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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BEHCN NEW DELHI

O.A. No. 1910/1988

DATE OF DECISION..... 25th March, 92

MUKESH KUMAR

..... APPLICANT

VERSUS

UNION OF INDIA & OTHERS RESPONDENTS

CORAM

HON'BLE MR. T.S. OBEROI

MEMBER (J)

HON'BLE MR. P.C. JAIN

MEMBER (A)

FOR THE APPLICANT

..... SH. A.S. GREWAL, COUNSEL

FOR THE RESPONDENTS

..... MS. ASHOKA JAIN, COUNSEL

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. T.S. OBEROI)

JUDGEMENT

The facts of the case briefly are that the applicant joined the Delhi Police on 1-9-1982. During his posting in the III Bn. of Delhi Police in September, 1985, he fell sick and initially applied for two weeks' leave from 30-9-1985 which was later extended from time to time, till 16-1-1986. On that date, he filed a medical certificate from a private medical practitioner from Meerut, recommending three months medical rest. The applicant accordingly applied for

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extension of leave to avail of the medical rest, at his home. This was not acceded to, and he was asked to appear before Civil Surgeon, Civil Hospital, Delhi on 25-1-1986, for second medical opinion. The Civil Surgeon declared him fit to join, but the applicant did not join duty w.e.f. 27-1-1986. In spite of absentee notice sent to him directing him to resume duty, he did not do so. Ultimately, a letter in that regard, was got served upon him through Sr. Supdt. of P-o-lice, Meerut, upon which he joined duty on 12-5-86, after an absence of about 3-months and 5-days. He, however, again absented w.e.f. 20-5-86. In the meanwhile, he had since been placed under suspension w.e.f. 18-2-86 but the suspension order sent through Regd. AD post, was returned unserved. Eventually, it was got served through the Sr. Supdt. of Police, Meerut but still the applicant did not resume duty. Disciplinary proceedings were initiated against him ex-parte. The Enquiry Officer submitted his findings dated 29-7-86 holding that charge of wilfully absents from duty had been substantiated. The Disciplinary Authority, tentatively agreeing with the findings of the E.O., issued show cause notice dated 24-9-86, proposing punishment of

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applicant's dismissal from service, which inspite of service upon the applicant, on 4-10-86, was not replied to, by him. A reminder was also sent on 17-10-86, but that, too, remained unattended by the applicant.

Accordingly, vide order dated 5-12-86(Annexure-'E'), he was dismissed from service, with the period of his suspension from 18-2-86 also treated as NOT spent on duty allowing only the subsistence allowance, already paid to him. The appeal as well as the Revision filed by the applicant were dismissed, vide orders(Annexure-'G' and 'H') and hence this application.

2. In the grounds urged by the applicant, the applicant has stated that he was seriously ill to perform his duties, or to attend the disciplinary proceedings, against him. He also alleged that the Civil Surgeon, Delhi did not examine him properly, nor could be diagnose, the disease the applicant was suffering from. He also took up the plea that he was not even paid the subsistence allowance and that orders of the competent authority to conduct the Enquiry proceedings ex-parte, against him, were not obtained. He also alleged bias against the E.O., the punishing authority, as well as the appellate/revisional authorities, who, according to him, did not consider his case

properly and took action erroneously against him and turned down his appeal/revision. He prayed for the same being set aside. He claimed the following reliefs:-

- (i) Order No. 9953-10000/Estt: III Bn.DAP dated 5-12-1986 dismissing the applicant from service be quashed.
- (ii) Order No. F-XVI(23)/87-6271-73/AP-I dated 10-4-1987 rejecting his appeal be also quashed.
- (iii) Order No. 18249-50/CR-I dated 13-8-1987 delivered to the applicant after 22-8-87, be also quashed.
- (iv) Any other relief(s) which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case be also awarded.

3. In the counter filed on behalf of the respondents, the applicant's case was vehemently opposed. It was urged that before the present spell of absence, the applicant had been absenting from duty, in the past as well, on a number of occasions. It was also averred that in spite of having been declared fit by the Civil Surgeon, Delhi, to resume duty on 25-1-1986, the applicant did not do so. He also did not receive notices etc. sent to him at his home address, by Regd. post, and in consequence, had to be served upon him through Sr. Supdt. of Police, Meerut. It was thus averred on behalf of the respondents that the applicant was incorrigible type of constable, and hence, was dismissed from service by making use of relevant provisions contained in Rule 8(a) and 10 of the Delhi Police(Punishment & Appeal), Rules, 1980.

4. The rejoinder was also filed on behalf of the applicant, in which he submitted that from the perusal of medical records (Annexure A-1 to A-32 at pages 11 to 42 of the paper book), both from the authorised medical attendant at Delhi as well as his family doctor at Meerut (UP), it will be seen that applicant was in fact, not well during all this period, and as treatment at Delhi was not doing any good to him, he preferred to get medical treatment by his family doctor at Meerut, and had, therefore, to shift to his native place. He also alleged that ex-parte proceedings were carried on, against him without appropriate orders from the competent authority, in terms of Rule 18 of the Rules *ibid*, and also, subsistence allowance as per Rules was NOT paid to him, during the period of his suspension, adding to his miseries.

5. We have heard the learned counsel for the parties. The learned counsel for the applicant by referring to the copies of medical record earlier mentioned, pleaded that the said record includes certificate from CGHS dispensary, Kingsway Camp, and also Lok Nayak Jai Prakash Narain Hospital, Delhi, and therefore, could not have been manipulated by the applicant and, as his condition was deteriorating, it was thought necessary by him, to shift to his native place, where he could also get medical

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treatment, from his family doctor. The learned counsel for the respondents, on the other hand, emphasized that the gravity of the case consists in the fact that inspite of having been opined by the Civil Surgeon, Delhi, as fit to resume duty, the applicant did not join duty, nor responded to various notices/communications, sent to him at his home address in District, Meerut(UP), till the same were got served upon him through the local police.

6. We have given careful consideration to the rival contentions, as briefly discussed above. We have also carefully perused the pleadings of the parties, together with the record filed by them, alongwith the same. We had also called for the record of disciplinary proceedings held against applicant, which shows that the order of the competent authority to proceed against the applicant ex-parte had been obtained on 21-10-86, as evident from the noting dated 21-10-86, on the file. The contention, in this regard, by the applicant is, therefore, of no consequences. He has also been paid subsistence allowance, as asserted by the respondents, and also, as evident from the perusal

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of the record, Every case has primarily to be decided on the facts and circumstances of its own. In the present case, the applicant was referred to Civil Surgeon, Delhi, for second medical opinion, in terms of Rule, 19(3) of the C.C.S.(Leave Rules), 1972, but, in spite of his having been declared fit to resume duty, on 25-1-86, he did not come to duty w.e.f. 27-1-86. Even if his plea that his treatment in Civil Hospital, or with the authorised Medical attendant, was not doing any good to him, he could have asked for a reference to some specialist, but instead, his choosing to revert to his family Doctor, at Meerut, does not seem to be convincing. Needless to say that, at Delhi, much better ^{medical} facilities are available, as compared to those at Meerut. Further, the applicant did not respond to two notices sent to him by the respondents, to resume duty, nor did he respond to any other communication, detailed earlier, in spite of the same having been served upon him, through the local police of Meerut. The respondents have taken all reasonable and possible steps to ensure adherence to the provisions of rules and regulations, before passing the order of termination of applicant's services. There seems to be no flaw or lacunae in the procedure adopted by them. On the other hand, the applicant's conduct in ignoring notices

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sent by the respondent concerned, has been one of utter indifference. In these circumstances, we have no hesitation to conclude that no indulgence or leniency is called for in treating the applicant's case. No interference is therefore, necessary in the impugned orders passed by the respondents in the case, and, in result, the O.A. is dismissed, with no orders as to costs.

Cec 25/3/92
(P.C. JAIN)
MEMBER (A)

T.S. Oberoi 25.3.92
(T.S. OBEROI)
MEMBER (J)