

*** HIGH COURT OF DELHI : NEW DELHI**

+ Writ Petition (Civil) No. 6656 of 2001

% Decided on: November 23, 2009

Ex. Constable Jai Singh
@ Jai Pal Singh
S/o Shri Chatte Singh
R/o Village & PO Nidana
P.S. Julana
District Jind (Haryana)

..... Petitioner
Through: Mr.Arun Bhardwaj, Adv.

versus

1. Union of India
Through its Secretary
Ministry of Home Affairs
North Block, New Delhi.

2. Commissioner of Police
PHQ, MSO Building
New Delhi.

3. Sr. Addl. Commissioner of Police
Armed Police & Training
PHQ, MSO Building
New Delhi.

4. Dy. Commissioner of Police
10th Bn. DAP
Pitampura, Delhi.

..... Respondents
Through: Mr.Sunil Bagai, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MS. JUSTICE MUKTA GUPTA

- | | |
|--|-----|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MADAN B. LOKUR, J. (ORAL)

The Petitioner is aggrieved by an order dated 26th June, 2000 passed by the Central Administrative Tribunal, Principal Bench in OA No. 301/1997.

2. The Petitioner, who was working as a Constable in Delhi Police was found absent from Roll Call on 16th August, 1994. Thereafter, he did not report for duty for the next few days with the result that on 25th August, 1994 a notice was issued to him asking him to resume duty at once or if he is sick then he should report to the Civil Surgeon, Civil Hospital, Jind (Haryana) for a medical examination.

3. The Petitioner did not comply with the direction in as much as he

neither reported back for duty nor did he go to the Civil Hospital for a medical examination.

4. All of a sudden, on 18th September, 1994 the Petitioner reported back for duty after having unauthorizedly and wilfully remained absent for 33 days. On reporting back for duty, the Petitioner explained that he was not well and, therefore, he remained absent from duty.

5. On these broad facts, a chargesheet was issued to the Petitioner for initiating disciplinary proceedings. In the chargesheet it was specifically mentioned that on 8 previous occasions between May, 1994 and January, 1995 the Petitioner had been absent from duty for varying periods. It was also mentioned in the chargesheet that the Petitioner had been absent from duty on 72 other occasions as well for which minor/major punishments were awarded to him.

6. The Petitioner participated in the departmental enquiry and the Enquiry Officer gave a report on 31st July, 1995 to the effect that the charges levelled against the Petitioner were proved.

7. The Petitioner preferred an appeal which was dismissed by the Appellate Authority on 20th February, 1996. A revision application was also dismissed on 12th November, 1996.

8. In the meanwhile, the disciplinary authority passed an order on 11th December, 1995 removing the Petitioner from service.

9. Feeling aggrieved, the Petitioner filed an Original Application before the Central Administrative Tribunal which came to be dismissed by the impugned order.

10. The submission of learned counsel for the Petitioner before us is that the details of the 72 occasions on which the Petitioner had remained absent from duty were not provided in the chargesheet but were taken into consideration by the departmental authorities. In our opinion, the 72 occasions on which the Petitioner was unauthorizedly absent have been mentioned only as a part of the history of the Petitioner's service and this is clearly severable from the main charge made against the Petitioner, namely, that he had remained absent on 1 + 8 occasions in the past for which a specific chargesheet was issued to him.

11. This being the position, in our opinion, the mere mention of the earlier 72 occasions on which the Petitioner was unauthorizedly absent is of no consequence.

12. It must be appreciated that leave is not a matter of right and it must be sanctioned by the competent authority. This is well settled by a catena of

decisions rendered by various courts. [See for example, *Birendra Kumar Sinha v. State of Bihar*, 1969 Lab. I.C 742, *Chandi Datt Misra v. The Cane Commissioner*, 1971 SLR 735 and *Comptroller & Auditor General of India v. Surajit Panigrahi*, 2009 IV AD (Delhi) 506].

13. The Petitioner had not reported for duty on Roll Call and there is nothing to suggest that he informed anybody that he was unwell and was leaving the police lines. It appears from the chargesheet that he just disappeared on 16th August, 1994 and in spite of being served with a notice asking him to resume duties or to go for a medical examination, the Petitioner did not do so. Of his own accord, he reported back to the police lines after an unauthorized absence of 33 days.

14. Under these circumstances, we are not at all inclined to interfere with the view that has been taken by all the authorities below that the Petitioner was unauthorizedly absent for a period of 33 days and also that on 8 other occasions, he had been unauthorizedly absent. The order of removal is not liable to be interfered with.

15. Learned counsel for the Petitioner relied upon a short order delivered by the Supreme Court in *Sukhbir Singh v. State of Haryana and others* arising out of *SLP (Civil) No. 25710/1995* decided sometime in 1996 (date

is illegible). It is not clear from the short order whether the hospitalization documents of the petitioner therein were produced before the Enquiry Officer or the circumstances in which they were brought to the notice of the Supreme Court. But in any event, the petitioner therein had produced documents to show his hospitalization and it is under those circumstances that the matter was remitted back to the disciplinary authority for taking appropriate action.

16. Insofar as the present case is concerned, the Petitioner was specifically asked to report for a medical examination in the Civil Hospital, which he did not do. There is nothing to show that the Petitioner was hospitalized during the period of his absence. Under the circumstances, we are of the opinion that the decision of the Supreme Court in *Sukhbir Singh* is of no avail to the Petitioner.

17. There is no merit in the writ petition.

18. Dismissed.

MADAN B. LOKUR, J

NOVEMBER 23, 2009
kapil

MUKTA GUPTA, J