

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of hearing and order: 4th March 2015

+ W.P.(C) 8/2015
VINAY KUMAR

..... Petitioner

Through: Mr. Shanker Raju, Mr. Nilansh Gaur,
Advocates

versus

COMMISSIONER OF POLICE

..... Respondent

Through: Ms.Ruchi Sindhwani, Additional
Standing Counsel, GNCT of Delhi
with Ms.Bandana Shukla, Advocate

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR
HON'BLE MR. JUSTICE I.S. MEHTA
ORDER

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KAILASH GAMBHIR, J. (ORAL)

1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks to challenge the orders dated 21.08.2013 and 02.09.2014 passed in O.A.No. 2664/2012 and R.A. No.155/2013 respectively, by the learned Central Administrative Tribunal, Principal Bench, New Delhi.

2. The brief facts of the case are that the petitioner had joined Delhi Police as Constable (Dog Handler) on 25.04.1989 and is still continuing in

service. Being a Dog Handler, he was required to undergo training and as per order dated 19.11.2009, 45 Constables (Dog Handlers) were detained for training and they were directed to report to I/C, Dog Squad on 23.11.2009. The petitioner had proceeded on ten days casual leave w.e.f. 30.11.2009 and this leave was duly sanctioned by the Competent Authority. As per the petitioner, after availing the said ten days leave period, he sought to join his duties on 14.12.2009 but was not permitted to. He had submitted an application dated 15.12.2009 to the respondent requesting that he may be allowed to join his duties anywhere in any Unit but with no avail. Vide order dated 17.12.2009, the petitioner was placed under suspension with retrospective effect from 12.12.2009. Petitioner by his letter dated 19.12.2009 sought revocation of his suspension order. The said suspension order was later revoked by the respondent vide order dated 07.04.2010 and the petitioner was reinstated back in service with immediate effect, without prejudice to the disciplinary proceedings pending against him. Vide order dated 25.04.2010 the respondent had initiated departmental proceedings against the petitioner under the provisions of Delhi Police (Punishment and Appeal) Rules, 1980, taking a view that the said absenteeism of the petitioner amounted to gross misconduct and dereliction in discharge of

official duties attracting Rule 3 of CCS (Conduct) Rules 1964. The following charges were framed against the petitioner and one Constable Sudhir Sharma:-

“I, Iqbal Mohd. ACP / Metro hereby charge you both Ct. (Dog Handler) Sudhir Sharma N. 47/DRP and Ct. (Dog Handler) Vinay Kumar No.311/ Crime that a list of 45 Dog Handlers was short listed for deployment along with pups to undergo Explosive Detection Training i.e. 20 each at NTCD, BSF Taken Pur (MP) and NTCD,BSF, Hoshiarpur, Punjab. The said list of 45 Dog handlers bore names of you both the constables (Dog Handlers). This list was sent to all District DCPs vide No. 20995-1007 /Genl. (II)/ C&R dated 19/11/2009 with the request to direct these Dog Handlers to report to I/C Dog Squad on 23/11/2009. They were further requested that these Dog Handlers may not be granted any kind of leave and those who are on leave; their leave may be cancelled and were directed to report for duty at once. All the 45 Dog handlers were called on 5.12.09 by the ACP/Research Cell and specified allocation of Training Institute and dog to each of the 40 Dog Handlers were allocated and remaining 05 were informed to be deputed as helpers. The Dog Handlers were directed again on 7/12/2009 for their Schedule departure at 8.00 AM on 8/12/2009 in two buses to report with their respective dog and baggage and after getting vaccination as recommended by the Training Institute Authorities. You Const. (Dog Handler) Sudhir Sharma No. 47/DRP allocated for Training at NTCD, BSF, Takenpur (MP) along with dog and you Ct (DHs) Vinay Kumar No.311/Crime were allocated for deployment as helping handler; you both the constables (DHs) requested for exemption from Training but your request for exemption from training was not accepted. You, both the Ct. (DHs) Sudhir Sharma No.47/DRP and Vinay Kumar No. 311/C were clearly directed by the

ACP/Research Cell that your request for exemption from Training cannot be accepted and both of you were clearly directed to report for duty i.e. Training without fail. But despite of clear instructions you both the Constables (DH) Sudhir Sharma No.47/DRP and Vinay Kumar No.311/ Cr. absented yourselves willfully to avoid Training and did not report on 8/12/2009 as directed for your Scheduled departure. Whereas you Ct. Vinay Kumar No.311/Cr. even managed to get sanctioned Casual Leave by misguiding, Sh. Om Bir Singh, Inspr. Investigation PS-Shahdhara without giving him intimation of your going for Training and proceeded on leave. Your leave was cancelled vide DD No.12 dated 08.12.2009 Dog Squad PS Shahdhara and you did not report for duty. Both of you have been specially recruited for handling dogs and training of Pups and your deployment was for looking after the Pumps while in Training. You, both the Constables (DH) Sudhir Sharma and Ct. (DH) Vinay Kumar, were deployed for Training at Takenpur you both did not report for duty i.e. training as directed and as such absented yourselves willfully without giving any intimation to the Senior Officers, to avoid Training and did not report for Training as directed.

The above act on the part of you both the Constable (Dog handler) Sudhir Sharma No.47/DRP and Ct. (Dog Handler) Vinay Kumar No.311/Cr amounts to gross misconduct, negligence, carelessness and dereliction in the discharge of your official duties which render you both the Cts. liable for Departmental action under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980.”

3. Based on the inquiry report, the Disciplinary Authority imposed a punishment of forfeiture of three years of petitioner's approved service

permanently vide order dated 3.5.2011. The appeal preferred by the petitioner against the penalty order was dismissed on 7.3.2012 and aggrieved by this the petitioner filed a revision petition, which too was dismissed vide order dated 26.4.2012.

4. Challenging the order passed by the Disciplinary Authority and the Appellate Authority the petitioner filed O.A.No. 2664/2012 before the learned Tribunal and the learned Tribunal vide order dated 21.08.2013 dismissed the Original Application preferred by the petitioner. The petitioner sought review of the said order by filing R.A. No. 155/2013 but the same was dismissed by the learned Tribunal vide order dated 02.09.2014. The petitioner in the instant petition has now assailed the said two orders passed by the learned Tribunal.

5. The main contention raised by the counsel appearing for the petitioner is that the learned Tribunal has failed to appreciate the fact that the petitioner was diagnosed with Hernia and therefore he could not have undertaken the arduous training required to be undertaken by Dog Handlers. The learned counsel for the petitioner further submits that the petitioner was operated upon and discharged from Dr. Ram Manohar Lohia Hospital on 4.4.2010. He was again hospitalised at the same hospital from 12.4.2010 to 22.4.2010

in connection with Hernia. The learned counsel for the petitioner also submits that the respondent cannot dispute the said medical condition of the petitioner and he had proceeded on leave on the basis of the certificate issued by the CGHS. The learned counsel for the petitioner also submits that the petitioner could not have developed the said medical condition in a day and he could not have undergone the strenuous training while such a medical condition persisted and therefore it could not be said that the petitioner had deliberately avoided undergoing the said training. The learned counsel for the petitioner also submits that the petitioner had neither absented himself unauthorizedly nor had he avoided the training. In support of his arguments, the learned counsel for the petitioner placed reliance on the judgment of the Apex Court in the case of ***Krushnakant B. Parmar v. Union of India, (2012) 3 SCC 178.***

6. Opposing the present petition, the learned counsel for the respondent submits that vide order dated 19.11.2009, 45 Dog Handlers including the petitioner were asked to report to I/C. Dog Squad on 23.11.2009 at 10 AM and it was made explicitly clear to them that they may not be granted any kind of leave and if any leave is already granted to any of them, the same was to be cancelled in view of the security arrangement for the Common

Wealth Games, 2010. The learned counsel for the respondent also submits that the leave of the petitioner was cancelled and repeated efforts were made to inform him to report for training but each time the petitioner was not reachable on account of his phone being switched off. The learned counsel for the respondent thus submits that the petitioner had absented himself wilfully despite the clear direction given by the respondent and his avoidance was writ large when he kept his mobile phone switched off. Counsel also submits that the learned Tribunal has dismissed the O.A.No. 2664/2012 and R.A. No. 155/2013 preferred by the petitioner on proper appreciation of the conduct of the petitioner and the settled legal principles. Counsel also submits that the petitioner being a Constable and a member of a disciplined force was expected to undergo training with due dedication and utmost sincerity but he wilfully avoided the same and for his such misconduct, he hardly deserves any leniency in the punishment awarded to him.

7. We have heard the counsel for the parties and have also gone through the impugned order and the material placed on record.

8. This petitioner had applied for ten days casual leave vide his application dated 26.11.2009 w.e.f. 30.11.2009 and it is not in dispute

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between the parties that the said leave was duly sanctioned to him by the Competent Authority. As per this leave application, the petitioner was to join back on his duties on 14.12.2009 but he was not allowed to do so. Since the petitioner was not allowed to join his duties, he filed an application on 15.12.2009 to the Commissioner of Police with a request to allow him to join back his duties in any Unit at any place. Instead of taking any decision on the said application filed by the petitioner, he was placed under suspension vide order dated 17.12.2009 with retrospective effect from 12.12.2009. The petitioner sought revocation of his suspension order vide letter dated 19.12.2009, which was revoked by the respondent vide their order dated 07.04.2010 and he was reinstated back into service. The petitioner was however proceeded departmentally under the provision of Delhi Police (Punishment and Appeal) Rules, 1980 as his act of not undertaking the training was treated as a case of gross misconduct, negligence and dereliction in discharge of his official duties. Based on the inquiry report the Disciplinary Authority awarded a major penalty of forfeiture of three years of approved service permanently and the period of suspension was also directed to be treated as not spent on duty. Not disputing the fact that the member of any disciplined force like Delhi Police

has to perform his duties with all sincerity and devotion and any wilful avoidance on the part of a member of such a force would amount to an act of gross misconduct but that would not mean that there can arise no eventualities or compelling circumstances due to which one may not genuinely be in a position to undertake the necessary training or other assigned duties. The petitioner herein had applied for ten days casual leave w.e.f 30.11.2009 which was duly sanctioned by the sanctioning authority. The petitioner never came to know that his leave was cancelled as no communication could be established with him as per the own case of the respondents. It is also an undeniable fact that the petitioner had attended the CGHS dispensary on 21.11.2009 and he was referred to Ram Manohar Lohia Hospital and was advised to remain on light duties for 15 days and was also advised for operation. The petitioner was operated upon and discharged from Dr. Ram Manohar Lohia Hospital on 04.04.2010 but he was again admitted from 12.04.2010 to 22.04.2010 and was advised rest upto 14.06.2010 and was declared fit to join back duties w.e.f. 15.6.2010 (FN). This medical evidence which was placed on record by the petitioner, during the course of inquiry proceedings and also before the learned Tribunal has not been properly appreciated. This medical condition of

Hernia could not have been said to be a creation of the petitioner himself. The petitioner having undergone the surgery for Hernia affirms the bonafides of the petitioner and certainly in such a condition the petitioner would not have been in a position to undergo the training of Dog Handler. In ***Krushankant Parmar v. Union of India*** case (*supra.*) the Hon'ble Supreme Court categorically held that absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean wilful absence. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his/her control like illness, accident, hospitalization etc, and in such a case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant. The relevant paras of the said judgment are reproduced as under:-

“15. In the case of appellant referring to unauthorized absence the disciplinary authority alleged that he failed to maintain devotion of duty and his behaviour was unbecoming of a Government servant.

16. The question whether unauthorized absence from duty amounts to failure of devotion to duty or behaviour unbecoming of a Government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful.

18. Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.”

9. In the facts of the present case also, we find that the failure of the petitioner to undergo the said training as Dog Handler was not a deliberate or wilful act on the part of the petitioner but was due to his medical condition which circumstance was sufficiently proved on record with the help of the medical evidence produced by the petitioner and the undeniable fact that the petitioner had actually undergone surgery for his medical condition i.e. of Hernia.

10. In this background of facts and circumstances and the legal position discussed above, while allowing the Writ Petition, the orders dated 21.08.2013 and 2.9.2014 passed in O.A No. 2664/2012 and R.A No.155/2013 respectively, by the Learned CAT are set aside. Accordingly, the respondents are directed to treat the suspension period of the petitioner from 12.12.2009 to 06.04.2010 as period spent on duty. The petitioner will also be entitled to all consequential benefits.

11. The Writ Petition is disposed of in the aforesaid terms with no orders as to costs.

KAILASH GAMBHIR, J

I.S. MEHTA, J

MARCH 04, 2015
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