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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2712/2001

New Delhi this the 10th day of October, 2001.

HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMNV)  
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Constable Surender Singh,  
No.1812/DAP,  
S/o Shri Randhir Singh,  
Village Vijawa P.O.  
Shonpur PA Israna District,  
Panipat (Haryana)

...Applicant

(By Advocate Shri V.K. Raina)

-Versus-

1. Govt. of N.C.T. through  
Commissioner of Police,  
Delhi Police Headquarter,  
I.P. Estate,  
New Delhi-110 002.
2. Dy. Commissioner of Police,  
IInd Bn. DAP,  
Delhi.
3. Addl. Commissioner of Police,  
Armed Force,  
Delhi.

...Respondents

(By Advocate - None)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Heard.

2. The applicant in this case has assailed an order passed by the respondents whereby on account of remaining absent unauthorisedly for a period of 404 days wilfully without permission the applicant has been removed from service. The punishment was carried in an appeal and the appellate authority by an order dated 28.3.2000 maintained the punishment.

3. The applicant has assailed the orders on the ground that the disciplinary authority as well as the

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appellate authority have not applied their mind while passing the orders.

4. We have carefully considered the contentions of the applicant and perused the orders passed by the authorities. We find that the removal order as well as the order on appeal are reasoned and have been passed after application of mind to all the contentions of the applicant. As such this plea of the applicant is rejected.

5. The applicant has taken a plea that the disciplinary authority has decided the absence period as dies non without according him an opportunity to show cause which is contrary to FR 17-A. We find from the record that the enquiry has been initiated against the applicant wherein he has been accorded reasonable opportunity to defend. His defence statement was taken into consideration and he has been found absent without any justified cause from duty for an extraordinary period of 404 days without production of the medical record and justified explanation. The applicant has been served with the findings of the enquiry officer to comment upon and having regard to the contentions taken by him in his reply the disciplinary authority decided the period of absence as not explained and justified as dies non the applicant who has been accorded sufficient opportunity to explain the absence period having failed to do so, the same has not at all been prejudiced by the action of the disciplinary authority to treat this period of unauthorised absence as dies non. The applicant's plea in this regard is rejected.

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6. The learned counsel for the applicant stated that having decided the period of absence as dies non the same is regularised by the disciplinary authority and as such no punishment can be sustained on the same and has placed reliance on a decision of the Apex Court in State of Punjab v. Bakshish Singh, JT 1998 (7) SC 142 as well as the decision of this Court in OA-293/99 dated 23.2.2000 in Ramesh Chand v. Lt. Governor, wherein the period has been treated as leave without pay (dies non) and placing reliance on Bakshish Singh's case (supra) the dismissal was set aside.

7. We have carefully considered this contention of the applicant and find that the facts of Ramesh Chand's case are distinguishable. Therein the period was treated as leave without pay. In the instant case the disciplinary authority has not regularised the period of absence and treated the same as dies non in absence of any valid justification or medical record produced by the applicant. The ratio arrived at by the Apex Court in Bakshish Singh's case (supra) has been watered down by the High Court in Delhi Admn. v. Karan Singh, decided on 9.4.2000 and placing reliance on a decision of the Larger Bench of the Apex Court in State of M.P. v. Harihar Gopal, SLR 1969 SC 274 wherein it has been held that regularisation of the period as leave without pay is not to condone the charge but it is for the purposes of maintaining the correct service record of the applicant.

8. We find that in the instant case having treated the period as dies non the same would not amount to regularisation and also placing reliance on Harihar Gopal's

case and the decision of the High Court the order does not suffer from any infirmity. The contention of the applicant is rejected.

9. The learned counsel for the applicant has further stated that the applicant has been meted out a differential treatment and has been discriminated in the matter of punishment in violation of Articles 14 and 16 of the Constitution of India as in similarly circumstance the case of one Constable Zile Singh and Ramesh Kumar they have been let off with minor punishment.

10. We have considered this contention of the applicant. In absence of any material on record to show that the treatment meted out to those two Constables the applicant has failed to establish the plea of discrimination. Apart from it, the applicant throughout the enquiry and before the authorities has failed to give a justified explanation of his unauthorised absence except to state that under the influence of a ghost and was in the perfect state of mind and was suffering from alopathy disease. In proof of the same he has not produced any medical record as such the disciplinary authority having regard to the fact that there is no valid explanation of his absence and non-production of the medical record in view of his grave misconduct of absenting for a period of 404 days imposed the punishment of removal which is not a disqualification for future employment. The action of the authorities is perfectly legal and his valid as per the provisions of Rule 8-A of the Delhi Police (Punishment & Appeal) Rules, 1980. Remaining absent for such a long period and having chequered history of bad record renders a

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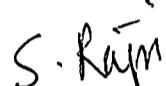
police official incorrigible and unfit for police duty as envisaged under Rule 10 of the Rules ibid. Leave cannot be claimed as a matter of right. The applicant having failed to respond to the absentee notices and his failure to report to Chief Medical Officer for re-medical examination and his refusal to the same clearly demonstrate that his grounds of illness were neither genuine nor bonafide. As laid down under Rule 19 of the CCS (Leave), Rules, 1972 it is incumbent upon a Government servant to inform the authorities in case he seeks to avail the leave and under compelling circumstances if it is found that the Government official has abruptly absent on account of illness then it is incumbent upon him to have informed the department and sent the medical record. Presuming without admitting that the applicant was mentally sick the other family members could have informed the department. But his failure to report to the Chief Medical Officer and his subsequent conduct of not submitting the medical record do indicate towards his malafides. In this view of the matter the ground taken by the applicant is rejected.

11. Lastly, the applicant stated that the punishment is excessive and is not proportionate to the charge alleged against him. The Tribunal has no jurisdiction to go into the proportionality of punishment. It is only when the conscience of the Tribunal is shocked the matter is to be remanded back to the appellate authority. From the perusal of the facts and circumstances and the appellate order we find that the proportionality has been gone into by the appellate authority and having found the past record of the applicant indicating towards incorrigibility on account of continued misconduct as the

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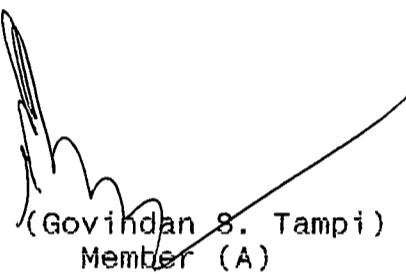
applicant has been awarded major and minor punishment the appellate authority maintained the punishment. Apart from it, remaining absent from duty in a disciplined force for a period of 404 days amounts to grave misconduct and is aggravated by non-production of a valid and justified medical record. In this view of the matter, we do not find the punishment either to be excessive or disproportionate with the charge.

12. In the result, having found the application as bereft of merit, the same is dismissed at the admission stage itself. No costs.



(Shanker Raju)  
Member (J)

'San.'



(Govindan S. Tampi)  
Member (A)