

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

% *Date of Decision : 5<sup>th</sup> July, 2010*

+ **W.P.(C) No.11/2004**

EX.CONSTABLE HARISH CHANDER ..... Petitioner  
Through: Mr.Pramod Gupta and Mr.Manish  
Kumar, Advocates.

versus

COMMISSIONER OF POLICE ..... Respondent  
Through: Mr.V.K.Tandon

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MR. JUSTICE MOOL CHAND GARG**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

**PRADEEP NANDRAJOG, J. (Oral)**

1. Petitioner was appointed as a Constable with the Delhi Police on 1.5.1989.

2. On 16.5.2002 a charge memo was issued and served upon the petitioner alleging his being unauthorizedly absent from duty for a period of 46 days 22 hours and 10 minutes. It was an indictment against the petitioner that neither he sent information before absencing from duty nor submitted any papers justifying the absence, as also that his past record shows that during 13 years of service he absented on 11 different occasions.

3. Responding to the charge memo, the petitioner pointed out that his brother had sent a telegram informing the department that the petitioner was unwell. It was highlighted that the petitioner had suffered a fracture and had undertaken

treatment from a government hospital; being Lal Bahadur Shastri Hospital, Khichdipur and due to said reason he could not report for duty.

4. Vide report of inquiry dated 20.6.2002, the inquiry officer concluded that the medical record submitted by the petitioner proved his suffering from a fracture. It was concluded that the medical record pertained to Lal Bahadur Shastri Hospital, Khichdipur. It was further opined that on verification it was established that the medical record was genuine. It was also held that the brother of the petitioner has sent a telegram which was received by the department, informing, that the petitioner was unwell.

5. However, the inquiry officer concluded by holding that it stood proved that the petitioner was absent without authorization i.e. he did not follow the prescribed procedure to avail medical leave.

6. A show-cause notice was thereafter issued to the petitioner by the Disciplinary Authority calling upon the petitioner to show-cause as to why the absence from 27.2.2002 to 15.4.2002 i.e. the period in question may be treated as not spent on duty and hence may not be regularized in any manner.

7. Surprisingly enough, after considering the response to the show-cause notice, the Disciplinary Authority passed an order dismissing the petitioner from service and in so doing, held that there were past 11 incidents of unauthorized absence.

8. The order of the Disciplinary Authority is dated 31.7.2002.

9. Statutory Appeal filed by the petitioner was rejected vide order dated 4.10.2002. The penalty was maintained.

10. Challenge before the Central Administrative Tribunal failed vide impugned order dated 12.8.2003.

11. The operative part of the impugned order reads as under:-

“11. We revert back to the facts of the present case. It is true that the inquiry officer found that the applicant had submitted medical certificates which were not doubted. It transpired in evidence that some information for being unwell was also being sent by the applicant. If this was all, a lenient view might well have been taken. But that is not so. The past record which was part of the charge indicated that on 11 occasions, the applicant had absented himself. Even if it was for short periods, it shows his incorrigibility and that he takes the things lightly and cannot, therefore, be taken to be a sincere worker. The disciplinary authority had taken note of this fact and as already recorded above that the applicant was an indisciplined and irresponsible type of employee. Even the appellant authority was conscious of the same and, therefore, keeping in view the totality of the facts, we hold that it is not a fit case requiring judicial interference.”

12. Suffice would it be to state that the Administrative Tribunal has been influenced by the fact that in the past, on 11 occasions, the petitioner absented himself without authorization. The Tribunal has returned a finding that this shows that the petitioner is an incorrigible and an insincere worker.

13. The pen profile of the 11 past incidents, of being absent, have been tabulated by the Tribunal as under:-

“PREVIOUS ABSENCE RECORD IN RESPECT OF CT.HARISH CHANDER NO.907/L DATE OF ENLISTMENT 01.5.89.

Sl.No.	DD No. & Dt. of Absent	DD No. & Dt. of Arrival	Days	Hrs.	Min.	Decision
1.	31 - 13.8.92	35 - 13.8.92	-	1	55	2 days P.D.
2.	61 - 2.9.93	71 - 2.9.93	-	1	55	Filed
3.	23 - 21.6.94	10 - 8.7.94	17	20	20	C.L.
4.	61 - 2.3.95	19 - 8.7.94	-	10	45	C.L.
5.	5 - 9.6.95	6 - 9.6.95	1	-	55	C.L.
6.	7 - 7.4.01	31 - 8.4.01	-	34	10	1 day C.L.
7.	7 - 12.6.01	39 - 12.6.01	-	10	26	5 days P.D.
8.	112 - 1.12.01	113 - 1.10.01	-	-	35	Filed, warned.
9.	94 - 15.10.01	96 - 15.10.01	-	-	20	Filed, warned.
10.	70 - 27.10.01	2 - 25.10.01	-	2	-	3 days P.D.
11.	43 - 29.10.01	94 - 29.10.01	-	-	45	3 days P.D.

14. At the outset, it is to be noted, that there is a perceptible difference between unauthorizedly absenting from duty and reporting late for duty. With this distinction in mind, it becomes apparent that out of the 11 past instances of unauthorized absence, only 2 i.e. the incident at serial No.3 and the incident at serial No.5 afore-noted can be classified as of being unauthorizedly absent. The others pertain to reporting late to duty and hence cannot be classified as a case of unauthorized absence from duty.

15. It is writ apparent that the authorities concerned i.e. the Disciplinary Authority, the Statutory Appellate Authority and finally the Central Administrative Tribunal have misdirected themselves by treating reporting late for duty by 'a few minutes' or 'a few hours' as equivalent to unauthorized absence.

16. It is trite that where the Statutory Authority misdirects itself on fact or on law, the decision gets vitiated.

17. That apart, where a major penalty is proposed to be imposed, the applicable service Rule i.e. Rule 16(xii)(c) of the Delhi Police Rules requires a show-cause notice to be issued stating the punishment proposed to be awarded against the delinquent employee.

18. We find that before inflicting the impugned penalty of dismissal, no prior show-cause notice envisaged by the Rule has been issued or served upon the petitioner.

19. To put it succinctly, there are two errors committed. The first is the non-issuance of any show-cause notice envisaged by the Rule. The second is a misdirected approach to treat as if in the past there were 11 instances of being unauthorized absence. The past instances are only 2 in number pertaining to the year 1994 and 1995. This has resulted in an erroneous conclusion being drawn that the petitioner is a chronic, habitual and incorrigible type of person who resorts to indiscipline and

irresponsible behavior with frequency. This would obviously be incorrect.

20. Accordingly, we dispose of the writ petition quashing the impugned order dated 12.8.2003 passed by the Central Administrative Tribunal and allow OA No.2924/2002 filed by the petitioner, but not in terms of the prayer made by the petitioner in the said OA.

21. We quash the order of penalty imposed by the Disciplinary Authority, being the order dated 31.7.2002 as also the order dated 4.10.2002 passed by the Appellate Authority.

22. Noting the taint in the proceedings afore-noted, we direct the Disciplinary Authority to issue an appropriate show-cause notice and serve the same upon the petitioner and while so doing be conscious of the fact that there are not 11 but only 2 past instances where the petitioner remained absent from duty without prior intimation and the period for the said 2 misdemeanours is about 18 days in one case and only 1 day in the other. Would that constitute chronic default would be a factor to be considered by the Disciplinary Authority. The Disciplinary Authority would also factor in the decision while issuing the show-cause notice that pertaining to the last episode of being unauthorisedly absent, the report of the Inquiry Officer is that in a inchoate form, intimation of absence was intimated by the brother of the petitioner and that as a matter of fact the petitioner was physically disabled and has medical papers from a government hospital, genuineness whereof has been accepted by the Inquiry Officer.

23. Fresh decision would be taken after the show-cause notice is issued.

24. We further direct the Disciplinary Authority to take a decision as to in what manner the period post 31.7.2002 till a fresh decision is taken, would be accounted for.

25. Needful would be done i.e. the fresh show-cause

notice required to be served would be issued and served within a period of 6 weeks from today and final decision taken within another 6 weeks thereafter.

26. No costs.

**PRADEEP NANDRAJOG, J.**

**JULY 05, 2010**  
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**MOOL CHAND GARG, J.**