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**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

O.A. NO.2033/1997

New Delhi this the 7th day of August, 2000.

**HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN**

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

Ashok Kumar  
S/o Shri Late Balwan Singh  
R/o Village & P.O. Gwalison  
P.S. Beri, Distt. Rohtak  
Haryana.

... Applicant

( None )

-versus-

1. Lt. Governor of Delhi  
(being the Administrator of the Union  
Territory of Delhi) Raj Niwas  
Civil Lines  
Delhi-110054.
2. The Commissioner of Police  
Delhi Police  
Police Headquarters  
I.P.Estate, New Delhi.
3. The Addl. Commissioner of Police  
(South Range)  
Police Head Quarters, I.P.Estate  
New Delhi.
3. The Additional Dy. Commissioner of Police  
Delhi Police  
West District  
Police Head Quarters, I.P.Estate  
New Delhi.
4. Shri Lakhi Ram  
Reserve Inspector, North-West District  
Delhi Police: Through  
The Commissioner of Police  
Delhi.

... Respondents

(Sh.D.K. Singh, proxy for Sh. ~~Anand Mohan~~ A. K. Gupta,  
counsel)

**O R D E R (ORAL)**

**Shri V.K. Majotra, Member (A):**

The Applicant and his advocate are absent. We have heard the learned advocate appearing on behalf of the respondents. We have proceeded to dispose of the OA on merits in terms of Rule 15 of the Central Administrative Tribunal (Procedure) Rules, 1987 in the absence of the applicant and his counsel.

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2. The applicant was found to be absent from duty on 4.6.1993 without any permission of the competent authority though he had been detailed for basic training course at P.T.S. Jharoda Kalan commencing from 1.6.1993. On 15.6.1993, the applicant submitted an application along with a medical certificate for medical rest for 8 days from 14.6.1993 from a private Doctor. He availed himself of the medical rest at his home accordingly without any prior permission of the competent authority. He submitted another application on 25.6.1993 for further medical rest for 6 days from 22.6.1993 to 27.6.1993. Respondents advice that the applicant should report to the Civil Surgeon, Civil Hospital, Delhi for second medical opinion could not to served on him as he was not found present at his quarters. An enquiry was instituted against him. He was held guilty in the enquiry. Although he was served with a copy of the findings of the enquiry officer on 7.1.1994, the applicant did not submit any representation against the same. He did not present himself in the O.R. despite an opportunity. Consequently considering that the applicant had nothing to say in his defence, he was dismissed from service and his suspension period was decided to be not spent on duty vide order dated 7.4.1994. Applicant's appeal and revision against the penalty of dismissal were rejected by the concerned authorities.

3. Applicant has challenged the orders relating to his dismissal in the present OA on the ground that the appellate authority and the revisional authority have not applied their mind to the facts and

circumstances of the case and that he has been dismissed from service arbitrarily and contrary to the principles of natural justice. He has sought the quashing of the orders dated 5.7.1993, 20.7.1993, relating to suspension and appointment of enquiry officer, <sup>respectively</sup> dismissal order dated 7.4.1994, appellate order dated 8.11.1994 and the order passed by the revisional authority on 14.8.1995.

4. In their counter, the respondents have stated that the applicant had wilfully and unauthorisedly remained absent without any intimation/permission of the competent authority which is in violation of Rule 19.5 of C.C.S. (Leave) Rules, 1972 as well as S.O. No.111. According to the respondents, medical certificate submitted by the applicant was found to be not genuine.

5. We have heard the learned proxy counsel for the respondents and also considered the material available on record carefully. The learned counsel for the respondents contended that submission of an application or medical certificate does not by itself confer any right upon the Government servant to avail himself of leave. Prior permission of the competent authority must be there before availing of the medical rest. He also pointed out that the applicant did not avail of the opportunity of obtaining the second medical opinion at the hands of the Civil Surgeon.

6. Provisions of Rules 8(a) and 10 of the Delhi Police (Punishment & Appeal) Rules, 1980, (for short,

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the Rules of 1980) are relevant to the facts of the present case. They read as follows:

"8(a) Dismissal/Removal- The punishment of dismissal or removal from service shall be awarded for the act of grave misconduct rendering him unfit for police service.

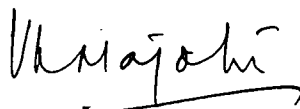
"10. Maintenance of discipline- The previous record of an officer, against whom charges have been proved, if shows continued misconduct indicating incorrigibility and complete unfitness for police service, the complete unfitness awarded shall ordinarily be dismissal from service. When complete unfitness for police service is not established, but unfitness for a particular rank is proved, the punishment shall normally be reduction in rank."

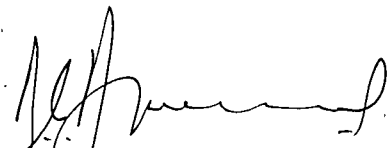
Misconduct for dismissal has to be grave and continued indicating incorrigibility and complete unfitness for police service under the provisions of Rule 8(a) read with Rule 10 of the Rules of 1980. The disciplinary authority has to apply his mind to the nature of the misconduct while awarding the punishment of dismissal from service. From the facts of the case on record, we find that there has been only one occasion when the applicant absented himself by submitting an application and a medical certificate though he had not obtained the prior permission of the competent authority. But this lone episode of absence cannot establish grave and continued misconduct indicating incorrigibility and complete unfitness for police service under the provisions of Rules 8 (a) and 10 of the Rules of 1980. We also find that the advise to obtain second medical opinion could not be served upon the applicant. Thus he remained unaware about the requirement of obtaining second medical opinion about his illness. Keeping in view the lone episode of absence for a few days from duty on the ground of illness, we are of the view that the applicant is more

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sinning against then sinning. Normally it is not within the ambit and scope of the Tribunal to go into the quantum of punishment but certainly in a case where the punishment is totally irrational and in outrageous defiance of moral standards and logic as in the facts and circumstances of the present case, it would be just and proper for the Tribunal to interfere and call upon the respondents to go into the question of quantum of punishment as there was a single incident of misconduct and the applicant had no history of misconduct of unauthorised absence.

7. Having regard to the reasons and discussion made above, we allow the OA and hereby quash the orders dated 5.7.1993 and 20.7.1993, enquiry proceedings, dismissal order dated 7.4.1994, appellate order dated 8.11.1994, revisional order dated 14.8.1995 and remand the case to the Addl. Dy. Commissioner of Police, Delhi Police, West District, respondent No.4 herein to consider the matter and pass a detailed and speaking order as to the punishment warranted in the case as also treatment to be given to the period of absence. In the meanwhile, the applicant will be reinstated in service forthwith and will be entitled to backwages for a period of 18 months only. No costs.

  
(V.K. Majotra)  
Member (A)

  
(Ashok Agarwal)  
Chairman