

Central Administrative Tribunal, Principal Bench

Original Application No.1699 of 2003
M.A.No.1443/2003

New Delhi, this the 5th day of April, 2004

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

Umesh Kumar
(Ex-Constable No.1571/DAP-1549/E
(PIS No.2891049)
R/o Karawal Nagar,
Near Khajuri Police Station,
Shahdara,
Delhi-92

.....Applicant

(By Advocate: Shri Arun Bhardwaj)

Versus

1. The Commissioner of Police,
Delhi Police,
Police Headquarters,
ITO Complex, New Delhi
2. Enquiry Officer
Inspector Mohan Singh Dabas
SHO/Anand Vihar, East District,
Delhi Police,
New Delhi
3. The Additional ~~Commissioner~~ Deputy
Commissioner of Police,
(Disciplinary Authority)
East District,
Delhi
4. The Joint Commissioner of Police,
Delhi Police (Appellate Authority)
Police Headquarters,
ITO Complex,
New Delhi

.....Respondents

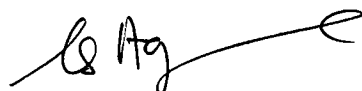
(By Advocate: Shri Ashwani Bhardwaj, proxy for Shri Rajan Sharma)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The applicant was a Constable in Delhi Police. Disciplinary proceedings had been initiated against him with respect to the following charge:

"I, Inspector Mohan Singh Dabas charge you Constble Umesh Kumar No.1571/DAP-1549/E



(PIS No.2891049) that while posted in IInd Bn. DAP has availed C.L. on the following occasions without obtaining order book from the office of DCP/IInd Bn., DAP.

- | | |
|--------------------------|------------|
| 1. DD No.57 dt. 22.2.95 | 12+13 days |
| 2. DD No.70 dt. 7.4.95 | 5+6 days |
| 3. DD No.81 dt. 21.3.95 | 3+2 days |
| 4. DD No.43 dt. 10.2.95 | 2+3 days |
| 5. DD No.65 dt. 4.5.95 | 4 days |
| 6. DD No.117 dt. 18.5.95 | 2+2 days |

28+26 days

You proceeded on 5+6 days C.L. w.e.f. 8.4.1995 vide D.D.No.70 dt. 7.4.95. You were due back on 19.4.95, but you did not turn-up. You were marked absent vide D.D.No.77 dt. 19.4.95. You resumed your duty vide D.D.No.39 dated 9.5.95 after absenting yourself for a period of 20 days, 23 hours and 35 minutes. You again proceeded on 2+2 days C.L. w.e.f. 19.5.95 vide D.D. No.117 dt. 18.5.95. You were marked absent vide D.D.No.39 dt. 23.5.95. You were resumed your duty vide D.D. No.39 dt. 23.5.95. You were resumed your duty vide D.D. No.63 dt. 7.6.95 after absenting yourself for a period of 14 days and 7 hours. You were temporarily attached with Inspector R.P. Tyagi and was directed by Inspector to report to District Line, but you did not report there and running absent since 15.11.95. All the shows that you are an incorrigible type of Constable which attracts Rule 10 of Delhi Police (Punishment & Appeal) Rules, 1978.

The above act on the part of you Constable Umesh Kumar No.1549/E amounts to grave misconduct and becoming a member of disciplined force, which renders you liable for punishment under section 21 / Delhi Police Act.1978."

2. The matter had been handed over to the enquiry officer. During the course of the enquiry, it appears that P.W. 4 Inspector Virender Singh had been examined and he made a statement that on scrutiny of Order Book of 5+2 days with effect from 24.5.95, he found that neither the applicant nor any dealing clerk had signed the paper book. Resultantly, the enquiry officer besides holding that the



charge is proved, further recorded -

"Hence it is clear that each and every time the defaulter constable has managed the fake O.B. PW-4 also stated in his statement that defaulter has managed the fake order book himself and defaulter get the medical from a private Doctor during his absent period, which is not acceptable."

3. The disciplinary authority accepted the report of the enquiry officer and while imposing the extreme penalty of dismissal from service, observed:

"Keeping in view all the facts in mind and after going through the record on DE file I am of the opinion that defaulter constable has manipulated the record by preparing fake OB, and to record the entries in Daily Diary Roznamcha regarding his departure on CL, which is gravest misconduct on his part. Moreover to record/ making falls entry in the Roznamcha attracts severest punishment. Hence this act of defaulter is not excusable and he is also absolutely unfit for retention in police force. I, therefore, hereby dismiss the defaulter constable Umesh Kumar No.1571/DAP, 1549/E from the force with immediate effect. His above said absence be treated as leave without pay."

The further appeal was dismissed.

4. The applicant by virtue of the present application seeks to quash the orders passed by the disciplinary and the appellate authority.

5. The petition is being contested.

6. Learned counsel for the applicant, at the outset, raised a preliminary objection that the application is barred by time. He contended that the order passed by the

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disciplinary authority is dated 23.10.97 and the appeal was dismissed on 24.8.99 while the petition has been filed on 3.7.2003.

7. If the matter had ended here, the plea of the respondents would have succeeded. But in the present case, the applicant preferred to file an application seeking condonation of delay. He points out that against the order passed by the appellate authority, he had filed a revision petition in September 1999. The same has not been decided. On this short ground, it is claimed that the delay may be condoned.

8. In reply, learned counsel for the respondents points that in terms of Section 20 read with Section 21 of the Administrative Tribunals Act, the period of limitation is one year from the date the final order is passed and the applicant, at best, could wait for six months and if the revision was not decided, he should have filed an application. We are not dwelling into this controversy for the present. The controversy to be decided for the present is that whether there are just and sufficient grounds for condonation of delay or not.

9. It is an admitted fact that revision petitions were being filed before the Commissioner of Police against the orders by the appellate authorities and were being entertained. It was in the year 2000 that this Tribunal held that the Commissioner of Police has no power to entertain a revision petition (see O.A.No.77/97 with



connected matters) entitled Head Constable Rajpal Singh & others vs. Union of India & others decided on 14.9.2000. In this backdrop, necessarily if a revision petition had been filed and if the applicant had waited, it cannot be termed that his application seeking condonation of delay must fail. He preferred to wait for some time and it is clear from the facts that he had the intention to challenge the orders so passed and in this backdrop, we condone the delay in filing of the petition because there were just and sufficient grounds to do so.

10. The main submission addressed was that the authorities concerned have taken into consideration extraneous factors while passing the impugned order.

11. We have already reproduced above the charge that was framed against the applicant. It pertained to unauthorised absence details of which were provided without obtaining the Order Book from the office. Perusal of different orders namely by the disciplinary authority, the appellate authority and also the report of the enquiry officer to which we have referred to above in the opening paragraphs, clearly show that the authorities were in addition to what we have recorded above, took into consideration certain extraneous factors pertaining to the applicant having manipulated the record by preparing a fake Order Book to record the entries in the Daily Diary Roznamcha. That was not a part of the charge.

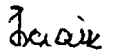
12. A charge is framed against a person against whom

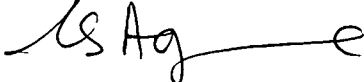
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there are certain allegations of misconduct to precipitate the controversy. This is done so that he knows fully the nature of allegations made against him and he could contest the same. Once the extraneous factors other than the fact have been taken into consideration, necessarily the impugned order on that count cannot be sustained. Even in the enquiry that has been held, statement of Inspector Virender Singh has been relied while there was no mention of his in the charge.

13. Resultantly, we allow the present application with the directions:

- (a) the impugned orders are quashed;
- (b) the authorities, if deemed appropriate, may pick up the loose threads and may take further action in accordance with law; and
- (c) the applicant would be entitled to the consequential benefits preferably within three months of the receipt of the certified copy of the present order.


(S.K. Naik)
Member (A)


(V.S. Aggarwal)
Chairman