CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(7)

O.A.No.1758 of 1994

New Delhi, this the 24th May, 1995.

Hon'ble Mr J.P.Sharma, Member(J)

Hon'ble Mr B.K.Singh, Member(A)

Shri Virender Singh
R/O Village Matandu,
P.S.& P.O.Kharkhoda,
Distt.Sonepat, Haryana. ... ... Applicant.

(through Mr Shankar Raju, Advocate).

vs.

1.N.C.T. of Delhi Administration & another
through its Chief Secretary,
Old Secretariat
Rajpura Road,
New Delhi.

2.The Commissioner of Police
Police Headquarters
Indraprastha Estate
New Delhi. .... Respondents.

(through Mr Raj Singh, Advocate).

ORDER(Oral)

PER J.P.SHARMA, MEMBER(J)

The applicant was enrolled in Delhi Police as a Constable in the year 1977. In the year 1989, he remained absent from duty after sanctioned leave of two days w.e.f.15.10.1989 for a period of 50 days and joined his duties on 7.12.1989. The aforesaid act was considered as misconduct as defined under Rule 3(i)(iii) of C.C.S.(Conduct) Rules, 1964, applicable to the employees of Delhi Police. Such misconduct is punishable in terms of Section 21 of the Delhi Police Act, 1978. An inquiry is

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to be held as laid down and provided in Delhi Police (Punishment & Appeal) Rules, 1980. A summary of allegations was served upon the applicant and Shri R.C.Garg was appointed as Inquiry Officer. Subsequently, the inquiry was entrusted to another Inspector, namely, Shri Harbans Singh. Shri Harbans Singh completed his inquiry and submitted his finding on 28th January, 1991. The Disciplinary Authority, exercising his power under Rule 16(10) of the Delhi Police(Punishment and Appeal) Rules, 1980 found that the delinquent has not been provided adequate opportunity to put up his case and, therefore, remanded the matter again to the Inquiry Officer to commence the proceedings from the stage of charge and that the delinquent be provided adequate opportunity. The delinquent official was directed, in writing, twice to appear before the Inquiry Officer for concluding the remanded proceedings of the departmental inquiry for his unauthorised absence, as detailed in the show-cause notice and in the charge framed against him. However, the delinquent did not join the proceedings and, therefore, the delinquent did not co-operate with the Inquiry Officer and the proceedings were concluded ex-parte against the applicant and the Inquiry Officer, on the basis of the earlier evidence recorded in the departmental proceedings held that the charge against the applicant of unauthorised absence from duty stands established. The Disciplinary Authority, therefore, gave a show-cause notice to the applicant on 14th May, 1991. The delinquent did not file any reply to the show-cuase notice proposing a penalty of dismissal from service and treating the unauthorised absence as leave without pay.

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The disciplinary authority passed his order dated 26.7.1991, dismissing the apolicant from service. The applicant appears to have preferred the appeal against the aforesaid order to the Appellate authority Additional Commissioner of Police on 20.6.1992 and the result of the same was conveyed to the applicant in writing on 3.12.1992.

The applicant filed the present O.A. on 16.12.1993 but it contained certain objections and this was re-filed on 18.3.1994.

MP No. 2293/94 has also been filed alongwith this application for condonation of delay. The application is duly supported by the affidavit of the applicant.

Notice of the O.A. as well as of the MA were issued to the respondents for filing the reply thereto. We find that the M.P., for condonation of delay, contains four paragraphs. Paras 1 and 2 deal only with the defence of the case. In paragraph 3 certain facts are noted that the delay in the filing the appeal was involuntary and the same be condoned. But, in fact, what were the reasons, which prevented the applicant from filing the appeal in time have not been mentioned in the misc.application. The application for condonation of delay should contain reasonable and sufficient cause to condone the delay caused. In paragraph 4, it is only stated that the balance of convenience is in favour of the petitioner.

Though we have gone through the reply but even we find that there is no ground, whatsoever, in the MA. for condonation of delay. In any case,

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the matter before us is with respect to the order of punishment passed by the disciplinary authority on 26.7.1991 and the rejection of the appeal by the appellate authority on 3.12.1992, so this application, which was filed within time cannot be said to be barred by time. If on re-filing there were certain lapses on the part of the counsel representing the applicant that should not prejudice the interest of the applicant for proper judicial review of his grievance. However, we do find that in the counter, the respondents have taken the stand that the applicant had earlier filed O.A. No.2528 of 1993 and that O.A. was dismissed as withdrawn by the order of the Principal Bench, CAT on 30th July, 1993. This fact has been concealed in paragraph 7 of the original application and in the rejoinder certain averments have been made showing that the applicant had no knowledge regarding the dismissal by withdrawal of the earlier O.A.No.2528 of 1993. We do not want to comment on this state of affiars prevailing with the applicant. The lawyer, who has been engaged has absolute power to pass on his brief to some other lawyer and the applicant cannot complain that the lawyer whom he engaged did not appear in person or the power exercised by brief-holder of the engaged lawyer was not according to the instructions given by the person conerned. Such things cannot be encouraged.

We find that the present application because of the concealment of the material facts is barred by suppression of material facts and on this ground alone, the O.A. is not maintainable at all.

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There will be another hurdle of res judicata coming in the way of the applicant. The earlier O.A. filed by the applicant was dismissed as withdrawn. In the present application filed, it is not stated that a liberty was reserved for the applicant to file a fresh O.A. for ventilation of his grievance after withdrawing the earlier O.A. The dismissal of a earlier proceeding either on merit or by withdrawl will operate as res judicata if no liberty is reserved to the applicant.

During the course of dictation of the judgment, the learned counsel for the applicant Mr Shanker Raju pointed out that liberty to file a fresh application was denied. In that event also, our view is more strongly boosted that the present application is barred by the principles of res judicata.

We have heard the whole case on merit because we do not want to leave anything untouched. We feel that the applicant is not entitled to the relief which he has prayed for.

The learned counsel Mr Shankar Raju has taken us through the judgment Union of India vs. Giri Raj Sharma(1995 S.C.C.(L&S) 290 of the Hon'ble Supreme Court. This Judgment deals with a case where the delinquent overstayed after sanctioned leave and penalty of dismissal was imposed. It was held that the applicant might have, on account of unavoidable and unforeseen circumstances, or on medical grounds or otherwise may not have been in a position to join and effectively discharge his duties and so he might have absented himself without sanctioned leave, which can also be

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granted subsequently on joining and the penalty imposed was held to be harsh. The ratio laid down by the Hon'ble Supreme Court cannot give any benefit to the learned counsel for the applicant since the applicant continued to absent himself for considerable period even after the disciplinary proceedings.

In this case, the disciplinary authority, in the interest of the applicant remanded the case with a direction to the Inquiry Officer to give adequate and convincing opportunity to the delinquent to produce his defence and he commenced the proceedings after such a lapse. Inspite of issue of notice of the date fixed in the inquiry, at one time by the Special Messenger, the applicant did not co-operate in joining the inquiry. In view of this, there was no alternative left but the right which had been granted to the applicant by the disciplinary authority was waived off by the applicant himself which cannot be now complained of. We do not find force in this submission of the learned counsel of the applicant that enquiry was wrongly held exparte after remand by disciplinary authority.

A notice was served on the applicant and there were certain contorversy regarding the service of that notice. However, in the re-commenced inquiry, there is no contorversy at all. Even if we take the contention of the applicant's counsel acceptable, though we do not accept the same, when the show cause notice was issued to the delinquent after the receipt of the report of the Inquiry Officer, which the learned counsel has fairly admitted having been received by the applicant, the applicant was within his right to take this point of not having knowledge of the date fixed in enquiry when the notice issued by the Inquiry Officer

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the second time or he was prevented by sufficient cause in not cooperating with the Inquiry Officer in the remanded proceedings. This point, therefore, of the learned counsel cannot be accepted. No other pointed has been stressed.

The learned counsel for the Respondents has stated that the inquiry file is not available with him and that may be available after lunch. We do not appreciate this contention of the respondents' counsel. We have since perused the pleadings and heard the learned counsel for the parties at length we do not find it plausible to wait for the departmental file as there is sufficient material on record to give effective judgment.

The application is, therefore, dismissed as not maintainable, barred by Res-judicata and also on merits. The parties are left to bear their own costs.

(B.K. Singh)
Member (A)

(J.P. Sharma)
Member (J)

24th May, 1995
"SDS"