



2024:DHC:885-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 07.02.2024

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W.P.(C) 13667/2023

VIRENDER

..... Petitioner

Through: Mr. Ashwani Bhardwaj, Adv.

versus

COMMISSIONER OF POLICE AND ORS

..... Respondent

Through: Mrs. Avnish Ahlawat, Standing Counsel, GNCTD (Services) with Mrs. Tania Ahlawat, Mr. Nitesh Kumar Singh and Ms. Laavanya Kaushik, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

REKHA PALLI, J (ORAL)

1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 16.09.2022 passed by the learned Central Administrative Tribunal (the Tribunal) in Original Application (O.A.) No. 1548/2015. Vide the impugned order, the learned Tribunal has rejected the original application preferred by the petitioner wherein he had sought quashing of order dated 12.10.2013 passed by the Disciplinary Authority imposing a penalty of forfeiture of one increment with cumulative effect on him. The



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learned Tribunal has also rejected the challenge to the appellate order dated 17.06.2014 vide which, the petitioner's appeal against the penalty order was dismissed.

2. Learned counsel for the petitioner submits that the impugned order is liable to be set aside as the learned Tribunal has failed to appreciate that the charge of being on unauthorized leave for 248 days was not made out against him. He submits that the petitioner was suffering from acute spondylitis during this period and, therefore, could not seek medical leave but had duly submitted the medical certificates after rejoining duties, which aspect, the learned Tribunal has ignored. Furthermore, the Disciplinary Authority has also taken into account his past leave record even though the petitioner had already been penalized for 65 prior incidents of remaining on unauthorized leave. The learned Tribunal has also failed to appreciate that even though as per the charge sheet, the petitioner had remained on 248 days unauthorized leave, the appellate order mentions 277 days leave. He, therefore, prays that the impugned order be set aside.
3. On the other hand, learned counsel for the respondents supports the impugned order and submits that taking into account the petitioner's past conduct as also the inordinately long period for which he remained on unauthorized leave and that too without giving any information to his superior officers in this regard, he has infact, been let off lightly. He submits that the petitioner's misconduct of remaining on unauthorized leave for 248 days and that too in a force like the Delhi Police is a gross act of indiscipline and cannot be condoned. Even the medical certificate produced by the petitioner



from a private hospital, he contends, only stated that the petitioner was suffering from backache which was rightly not accepted as sufficient ground for him to remain on leave for such a long period and that too without any intimation to the respondent. Even otherwise, the petitioner was habitual of remaining on unauthorized leave from time to time as is evident from his service record, which shows that he was penalized on 65 earlier occasions for remaining absent without leave but he has remained incorrigible.

4. In order to appreciate the aforesaid submissions of learned counsel for the petitioner, it would be apposite to note herein below the relevant extracts of the impugned order, which read as under:

“6. Notices were issued to the respondents and Mr Amit Yadav, learned counsel for respondents accepted the same. In reply submitted by the learned counsel for respondents it is submitted that the applicant has produced the medical certificate of private nursing home i.e. Shalini Nursing Home, Rohtak Road, Jhajjar for back pain and he has extended the leave and the same was granted to him.

7. The applicant, in his representation, has made no mention that he was suffering either from Hepatitis C or Spondylitis. He was also heard in person on 10.10.2013 where he has not stated anything afresh. The Disciplinary Authority after careful consideration and on perusal the material available on record forfeiture of one increment with cumulative effect awarded punishment to the applicant.

8. Learned counsel for the applicant has also relied on the Judgment of Hon’ble Supreme Court of India in B.C. Chaturvedi Vs. Union of India and Ors. (1995 (6) SCC 749) and R.S. Saini Vs. State of Punjab decided on 09.09.1999 and he has also relied upon recent judgment



of coordinate Bench of this Tribunal in OA No. 4082/2015 dated 01.09.2022 and submitted that similarly situated persons have approached and it has been dealt with respondents. In B.C. Chaturvedi Vs U.O.I (1995 (6) SCC 749, the Hon'ble Supreme Court in para 18 observed as under:

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases. Impose appropriate punishment with cogent reasons in support thereof.”

6. Heard learned counsel for respondents at length.

(A). The short question raised by the applicant in the present Original Application whether punishment awarded is disproportionate or not? Whether Disciplinary Authority mentioned 277 instead of 248 days was prejudicial to the applicant or not?

(B). The arguing counsel for the applicant submitted that



previous period of absence has been dealt with, that cannot be relied upon.

7. We are in agreement the earlier period so dealt with by the Competent Authority has cleared that his absence will be taken into consideration in awarding the said punishment. In fact the disciplinary authority has considered all his aspects in this regard and the orders by taking any lenient view and the same is liable to be quash aside and rejected. He got extension of leave without permission and his absent without permission is not commendable in department respondents like Delhi Police. The applicant is working in a disciplinary force where everything has to be in discipline even if he is suffering from serious illness he has to inform the department in written or by post and any other thing that he could not attend the office.

8. Learned counsel for the applicant submits that in the charge sheet they have mentioned that he was absent for 248 days but in the appellate order 277 days is written. But the fact is that Enquiry Officer has mentioned in his report that he was absent for 248 days and enquiry is conducted for 248 days absence only and report was submitted accordingly. Thus no prejudice is caused to the applicant in Department Proceedings. Accordingly, it has to be corrected by the department. It may be a clerical error.

9. Be that as it may, the question of absenting has not been explained properly by the applicant, thus we are of the view that the explanation of applicant is not convincing, absenting without intimation to the department in writing along with undertaking that he would submit the medical certificate. As regards to the point, that punishment so awarded is disproportionate, is also not convincing. The Disciplinary Authority clearly mentioned that a lenient view is taken and award



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punishment forfeiture of increment without cumulative effect. In our considered view the same is not disproportionate in any manner.

5. From a bare perusal of the aforesaid, we find that while accepting the petitioner's plea that his absence was for 248 days as against the 277 days mentioned in the appellate order, the learned Tribunal did not find the explanation given by the petitioner for his unauthorised leave to be satisfactory. Even though, we are in agreement with the view taken by the learned Tribunal, we have at the insistence of the learned counsel for the petitioner examined the medical certificate furnished by him but find that the same does not in any manner explain the reason for the petitioner being on leave for this inordinately long period of 248 days unauthorised leave. As rightly pointed out by the respondent, the medical certificate on which the petitioner has relied on was issued by a private medical hospital, and, therefore, its validity itself is a question. In this regard, reference may also be made to the decision in *State of Punjab v. Dr. P.L. Singla, 2008 8 SCC 469*, wherein the Apex Court while dealing with a case of a doctor working with health and family welfare department held as under:

“13. We may note here that a request for condoning the absence may be favourably considered where the unauthorised absence is of a few days or a few months and the reason for absence is stated to be the sudden, serious illness or unexpected bereavement in the family. But long unauthorised absences are not usually condoned. In fact in security services where discipline is of utmost importance, even a few days of overstay is viewed very seriously. Be that as it may.



14. Where the employee who is unauthorisedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorised absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence. Where the punishment is either dismissal or removal, it may not be necessary to pass any consequential orders relating to the period of unauthorised absence (unless the rules require otherwise). Where the punishment awarded for the unauthorised absence, does not result in severance of employment and the employee continues in service, it will be necessary to pass some consequential order as to how the period of absence should be accounted for and dealt with in the service record. If the unauthorised absence remains unaccounted it will result in break in service, thereby affecting the seniority, pension, pay, etc. of the employee. Any consequential order directing how the period of absence should be accounted, is an accounting and administrative procedure, which does not affect or supersede the order imposing punishment.”

6. In the light of the aforesaid, and taking into account that the petitioner was a member of the Delhi Police where he is expected to be available for the general public, we are of the considered view that the kind of indiscipline as exhibited by the petitioner cannot be condoned. He, therefore deserves no sympathy at all. On the other hand, we are, infact, inclined to agree with the respondent that the penalty imposed



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on the petitioner ought to be enhanced. However, taking into account that the incident for which the petitioner is being charged pertains to the year 2012, we are refraining from passing any order in this regard at this belated stage.

7. In the light of the aforesaid, we are of the considered view that the learned Tribunal was justified in passing the impugned order and dismissing the O.A.
8. The writ petition being meritless is, accordingly, dismissed.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

FEBRUARY 7, 2024
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