

(2014) 02 DEL CK 0129
In the Delhi High Court
Case No : Writ Petition (C) 792 of 2014

Ram Niwas Meena

APPELLANT

Vs

GNCT of Delhi and Another

RESPONDENT

Date of Decision : 06-02-2014

Acts Referred:

Citation : (2014) 02 DEL CK 0129

Hon'ble Judges : Gita Mittal, J;Deepa Sharma, J

Bench : Division Bench

Advocate : Sachin Chauhan, for the Appellant; Megha Bharara for Ms. Ruchi Sindhwani, for the Respondent

Final Decision : Dismissed

Judgement

Deepa Sharma, J.—Vide separate order passed today we have dismissed the writ petition. We now record our reasons for the same. The petitioner joined Delhi Police as a Constable in the year 2001 and after serving for about seven years, he appeared in the examination for recruitment to the rank of Sub-Inspector (SI) in Delhi Police and was selected for appointment. He joined Police Training College on 22nd July, 2008. While undergoing the basic training at the institution in batch no. 33, the petitioner proceeded on one day Casual Leave on 22nd October, 2008 but instead of returning back on duty on 23rd October, 2008, he absented and joined the training programme after 29 days, 9 hours and 30 months. He submitted medical certificate for the period of absence from an authorised medical officer. No action was proposed against him at that time.

2. On 22nd June, 2009, he again absented himself from the training institution. Since he fell short of attendance, he was re-batched vide order dated 9th September, 2009 with the next batch of PSIs of Delhi Police. Vide order dated 22nd October, 2009, he was directed to report at once. The petitioner resumed his training only on 24th February, 2010 after a lapse of 08 months, 01 day, 21 hours and 30 minutes.

3. In these circumstances a departmental enquiry was initiated against him on the following charges:

CHARGE

I, Mahesh Batra, ACP/I.T./PTC charge you PSI Ram Niwas Meena, No. D-4126 that while undergoing your basic training at PTC, Jharoda Kalan (Batch No. 33), proceeded on one day C.L. on 22.10.2008 and had to join your training on 23.10.2008. But you neither reported yourself for training nor sent any intimation to this Institution on the due date. Thus, you were marked absent vide DD No. 51 dated 23.10.2008. An absentee notice was issued to you at your given residential address i.e. Vill. Bajeedpur, P.O. Barria Via Kurgaon Teh. & Distt. Karauli (Rajasthan) vide this office No. 2242/Trg. Br./PTS/Wazirabad dated 03.11.2008 with the direction to resume your duties at-once failing which necessary disciplinary action will be initiated against you. Lastly, you resumed your duty on 22.11.2008 vide DD No. 50 after absenting yourself wilfully and unauthorisedly for a period of 29 days, 9 hours & 30 minutes and submitted medical certificate to cover up your absence period.

On 22.06.2009, you again absented yourself from training programme wilfully, unauthorisedly and as such, were marked absent vide DD no. 29-B dated 22.06.2009, PTC, Jharoda Kalan, Delhi.

Since you were disqualified to appear in the final examination due to short of attendance, you were re-batched vide this office order No. 12201-216/Exam.Cell/PTC dated 9.9.09 with the directions to undergo your basic training i.e. Indoor/Outdoor with next batch of PSIs (batch no. 34) of Delhi Police. Accordingly, you were directed vide this office memo. No. 3854/Trg. Br.(D-II)/PTC dated 22.10.2009 to join this Institution for your basic training with batch no. 34 of Delhi Police but you failed to do so. Lastly, you joined your training on 24.02.2010 vide DD no. 14-B after absenting yourself wilfully & unauthorisedly for a period of 8 months, 1 day, 21 hours and 30 minutes.

As per S.O. No. 291/2008 {Para-11(i)}, more than 14 days continuous unauthorised absence from the daily outdoor/indoor programme by the PSI shall be sufficient ground for initiating disciplinary action against the PSI, whereas in the instant case, you, PSI Ram Niwas Meena, No. D-4126 had absented yourself for a period of 9 months, 1 day & 7 hrs. on two different occasions.

The wilful and unauthorised absence from Govt. duties/training during the initial stage of training amounts to gross misconduct, highly indiscipline, and not likely to become a good police officer which renders you liable for punishment under the provisions of Delhi Police (Punishment & Appeal) Rules-1980.

Sd./-

(ENQUIRY OFFICER)

4. The enquiry was entrusted to ACP Mahesh Batra. On conclusion of the enquiry,

report was furnished to the disciplinary authority. The Enquiry officer concluded that the charges of unauthorised absence during basic training stood proved. A copy of the findings of the enquiry officer was issued to the petitioner on 15th July, 2010 giving him opportunity to submit his written representation/submission against the findings of the enquiry officer within 15 days from the date of its receipt. It was duly served on him at his native place Village Bajeer Pur, P.O. Barria Via Kurgaon Teh. & Distt. Karauli (Rajasthan) through a special messenger. The petitioner, however, did not submit any representation. He was also given three opportunities to appear before the disciplinary authority but he failed to avail the same. A Special messenger was sent to his native place to inform him of the various dates fixed for his appearance. After assessing the enquiry report, the statements of PWs and the other documents on record, the disciplinary authority concurred with the findings of enquiry officer and terminated the services of the petitioner.

5. The petitioner was given full opportunity to participate in the enquiry. The enquiry record shows that four witnesses were examined by the department. The petitioner did not cross-examine them despite opportunity. He also did not produce any defence witnesses. He, however, filed his defence statement.

6. The petitioner thereafter filed the statutory appeal which in the above circumstances was dismissed vide order dated 25th November, 2011.

7. The petitioner thereafter challenged the order dated 13th January, 2011 of the disciplinary authority and the order dated 25th November 2011 of the Appellate Authority by way of O.A. No. 1527/2012 which was dismissed vide order dated 11th December, 2013. The petitioner has challenged this order in this writ petition.

8. The main argument of petitioner is that his illness had prevented him from attending the training and that this fact can be ascertained from his medical certificates furnished by him. The petitioner submits that the Tribunal also did not found any defect in the certificates. It is argued that in view of his medical certificates and the fitness certificates, his absence from duty period ought to have been regularised. It is argued that his absence was not wilful and was under these forced circumstances. Our attention has been drawn by the petitioner towards the medical certificates of his illness and fitness, copy whereof has been placed on record by the petitioner along with this petition.

9. Admittedly the petitioner had remained absence from his training on two occasions, firstly, from 23.10.2008 to 21.11.2008 for 29 days and secondly, from 22.06.2009 to 23.02.2010 that is for more than 8 months totalling for about 270 days. It is also admitted that during the entire period of his absence he did not sent any communication to his department. He did not apply for leave or extension of leave. It is also an admitted fact that when the petitioner had started absenting, the respondents had sent communications to him, asking him to join his training and he had to be re-batched for the next batch on account of

the shortage of attendance which prevented him from appearing in the examination along with his batch mates.

10. The perusal of medical certificates on record shows that the medical certificates pertain to the period of his absence for the period 22.6.2009 to 23.2.2010. The first medical certificate placed on record by the petitioner is dated 8th July, 2009 whereas the petitioner had absented himself from duty on 22.6.2009. There is no medical certificate for the period from 22.6.2009 to 8.7.2009. This medical certificate dated 8th July, 2009 shows that the petitioner had been suffering from diarrhea and for his recovery from this ailment he needed seven days absence. The subsequent medical certificate dated 15.7.2009 also shows that the petitioner had been suffering from diarrhea and again needed seven days absence. On 22.7.2009, he was apparently suffering from Typhoid and again absence of 15 days was necessary for his recovery. The subsequent medical certificates dated 6.8.2009, 13.8.2009, 20.8.2009, 4.9.2009, 8.9.2009, 23.9.2009, 30.9.2009, 7.10.2009, 22.10.2009, 6.11.2009, 22.11.2009, 28.11.2009, 3.1.2010, 18.1.2010 and 25.1.2010 show that the petitioner had been suffering with Typhoid. As per these certificates the petitioner was thus suffering from typhoid for a period of eight months. No blood test reports or bill of purchase of medication is available. It is also strange that the medical certificate dated 5.12.2009, 20.12.2009, 27.12.2009, 1.2.2010, 16.2.2010 and 23.2.2010 although prescribed that absence was necessary for the petitioner for his recovery but do not disclose the nature of illness. We find it unreasonable that a person who had been suffering continuously with typhoid since 22.7.2009 and continued to suffer for about eight months, did not even think of consulting any other doctor or Hospital. Apparently, the treatment of typhoid under Dr. J.C. Yadav was not helping him. The petitioner still continued his treatment with the same doctor with no sign of recovery. We are very sure that no reasonable prudent man would continue his treatment for months together with the doctor whose treatment is not curing a curable disease. He would certainly prefer, either to change doctor or consult an expert. This creates genuine doubts about the genuineness of illness of the petitioner.

11. This view is confirmed by the fact that in the petitioner's representation against the main order of punishment dated 13.01.11 submitted on 17.2.2011 to the Commissioner of Police, the petitioner has taken the plea that on 22.6.2009, when he got the information that his wife had suffered a mental fit, he rushed to his home and there he had himself fallen sick. He was taken to Government Ayurvedic Hospital, Shahpur, District Alwar, Rajasthan where the doctor had started his treatment for "utter depression". His plea was that he was given treatment of disease called "utter depression". As against this plea he has produced the medical certificates of diarrhea and typhoid. In the light of these facts, the conclusion of the disciplinary authority and the findings of the Tribunal cannot be faulted with.

12. The petitioner has also challenged the order of the Tribunal on the ground

that issue of quantum of punishment raised by him in his petition had not been dealt with. This aspect of the argument of the petitioner has been dealt with by the Tribunal and following findings have been given:

The third ground raised by the learned counsel for the applicant is that the applicant in his representation to the AA has raised the issue of quantum of punishment imposed on him to be excessive compared to the lapse on his part. A plain reading of the appeal submitted by the applicant, which is undated but annexed as Annexure A-7 to the OA shows that it does not specifically raises the issue of quantum of punishment. The prayer is limited to his restoration in service as SI in Delhi Police. The order of the AA, therefore cannot be faulted on the ground of not having addressed the plea raised in the appeal submitted by the applicant.

From the above discussion, we are of the view that the conclusions of the Tribunal does not suffer with any infirmity.

13. The petitioner was serving as Constable for the last seven years when he had appeared in the examination for recruitment to the rank of Sub Inspector (SI) in Delhi Police and was selected and joined the Delhi Police Training College on 22.7.2008. He being a member of a disciplined force was very well aware of all the rules and regulations of his service.

14. The petitioner was on probation during the training and therefore, at the relevant time Standing Order no. 291/2008 was binding on him. The S.O. No. 291/2008 reads as under:

11. CAUTION

In order to eliminate unsuitable trainees at the stage of training itself, any one of the following grounds shall be sufficient for initiating of disciplinary action and or termination of service by the competent authority:-

(i) More than 14 days continuous unauthorised absence from the daily outdoor/indoor programme.

15. Admittedly, the petitioner had remained absent from duty for more than 15 days. The respondents have already taken a considerate view of his absence and did not propose any action against him. When the petitioner could not appear in the examination along with his batch mates due to shortage of attendance, he was re-batched for training with the next batch. Instead of mending his ways, the petitioner got bolder and again absented himself without informing anybody and without any reasonable excuse for more than eight months. In his representation, he has alleged that on receiving information of the mental fit of his wife, he rushed to his village where he had fallen sick. If we believe that he had to leave his training due to sudden illness of his wife, he had ample opportunity to inform his superiors or move an appropriate application seeking permission to go on leave before leaving Delhi for his home town. He had chosen not to do it. He did not even bother to send any communication to the

respondents during the entire period of his absence.

In view of the above discussion, it cannot at all be said that the punishment imposed upon the petitioner is disproportionate to his acts.

16. The findings of Tribunal on all counts are well reasoned and suffer no infirmity. There exists no ground to interfere. The writ petition is hereby dismissed.