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In the Central Administrative Tribunal  
Principal Bench

O.A.2231/98

New Delhi this the 18th day of November, 1999.

Hon'ble Mr.Justice V.Rajagopala Reddy,VC(J)

Hon'ble Smt.Shanta Shastry,M(A)

Brij Bir Singh  
Ex-Constable No.6710/DAP  
S/o Sh.(Late) Girwar Singh,  
R/o Vill.P.O. & P.S - Daurala,  
Distt. Meerut, U.P. .... Applicant  
(By Advocate Sh. Shankar Raju)

Versus

1. Union of India,  
Through its Secretary,  
Ministry of Home Affairs,  
North Block, New Delhi.
2. Addl. Commissioner of Police,  
Armed Police,  
Kingsway Camp, New Police Lines,  
Delhi.
3. Dy. Commissioner of Police,  
Ist Bn, D.A.P.,  
New Police Lines, Kingsway Camp,  
Delhi. .... Respondents  
(By Advocate Sh. S.K.Gupta)

ORDER(Oral)

By Reddy.J-

Heard the learned counsel for the applicant  
and the learned counsel for the respondents.

2. The applicant is aggrieved vide impugned order of dismissal dated 17.2.98. The applicant was a Constable in Delhi Police. On the allegation of unauthorised absence from 9.12.96 to 7.2.97 and 6.4.97 to 3.11.97 disciplinary proceedings have been

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initiated against him and on the basis of enquiry report the applicant has been dismissed from service as per the impugned order.

3. Learned counsel for applicant raised the contention that as the alleged unauthorised absence has been since regularised by the respondents the decision taken by the disciplinary authority holding that the applicant was guilty for the unauthorised absence is illegal and that the applicant could not be punished for any misconduct which did not survive. Learned counsel relies upon citation State of Punjab Vs. Bakshish Singh JT 1998 (7) SC 142.

4. Ld. counsel for the respondents submits that the applicant was rightly to be dismissed from service on the ground of unauthorised absence.

5. The point raised is squarely covered by Bakshish Singh' case(supra). It has been held in the above case that as the alleged unauthorised absence from duty having been regularised granting leave, the misconduct did not survive. In the impugned order the disciplinary authority himself has stated that period of absence of the applicant was treated as leave without pay. Hence, the charge of unauthorised absence would not survive.

6. In the circumstances, the applicant succeeds and the impugned order is set aside. Respondents are directed to reinstate the applicant

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within a period of 3 months from the receipt of a copy of this order. In view of the facts and circumstances of the case there shall be a direction to pay 50% of backwages.

O.A. is accordingly disposed of. No. costs.

Shanta S-  
(SMT. SHANTA SHASTRY)  
M(A)

Ch. Div. Secretary  
(V. RAJAGOPALA REDDY)  
V.C. (J)

RB.