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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 51 OF 2003

New Delhi, this the 17th day of July, 2003

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K. NAIK, MEMBER (A)

Ex.Const. Kamal Ram,
No.7419/DAP (PIS No.28900481)
S/o Shri Narain,
R/o Village Khorera, P.O. Bada,
Police Station Salem Pur,
Distt. Dausa (Rajasthan).

....Applicant

(By Advocate : Shri Ashwani Bhardwaj)

Versus

1. Commissioner of Police
Police Head Quarter,
Indraprastha Estate,
New Delhi.
2. Addl. Commissioner of Police,
Armed Police, Police Head Quarter,
Indraprastha Estate,
New Delhi.
3. Dy. Commissioner of Police,
VI Bn. DAP, Police Control Room,
Police Head Quarter,
Indraprastha Estate,
New Delhi.

.....Respondents

(By Advocate : Ms.Renu George)

ORDER (ORAL)

JUSTICE V.S. AGGARWAL

Applicant (Kamal Ram) was enrolled as a Constable in Delhi Police. Disciplinary proceedings had been initiated against him vide the order of 1.6.2001 on the allegation that he proceeded on 7 days' medical rest and did not turn up on the scheduled date and time. He was marked absent. He was issued absent notices but still did not join. The charge framed against the applicant was to the

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following effect:-

CHARGE

I, Inspector Vimal Sagar EO of DAP VI Bn. (temp. attached with 'E' Block, Security lines for security duties presently hereby charge you, Const. Kamal Ram No.7419/DAP (PIS No.28900481) that you, proceeded on 7 days medical rest vide D.D.No.36-B, 'E' Block Security lines, New Delhi dated 25.9.1999 duly permitted by ACP/VI Bn.D.A.P. 'E' Block. You were due back on 2.10.99 after availing the medical rest however, you did not turn up in due time and no further extension of medical rest was received from you and as such you were marked absent vide D.D.No. 21-B of 'E' Block, Security lines, New Delhi dated 2.10.99. You were issued with the following absentee notices with the directions to resume your duty at once or in case of illness you may report to Civil Hospital, Dausa, Rajasthan, for second medical opinion:-

Sl No.	FROM	TO	DAYS	PERIOD HRS. MINTS.	REMARKS
1.	12.1. 91	12.1. 91	-	04 -55	5 days P.D.
2.	9.3. 91	9.3. 91	-	20 -30	L.K.D.
3.	18.3.91	19.3.91	-	16 -30	1 DAY C.L.
4.	7.7.91	8.7.91	-	19 -50	-do-+ 1 day P.D
5.	27.7.91	27.7.91	-	4 -35	Filed
6.	24.8.91	24.8.91	-	7 -45	Warned
7.	7.5.92	29.5.92	21	16 -10	L.K.D.
8.	10.12.92	24.12.92	15	8- -	L.K.D.
9.	14.7.93	14.7.93	-	4 -10	Warned
10.	6.1.95	18.1.95	12	- 30	L.K.D.
11.	14.3.95	29.5.95	75	4 - -	L.K.D.
12.	29.12.95	12.1.96	14	- -40	E.O.L.
13.	7.5.96	25.7.96	68	7- 30	One increment withheld and period decided as not spent on duty.
14.	20.11.96	28.12.96	37	20-15	L.K.D.
15.	13.11.98	2.1.99	49	16-30	L.K.D.

The above act on your part Const.Kamal Ram No.7419/DAP amounts to gross misconduct indiscipline, dereliction in the discharge of your official duties and irresponsible behaviour in performing of your duties and incorrigible type of person for which you are liable to be punished in accordance with the rules as envisaged under Sec-21 of Delhi Police Act 1978."

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After the inquiry officer returned the findings against the applicant holding that the charge stood proved, the disciplinary authority had dismissed him from service. He preferred an appeal which was rejected on merits but with respect to punishment of dismissal, the appellate authority reduced the same to removal from service. By virtue of the present application, he seeks quashing of the same. The application has been contested. It is reiterated that the applicant had proceeded on seven days' medical rest. He was expected to join duty on 2.10.1999. He did not turn up on the scheduled date. No further extension of medical rest was received from the applicant and he was marked absent. Five absentee notices were issued. Out of these, four absentee notices sent to his native village through Registered Post were received back with the report that the addressee was not found. In the subsequent notice, the applicant was directed to appear before a medical board. Applicant had undergone the second medical examination and the medical board opined that the applicant was not found to be suffering from any disease for which he might be allowed to remain absent. Thereafter, he resumed duty after remaining absent for a period of 69 days, 2 hours and 35 minutes. He did not file any medical papers. The previous conduct of the applicant of remaining absent was also conveyed to him. He continued to remain absent thereafter also. Resultantly, the departmental

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proceedings had been initiated. The same were, therefore, stated to be justified.

2. At the outset, the learned counsel for the applicant urged that in pursuance of the notice that was served upon the applicant, he had appeared before the medical board and, therefore, there was no dereliction of duty on his part because it was followed by joining of duty by him. In support of his claim, he relied upon a decision of this Tribunal in the case of **Bhagat Singh v. Commissioner of Police and others** in OA No.3072/2001 rendered on 29.4.2002.

3. In the cited case, an absentee notice was issued on 19.5.1999 directing the applicant therein that if he did not resume duty at once, disciplinary action would be taken against him. He received the notice on 23.6.1999 and resumed his duty on 24.6.1999. Taking stock of these facts, this Tribunal held:-

"4. We are further constrained to observe that the disciplinary authority in this case has initiated the disciplinary proceedings in a most reckless manner. Even the disciplinary authority had not bothered to note the contents of its own absentee notice which, inter alia, provided the failing clause that in case the applicant did not report for duty, only then disciplinary action would be taken up against applicant. Disciplinary enquiry was initiated despite the fact that within 24 hours of receipt of notice applicant had joined the duty and thus complied with the notice. Disciplinary authority thus was not left with any option to initiate disciplinary

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enquiry."

It is obvious from the aforesaid that what prevailed with this Tribunal is the fact that within 24 hours of receipt of the notice, the applicant therein had joined the duty and thus complied with the same. It is not so in the present case. The absentee notice is dated 12.11.1999 and the applicant did not join the duty immediately thereafter.

4. In the absentee notice of 12.11.1999, it was further mentioned that in case of illness, the applicant was directed to report to the Civil Surgeon, Civil Hospital in Rajasthan and that according to the learned counsel, the applicant did appear before the medical board. The said board gave a certificate that the applicant was fit to join duty on 10.12.1999 and that was complied with. Even on this count, the plea is without any merit. The notice reads:-


"Memo.

Reference this office memo. No.6656/P.Br. 6th Bn.DAP, dated 27/X/99 on the subject cited above.

You are hereby again directed to resume your duty immediately, failing which disciplinary action would be ensue. In case of illness you are, therefore, directed to report to civil Surgeon Civil Hospital, Distt. Dausa (Rajasthan) soon after receipt of this notice.

Sd/-
ACP/HQ.

For Dy. Commissioner of Police
VI BN.DAP: DELHI "



Perusal of the same clearly shows that the notice was in two parts. Firstly, the applicant was directed to resume his duty immediately and secondly, in case of illness, he was to appear before the Civil Surgeon in the Civil Hospital in Rajasthan. The medical board had been constituted and when the applicant had appeared before the board, he had told that he was suffering from piles (khooni vawasir). The board was of the opinion that the applicant was not suffering from any such ailment which would prevent him from joining duty. He could resume duty. Therefore, it is patent that the plea that he was directed to resume duty on 10.12.1999 and that he complied with it, would be incorrect. Only in case of illness, if found correct, such a plea could be forwarded. Here the plea of sickness/illness was not found to be correct and, therefore, we have least hesitation in rejecting the said contention.

5. Confronted with that position, the learned counsel urged that the disciplinary authority had called for the file before the date that was given to the applicant. He relied upon the facts in this regard from the report of the inquiry officer. The inquiry officer writes:-

"In the meantime I also received order No.3427-28/HAP-VI Bn. DAP dated 24.5.2001 in which the disciplinary authority i.e. DCP-VI Bn.DAP has passed the following remarks "D.O. be advised to put up ex-parte orders". Accordingly I appeared before the competent authority on 29.5.2001 with a request for

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passing orders to proceed on ex-parte basis as the delinquent was not at all co-operating me in the D.E.against him. On perusal of D.E. file DCP-VI advised me to give one more opportunity to the delinquent by sending a U.P.C.letter mentioning therein that it is a last and final opp. being given to him on the basis of principles of natural justice and also send some spl.messenger at the native village of the delinquent Const.Kamal Ram. No.7419/DAP."

It clearly shows that the inquiry officer had appeared before the competent authority and requested for passing an order ex parte as the applicant was not co-operating. It was not done before the date fixed for appearance of the applicant. Simply because the file inadvertently was called for before that date, the said argument cannot be floated so as to contend that there was any bias in this regard.

6. Yet another limb of the argument was that a period of nine days was to be given for producing the list of witnesses but the same was not given in the present case. When we had put it to the learned counsel, he conceded that such a plea had not been raised in the application. A fact not pleaded cannot be allowed to be agitated particularly when it is based on facts and it is not a pure question of law.

7. Main argument which was thereupon pressed was that the disciplinary authority while imposing the penalty had taken extraneous factors into consideration. Reliance in this regard was placed on the order that had been passed and which is under the

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~~gaze~~ of this Tribunal. Perusal of the same clearly shows that the charge framed, as already referred to above, was of absence from duty and the past conduct of the applicant which was also a part of the charge for remaining absent, but the disciplinary authority in the impugned order took fact of subsequent absence from duty also into account. The disciplinary authority can only be known from the order. The relevant part of the order reads:-

"Thus, the defaulter constable was supposed to submit his representation upto 15.8.2001 and also to appear in O.R. on 15.8.2001. Though it was the day of holiday being Independence Day, it was the responsibility of the defaulter Constable Kamal Ram No.7419/DAP to appear in O.R. before the undersigned on the very next working day i.e. on 16.8.2001. But the defaulter constable neither submitted his representation against the findings of the E.O. nor appeared in O.R. before the undersigned on the scheduled date and time or uptill now. At present he is running absent from duty since 27.9.2000 continuously without any intimation or permission.

I have carefully gone through the statements of PWs findings of the E.O. and entire record/material available on the D.E./file. The defaulter is running absent since 27.9.2000. This D.E. was ordered for his absence of 69 days w.e.f. 2.10.99 to 10.12.99 vide this office order No.5985-6014/HAP-VI Bn.DAP dated 8.8.2000.

The defaulter has failed to join the D.E. at any stage and orders for conducting the D.E. ex-parte were given on 11.6.2001 vide this officer order No.4142-43/HAP-VI Bn.DAP dated 11.6.2001.

The findings have been served on the father of the defaulter two times in the presence of witnesses and D.D. entry has been lodged in the local Police Station by Constable Mangtu Ram No.7631/DAP vide D.D.No.253 dated 9.8.2001 P.S. Salempur, Distt. Dausa, Rajasthan.

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The defaulter has failed to make any representation. There is nothing on record to indicate his inclination to join the enquiry at any stage. No attempt has been made by him to rejoin his duties, explain reasons for his absence to his seniors or otherwise communicate in any manner i.e. his continuous absence since 27.9.2000 till the date of this order. He was also got medically re-examined by the Medical Board of Distt. Hospital Dausa, Rajasthan where he was not found suffering from any such disease on 9.12.99.

His past record has also been mentioned in the summary of allegations as well in the charge, to show that he is a habitual absentee."

The facts show that the disciplinary authority was greatly influenced by the fact that the applicant was subsequently running absent and, therefore, the dismissal order had been passed. We hasten to add that we are not expressing any opinion that bereft of the subsequent conduct of the applicant, the same order could not have been passed, but a perusal of the order shows that this was the fact which was weighing heavily in the mind of the disciplinary authority. The learned counsel for the respondents vehemently contended that this was only the conduct of the applicant which we have referred to above which had resulted in passing of the impugned orders. We disagree and reject the said contention. This is for the reason that it is not merely the conduct of the applicant but other factors which promoted the disciplinary authority to pass the order of dismissal. Resultantly when extraneous factors had been taken into consideration, on this short ground, the impugned orders cannot be sustained.

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8. Accordingly, we allow the application and quash the impugned orders on the ground that extraneous factors which were not part of the charge or the summary of allegations had been considered. Resultantly while quashing the said orders, we direct that the disciplinary authority may from the stage of the impugned orders pass fresh orders in accordance with law. No costs.

Announced.

Naik
(S.K. NAIK)
MEMBER (A)

V.S. Aggarwal
(V.S. AGGARWAL)
CHAIRMAN

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