
(2020) 01 CAT CK 0004

In the Central Administrative Tribunal

Case No : Original Application No. 4323 Of 2015, Miscellaneous Application No. 3935 Of 2015

Om Prakash

APPELLANT

Vs

Commissioner Of Police And Ors

RESPONDENT

Date of Decision : 03-01-2020

Acts Referred:

Citation : (2020) 01 CAT CK 0004

Hon'ble Judges : S.N. Terdal, J; Mohd. Jamshed, Member (A)

Bench : Division Bench

Advocate : G.D. Chawla, Harvinder Oberoi

Final Decision : Dismissed/Disposed Of

Judgement

Mohd. Jamshed, Member (A)

The applicant was working as Constable in Delhi Police (DP) since 1998. Vide order dated 05.10.2011 his explanation was sought regarding his unauthorized absence from duty on a number of occasions. Subsequently, vide order dated 15.11.2011 Absentee Notice for Unauthorized Absence was issued to the applicant to resume duty, failing which departmental enquiry will be initiated. Vide order dated 22.02.2012, it was decided to hold departmental enquiry against the applicant under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980. An enquiry was conducted and the enquiry report was submitted on 03.07.2012 holding the charge as proved. The Disciplinary Authority (DA) vide order dated 22.02.2013 imposed the penalty of removal from service. The applicant preferred an appeal which was considered and rejected by the respondents vide order dated 20.10.2014.

2. The applicant submits that he had a blameless service record for 15 years and that while posted as Main Security Line he was absent from 05.04.2011 to 16.05.2011. This period was treated as Dies-non. Subsequently, the applicant was transferred to New Delhi and was absent from duty from 28.07.2011 to

05.08.2011. This period was also treated as Dies-non. He has stated that he further remained absent from duty from 11.08.2011 to 16.09.2011. This period has also been treated as Dies-non by the Competent Authority (CA). It is also submitted by the applicant that subsequent to this, his explanation was called and an absentee notice was also issued to the applicant. He has also stated in the OA that, thereafter, the CA issued orders for departmental enquiry. He attended the enquiry and also submitted his defence. It has also been stated that the applicant has been suffering from psychiatric problems and that was perhaps the reason for the absence and this aspect has been overlooked by the DA. His appeal has also been rejected. Aggrieved by this action of the respondents, he is seeking relief by way of setting aside and quashing of the impugned order dated 22.02.2013 and 20.10.2014 and to reinstate him into the service with all consequential benefits.

3. The respondents filed a counter affidavit opposing the OA and submitting that the applicant has been absent in an unauthorized manner, without intimation to the department on four occasions for periods varying from 08 days, 31 days, 36 days and 124 days. This being a serious matter under the provisions and rules of Delhi Police, he was issued a notice to explain his unauthorized absence and an absentee notice was also issued to him in this regard. Further, the departmental enquiry was held and charges of unauthorized absence were proved against him. The DA imposed punishment of removal from service through a detailed order. His appeal has also been considered and rejected by the AA. The applicant has also filed a rejoinder submitting new facts and allegations that in 2010, he was marked absent although he was attending a medical emergency. He has also levelled various other allegations against his senior officers indicating their biased attitude. He has, further, sought different relief(s) through the rejoinder indicating that FIR should be registered against his senior officers etc. The relief sought in the rejoinder are different from the relief sought in the OA and are also not relevant to the main OA.

4. We heard the applicant in person and Mr. G. D. Chawla for Ms. Harvinder Oberoi, learned counsel for the respondents.

5. The applicant was working as Constable in Delhi Police since 1998. He was found to be unauthorizedly absent on a number of occasion in 2011 and 2012 in different spells varying from 08 to 124 days. For this act of unauthorized absence without intimating the department the respondents sought his explanation vide order dated 05.10.2011 and, thereafter issued him an absentee notice for unauthorized absence dated 15.11.2011 directing him to resume his duty, failing which departmental action will be initiated against him. Subsequently, the respondents passed an order dated 22.02.2012 mentioning that despite the absentee notice, asking the applicant to resume his duties, he did not resume his duties and, thereafter, it is decided to hold a departmental enquiry under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980. A charge memorandum dated 24.04.2012 was issued along with list of relied upon

documents and witnesses. The enquiry was concluded on 03.07.2012 during which he was provided reasonable opportunities to represent his case and his defence statements were also considered. The Inquiry Officer (IO) held that charges of carelessness and habitual absenteeism are proved against the applicant. The DA agreed with the findings of the IO stating that this is a serious lapse on the part of the applicant and such absenteeism is in violation of CCS (Leave) Rules, 1972 and S.O. No. 111 of DP. The Appellate Authority (AA) vide order dated 20.10.2014 considered the appeal filed by the applicant against the orders of the DA and passed a detailed speaking order upholding the punishment imposed by the DA and rejecting his appeal.

6. It is evident that the applicant has remained unauthorizedly absent from duty on a number of occasions. This has also been clearly narrated by him in the OA. Only a casual mention of slight bias has been indicated during enquiry. He has sought setting aside of the DA and AA orders. It is evident that the disciplinary proceedings have been completed by following the due procedure. His explanation was also called for and an absentee notice was also issued to him on which he has not taken any action. He did attend the enquiry and his defence statement was also taken into consideration by the IO. The charges levelled against him have been proved and the DA has imposed the punishment which was upheld by the AA. It is also worth mentioning that he has submitted his rejoinder with a different version and seeking different relief, which is unconnected and irrelevant to the main OA.

7. We have not found any infirmity or any illegality on the part of the respondents in conducting disciplinary proceedings and imposition of penalty of removal from service upon the applicant. It is also settled law that Tribunals and Courts cannot be the Appellate Authority in disciplinary cases. In view of the above mentioned, we are of the view that the present OA is devoid of merit and the same is, accordingly, dismissed. Pending MAs, if any, shall stand disposed of. There shall be no order as to costs.