

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: September 24, 2013*
Judgment Delivered on: October 30, 2013

+ **WP (C) 3701/2002**

ANOOP SINGH Petitioner
Represented by: Mrs.Avnish Ahlawat, Advocate

versus

GOVT.OF NCT OF DELHI & ORS. Respondents
Represented by: Mr.Mirza Amir Baig, Advocate for
Mr.Anjum Javed, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. The present writ petition lays a challenge to the order dated August 31, 2001 passed by the Central Administrative Tribunal in OA No.2656/1999 upholding penalty of dismissal from service upon the petitioner for habitual and unauthorized absence.

2. Enrolled as a Constable with Delhi Police in the year 1988, as of the year 1996 the petitioner was posted in the VI Battalion of the Delhi Armed Police. He was detailed for an induction course at the Main Security Lines. The course being over on June 02, 1996 he was relieved vide DD No.24 with a direction to report at the E-Block Security Lines the next day on June 03, 1996. The petitioner did not do so. He went away to his home place at Bahadurgarh where he was arrested on June 03, 1996; being named as an accused in FIR No.236 of even date for offences punishable under Section 25/54/59 of the Arms Act P.S.City Bahadurgarh, Haryana. But prior thereto on May 10, 1996 he was directed to report at the E-Block Security Lines,

vide DD No.58. He did not do so. He absented himself for 12 days. He reported at the E-Block Security Lines, New Delhi on May 21, 1996.

3. The competent authority decided to initiate disciplinary proceedings against the petitioner. As required by the Delhi Police (Punishment & Appeal) Rules, 1980 a Summary of Allegations was served upon the petitioner on June 20, 1996, which reads as under:-

“It is alleged against Const.Anoop Singh No.7941/DAP (PIS No.288687) that he was detailed for Induction Course at main security lines, New Delhi w.e.f. from 22.5.96. The course was over on 2.6.96 and he was relieved vide D.D.No.24 dated 2.6.96 from there to report in E Block New Delhi but despite reporting there he absented on 3.6.96 at 8.00 A.M. vide DD No.6-B dated 4.6.96 E Block, Security Lines, New Delhi w.e.f. 3.6.96.

It was learnt that he was arrested in case FIR No.236, dated 3.6.96 U/s 25/54/59 Arms Act P.S. City Bahadurgarh Haryana. It is evident from his conduct that:

- 1) he has left the station without any proper permission of the competent authority.*
- 2) he has failed to inform his parent office about his arrest in the said case vide Rule 3 of CCS (Conduct) Rules, 1964*
- 3) he has absented from station unauthorisedly:*

It is also alleged against him that previously he was directed to report in E Block Security Lines, New Delhi vide DD No.58, dated 10.5.96 but he did not report there. Hence, he was marked absent vide DD No.57 dated 14.5.96 w.e.f. 10.5.96 E Block Security Lines, New Delhi. He resumed his duty vide DD No.51 dated 21.5.96 after absenting himself for a period of 11 days, 9 hours and 20 minutes unauthorisedly and wilfully in violation of CCS (Leave Rules,) 1972 and S.O.No.111/88 of Delhi Police.

His previous record mentioned in Appendix-A shows that he is a habitual absentee and incorrigible and unfit for police service.

It amounts to grave misconduct, indiscipline, negligence, carelessness, remissness and dereliction of duty not befitting a police officer on the part of the defaulter rendering him liable for departmental action in accordance with rules for punishment as envisaged u/s 21 of Delhi Police Act, 1978...

4. A perusal of the summary of allegations would reveal that the petitioner was charged for three separate and distinct imputations of misconduct. The first imputation pertained to petitioner leaving the station without proper permission of the competent authority. The second imputation was of failure to inform the parent office about petitioner being arrested and the third was being absent from station unauthorizedly.

5. The department examined six witnesses to prove the indictment.

6. HC Matvaur Singh PW-1 deposed that the petitioner was posted at 6th Bn. D.A.P. and was directed to report at E-Block 6th Bn D.A.P. on May 10, 1996 vide D.D.No.58, Ex.PW-1/A. HC Rajender Singh PW-2 deposed that after the culmination of the induction course on June 02, 1996 all officers participating in the same were directed vide DD No.24 of even date to report at E-Block at 8.00 A.M. the next day, but petitioner neither reported for duty nor submitted intimation or information regarding his absence. The petitioner's absence was recorded vide DD No.6-B dated June 04, 1996. Prior to this incident, on May 10, 1996, the petitioner was detailed for duty at 6th Bn. Model Town, E-Block vide DD No.58 but did not report at E-Block; reporting for duty on May 21, 1996 after an absence of eleven days, nine hours and twenty minutes. His return was recorded vide DD No.51 dated May 21, 1996 Ex.PW-2/A. HC Mangat Ram PW-3 deposed in

sync with PW-1 and 2; proving DD No.6-B, dated June 04 1996 Ex.PW-3/A, which recorded the absence of certain officers, including the petitioner who had completed the induction training; DD No. 57 dated May 14, 1996, Ex.PW-3/B which recorded the absence of the petitioner who was detailed to report for duty at 6th Bn. Model Town, E-Block, DD No. 51 dated May 21, 1996 Ex.PW-3/C which recorded the absence of the petitioner for 11 days, 9 hours and 20 minutes from May 10, 1996. As per the witness on May 21, 1996 the petitioner had produced a medical slip and had made a statement regarding his absence. HC Lalit Kumar PW-4 deposed with reference to the record of previous instances of unauthorized absence of the petitioner (which were mentioned in Appendix-A to the Summary of Allegations). We note that as per same between the years 1989 till the year 1996 the petitioner had remained unauthorizedly absent virtually each year i.e. six times for periods 1 day, 6 days, 21 days, 26 days, 30 days and 33 days. Insp. Mangal Sen PW-5 deposed that on June 04, 1996 pursuant an order passed by the Additional DCP/Sec. he visited PS Bahadurgarh to enquire about the arrest of the petitioner, where he learnt that the petitioner was under judicial custody in relation to FIR No.235-236/1996 Ex.PW-5/A.PW-5. He deposed that he had prepared an enquiry report Ex.PW-5/B informing of his visit. Const. Mahavir Singh PW-6 proved DD No.24 dated June 02, 1996 Ex.PW-6/A as per which all the trainees including the petitioner, who had completed the induction programme were relieved at 10:30A.M. with a direction to report to E-Block at 8 A.M. the next day.

7. It needs to be noted that the record of the inquiry would reveal that the petitioner was present on each day when the Inquiry Officer recorded evidence.

8. Being of the opinion that the evidence produced by the department warranted a formal charge to be drawn up, the Inquiry Officer

did so and after approval of the disciplinary authority and as recorded in the order-sheet dated October 10, 1996 handed over the same to the petitioner requiring him to file a reply if he so desired to the charge-sheet and produce defence witnesses within seven days. The charge mirrors the three indictments as per the Summary of Allegations. The record would reveal that the petitioner did not appear before the Inquiry Officer on the next date and neither filed any reply to the charge-sheet nor filed any list of witnesses who he proposed to examine. After deferring the matter on three dates, as recorded in the order-sheet dated November 08, 1996 the Inquiry Officer sent a letter by registered post at the native village address of the petitioner requiring him to appear before him on November 14, 1996. But the same was returned unserved requiring an order to be passed that the petitioner be personally served. Ct.Shiv Narain was sent to the village where petitioner resided to serve him with a notice of the next date of hearing and he reported that the petitioner was not available in the village and that his wife and mother refused to receive the same and thus he pasted the same in front of the wall of the house. Thus, the petitioner was proceeded against ex-parte.

9. The Inquiry Officer submitted a report holding that the charge was proved.

10. Agreeing with the findings returned by the Inquiry Officer vide order dated December 31, 1996 the disciplinary authority levied penalty of dismissal from service upon the petitioner against which appeal filed was rejected by the appellate authority on June 16, 1997 and the revision filed there against was rejected by the revisional authority on December 12, 1998. Aggrieved, the petitioner challenged the three orders vide OA No.2656/1996 before the Central Administrative Tribunal at Delhi.

11. Observing that the petitioner did not participate at the departmental inquiry, the Tribunal opined that there was sufficient evidence to hold against the petitioner and thus dismissed the Original Application.

12. It needs to be highlighted that the Tribunal has wrongly observed that the petitioner did not participate at the departmental inquiry, overlooking that he did so by cross-examining such witnesses which he desired at the stage after Summary of Allegations were served upon him, but chose to remain absent after the charge-sheet was received by him. But said fact is irrelevant because neither before the Tribunal nor before this Court was a grievance raised that the petitioner was prejudiced on account of being proceeded against ex-parte.

13. Before the Tribunal the petitioner had urged that it was a case of no evidence emerging from the fact that as deposed to by PW-5 the fact of the petitioner being arrested was brought to the notice of the Additional DCP/Sec. warranting PW-5 to visit P.S.Bahadurgarh on June 04, 1996 to make an inquiry and submit a report.

14. We note that though not pleaded in the Original Application and hence not finding a reference thereto in the decision passed by the Tribunal, before this Court, the petitioner has relied upon a Standing Order No.8/1998, which reads as under:-

*“CORRIGENDUM
(Standing Order No.8/1998)*

The existing para 2 of Standing Order No.8/88 issued vide this Headquarters No.26778-27028/Estt. (I) dated 26.12.1988, may be substituted as under:-

Permission may be given by the Station House officer of the police station, Officer incharge of Police Post and by the Reserve Inspector or Company. Commander (In DAP) to as many married/unmarried officers and men posted to the Police Station. Police post or police Line, as can be spared upto a maximum of 30% of the present strength to sleep at

their houses in Delhi/outside in the surrounding areas each night. Permission should be given in turn according to the lists of married/un-married men maintained and a proper system of rotation should also be established. The names of men to whom permission has been given must be entered in the Daily Diary and the time of their departure and return must also be entered. Any absence without permission or late return must be reported at once to G.O. incharge of the Station, or Lines as the case may be.

Sd/-

*KARNAL SINGH DCP/HQ
FOR COMMISSIONER OF POLICE, DELHI”*

15. Based thereon, contention urged before us was that the charge of leaving station without prior permission as also the charge of absenting from station unauthorizedly could not be said to be established because the Standing Order aforementioned permitted police officers to sleep at their houses in Delhi and outside in the surrounding areas each night. Thus, as per the petitioner he did no wrong when instead of reporting at the E-Block Security Lines when he was relieved on June 02, 1996 at the Main Security Lines in the evening he went to his village because he was to report at the E-Block Security Lines the next day i.e. June 03, 1996 at 8.00 A.M.

16. Pertaining to past misconduct the petitioner had urged before the Tribunal, which plea was reiterated before us, that if an absence was adjusted against leave, the misdemeanour would cease.

17. The contentions urged before the Tribunal were rejected. The Original Application filed by the petitioner was dismissed on August 31, 2001. The present petition challenges said order.

18. As we have noted above, the misdemeanours alleged were three in number: (i) leaving the station without proper permission of the competent authority; (ii) failure to inform the parent office about his arrest; and (iii) unauthorizedly absenting from station.

19. In view of the testimony of PW-5 it has to be held that the department itself admitted having knowledge of petitioner being arrested on June 03, 1996 for the reason as per PW-5 on June 04, 1996 he had visited P.S.Bahadurgarh under orders passed by the Additional DCP/Sec. It may be true that there is no evidence that the petitioner informed of he being arrested, but inherent in the testimony of PW-5 is that the information emanated from the petitioner. Being arrested on June 03, 1996, obviously the petitioner could not have made himself physically available at his parent office to inform of he being arrested. He could not do so. He could not physically do so. It is obvious that he told the police officials at P.S.Bahadurgarh to inform his office.

20. This aspect of the matter has escaped the notice of the Inquiry Officer, the disciplinary authority, the appellate authority, the revisional authority as also the Tribunal.

21. Thus, the charge of failure to inform the parent office of being arrested cannot be said to be proved for the reason the evidence led by the department itself establishes said fact.

22. On the subject of being unauthorizedly absent from station and leaving the station without proper permission, learned counsel for the petitioner conceded to the fact that evidence establishes that on being relieved firstly on May 10, 1996 to report at the E-Block Security Lines, New Delhi, the petitioner remained unauthorizedly absent for 11 days 9 hours and 20 minutes. But pertaining to the charge of being absent from station unauthorizedly proved by the fact that relieved from the Main Security Lines when the induction course training was over on June 02, 1996 and required to report at E-Block Security Lines, New Delhi, the petitioner left Delhi for Bahadurgarh where he was arrested the next day morning,

learned counsel relied upon the corrigendum to the Standing Order No.8/1988, contents whereof have been noted by us in paragraph 18 above.

23. Since it was conceded that the charge of unauthorized absence for a period of 11 days 9 hours and 20 minutes was proved, we deal with the contention pertaining to the Standing Order No.8/1988.

24. The argument overlooks the fact that as per the Standing Order nobody had a right to spend the night at one's house. The Standing Order empowered the Station House Officer of a Police Station or an Officer-in-Charge of a Police Lines to permit police personnel upto a maximum of a 30% of the strength in the Police Station or the Lines to sleep at their houses. As per the same permission had to be given in turns.

25. The Office Order is an enabling provision and not an empowering provision. In other words, those who wanted to sleep in their houses had to apply for and obtain permission. The reason for the policy is that emergency requiring additional force may arise at any time and thus even while not on active duty, police personnel have to be available at the residential quarters in Police Stations or the Police Lines. Thus, the reason for limiting the power of competent officers to sanction permission not beyond 30% of the personnel available to be permitted to sleep in their houses.

26. We thus hold that the charge of unauthorizedly absenting from the station and the charge of leaving the station without proper permission stands proved.

27. On the subject of the unauthorized absence being adjusted against leave, the seemingly conflicting opinions of the Supreme Court reported as 1969 SLR 272 State of M.P. vs. Harihar Gopal and 1998 (7) JT 142 State of Punjab vs. Bakshish Singh was laid to rest in the opinion of the Supreme Court reported as (2003) 3 SCC 464 Maan Singh vs. UOI & ors. wherein in paragraph 5 it was held as under:-

“5. In Harihar Gopal's case this Court noticed that the delinquent officer in failing to report for duty and remaining absent without obtaining leave had acted in a manner irresponsibly and unjustifiedly; that, on the finding of the Enquiry Officer, the charge was proved that he remained absent without obtaining leave in advance; that the order granting leave was made after the order terminating the employment and it was made only for the purpose of maintaining a correct record of the duration of service and adjustment of leave due to delinquent officer and for regularising his absence from duty. This Court's attention was not invited to any rule governing the respondent's service conditions under which an order regularising absence from duty subsequent to termination of employment had the effect of invalidating termination. Thus, this Court concluded that it could not be held that the authority after terminating the employment of delinquent officer intended to pass an order invalidating that earlier by sanctioning leave so that he was to be deemed not to have remained absent from duty without leave duly granted.”

28. Differentiating the decision of the Supreme Court in Harihar Gopal's case (supra) from the decision in Bakshish Singh (Supra) the Court held as under:-

“6.... It is only in the head note of the report that the question whether an employee could be held guilty of misconduct on the basis of unauthorised absence is set out as decided in the trial court and affirmed by the first Appellate Court and not from the judgment of this Court such a conclusion can be drawn since there is no consideration or discussion at all, much less any declaration of law is made by this Court on this aspect of the matter. This Court is that case really considered the scope of powers of remand, made the order as set out above and did not, in fact, consider the question whether the view expressed by the first Appellate Court in affirming the order of the trial court was justified or not, but proceeded on the basis that on the conclusion reached by the first Appellate Court whether remand to disciplinary authority is permissible in law and recorded its findings. therefore, the

decision of this Court in Bakshish Singh's case is not an authority for the proposition that the order terminating the employment cannot be sustained inasmuch as in the later part of the same order the disciplinary authority also regularised unauthorised absence from duty by granting an employee leave without pay. In our view, thus, there is no conflict in this regard with the decision in Harihar Gopal's case."

29. We need now to note and deal with the last contention urged. The contention was that if the charge of failure to inform the parent office of being arrested would fail and if the remaining two charges would stand, the penalty of dismissal would be disproportionate for the reason the absence in question was of 11 days, 9 hours and 20 minutes and leaving the station without proper permission was not a very serious wrong.

30. It is trite that past misconduct can be taken into account on the question of a penalty and especially when the same is made known to the delinquent. As noted above, previous misconduct was made known by appending the same to the Summary of Allegations. We cannot overlook the fact that in his six years service there were six previous unauthorized absences.

31. That the petitioner was ultimately acquitted in the case registered against him under the Arms Act is neither here nor there for the reason admittedly the petitioner was arrested on June 03, 1996. It is relevant to note that the petitioner was relieved from the Main Security Lines, New Delhi after the induction course is over in the evening of June 02, 1996 and he was required to be at the E-Block Security Lines, the same evening for that was the place where he was to sleep notwithstanding that the petitioner was to formally report for duty at 8.00 A.M. the next day. Petitioner going away to Bahadurgarh and being arrested is not in doubt. He was in the company of one Surinder Singh who was also arrested. At the criminal trial

it could not be proved that the petitioner was possessing arms and ammunition unlawfully.

32. That petitioner was acquitted at the criminal trial does not mean that he was innocent. It only means that the prosecution could not muster such evidence as crossed the threshold of proof beyond reasonable doubt.

33. We are dealing with a police constable. Petitioner's propensity to repeatedly indulge in the indiscipline act of unauthorized absence cannot be overlooked. Indiscipline in the lower ranks in the police force is reaching endemic proportions. It is trite that a penalty has a two-fold object. To punish the wrongdoer for the wrong and set an example to others. The fact that in the past the petitioner was unauthorizedly absent six times but was let off by having the absence adjusted against leaves and he being simply cautioned had no curative effect on the petitioner. The penalty imposed cannot be said to be disproportionate.

34. The writ petition is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

OCTOBER 30, 2013

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