

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

% **Date of Decision: 25th August, 2017**

+ **W.P.(C) 7361/2017**

EX CT SURENDER PAL Petitioner

Through: Mr.Amitesh Giroti with
Ms.Sana Zaidi, Advs.

versus

NCT OF DELHI AND ORS Respondents

Through: Mr.Satyakam, ASC.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

CM No.30386/2017

Exemption allowed subject to all just exceptions.

The application stands disposed of.

W.P.(C) 7361/2017

1. The Petitioner has preferred the present writ petition to assail the order dated 20.07.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.1881/1997. The Tribunal has rejected the said Original Application preferred by the

Petitioner. The case has a chequered history. The Petitioner was serving as a Constable in Delhi Police. He was served with a memorandum initiating department proceedings dated 24.08.1993, on the allegation of this unauthorized absence. The allegation against the Petitioner reads as follows:-

*“I, Rajlaxmi, Inspr./PCR charge you constable Surender Pal No. 3000/PCR, (PIS No. 28824163) was detailed for reserved duty at Rose Bud/PCR from 8 am to 2 pm. But you did not report for duty, **thus you were marked absent vide DD No. 9-B dated 24.05.93, Rose Bud/PCR. An absentee notice vide No. 1292/Rose Bud/PCR dt. 16.06.93 was sent at your residence i.e. Village & PO Nizampur, PS Kanjhawla, Delhi through H. Ct. Ram Phal No. 1429-PCR the said notice was received by you on 28.06.93 against your proper receipt. But you did not bother to resume your duty or send any information to the department about your whereabouts. You are still running absent wilfully/unauthorisedly. Your previous records shows that you absented yourself from duty on 43 occasions and did not improve yourself although several major/minor punishments were inflicted upon you on the same grounds. You rather proved yourself incorrigible type of constable and remained absent from duty w.e.f. 24.05.93. The above act on your part, amounts to gross misconduct, carelessness and remissness in discharge of official duties which renders you liable to be dealt with departmentally under section 21 of Delhi Police Act 1978.**” (emphasis supplied)*

Thus, it was, alleged that the Petitioner *inter alia*, was absent repeatedly (on 43 occasions earlier) and was on continuous absence since 24.05.1993 when the charge memo was issued on 24.08.1993

2. The Enquiry Officer was appointed vide order dated 17.08.1993. The petitioner did not join the enquiry proceedings despite his being summoned and having been put to adequate notice thereof. The Enquiry Officer after recording the statements of the departmental witnesses concluded that the charges against the Petitioner were duly proved. The disciplinary authority agreeing with the findings returned by the Enquiry Officer vide his report dated 24.09.1993, dismissed the Petitioner from service vide its order dated 17.11.1993. It appears that, in the mean time, while his departmental appeal was pending he had also preferred OA No.1225/96 which was disposed of with a direction to decide the appeal. The Petitioner's departmental appeal was also dismissed on 23.10.1996 by the Appellate Authority. The Petitioner then preferred the present original application before the Tribunal, to assail the departmental proceedings and penalty imposed upon him.

3. The present original application was allowed by the Tribunal and the Petitioner was directed to be reinstated in service without consequential benefits vide order dated 22.02.2000. Resultantly, the Petitioner was provisionally reinstated in service w.e.f. 17.11.1993. The Respondent-department, however, did not accept the order of the Tribunal and assailed the same by way of W.P.(C) No.374/2001. The

said writ petition was allowed by this Court on 04.09.2009. The matter was remitted to the Tribunal for re-considering the issues in the original application.

4. When the original application was restored after remand, the Petitioner withdrew the same on 13.08.2010, while only seeking liberty to prefer his remedy before the departmental authorities. Consequent upon withdrawal of the original application, the Respondent vide its order dated 27.05.2011 restored the penalty dismissing him from service, which had been initially imposed upon the petitioner vide order dated 17.11.1993. The Petitioner then preferred a departmental appeal against the aforesaid order, which was dismissed on 25.08.2011. Consequently, the Petitioner preferred yet another OA i.e. OA No.782/2012 to assail the subsequent order. The said OA was dismissed by the Tribunal on 07.03.2012. The Petitioner, then preferred W.P.(C) No.448/2013, to assail the order dated 07.03.2012. The said writ petition was also not pressed by the Petitioner. However, he was granted liberty to seek revival of OA No.1881/1997 and vide order dated 14.01.2016, it was so revived. The Petitioner was also permitted to amend the original application and he amended his original application.

5. At the hearing of the original application, it appears that the Petitioner only pressed one submission, namely, with regard to non-issuance of notices at various stages of the enquiry to him which, according to him, had prejudiced his case. The Tribunal has rejected

the said submission of the petitioner by referring to various notices issued to the Petitioner from time to time during the enquiry proceedings. The Tribunal concluded that the Petitioner has been given adequate opportunities to participate in the enquiry which he did not avail of, at his own peril. The Petitioner also contended before the Tribunal that between the date of his reinstatement of service - in terms of the order passed by the Tribunal on 22.02.2000, and the date of his dismissal from service on 27.05.2011, he had served the department without any complaint for about 10 years. His work was satisfactory and he had also been granted promotion. Consequently, he claimed that his subsequent conduct washed away his earlier misconduct and the same should also be taken into consideration. The Tribunal rejected this submission of the Petitioner as well.

6. Learned counsel for the Petitioner has now assailed the order of the Tribunal on the same grounds. Once again, the submission is that the Petitioner having been reinstated provisionally in service, and having served for 10 years satisfactorily, the imposition of the punishment of dismissal from service would be too harsh in the facts and circumstances of the case.

7. We have heard learned counsel for the Petitioner and perused the impugned order as well as the record. The Petitioner's dismissal from service was set aside by the Tribunal but the said order was not accepted by the respondent. He was reinstated in service only provisionally. With the setting aside of the earlier order of the

Tribunal dated 22.02.2000 by this Court, the matter stood remanded to the Tribunal. He withdrew his Original Application unconditionally. Thus, the order of dismissal attained finality.

8. The Petitioner, no doubt served between the date of his provisional reinstatement, and the date of his dismissal on 27.05.2011. The service rendered by the Petitioner in the interregnum was only provisional, and the respondent did not take back the Petitioner unconditionally without any reservation. That being the position, the Petitioner is not entitled to any consideration for said service, particularly in view of the fact that the Petitioner's conduct was found incorrigible. He had on 43 occasions, remained absent on unauthorized leave. The charge-sheet of the Petitioner shows that he was absent from 24.05.1993, and even on the date of issuance of the charge-sheet - which is 24.08.1993, he was absent. The Petitioner was given adequate opportunities to participate in the departmental proceedings and he was repeatedly served with the notices of the summons. He chose to remain absent and did not participate in the enquiry proceedings. We may extract the relevant portions from the impugned order, wherein the Tribunal has after examination of record, come to the conclusion that the Petitioner was given adequate opportunities. The Tribunal has observed as follows:-

“21. Having heard the learned counsel for the parties, having gone through the record with their valuable help (original enquiry record) and after bestowal of thoughts over the entire matter, we are of the firm view that there

is no merit and the instant OA deserves to be dismissed for the reasons mentioned hereinbelow.

22. Ex-facie, the main argument of learned counsel that neither DA nor EO has served any notices/summons at any stage causing great prejudice to the case of the applicant, so enquiry is vitiated and impugned orders are liable to be set aside, is not only devoid of merit, but misplaced as well.

23. As is evident from the record that the applicant has wilfully absented from his duty and he was marked absent vide DD No.9-B dated 24.05.1993. An absentee notice bearing No.1291/Ros/Bud/PCR dated 16.06.1993 was sent to him on his address through HC Ram Phal No.1429/PCR, was received by the applicant on 28.06.1993 against a proper receipt. Still he did not bother to resume his duty or sent any information to his department about his whereabouts.

24. Finding no alternative, the competent authority ordered the initiation of departmental enquiry against the applicant and EO was appointed. We have summoned and perused the original enquiry file. A bare perusal of enquiry proceedings dated 27.09.1993, would reveal that summary of allegations and other documents were prepared and summons were issued to the applicant, as he was running absent. As per proceedings dated 01.09.1993/03.09.1993, summary of allegations and all related papers/documents were sent and served upon the applicant, but still he has not joined the DE. Again, notice was issued to call him. Thereafter, since the applicant did not join the proceeding, so order for initiating ex-parte proceedings were obtained by the EO from the competent

officer. The applicant did not participate in the enquiry proceedings, despite service and statements of PW-1 to PW-4 were recorded by the EO. After following the due procedure, the charges were framed & were duly served and applicant was directed to submit his reply to the charge sheet within a period of 7 days by the EO, vide proceeding dated 12.09.1993.

25. Further, perusal of the enquiry file would reveal that the EO issued notices informing the applicant about the holding of DE, enclosing therewith summary of allegations and list of witnesses proposed to be relied upon by the department (page 5 of the file). This notice was duly received by the applicant on 28.08.1993 attested by HC Ram Phal Singh No.1429/PCR dated 29.08.1993.

26. Not only that, enquiry file shows that various notices were issued to the applicant by the Enquiry and Disciplinary Authorities at every relevant stage. Instead of reproducing each interim order of the enquiry file and in order to avoid the repetition, suffice it to say that the EO and DA have issued requisite notices along with relevant documents to the applicant at every relevant stage, which were received by him, but surprisingly enough, he did not join/participate in the departmental proceedings despite acceptance of indicated notices. In that eventuality, it cannot possibly be saith that DE was held against the applicant without following due procedure, as contrary urged on his behalf.”

9. We find that the Tribunal has, after examining in great depth the Enquiry Officer's report as well as the orders passed by the Disciplinary Authority and the Appellate Authority, come to the

conclusion that there was no illegality, irregularity or perversity in any of these orders.

10. A perusal of the Enquiry Report shows that the Petitioner was found to be a habitual and incorrigible absentee and he was not responding to repeated absentee notices. He had even not bothered to attend the enquiry proceedings or send any reply despite having received various notices to join the proceedings. This, in itself, shows that the Petitioner's conduct was most unbecoming of a member of a disciplined force, and despite various opportunities given to him, he did not improve himself and proved to be incorrigible. The very fact that he remained absent unauthorisedly from service on 43 occasions and thereafter did not care to participate in the enquiry, speaks for itself and therefore in our view, the Disciplinary Authority rightly came to the conclusion that his presence in the department was a big burden. We also find that the disciplinary enquiry against the Petitioner was held by following principles of natural justice and once he himself chose not to join the enquiry, the authorities were fully justified in holding him guilty of willful unauthorised absence from duty. Keeping in view his absence from duty on 43 previous occasions, the imposition of penalty of dismissal on him was commensurate with his misconduct. We also don't find any force in the submission of the learned counsel for the Petitioner that keeping in view his almost 10 years of unblemished service after his provisional reinstatement, the penalty of dismissal was harsh or disproportionate. The basis for the enquiry against the Petitioner and the penalty of

dismissal imposed on him was only his conduct prior to 24.08.1993, which we find was not at all befitting a member of a disciplined force. The Petitioner's subsequent conduct on promotion after his provisional reinstatement is not at all relevant to decide the validity of the enquiry proceedings or penalty order and we find ourselves in agreement with the conclusions of the authorities that the Petitioner was 'unfit' to be retained in a disciplined force like the police.

11. The Tribunal was, in our view, justified in dismissing the Original Application. We find absolutely no merit in this petition and the same is dismissed without any order as to costs.

VIPIN SANGHI, J

REKHA PALLI, J

AUGUST 25, 2017

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