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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1167/2003

Thursday, this the 13th day of November, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S. K. Naik, Member (A)

Const. Jai Bhagwan
PIS No.28861362
r/o H.No.114
Jaidev Park, East Punjabi Bagh
New Delhi
Presently lodged in:
Tihar Jail, Delhi since 3.7.2002
.....Applicant
(By Advocate: Shri Anil Singal)

Versus

1. GNCT through
its Chief Secretary
Delhi Secretariat
IP Estate, New Delhi
2. Commissioner of Police
Police Head Quarters
IP Estate, New Delhi
3. Jt. Commissioner of Police
(Northern Range), PHQ
IP Estate, New Delhi
4. DCP (North West Dist.)
PS Ashok Vihar, Delhi
.....Respondents
(By Advocate: Shri Ajesh Luthra for Ms. Rashmi Chopra)

O R D E R (ORAL)

Justice V.S. Aggarwal:

The applicant was a Constable in Delhi Police.
He was served with the following charge:-

"I, Insp. R.C. Garg E.O. charge you Ct. Jai Bhagwan No.1974/ NW, that you while posted at P.S. Jahangirpuri, Delhi absented yourself on the following occasions without any leave/permission of the competent authority. You resumed your duty after absenting yourself for the period as mentioned against each D.D. entries:-

S. No.	DD No. & dated absent	DD No. date of arrival	Period of absence day Hrs. Mts.
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1. 12-B, 6.11.93 13-B, 6.11.93 - - 05

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2.	30-B, 22.12.93	40-B, 1.1.94	09	20	-
3.	41-B, 2.1.93	35-B, 3.2.94	31	19	-
4.	51-B, 20.2.94	46-B, 21.2.94	-	22	05
5.	63-B, 25.2.94	83-B, 28.2.94	03	-	45
6.	47-B, 7.4.94	35-B, 8.4.94	-	21	-
7.	3-B, 29.4.94	4-B, 29.4.94	-	-	30
8.	31-B, 5.5.94	33-B, 5.5.94	-	-	10

The above act on your part amounts to gross misconduct negligence and dereliction in the discharge of your official duty which renders you liable for punishment u/s 21 of D.P. Act.

Sd/-

R.C. Garg E.O.
SHO/Mukherjee Nagar
Delhi"

2. The inquiry officer had recorded the finding that the charge stood proved against the applicant. In pursuance of the said findings, the disciplinary authority agreeing with the same imposed a penalty dated 11.10.1996 removing the applicant from service. He preferred an appeal. The same was dismissed on 19.7.1999 holding that it has been filed after two and a half years of the order passed by the disciplinary authority. The applicant still has chosen to prefer a revision petition with the Commissioner of Police. Vide communication of 31.5.2001, the applicant was informed that the Commissioner of Police does not have the revisionary powers and he is at liberty to move the court, if so desires.

3. It is in the backdrop of these facts that the present petition has been filed seeking quashing of the above said orders.

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4. Learned counsel for applicant contends that the appeal has been dismissed to be time barred without considering his prayer that he was not in a fit state of mind and has lost the memory. He further urges that while passing the order by the disciplinary authority, the past record which was not the part of the charge has been taken into consideration and lastly that the applicant could not file the present application in time as before the period of limitation of one year could expire, he was arrested in some matter and was confined to Tihar Jail on 3.7.2002 and, therefore, the delay as such may be condoned.

5. On the contrary, the respondents' learned proxy counsel contended that the appeal was hopelessly time barred and there was no ground for condonation of delay and even thereafter the applicant preferred to file a revision petition which was not maintainable in law. Thus there was no ground, in any event, to condone the delay.

6. We have carefully considered the said submissions that have been made at the Bar.

7. In the facts of the present case, the record reveals that the disciplinary authority had passed the order removing the applicant from service on 11.10.1996. Admittedly, the appeal was filed on 30.3.1999, i.e., almost two and a half years after the passing of the order by the disciplinary authority.

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8. Learned counsel for applicant had relied upon the order passed by this Tribunal in the case of Rajender Singh v. Union of India & others (OA-508/2002) decided on 16.12.2002 to contend that when the medical certificate had not been considered, the appellate order could not stand scrutiny.

9. We do not dispute the said proposition that when an appeal is preferred, the medical certificate, if any, filed seeking condonation of delay, must be taken note of.

10. However, the position in the present case is totally different. We have already referred to above the various dates, namely, when the order was passed by the disciplinary authority and thereafter the appeal was preferred on expiry of two and a half years of the same. Applicant's learned counsel has placed on the record certain medical certificates to buttress his plea. But even if we read the said medical certificates, it is patent that there is no medical certificate filed from 24.4.1997 till 1.4.1998. It is anybody's guess that for this period if the applicant was suffering from SICOTIESH. Otherwise also, there appears to be no application filed for condonation of delay before the appellate authority. In this view of the matter, the appeal was rightly dismissed by the appellate authority to be barred by time.

11. There is another way of looking at the matter. Once the appeal was dismissed on a little ground of



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delay, which was not even taken, the person cannot be allowed to turn around and challenge the said order. Every litigant must be vigilant and take care of his rights and, therefore, there is no ground to interfere.

12. Resultantly, application being without merit fails and is dismissed.

Naik
(S.K. Naik)

Member (A)

Aggarwal
(V.S. Aggarwal)
Chairman

/sunil/