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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No.2486/94

New Delhi: this the 9<sup>th</sup> day of September, 1999.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE MR. KULDIP SINGH, MEMBER (J)

Mukesh Kumar,  
S/o Late Shri Bikram Singh,  
R/o Village & PO Khera,  
P.S. Pilakhwa,  
Distt. Ghaziabad (U.P.)

.... Applicant.

(By Advocate: Shri Kulbir Prashar).

Versus

1. Union of India,  
through  
Secretary,  
Ministry of Home Affairs,  
North Block,  
New Delhi-110011.

2. The Commissioner of Police,  
National Capital Territory of Delhi,

I.P. Estate,  
New Delhi-0002

..... Respondents.

(By Advocate: Shri Surat Singh )

ORDER

HON'BLE MR. S. R. ADIGE VICE CHAIRMAN (A).

Applicant impugns respondents' order dated 19.7.90 (copy taken on record) dismissing him from service, and the appellate order dated 4.9.91 (ann-A1) rejecting the appeal.

2. Applicant was proceeded against departmentally for having absented himself wilfully and unauthorisedly for about 51 days between the period 28.2.89 to 22.9.89. On scrutiny of his previous record of service it transpired that he was a habitual employee who had absented himself wilfully and unauthorisedly on 16 different occasion for a total period of about 130 days against which he had been sanctioned several kinds of

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leave, awarded punishment and warned severally but these actions had no effect upon him.

3. The Enquiry Officer in his findings held the applicant guilty of the charge framed against him. Applicant was issued a show cause notice on 24.5.90 as to why he should not be dismissed from service and the period of unauthorised absence treated as leave without pay. He was also given an opportunity of hearing, but he neither submitted his reply nor appeared before the Disciplinary Authority.

4. After going through the materials on record and finding that applicant had not cooperated during the course of the enquiry, the Disciplinary Authority accepted the findings of the Enquiry Officer and issued the impugned order dated 19.7.90 dismissing applicant from service and directing that the period of unauthorised absence be treated as leave without pay. Against that order applicant filed an appeal which was dismissed by impugned appellate order dated 4.9.91. Hence this OA.

5. We have heard both sides.

6. Applicant's counsel has taken the stand that as respondents themselves have regularised the period of unauthorised absence by the grant of leave without pay, the charge of unauthorised absence from leave does not survive, and the impugned orders therefore have to be struck down. In this connection he relies upon the Hon'ble Supreme Court's judgment in State of Punjab Vs. Bakshish Singh J.T. 1998 (7) SC 142 as well as the Delhi High Court's order in S.P. Yadav Vs. UOI 71(1998) Delhi Law Times, 68, wherein it has been held that having regularised the absence, the charge of

absence did not survive. In so far as the other absences noted in the Disciplinary Authority's order were concerned, it was urged that when the main charge of absence of about 57 days had been regularised by grant of leave without pay, applicant could not be visited the punishment of dismissal from service on the basis of those other absences alone.

7. The ground of limitation was raised by respondents' counsel, but we notice that applicant, pursuant to the Tribunal's directions dated 20.1.95, has submitted a Misc. application for condonation of delay, in which it has been contended that the delay occurred largely at the hands of the previous counsel engaged by applicant who misplaced the record. In this connection reliance has been placed on the Hon'ble Supreme Court's judgment in Lala Mata Din Vs. A.Narayanan (1969) 2 SCC 770 that in certain circumstances, particularly where a bonafide mistake has been made by counsel, the same may be taken into account in condoning delay.

8. In the light of the fact that with the regularisation of the period of unauthorised absence, the charge itself does not survive as per the two judgments cited above, we hold that we would not be justified in rejecting the OA on grounds of limitation.

9. In the result the OA succeeds and is allowed. The impugned orders which are not sustainable in law, are quashed and set aside. Respondents are directed to reinstate applicant within 2 months from the date of receipt of a copy of this order. The intervening period

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between the date of dismissal and the date of reinstatement, and such consequential benefits as will flow from applicant's reinstatement shall be determined by respondents in accordance with rules, instructions and judicial pronouncements on the subject. No costs.

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( KULDIP SINGH )  
MEMBER(J)

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(S. R. ADIGE )  
VICE CHAIRMAN (A).

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