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

Date of decision : 27.09.2019

+ W.P.(C) 10266/2019

SATISH KUMAR

..... Petitioner

Through: Ms. Kanishka Singh, Adv.

versus

COMMISSIONERATE OF POLICE & ORS

..... Respondents

Through: Ms. Avnish Ahlawat, Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J. (ORAL)

The petitioner impugns order dated 27.09.2018 made by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal' for short) in OA No. 3494/2013 whereby order dated 21.11.2012 made against the petitioner imposing a penalty of 'dismissal from service' passed against the petitioner after conducting a disciplinary enquiry, was upheld.

2. The backdrop of the matter is as follows:

- (a) The petitioner joined the Delhi Police as Constable on 19.05.1989 and was posted at various locations in Delhi;
- (b) On 19.12.2011, the Additional Deputy Commissioner of Police,

(West District) ordered a departmental enquiry against the petitioner under the Delhi Police (Punishment and Appeal) Rules, 1980 by reason of the petitioner's absence from duty without leave on various dates.

(c) Pursuant thereto, on 16.08.2012 the Enquiry Officer framed charge against the petitioner alleging gross misconduct, indisciplined attitude unbecoming of a police officer and dereliction in the discharge of official duty on the allegations:

- (i) firstly, that while being posted in NDZ/PCR and being detailed for reserve duty in NDZ/PCR from 8 pm to 8 am on 16.04.2009, the petitioner neither reported for duty nor sent any intimation regarding his whereabouts and that the petitioner remained continuously absent, unauthorisedly, till 25.04.2011, that is for a period of 2 years 10 days 5 hours and 15 minutes ; and
- (ii) secondly, that having been relieved on transfer from NDZ/PCR to West District on 26.04.2011, the petitioner did not report to the West District and remained unauthorisedly absent ; and resumed duty only on 19.09.2011, thereby having absented himself for another period of 4 months 22 days 18 hours.

It was alleged that such unauthorised absence from duty amounted to violation of CCS (Leave) Rules, 1972 and SO No. 111 of the Delhi Police.

(d) The charge so framed also gave details of 'absentee notices' that were issued to the petitioner, to which, according to the

respondents, the petitioner neither replied nor did he comply with the same.

(e) Since the petitioner did not plead guilty, a departmental enquiry was conducted in the course of which seven PWs were examined ; the petitioner chose not to cross-examine any of the PWs ; the petitioner's defence statement was considered ; and the Enquiry Officer held that the charge was proved.

(f) Thereupon, after considering the departmental proceedings so conducted and after considering the petitioner's representation and giving him a hearing, the Disciplinary Authority passed a penalty order dismissing the petitioner from service.

(g) The appeal filed by the petitioner was also dismissed by the Appellate Authority *vide* order dated 27.05.2013.

(h) The conclusion recorded by the Enquiry Officer was as under :

“CONCLUSION

In view of the above facts, I have gone through the statements of PWs and defence statement of delinquent Const. Satish Kumar No. 2944/W adduced during the DE proceedings which reveals that the delinquent is a habitual absentee, who was marked two times absent from the duty for a period of 2 years 10 days 5 hours & 15 minutes, second time for a period of 4 months 22 days & 18 hours. He did not produce any medical and treatment documents during the course of DE proceedings. Hence the charge levelled against the delinquent stands proved. ”

(i) Aggrieved by the enquiry proceedings and the punishment visited upon him, the petitioner filed OA No. 3493/2013 before the

Tribunal in which his principal grievances were :

- (i) firstly, that the Enquiry Officer had taken into account the past service record of the applicant/petitioner in violation of Rule 16 (ix) of the Delhi Police (Punishments and Appeals) Rules, 1980 without framing a definite charge in respect of such past service record ; and
- (ii) secondly, that the Enquiry Officer had ignored medical records which showed that the petitioner had been ill and under treatment, which was the reason for his absence from duty.

In support of his contentions the petitioner also relied upon certain judicial precedents to the effect that if past service record is to be considered in a departmental enquiry, such record must form the basis of a definite charge against the delinquent officer so as to give him an opportunity to defend himself. The petitioner also relied upon precedents on the issue of absence from duty by reason of illness.

(h) Not being impressed by the grounds cited in the OA, the Tribunal has dismissed the OA by way of impugned order dated 27.09.2018, thereby upholding the punishment of dismissal from service awarded to the petitioner.

3. We have heard Ms. Kanishka Singh, learned counsel for the petitioner as well as Ms. Avnish Ahlawat, learned Standing Counsel for the respondents and have considered the record.

4. The relevant and material aspects that emerge for our consideration from the record are the following :

- (a) It is not in dispute that the petitioner remained absent from duty for two phases, one for a period of 2 years 10 days and then again for

another period of 4 months 22 days between April, 2009 and September, 2011 ;

(b) During this phase of absence from duty, the petitioner did not receive any approval or leave of absence from the respondents. To be sure, the petitioner contends that he did inform the respondents the cause of his absence, through written communications/letters sent under postal certificate (UPC), but admittedly no leave of absence was granted to the petitioner. It is also the petitioner's contention that he sent such alleged communications UPC since he could not afford any other method ;

(c) Although the petitioner contends that he was under prolonged medical treatment, such treatment was not availed through the Central Government Health Services facilities ; nor did the petitioner ever claim any medical reimbursement therefor, even though he alleges that the non-payment of salary to him has placed him in a position of severe financial crisis ;

(d) In spite of his contention that he was suffering prolonged illness and was under medical treatment, the petitioner did nothing more than allegedly sending some letters to the respondents, informing them of this state of affairs ;

(e) Insofar as the petitioner's allegation that his past service record has also been considered by the Enquiry Officer without framing a definite charge in respect of such conduct, a perusal of the record shows that in the decision of the Enquiry Officer subsequently approved by the Disciplinary Authority and upheld by the Appellate Authority, although the Enquiry Officer has made a passing reference

to the petitioner as a “habitual absentee” such consideration is not the basis of holding the petitioner guilty or awarding him the punishment of dismissal from service. The Disciplinary Authority has also observed again, but only in the passing, that the petitioner had also absented himself in the past without intimation ; and that departmental enquiry had been initiated against him earlier-on as well, when he was punished with forfeiture of certain years of service and had also been ‘censured’ twice, this again is merely a reference to the petitioner’s past conduct but is not the basis of the impugned decision ;

(f) The record also shows that the petitioner chose not to cross-examine any of the PWs produced against him ; nor did he produce any DWs, not even the doctor who the petitioner claims was treating him throughout the period of his absence from duty and who would have been able to depose to his medical condition ;

(g) It is also a matter of record that although the petitioner did produce several medical prescriptions to evidence that he had taken treatment under private doctors before the Tribunal, such medical records were not produced in the Departmental Enquiry.

5. It is in these circumstances that the Enquiry Officer held that the charge levelled against the petitioner stands proved ; and considering that the petitioner was a member of a disciplined, uniformed force, the punishment of dismissal from service came to be awarded to the petitioner.

6. In the above view of the matter, and being conscious of the contours of judicial review in exercise of powers under Article 226 of the Constitution of India, we are of the opinion that there is no illegality in impugned order dated 27.09.2018, whereby the Tribunal has upheld the

departmental enquiry proceedings culminating in the dismissal of the petitioner from service.

7. We are satisfied that the principles of the natural justice have been followed in the proceedings against the petitioner. We are also satisfied that the inferences drawn, conclusions arrived at and the punishment meted-out to the petitioner are based upon material on record and upon relevant and material considerations. In particular we are satisfied that the punishment meted-out to the petitioner is not disproportionate or perverse.

8. In these circumstances, we find nothing amiss in the departmental enquiry proceedings conducted by the respondents ; or in the impugned order upholding such proceedings that would warrant any interference by us in exercise of our extraordinary powers under the writ jurisdiction.

9. Accordingly, we find no merit in this writ petition, which is hereby dismissed ; however, without any order as to costs.

10. Pending applications, if any, stand disposed of.

ANUP JAIRAM BHAMBHANI, J.

G.S.SISTANI, J.

SEPTEMBER 27, 2019/uj