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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.123/1995

New Delhi this the 4th day of September, 2002.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)

Woman Head Constable Rajani Tyagi
No.63/F
Delhi Police
C/o Mrs. Avnish Ahlawat, Advocate
243, Lawyers' Chambers
Delhi High Court
New Delhi-110 003.

..... Applicant

(By Mrs. Avnish Ahlawat, Advocate)

-versus-

1. Government of National Capital Territory of Delhi, through Commissioner of Police, Delhi Police Headquarters
M.S.O. Building
I.P. Estate
New Delhi-110 002.
 2. Dr. Chandra Prakash
Additional Commissioner of Police (Operations),
Delhi Police
Police Headquarters
M.S.O. Building
I.P. Estate
New Delhi-110 002.
 3. Shri S.K. Jain
Deputy Commissioner of Police
F.R.R.O., Delhi Police
Police Headquarters
I.P. Estate
New Delhi-110 002.
 4. Inspector Umrao Singh
Enquiry Officer
F.R.R.O. Safdarjang Lines
to be served through
D.C.P., F.R.R.O.
Police Headquarters
M.S.O. Building
I.P. Estate
New Delhi-110 002.
- Respondents

(By Shri George Paracken, Advocate)

As Ag

O R D E R

Justice V.S. Aggarwal:-

By an order passed by this Tribunal on 16.2.2000 in the present Original Application, the order of penalty issued against the applicant of reduction in pay by three stages for a period of three years was quashed and set aside on the ground that the order of penalty had directed the period of absence to be treated as leave without pay. Reliance was placed on the decision of the Supreme Court in the case of **State of Punjab & Ors. v. Bakshish Singh**, JT 1998 (7) SC 142. The said order of this Tribunal had been set aside by the Delhi High Court in Civil Writ Petition No.352/2001 on 17.4.2002 relying on an earlier judgement of the Supreme Court in the case of **State of Madhya Pradesh v. Harihar Gopal**, 1969 SLR 274. The matter has been remitted to this Tribunal for considering the further contentions of the applicant.

2. Applicant (Ms. Rajani Tyagi) is employed in Delhi Police. The allegations against her were that on 14.3.1991, she was detailed for duty as Typist at Immigration Check Post, IGI Airport, New Delhi but she did not report for duty and was marked absent at 12.43 PM vide DD No.12 dated 14.3.1991. An absentee notice was issued at her residence. On 5.4.1991, it was delivered to her

BS Ag

personally. Applicant did not resume her duty. Another absentee notice was issued to her through Registered Post. It had been served on her. She resumed her duty on 13.5.1991 at 11.00 AM and she is alleged to have remained absent for 60 days, 1 hour and 30 minutes.

3. On 10.6.1991 when she was posted in Accounts Branch, one day's casual leave was sanctioned by the Accountant. She was to report back on 11.6.1991 but she did not resume her duty wilfully and unauthorizedly and was marked absent. She submitted an application that she was suffering from fever and the Doctor had advised her five days' medical rest with effect from 10.6.1991 to 14.6.1991. She did not submit the medical certificate and continued to remain absent. On 26.6.1991, an absentee notice was issued to her at her residence. It was followed by another notice but without effect. It was delivered on her mother. On 14.8.1991, she submitted an application through Registered Post accompanied by a medical certificate issued by a private practitioner regarding medical rest for three weeks with effect from 25.7.1991. On 19.8.1991, she again adopted the same tactic and sent an application through Registered Post that she was advised two weeks medical rest enclosing therewith a copy of the previous medical certificate. She was directed to have second medical opinion. On 14.10.1991, she was examined by Dr. Bharat Singh Medical

LS Ag

Superintendent- cum- Medical Legal
Expert-cum-Consultant, Civil Hospital who found her
an old case of enteric fever, treated her and she
was found fit to join duty. She still did not join
duty and remained absent.

4. An enquiry had been conducted. The report
was not in favour of the applicant. The Deputy
Commissioner of Police awarded a punishment of
reduction of her pay by three stages for a period
of three years and, therefore, the pay of the
applicant was reduced from Rs.1150/- pm to
Rs.1075/-pm in the time scale of pay for a period
of three years with immediate effect which will
have its effect upon postponing of her future
increments. The absence period of the applicant
was decided as leave without pay.

5. The applicant assails the said order and
during the course of submissions at the Bar, the
learned counsel for the applicant had urged
vehemently that the applicant was suffering from
fever. She was under treatment. She had been
advised medical rest and, therefore, the finding to
that effect necessarily must be set aside. So far
as this particular contention of the learned
counsel is concerned, indeed it must be held to be
totally devoid of merit. It is a finding of fact.
It has to be arrived at by the concerned authority.

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The finding is based on evidence. It cannot be described to be erroneous or that no reasonable person would have come to such a conclusion. Once it is found to be based on evidence, this Tribunal would not reappraise the same or interfere with the same.

6. The learned counsel for the applicant further contended that the applicant was found to be unwell by Dr. Bharat Singh, Medical Superintendent- cum- Medical Legal Expert- cum- Consultant and, therefore, the respondents were not required to pass the impugned order. Indeed, the contention so raised once again does not get support from the material on record. The charge against the applicant has been absence without prior permission. She did not take any prior permission. Even Dr. Bharat Singh found her fit to join duty but she did not care to join the duty. Therefore, to state that Dr. Bharat Singh had found her to be unwell is totally half of the version of the report of Dr. Bharat Singh but when read as a whole, it clearly shows that the applicant did absent from duty without prior permission.

7. There is no ground thus to interfere. The application being devoid of merit must fail and is

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accordingly dismissed. No costs.

Announced.

V.K. Majotra
(V.K. Majotra)
Member (A)

V.S. Aggarwal
(V.S. Aggarwal)
Chairman

/sns/