

Delhi High Court

Satya Pal Yadav vs Union Of India And Ors. on 20 October, 1997

Equivalent citations: 71 (1998) DLT 68

Author: U Mehra

Bench: U Mehra

JUDGMENT Usha Mehra, J.

(1) The petitioner joined as Constable in Central Industrial Security Force. On 23rd March, 1991 he fell sick, therefore, was referred to the Central Hospital Katra for treatment. The said doctor advised him rest for 20 days and further directed him to take medicine and other treatment. On 28th March, 1991 petitioner requested his unit to permit him to go to his home in the village. Accordingly, the petitioner proceeded to his home as he was given 20 days medical rest. In the village, his doctor prescribed certain medicine and he became an outdoor patient in the Civil Hospital Kaninar (Haryana). On 12th May, 1991 fitness certificate was issued by the said hospital and when the petitioner reached his unit alongwith the medical fitness certificate, he was allowed to join the duty on 23rd May, 1991. On 6th June, 1991 the petitioner was charge-sheeted for being unauthorisedly absent. On the basis of the charge-sheet he was removed from the service with immediate effect on 19th August, 1991. The appeal filed by the petitioner was rejected. The revision was also filed by the petitioner. When no relief was granted, the petitioner filed the present writ petition. .

(2) The grievance of the petitioner is that once in the final order dated 19th August, 1991 his leave from 30th March, 1991 to 23rd May, 1991 i.e. for 54 days was regularised against Eol (Extra Ordinary Leave) with Medical Certificate there was no question of treating him absent for that period. Once his absence from duty from 30th March, 1991 to 23rd May, 1991 was regularised there was no question of charge-sheeting him on the basis of alleged unauthorisedly absence. Therefore, the decision to remove him from service is not only bad in law but against the facts on record. To support his case petitioner has placed reliance on the decision of Punjab & Haryana High Court in the case of State of Punjab v. Chanan Singh, 1988 (3) All India Services Law Journal 216, which to my mind, on all force applicable to the facts of this case. In that case a Constable was dismissed from service for remaining absent from duty. The dismissal order was passed because Chanan Singh as per the charge was absent. Hence dismissed. The period of absence had, however, been counted as leave without pay. Because of this, the Punjab & Haryana High Court observed that having regularised the absence the charge of absence did not survive. In the facts of the present case also once the respondent vide order dated 19th August, 1991 regularised the period of absence as E.O.L. with medical certificate, there was no question of his being absent hence the charge-sheet did not survive. Therefore, the dismissal of the petitioner is bad in law. I am in agreement with the contention of the petitioner that the facts of the present case are identical to Chanan Singh's case (supra). The law laid down in the case of Chanan Singh (supra) applies to the facts of this case. In view of the observations made by the Punjab & Haryana High Court in the case of Chanan Singh (supra) the order of dismissal of the petitioner on the ground of absence cannot survive. Accordingly, the dismissal based on that charge is set aside.

(3) The petition allowed but with no order as to costs.