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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.751/2000

New Delhi, this the 10th day of December 2001

HON'BLE MR. M.P. SINGH, MEMBER (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

E M Shaji, Ex. H.C. No.1890/C
R/o 749, LIG Flats Hastshal Uttam Nagar,
New Delhi.

... Applicant

(None for the applicant)

V E R S U S

1. Union of India
Through Commissioner of Police,
Police Headquarter I.P. Estate,
New Delhi.
2. Senior Addl. Commissioner of Police,
AP&T, PHQ I.P. Estate,
New Delhi.
3. Deputy Commissioner of Police,
10 Bn. DAP Pitampura Complex,
Delhi-110 034.

... Respondents

(By Advocate: Shri J. Choudhary, learned proxy counsel
for Shri George Paracken)

ORDER (ORAL)

By Shanker Raju, Member (J) :

At the outset, Shri Bhasker Bhardwaj, learned counsel for the applicant states that he has no instruction from the applicant and, therefore, he wants to withdraw his name from this case and the same is allowed. None for the applicant. We proceed to disposed of the present OA as per the provision of Rule 15 of CAT (Procedure) Rules, 1987.

2. Heard Shri J. Choudhary, learned proxy counsel for Shri George Paracken, learned counsel for the respondents.

3. The applicant, in this case, has been proceeded against in the disciplinary proceedings on the allegation of remaining absent for the period of 150 days and also for 111 days. The applicant absented unauthorisedly and wilfully and has also not informed the department, despite having received communications. He neither produced the medical certificates nor any postal communication. The Inquiry Officer on the basis of the examination of witnesses and also keeping in view the defence of the applicant, where he had admitted his default, held him guilty of wilful absence without any reasonable cause. The disciplinary authority served the findings upon the applicant. The applicant also submitted his representation. Thereafter keeping in view the long period of absence, the disciplinary authority imposed the major penalty of removal from service and simultaneously treated the absence period as leave without pay on the basis of "no work no pay" under the provision of FR 17 (I). The appeal preferred by the applicant against the aforesaid order of the disciplinary authority was dismissed vide order dated 24.11.1997 wherein the proportionality of penalty has already been taken note of by the appellate authority. Thereafter the applicant has filed a revision petition and the same was also considered and rejected vide an order dated 4.12.1998.

4. The applicant in this OA has taken a plea that having treated the period leave without pay, the charge of remaining absent has been condoned as the same no more survives. The applicant places reliance on a decision



of Apex Court in the case of State of Punjab & Ors. Vs. Bakshish Singh reported as 1998 (7) JT 142, in support of his contention. It is also stated that the applicant has a clean service record and many commendation certificates to his credit and inhuman approach has been taken against him by the respondents.

5. On the other hand, the respondents have strongly rebutted the contention of the applicant and stated that despite issuance of two absentee notices to resume his duty immediately and in case of sickness, he should report for second medical examination. The applicant despite receipt of the same has neither informed the department nor reported for second medical examination. This shows that the grounds taken by him are unjustified and not genuine. As regard the legal plea, treating the period of absence as leave without pay on the principle of "NO WORK NO PAY" under provision of F.R. 17(I), the respondents place reliance of the Apex Court's larger Bench decision in the case of State of M.P. Vs. Harihar Gopla reported as 1969 SLR SC 274 and contended that mere treatment of period of absence as leave without pay shall not have the effect of nullifying the order but it was for the purposes of maintaining correct service record. In this view of the matter, it is stated that remaining absence from duty for a longer period in the disciplined force like Delhi Police, the applicant has committed a grave misconduct and in the absence of any justified reason or explanation to this long absence tendered by the applicant, the punishment

imposed by the disciplinary authority and affirmed by the appellate authority as well as revisional authority is legal and justified.

6. We have carefully considered the contentions of the learned counsel of the respondents and perused the records.

7. The legal plea of the applicant in this OA regarding treatment of period of absence from duty as leave without pay which amounts to condoning the charges cannot be countenanced. The disciplinary authority while issuing the order has treated the period of absence under FR 17 (I) as "No Work No Pay" to maintain correct service record and this cannot be treated to have regularised the period of absence. Apart from it, in view of the ratio in Harihar Gopal's case (supra) by a larger Bench, the ratio laid down in Bakshish Singh's case (supra) cannot be treated as a precedent under Article 141 of the Constitution of India. We also find, the order passed by the appellate authority as well as revisional authority where the proportionality of penalty has been gone into by them, the penalty of removal from service has been imposed on the ground of long absence of the applicant from duty without any justified explanation and without any proof of his having responded to the absentee notices. In case the applicant was sick, he should have reported for second medical examination under Rule 7 and 19 of the CCS (Leave Rule) 1972, leave cannot be claimed as a right. Without any justified reason or explanation, the absence

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of the applicant is to be treated as wilful and unauthorised and without seeking proper permission which is also inviolation of Standing Order No.111 of Delhi Police Act, 1978. More particularly in a disciplined force like Delhi Police. No doubt the misconduct of the applicant is to be termed as grave. No other legal or valid grounds have been raised in the O.A. by the applicant.

8. In the result, having regard to the reasons stated above, we do not find any merit in the present OA and is, accordingly, dismissed. No costs.

S Raju
(SHAKER RAJU)
MEMBER (J)

M.P. Singh
(M.P. SINGH)
MEMBER(A)

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