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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION(CIVIL) No. 717/2017**

Date of decision: 16th March, 2017

VIKRAM SINGH Petitioner

Through Ms. Neha Kapur, Advocate.

versus

GOVT OF NCT OF DELHI AND ORS. Respondents

Through Ms. Manika Tripathy Pandey, Advocate
alongwith SI Ram Tirath & ASI Praveen Kumar,
Traffic.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

Vikram Singh in this writ petition impugns the order dated 9th August, 2016 whereby OA No. 1402/2013 filed by him has been dismissed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short).

2. This is the second round of litigation as the petitioner had earlier filed OA No. 4118/2010, which was disposed of vide order dated 9th December, 2011, observing as under:-

“10. We have given due consideration to the submissions made by the learned counsel for applicant and we are of the view that it was not permissible for the disciplinary as well as the appellate authorities to take past conduct of the applicant whereby he remained absent on three different occasions without putting him

to the notice and giving an opportunity to explain his position and thereafter considering his application, especially in the light of the instructions issued by the Govt. of India vide OM dated 26.8.1968, as referred to above and in the light of the mandate of Rule 16 (11) of Delhi Police (Punishment & Appeal) Rules, 1980. In this case the applicant has been awarded penalty of dismissal from service taking into consideration his past conduct, which has caused prejudice to him.

11. Accordingly, the present OA is disposed of and the impugned order dated 26.8.2010 (Annexure A-3) is quashed. Matter is remitted back to the disciplinary authority with a direction to consider the issue of quantum of punishment afresh without taking into consideration the past conduct of the applicant and pass appropriate order within a period of three months from the date of receipt of a copy of this order. No costs.”

3. We have some reservations on the findings recorded aforesaid, for we find that the chargesheet had specifically referred to absence of the petitioner from 4th July, 2004 till he had reported for duty after a period of 4 years 7 months 21 days and 12 hours on 26th February, 2009. This is clear from the summary of allegations as mentioned in the enquiry report. For the sake of convenience, we would like to reproduce the summary of allegations:-

“SUMMARY OF ALLEGATION

It is alleged against Ct. Vikram Singh No. 3758-T (PIS No. 28981598) that while posted at IGI Circle was relieved on transfer to R.P. Bhawan in compliance of PHQ’s transfer order No. 10492-516/P.Br./PHQ dated 15.6.2009 to make his final departure from RND vide DD No. 20/IGI Circle, dated 4.7.2004. But he did not report in RND and absented himself willfully and

unauthorisedly without any intimation. He reported to RND vide DD No. 46/RND on 26.2.2009 after absenting himself for a period of 04 years, 07 months, 21 days and 12 hours unauthorisedly, willfully and without any intimation. On 6.4.2009, he was again relieved on transfer to R.P. Bhawan vide DD No. 36 but he did not report there and is still running absent. Two absentee notices were issued to him vide office No. 4929-32/SIP-T(D-III) dated 13.5.2009 and No. 5343-46/SIP-T(D-III) dated 26.5.2009 with the directions to resume his duty. It was also directed that in case of illness, he will report to the Medical Superintendent, Civil Hospital for medical examination. Absentee notices were served upon his father Sh. Jaswant Singh on 22.5.09 and 21.6.2009. His father informed that he had gone to join his duty on 10.5.2009. But, he neither reported for medical examination at Civil Hospital nor reported on duty and is running absent continuously in violation of CCS (Leave) Rules, 1965.”

4. These allegations were proved through documentary and oral evidence of Constable Deepak Anand (PW-1), Head Constable Gulzar Chand (PW-2), SI (Min) Hari Prakash (PW-3) and ASI Jai Bhagwan (PW-4).

5. Pursuant to the order of remand passed by the Tribunal vide order dated 9th December, 2011, the matter was re-examined by the Deputy Commissioner of Police (Traffic) (Headquarters), who vide order dated 22nd February, 2012 held that the petitioner had willfully and unauthorisedly absented himself for a long period from 4th July, 2004 to 25th February, 2009 and from 6th April, 2009 till the order of dismissal was passed on 23rd April, 2010. The punishment of dismissal was justified and

correct in view of the grave misconduct. This order also records that the petitioner had given a wrong statement in writing that he had resumed duties in the Rashtrapati Bhawan on 16th March, 2010. The Deputy Commissioner of Police observed that the Delhi Police is a disciplined force and such absence over a long period without any intimation amounts to grave misconduct rendering the person/officer unfit for police service.

6. Learned counsel for the petitioner has submitted that the petitioner was in fact suffering from depression, hypertension, hepatitis, etc, and, therefore, had not attended to the duties. This aspect was specifically examined and elucidated by the Disciplinary Authority in the order dated 23rd April, 2010. For the sake of clarity, we would like to reproduce the observations on the said aspect, as recorded in the order dated 23rd April, 2010, which read:-

“An analysis/scrutiny of the medical papers submitted by the Default Const. has revealed the following:-

- (i) No papers in respect of illness for a period of 1016 days have been produced.
- (ii) The prescription slip issued for the period from 08.09.04 to 05.02.07 (exceed 1016 days) by P.H.C., M.C.D., Mehrauli, Delhi show that the Const. W reportedly suffering from anxiety, neurosis and depression, whereas prescriptions dated 13.02.07 to 19.08.07 diagnose the purported illness diagnosed as acute viral Hepatitis.
- (iii) The Const. did not resume his duties despite the initiation of a D.E. although he continued to join the D.E. Proceedings.
- (iv) The notices issued by the E.O. directing him to join the D.E. proceedings we addressed at his native/permanent address viz. Const. Vikram Singh, 3758, s/o Sh.

Jaswant Singh, VPO chandawans, Distt. Rewari, Haryana.

- (v) Although the Const. was residing at Rewari, he had been purportedly visited the MCD dispensaries in Delhi located Mehrauli and Daulatpur.
- (vi) The distance between the two MCD Dispensaries is more than 35 Kms.
- (vii) While the defaulter Const. kept visiting the MCD Dispensaries for his treatment, he did not find it fit to inform the department about his purported illness.
- (viii) The defaulter Const. has claimed in his defence statement that he had started suffering from anxiety, neurosis and depression caused by bouts of epilepsy and dizziness, the documents submitted by him in support of his purported illness and(sic) incomplete and diagnose his illness as anxiety, neurosis and depression as well as acute viral Hepatitis.
- (ix) He was declared fit to resume duty by the doctor of PHC, MCD, Daulatpur Delhi on 29.08.07 but he did not report for duty.

After examining the D.E. file on record and the scrutiny of medical examination papers, I agree with the findings of the Enquiry Officer and the charged leveled against the defaulter Const. Vikram Singh No. 3758/T is substantial without any doubt. The defaulter Const. had absented himself from his office duties from 04.07.07 to 25.02.09 unauthorisedly, willfully and without any prior intimation/permission from the competent Authority, which is in violation of the provisions of CCS (Leave) Rules 1972 and instructions contained in S.O. No. 111 Delhi Police. Constable Vikram Singh, No. 3758/T was relived on transfer to R.N. Bhawan vide DD No. 36/RND dated 6.04.2009 but he did not report there and is still running absent. He also failed to submit the reply to the findings of the E.O. despite issuing reminders dated 24.02.2010 and 16.03.2010. The conduct of default Constable indicates that he is in the habit of absenting himself in utter disregard the instructions/ rules of the department in the manner which is unbecoming on member of a uniformed organisation. He has deliberately misled the department representing that he had reported for duty at

R.P. Bhawan which was an obvious attempt to subvert/derail the departmental proceedings.

Willful and un-authorised absence, if taken leniently, will not encourage others in a disciplined force to follow suit and it will also destroy whole fabric of discipline. Apart from it, un-authorised absence from duty manifest lack of devotion to duty. The delinquent has also absented himself on 03 different occasions earlier also in the past, willfully & knowingly without intimations or prior approvals of the competent authorities.

In view of above facts and discussion, I do not see any other penalty which can be awarded to such incorrigible person except to dismiss him from service. The above act on the part of Const. Vikram Singh, No. 3758/T amounts to grave misconduct rendering him unfit for police service. Therefore, I Prabhakar, Dy. Commissioner of Police, (HQ) Traffic, and Delhi dismiss Const. Vikram Singh No. 3758/t from service with immediate effect. The period of absence from 04.07.2004 to 25.02.2009 and 06.04.2009 to till date is treated as period not spent on duty for all intents and purposes.”

7. In the factual matrix of the present case, we are satisfied that the order of the Tribunal is just and fair. This is a case of wilful unauthorised absence not for a small period, but for over 4 years and 7 months at one stretch and thereafter again for the period from 6th April, 2009 till the order of dismissal was passed on 23rd April, 2010. The writ petition has no merit and is dismissed. No order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

**MARCH 16, 2017
VKR**