram,
No. 891/L
S/o Shri Somnath, D.D.
R/O C-73, 2, Yadav Nagar,
Samay Pur Badli, Delhi-110042 ... Applicant.

(By Advocate: Shri Siddhartha Yadav)

Versus

1. Commissioner of Police, PHQ,
I.P. Estate, New Delhi.
2. Joint Commissioner of Police,
Provisioning and Logistics,
Old Police Lines, Rajpur Road, Delhi.
3. Deputy Commissioner of Police,
Provisioning and Logistics,
Old Police Lines, Rajpur Road,
Delhi. Respondents

(By Advocate: Mrs. P.K. Gupta)

O R D E R (ORAL)

Shri Justice V.S. Aggarwal:

The applicant was a Constable in Delhi Police. Disciplinary proceedings had been initiated against him pertaining to the following charges:-

"I, Insp. Surjeet Singh, E.O. Charge You Const. Bali Ram No. 2393/DAP (Now 891/L) (PIS NO. 28880402) that You Const. while posted in 111rd Bn. DAP Delhi were relieved on transfer from 111rd Bn. DAP to Prov. & Logistics Unit Delhi vide D.D. No. 26.A dated 24.10.2000 in compliance of PHQ's order No. 26861/900/P.Br.PHQ, dated 20.9.2000. You were relieved with the direction to report to P&L Unit on 24.10.2000. As such you were required to report for resuming your duty in this unit on 25.10.2000, but you failed to do so. You reported in this Unit on 30.11.2000 vide D.D. No. 54 after absenting yourself willfully and unauthorisedly and without any

Ag

intimation/permission of the competent authority for a period of 37 days. You also did not produce any medical rest for this period.

Your previous record shows that you were enlisted in Delhi Police on 29.8.88(A.N) and during 13 years and 6 months of your service, you have absented your self 89 different occasions and despite award of various punishments including major punishment of forfeiture of your two years approved service permanently, you have not mended your ways, which indicates that you are an habitual absentee and incorrigible type of person.

The above acts on your part amount to grave misconduct, negligence, carelessness, dereliction in discharge of your official duties, habitual absenteeism, incorrigible type of person, and unbecoming of a Police Officer, which renders you liable for punishment under the provisions of the Delhi Police (Punishment & Appeal) Rules, 1980."

2. The enquiry officer had recorded his finding that the charge is proved. Resultantly, the disciplinary authority, who recorded separate reason accepting the report of the enquiry officer, imposed a penalty of dismissal from service on the applicant vide order dated 01.10.2002. The applicant preferred an appeal which was dismissed on 2.1.2003.

3. By virtue of the present application, the applicant seeks to assail the orders passed by the disciplinary as well as the appellate authority on various grounds which we shall deal herein.

4. Petition has been contested. The respondents plead that the applicant was required to resume his duty on 25.10.2000, but only reported on 30.11.2000 after absenting for a period of 37 days. His previous records even indicate that though he was enlisted in Delhi Police only on 29.8.1998, he absented himself on 89 different occasions and despite awarding various major/minor penalties, he failed to mend his ways. It is thereafter stated that the

As Aey

charge sheet referred to above had been served in accordance with law and following the procedure, the penalty has been imposed.

5. We have heard parties counsel.

6. Admittedly, the applicant was on medical leave and he was required to join duty on 25.10.2000. He submitted a hand written application dated 24.10.2002 in which he had specifically mentioned that he is fit and can join duty. Learned counsel for applicant wanted us to ~~see~~ ^{believe} that the said line had been recorded at the advice of the duty officer which indicates that applicant was ~~still~~ ^{not} unwell.

7. In the facts and circumstances of the case, we find that the said plea is so much thought of by the learned counsel and has to be rejected. If the said line had been recorded by the applicant mistakenly by an advice, he should have taken this plea on an earlier occasion also. However, it had not been done. Therefore, it is too late in the day to urge, what we have recorded above.

8. Admittedly, thereafter he did not join his duty as, according to the learned counsel, the applicant was unwell. He relies upon the medical certificate issued from Unani dispensary at Najafgarh to indicate that he was suffering from Piles and as such he could not attend his duty. Learned counsel for the respondents rightly pointed that the applicant, in fact, is a resident of Samaypur, Delhi. He was going to Najafgarh for treatment but did not care to get treatment from CGHS or join the duty, though he could travel more than 15 km to Najafgarh.

9. Not only the said plea of the learned counsel must prevail but otherwise also the record reveals that he produced medical certificate which was illegible. During

18 Aug

the course of the enquiry, all these original documents had ~~not~~ been produced. in such a situation, the disciplinary authority was justified in rejecting the said defence that the applicant was unwell which otherwise is contrary to what the applicant had given in writing on 24.10.2000, to which we have already referred to above.

10. Yet another submission made by the learned counsel is that the applicant had been deprived of a reasonable opportunity to produce his defence witness. In paragraph 4.14 of his petition, the applicant makes a grievance about the said fact and contends that he had informed the enquiry officer that his defence witness would be available on 13.8.2002 for evidence and accordingly he produced Shri Goverdhan on that date. That was not allowed ~~to do~~ ^{as} ~~so~~ The said contention has ^{also to be} been rejected as the pleadings itself indicate that before 12.8.2002 a number of opportunities had been granted to the applicant. However, he did not produce the defence evidence or the witness, i.e. Shri Governdhan. Therefore, it cannot be taken that the applicant was deprived of producing the evidence in his defence, but it would be appropriate to term that he has not availed of the opportunity at the proper time. The present plea, therefore, must be described ^{as a} ~~only~~ ^{to get} the impugned orders set aside. The plea, therefore, has to be rejected.

11. The ~~last~~ ^{last} submission in this regard was that the penalty awarded is disproportionate to the alleged dereliction of duty. We are conscious of the fact that this falls within the domain of the disciplinary authority. But suffice to mention that it was not in the first instance that the applicant remained absent for more than a

ls Ag

(5)

month without any proper application. His past record indicated that on 89 earlier occasions, he had absented himself from duty and this fact has been incorporated even in the charge-sheet that have been proved against the applicant in disciplinay proceedings. No other grounds have been raised on behalf of the applicant. In the circumstances, no interference is called for from this Tribunal. OA must fail and is dismissed.



(S.A. Singh)
Member (A)



(V.S. Aggarwal)
Chairman

/kdr/