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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. NO. 2028/2004

New Delhi, this the 5th day of September, 2006

**HON'BLE MR. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)**

Const. Naresh Kumar,
PIS No.28930706 (since deceased)
Through his legal heir

Smt. Maya Devi,
Widow of Late Const. Naresh Kumar,
R/o 12/317, Panchi Road,
Gandhi Nagar, Ganaur Mandi,
Distt. Sonapat, Haryana
(By Advocate : Shri Arun Bhardwaj)

... Applicant

Versus

1. Commissioner of Police,
PHQ, I.P. Estate,
New Delhi

2. Joint Commissioner of Police,
Prov. & Logistics,
Delhi

3. Deputy Comm. Of Police,
Prov. & Lines,
Delhi

(By Advocate : Mrs. Sumedha Sharma)

... Respondents

O R D E R

By Mukesh Kumar Gupta, Member (J):

Legal heir of deceased Const. Naresh Kumar of Delhi Police has assailed penalty of dismissal inflicted vide order dated 01.06.2001, as upheld vide appellate authority's order dated 16.10.2002.

2. Late Shri Naresh Kumar died on 25.07.2003. Thereafter, applicant herein made representation for appointment on compassionate ground, which had been rejected by Respondents vide order dated 12.02.2004, stating that since her deceased husband was

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dismissed from service, request for compassionate appointment did not fall within the ambit of rules governing such appointments.

3. Shri Arun Bhardwaj, learned counsel for applicant basically raised three contentions, namely -

- i) That the inquiry officer vide report dated 28.03.2001 holding the charge of willful and unauthorized absence as proved against the deceased, relied upon his dismissal on an earlier occasion, which had not been the charge framed against him. Not only this, even the appellate authority also relied upon such facts, which is impermissible and violates rule 16 (xi) of Delhi Police (Punishment & Appeal) Rules, 1980. The material so relied was extraneous to the proceedings, contended learned counsel.
- ii) That the deceased was mentally disturbed and had been treated for ailments at various hospitals, certificates establishing such aspects were placed on record, but arbitrarily & illegally disbelieved by inquiry officer, disciplinary as well as appellate authorities. He had submitted medical papers in respect of himself and family members of various hospitals and dispensaries, including Institute of Human Behaviour & Allied Sciences, Shahadra, Delhi. The inquiry officer failed to apply his mind to the fact that SHO, PS Mangolpuri recorded DD No.7-A dated 07.07.1998, which reflected his state of mind, as he had climbed on an electric pole having supply of 11000 KW at 9.30 PM. Thus, it was contended that the deceased was not in a proper state of mind. Being unable to understand



anything was not able to perform his duties. This proves that he was actually ill and remained under regular treatment at various hospitals and, therefore, his absence cannot be either treated as willful or unauthorized.

- iii) Lastly, it was contended that on his demise, applicant herein had made an application for compassionate appointment, which was rejected without any reason & justification.

4. Respondents resisted applicant's plea by filing detailed reply and stated that he was absent on 57 occasions unauthorisedly and willfully in years 1997-2000. He participated in enquiry, inquiry officer examined PWs in his presence, was allowed full opportunities to cross examine them, which had also been availed. The charge levelled was based on the evidence placed on record. The questionnaire was filled by deceased Constable and he had also submitted his defence statement enclosing medical papers of various hospitals regarding his own and wife's illness. He was heard in person by disciplinary as well as appellate authorities. Allegation of violation of rule 16(xi) of the Rules is not justified as his previous bad records had not been the basis for imposing impugned punishment of dismissal. Reliance was not placed on the same by the disciplinary authority in imposing impugned punishment. As far as submission of medical papers is concerned, it was stated that he had never informed the department about his own or family members' illness, he did not take permission as per procedure/rule for his absence. His unauthorized & habitual absence rendered him unfit to be a member of disciplined force of the country's capital. Agreeing with findings of inquiry officer, which





proved charges of his absence on 57 occasions, his plea of illness was taken to be a lame and after thought excuse. Medical papers were submitted at a later stage along with defence statement and had not been supplied to his controlling authority. Medical certificate has to be forwarded to the authority competent for grant of leave and order of such authority should have been obtained, which had not been done. Mere submission of medical certificates did not confer any legal right to claim leave.

5. Regarding applicant's claim for compassionate appointment, it was stated that such a request cannot be accepted in terms of rules and instructions on the said subject.

6. We heard learned counsel for parties and perused the pleadings including original records.

7. On perusal of charge framed against deceased Constable, we note that the period of unauthorized absence pertained to period from August 1997 to 4th September, 2000. It has been established that he, at no point of time, had sought prior permission for leave on account of his illness nor he informed the department or lodged any daily report to that effect. It was also observed that deceased Constable was a habitual absentee. The disciplinary authority vide order dated 01.06.2001 observed as follows:

"I have gone through the DE file, finding of the E.O., representation, attached documents etc. in detail. I have also heard Constable Naresh Kumar No.411/L in Q.R. on 25.5.2001. I agree with the findings of the E.O. in which the charge of defaulter's 57 times aghast, willful and unauthorized absence is proved beyond any shadow of doubt. His plea of his own and his family members illness as the reason for his absence on almost all occasion is a lame and an after thought excuse. It is also not tenable in this case. Had he been



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facing genuine problem as mentioned by him in his representation as well as oral submission, he would have intimated the department and taken due permission as per procedure/rule. But he never bothered for the same."

8. The appellate authority also provided him hearing in O.R. on 27.09.2002 and observed as under:

"I have carefully considered the points raised by the appellant in his appeal and have also perused the findings of the E.O. and other material available on D.E. file. I have also heard him in O.R. on 27.09.2002. In his appeal, he has taken pleas mainly that he is a married person having minor children and there is no source of income. During service, he had severe mental depression due to family condition and remained under treatment in various hospitals. DCP/10th Bn. DAP with biased attitude kept pending absence cases for the year 1977, 1998 and 1999 and sent the same to DCP/P & L to harm the appellant and all those were decided in the year 2001. The plea taken by the appellant is not tenable. He himself is responsible for creating such situation for his family. He neither informed the department nor sought any permission from the competent authority to avail the medical rest which is violation of S.O. No.111 and C.C.C. (Leave) Rules, 1972. The grant of medical certificate does not in itself confer upon the Govt. servant concerned any right to leave his/her office or place of duty. The medical certificate has to be forwarded to the authority competent to grant leave and orders of that authority awaited. The appellant was detailed for duty in 3rd Bn. DAP temporarily from 10th Bn. where he remained absent on various occasions. His absence papers were supplied to 10th Bn. for taking necessary action but in the meanwhile he was removed from service in another D.E. by DCP/10 Bn. DAP vide order dated 19.05.1999. As such, the said absence periods could not be decided. Later-on, he was re-instated in service by the appellate authority vide order dated 22-05-2000 and on re-instatement in service, he was transferred to P & L Unit vide PHQ's order dated 27-06-2000. In view of his transfer to P & L Unit, his absence cases were sent to P & L Unit for taking necessary action. If there was some problem with the appellant, he should have informed the department and sought permission of the competent authority but the appellant never adopted proper procedure and preferred to remain absent unauthorisedly and willfully at his own sweet will which can not be tolerated in a disciplined uniformed force. In personal hearing, he could not

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say anything new except what he has explained in his appeal."

9. The factum of his earlier dismissal and reinstatement, as referred to hereinabove, in our considered view, was noticed only with a view to narrate the facts in sequence and had not been the basis for imposing the extreme penalty of dismissal. Therefore, we do not find any justification in the contention raised about violation of rule 16 (xi) of the Rules. As far as question of mental disturbance and submission of medical papers are concerned, the aforesaid authorities had taken a view, which appears to be just and reasonable in the given circumstances. It is well settled law that Tribunal/Court cannot re-appreciate the evidence and substitute their own findings. Principles of natural justice have been observed. The deceased Constable was given opportunity of hearing and procedure prescribed under the law and rules had been meticulously observed. As per policy decision taken by Respondents not to consider cases for compassionate appointment, particularly when they are wards of dismissed employees, having not been challenged in present OA, no relief can be granted.

10. In view of discussion made hereinabove, we find no justification to interfere with Respondents' action and accordingly OA lacks merit and is dismissed. No costs.



(Mukesh Kumar Gupta)
Member (J)



(V.K. Majotra)
Vice Chairman (A)