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

Reserved on: 06.05.2025
Pronounced on:01.07.2025

\+ W.P.(C) 4689/2008

GOVERNMENT OF NCT OF DELHI & ORS. .....Petitioners

Through: Mr. Satya Ranjan Swain, SPC with Mr. Ankeesh Kapoor, Adv.

versus

UDAI SINGH .....Respondent

Through: Mr. Ajay Veer Singh, Mr. Uday Ram Bokadia, Mr. Shubham Singh & Ms. Mahima Shekhar, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

RENU BHATNAGAR, J.

1. The present writ petition has been filed by the petitioners, invoking the extraordinary jurisdiction of this Court under Article 226 read with Article 227 of the Constitution of India, assailing the Order dated 10.10.2007 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred as, 'Tribunal') in O.A. 1404/2007 titled ***Udai Singh v. Union of India & Ors.***, whereby the learned Tribunal, while allowing the said OA, set

aside the Order dated 19.06.2006 vide which the respondent had been dismissed from service, and further directed the petitioners to reinstate the respondent in service forthwith. However, the learned Tribunal granted liberty to the petitioners to proceed afresh with the Departmental Enquiry against the respondent from the stage of the report of the Enquiry Officer, in accordance with the law.

FACTS OF THE CASE

2. The relevant facts for adjudication of the present petition as emerging from the record are that the respondent/Udai Singh was appointed as a Constable in the Delhi Police on 15.12.1982. The services of the respondent were earlier terminated in the year 1987, under Rule 5 of the CCS (Temporary Service) Rules, due to unsatisfactory service. The respondent challenged the said termination by way of O.A. No. 1249/1987, which was allowed by the learned Tribunal on 04.05.1989, and he was reinstated in service.

3. In the years 1994 -1998, the respondent absented himself from duty for several periods, that is, from 21.03.1994 to 31.08.1994, from 13.09.1994 to 6.07.1995, from 13.09.1995 to 27.09.1996, and from 1.03.1997 to 19.03.1998, for a total of 1216 days, without intimating or without any prior approval from his senior officials.

4. Despite several absentee notices being issued by the petitioners, the respondent did not bother to respond to the same and no formal reply was received by the petitioners.

5. Accordingly, the Deputy Commissioner of Police (V) Battalion, Delhi Armed Police, Delhi, in exercise of his powers under Article

311(2)(b) of the Constitution of India, dismissed the respondent from service vide Order dated 19.03.1998. The appeal of the respondent against the said order was also dismissed by the Appellate Authority.

6. The said Order was challenged by the respondent by way of O.A. 1696/2002, which was allowed by the learned Tribunal *vide* Order dated 20.02.2003, and liberty was granted to the petitioners herein to proceed against the respondent herein afresh in accordance with the law.

7. Accordingly, a Departmental Enquiry was ordered against the respondent under the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980, *vide* Order dated 20.05.2003, on the allegation that he remained unauthorizedly and wilfully absent from duty in violation of the CCS (Leave Rules) 1972 and Standing Order No.111 of the Delhi Police for the period from 21.03.1994 to 31.08.1994, then from 13.09.1994 to 6.07.1995, then from 13.09.1995 to 27.09.1996, and then from 1.03.1997 to 19.03.1998, for a total of 1216 days.

8. Based on the Enquiry Report, the Disciplinary Authority dismissed the respondent from service by Order dated 23.07.2004, against which a statutory appeal was filed by the respondent, which was rejected by the Appellate Authority, *vide* Order dated 19.06.2006. The said Order was assailed by the respondent through O.A. 1404/2007, which was allowed by the learned Tribunal and the Orders impugned therein were quashed and set aside.

9. Aggrieved by the said Order, the petitioners have approached this Court through the present petition.

10. We may further note that the respondent passed away on 23.06.2017 during the pendency of the present proceedings, and the legal heirs of the deceased respondent were substituted as parties to the present proceedings, *vide* Order dated 23.05.2019.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

11. The learned counsel appearing on behalf of the petitioners has questioned the correctness of the view expressed in the Impugned Order dated 10.10.2007, asserting that the learned Tribunal gravely erred in failing to take into consideration the callous approach of the respondent towards his duties, who remained absent from duty without intimation or prior approval from the competent authority for a total of 1216 days.

12. He further submitted that as per the earlier Order dated 20.02.2003 passed by the learned Tribunal, whereby liberty was granted to the petitioner to proceed afresh with the departmental enquiry against the respondent, the petitioners conducted a due enquiry and after consideration of the enquiry report, conduct of the respondent, and the representation made by the respondent, the Dismissal Order was passed.

13. He further submitted that the respondent was dismissed from service after being given ample opportunity to re-join duty as thirteen absentee notices were issued to the respondent, even whereafter he failed to resume his duty and remained absent without intimating or taking prior approval of the Senior Officials.

14. He submitted that the learned Tribunal relied solely upon the

statements made by Shri Surinder Singh (DW1) and Shri Yashpal Singh (DW2), without there being any document to substantiate the said statements, and passed the Impugned Order. Further, the defence witnesses produced by the respondent before the Enquiry Officer were interested parties and could not be relied, without there being any documentary evidence to substantiate the said statements.

15. He further submitted that the medical slips produced before the Enquiry Officer did not disclose the nature of illness or the gravity of illness of the respondent. He further submitted that the respondent was also directed to report to the Chief Medical Officer (CMO), Rohtak District, Haryana for a second medical opinion, but he failed to do so and merely submitted that he was not entertained by the CMO.

16. He further submitted that it was the bounden duty of the respondent to intimate or take prior approval from the competent authority before absenting himself from his duties, which he failed to do, thereby violating the provisions of CCS(Leave Rules), 1972 and the Standing Order No.111of Delhi Police, and in the face of these circumstances, after following the due process as per law, the respondent was dismissed from service.

17. The learned counsel lastly submitted that such repeated infractions by the respondent undermined the integrity of service discipline, and his dismissal was, therefore, not only warranted but imperative.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

18. The learned counsel appearing on the behalf of the respondent, while refuting the pleas raised on behalf of the petitioners, submitted that the respondent was severely sick during the period of absence and could not be said to be wilfully absent from service.

19. He further submitted that the period of absence of the respondent was covered by the medical certificates issued by the Medical Officers of the Government Hospitals/Dispensaries, which the respondent duly submitted when he resumed his duties.

20. He further submitted that there was considerable delay in initiating the Disciplinary Enquiry for the alleged irregularities for the period from 1994 to 1997, which was initiated only in the year 2003, due to which much of the documents required to prove the allegations of wilful absence from duty by the respondent had been destroyed and could not be produced in the enquiry proceedings.

21. The learned counsel lastly submitted that an extreme penalty had been imposed upon the respondent and the learned Tribunal has rightly set aside the Dismissal Order as the said penalty was disproportionate to the gravity of the wrong.

ANALYSIS & FINDINGS

22. Having heard the learned counsels for the parties and after carefully considering the material available on record, the short issue which arises for consideration is whether the learned Tribunal was justified in quashing the Dismissal Order dated 19.06.2006 and directing reinstatement of the respondent in service forthwith.

23. We may proceed to note that there is no dispute that the punishment of dismissal imposed upon the respondent was pursuant to a Departmental Enquiry, which was conducted by the petitioners in compliance with the Order dated 20.02.2003 passed by the learned Tribunal, on the ground of unauthorized absence of the respondent from his duties.

24. It is further not disputed that the respondent absented himself from his duties for the aforementioned period from 1994-1998, and no leave was either applied for or sanctioned by the Competent Authority in respect of the said period of absence. Prior to the departmental enquiry, thirteen absentee notices were issued to the respondent, out of which, five notices had been personally received by the respondent, five notices were deemed to have been received by him, and for the remaining three notices, the report of the local police was very much against the respondent.

25. Thereafter, when the respondent did not reply to the aforementioned notices, the petitioners dismissed the respondent from service on the grounds of absence of the respondent from his duties, *albeit* without conducting a Departmental Enquiry, using powers under Article 311(2)(b) of the Constitution of India.

26. The said Order was set aside by the learned Tribunal and liberty was granted to the petitioners herein to proceed against the respondent in accordance with law.

27. Thereafter, the petitioners conducted a due enquiry and after consideration of the enquiry report, conduct of the respondent, and the representation made by the respondent, the Dismissal Order was

passed.

28. The plea of the respondent is that his absence was on the ground that he was severely sick and owing to the medical exigencies, he was unable to re-join his duties and to intimate the petitioners about his absence. The Enquiry Officer in his report has dealt with all the points raised by the respondent regarding the production of the medical certificates obtained from the doctors of the Dispensary/Government Hospital. The Enquiry Officer has observed that they were obtained by the respondent at his convenience in the Delhi area itself and that the respondent had sufficient time to visit hospital/dispensaries for medical check-ups at different places from his residence in Haryana, but had no time to come to his place of posting to inform the department about his sickness or to get medical leave sanctioned by the Competent Authority to fulfil the requirements of the Rules and Regulations of the police department. The Enquiry Officer further observed that it was never proved by the respondent that he was so bedridden so as to be unable to appear before the officers of his unit for apprising them of his medical condition. The Enquiry Officer has observed that the respondent cannot be absolved of all the charges mentioned in the chargesheet served upon him, merely on the basis of the medical certificates.

29. The aforesaid observations of the Enquiry Officer were made in order to reach a conclusion on the question whether the absence of the respondent was wilful or whether he was prevented by sufficient cause arising from his medical illness to visit his office and get the leave sanctioned.

30. The learned Tribunal has, however, held that on the basis of the Absentee Notices and Medical Certificates, the seriousness of the illness of the respondent cannot be judged by it and that the prosecution witnesses had not proved that the respondent was wilfully absent from his duty. We cannot agree with the above finding.

31. It is admitted that thirteen notices were sent to the respondent. This Court has observed from the enquiry report that out of thirteen notices, five notices were received by the respondent personally, the other five were deemed to have been received by him, whereas for the remaining three, the report of the local police was very much against the respondent. It was reported that the respondent had gone to meet his relatives as a sick man but was unable to inform the department due to his weak physical condition. The Enquiry Officer has made a reference of two of such reports and has observed as under:

> *"Vide report on AN No. 6944/ASIP-V Bn DAP dated 21.12.1994, he has already went back to his duty but reported for duty on 6.7.1995 after more than 6 months. The report on AN dated 11.7.1994 by the local police is very much critical of the delinquent, which reads as, "though the constable has noted letters received from this office but he normally stated that he is ill and will report for duty as and when recovered from illness. In fact, the constable deliberately not reported for duty and remained busy in his own work at his home. It showed the callous and apathetic attitude of the constable in the performance of his official duties in Delhi Police. Though the official duty can be resumed after obtaining the fitness certificate from the doctor, but who prevented him to appear personally before the competent police officer to show his physical condition by stating the illness he was afflicted with."*

32. While the respondent claims to have visited Government dispensaries and Government hospitals at Delhi, located far from his residence in Haryana, to obtain medical certificates, he chose not to visit his department for applying and for getting his leave sanctioned, even after receiving thirteen notices from his department. He could even visit his relatives during his illness, but did not come to his Unit to apprise his superiors about his condition or for applying for leave. This Court finds that on the basis of all this evidence, the Enquiry Officer has rightly come to the conclusion that the respondent was wilfully absent and neglected to join his duties.

33. In view of the evidence available on record, this Court does not find any justifiable reasoning on the part of the learned Tribunal to upset the finding of the Enquiry Officer/Disciplinary Authority. The reasoning given by the learned Tribunal is cryptic and inadequate.

34. Even regarding obtaining the second medical certificate from the CMO, Rohtak, the stand of the respondent was that the representative for the department was not present and, therefore, he was not entertained by the hospital. The Enquiry Officer has mentioned in the report that it was the duty of the respondent to present his medical documents to the CMO, Rohtak, as the medical documents were in his possession alone and no responsibility was with the Government Representative in the Office of the CMO, Rohtak. Without any specific reason, the learned Tribunal has simply discarded these observations, by holding that they cannot dismiss the statement of respondent as fictitious. It is not the case of the respondent that he ever apprised the department of the fact that he was

not entertained at the hospital or ever tried to obtain the medical appointment again.

35. The respondent has not disputed the different periods of his absence from 1994-1998 (1216 days). He himself produced medical certificates and, therefore, the destruction of the *Roznamcha* by the department as per the applicable Rules cannot be a ground to shun the other evidence in the form of prosecution witnesses and documents which were available on record.

36. This Court notes from the Enquiry Report, that the medical certificates produced by the respondent before the Enquiry Officer, did not disclose the nature of illness or the gravity of illness of the respondent. We further note that the respondent was also directed to report to the CMO, Rohtak District (Haryana) for a second medical opinion, but he failed to do so and merely submitted that he was not entertained by the CMO.

37. The petitioners afforded the respondent multiple opportunities to re-join his duties, with thirteen absentee notices being issued to the respondent but the respondent failed to intimate the competent authorities about his absence due to medical exigencies.

38. In view of the above, even if the respondent's plea is accepted as being correct that he was severely sick and could not re-join his duties owing to medical exigencies, it was incumbent upon him to apprise the petitioners of his medical condition and to seek authorised leave from them. Failure to do so constituted a failure to discharge an obligation placed upon him, being an employee of the Police Force.

39. It is to be noted that "unauthorized absence" from service is a

grave misconduct that warrants initiation of a Departmental Inquiry. When such misconduct is wilful and prolonged, coupled with a pattern of similar behaviour, it may lead to dismissal from service. The respondent, being a Constable serving in a disciplined force, was required to strictly adhere to rules and procedures, more than an employee of any other department. No responsible member of the Force can be absent from service without permission. On the contrary, the member of the Force must show a high level of discipline and accountability. A longer period of absence from duty and repeated absence, reveals indiscipline and lack of seriousness towards the service. Such a conduct is unwarranted and impermissible on part of any member of the Police Forces.

40. In view of the above, this Court notes the conduct of absence from duty of the respondent in violation of CCS (Leave Rules) 1972 and Standing Order No. 111 of Delhi Police, which is reproduced as under:-

S.No.	**From**	**To**	**Period of absence**
1.	21.03.1994	31.08.1994	5 Months 10 days
2.	13.09.1994	06.07.1995	294 days
3.	13.09.1995	27.09.1996	1 Year 14 days
4.	01.03.1997	19.03.1998	1 Year 18 days

41. This Court also notes from the Enquiry report, the previous

instances of absence by the respondent on 39 occasions for which he had already been awarded Punishment Drills and Leave without Pay by the Competent Authority.

42. From the above, it is manifest that the respondent was a habitual absentee. Furthermore, the respondent had a history of misconduct for which he was also charged with an offence under Section 93/97 of the Delhi Police Act. There were certain other allegations of misconduct for which he was awarded the punishment of "withholding of three increments having cumulative effects". This Court is constrained to observe that the antecedents of the respondent are highly unbecoming of a member of the Police Force.

43. In this regard, reference may be made to the decision in ***State of U.P. v. Ashok Kumar Singh & Anr.***, (1996) 1 SCC 302, wherein, the Supreme Court held that the absence of the respondent from duty would amount to grave misconduct and there was no justification for the High Court to interfere with the punishment by holding that the punishment was not commensurate with the gravity of the charge. Paragraph 8 of the said judgment reads as under:-

> *"8. We are clearly of the opinion that the High Court has exceeded its jurisdiction in modifying the punishment while concurring with the findings of the Tribunal on facts. The High Court failed to bear in mind that the first respondent was a police constable and was serving in a disciplined force demanding strict adherence to the rules and procedures more than any other department. Having noticed the fact that the first respondent has absented himself from duty without leave on several occasions, we are unable to appreciate the High Court's observation that his absence from duty would not amount to such a grave charge'. Even otherwise on the facts of this*

> *case, there was no justification for the High Court to interfere with the punishment holding that 'the punishment does not commensurate with the gravity of the charge' especially when the High Court concurred with the findings of the Tribunal on facts. No. case for interference with the punishment is made out."*

44. Further, the Supreme Court in ***Mithilesh Singh v. Union of India &Ors***., 2003 SCC OnLine SC 292, has held that the modalities, like prohibition on any member of the Force to not absent himself from duty without specific permission from the authority empowered to grant such leave, which are clearly enumerated in the rules, are required to be observed mandatorily. A mere application for leave cannot be of any consequence in the presence of the strict requirement of giving proper intimation. Paragraph 8 of the said judgment reads as under:-

> *"8. Rule 147(vi) deals with the case of absence without proper intimation. A mere application for grant of leave cannot be construed to be a proper intimation for absence. Rule 104 indicates various modalities governing grant of leave. There is prohibition on any member of the Force to leave Station even on holidays without specific permission of the authority empowering to grant casual leave. These modalities have been enumerated in Rule 104 clearly bring out the essence of discipline, which is required to be observed. Absence from duty without proper intimation is indicated to be grave offence warranting removal from service. Therefore, mere making an application for leave cannot be construed to be of any consequence in the background of the strict requirement of giving proper intimation. Even if it is accepted that there was intimation, that by no such imagination can be construed to be a proper intimation for diluting the requirement of obtaining permission before absenting from duty. Stress is on the expression, "proper". It means appropriate, in the required manner, fit, suitable apt. The mere*

> *making of a request of leave, which has not been accepted is not a proper intimation. It cannot be said that the said word is a surplusage. The intention of legislature is primarily to be gathered from the language used, and as a consequence a construction which results in rejection of words as meaningless has to be avoided. It is not a sound principle of construction to brush aside word (s) in a statute as being inapposite surplusage: if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In the interpretation of statutes the Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. The Legislature is deemed not to waste its words or to say anything in vain. The authorities were, therefore, justified in holding that he was guilty of the offence of absence from duty without proper intimation."*

45. Applying the above legal principles to the present case, it would emerge that the respondent herein did not make any such application for leave for his medical exigencies, and absented himself from duty in violation of CCS (Leave Rules) 1972 and the Standing Order No. 111 of Delhi Police, which clearly enumerate the modalities governing the grant of leave. Further, the medical slips submitted by the respondent to the concerned authority upon joining/resuming his duties, cannot in any manner be considered as a proper intimation for leave by the respondent herein.

46. On an overall consideration of the above facts and circumstances, it is evident that the respondent was a habitual absentee for long periods on several occasions without authorisation, leading to grave misconduct. The view taken by the Disciplinary Authority was justified and the penalty of dismissal from service in the present case

was not disproportionate.

47. Accordingly, the Order dated 10.10.2007 passed by the learned Tribunal is quashed and set aside. Further, the Orders dated 23.07.2004 and 19.06.2006 passed by the petitioners are upheld.

48. The petition, alongwith any the pending applications, if any, is disposed of. The parties shall bear their own costs.

RENU BHATNAGAR, J.

NAVIN CHAWLA, J.

JULY 01, 2025/KZ

Click here to check corrigendum, if any