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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 6311/2015**

CHANDER MUNI Petitioner
Through : Mr. G. S. Rana, Advocate.

versus

COMMISSIONER OF POLICE & ORS. Respondents
Through : Mr. Raman Duggal, Advocate,
Standing Counsel (Civil), GNCTD
with Mr. Arun Panwar and
Ms. Aayushi Gupta, Advocates for
respondents.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER
07.08.2015

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1. Aggrieved by the order dated 28.02.2014, passed by the Central Administrative Tribunal, the petitioner has been forced to file the present writ petition. Petitioner prays that the impugned order dated 28.02.2014 be set aside and quashed.

2. The necessary facts to be noticed for the disposal of the writ petition as noticed by the learned Tribunal are that petitioner was working as a Constable in the Delhi Police. He was charged for misconduct of unauthorised absent for a period of 252 days 23 Hrs. and 35 minutes. Following charge was framed against the petitioner by the Inquiry Officer:

“I, Sheelwant Singh, Inspector (E.O.), charge you, Constable Chander Mani No. 1874/SE (PIS No. 28861813) that while you were posted in PS Badar Pur, New Delhi you had proceeded on 5+3 days

Casual Leave on 19.06.2009. Your arrival was due on 29.09.2009 but you did not join your duty. Subsequently, your absent was recorded vide DD No.26 B dated 28.06.2009 PS Badar Pur New Delhi. You resumed your duty on 08.03.2010 vide DD No. 25 B dated 08.03.2010 PS Badar Pur, New Delhi after absenting yourself from duty from 252 days 23 hours and 35 minutes willfully/unathorisedly.

Two absentee notices were issued vide this office No.10208-12/SIP/SED, dated 30.07.2009 and 11147-49/SIP/SED dated 04.09.2009 with the direction to report for duty at once otherwise departmental action will be initiated against you.

On perusal of your previous record, it reveals that earlier you had also absented yourself on 48 different occasions which have already been decided as not spent on duty and also awarded two major penalties including "dismissal" but it shows that you have formed habit of absenting yourself from duty at your own sweet will.

The above act on the part of you, Constable (Exe.) Chander Mani No. 1874/SE (PIS No.28861813) clearly shows that you have violated the provisions of CCS (Leave) Rules, 1972 and S.O. No.111 of Delhi Police, which amounts to gross misconduct, negligence and carelessness, highly irresponsible and dereliction in the discharge of your official duty and renders you liable for punishment under the provisions of Delhi Police (Punishment and Appeal) Rule-1980."

3. The petitioner herein pleaded not guilty and also submitted his defence statement. As per the petitioner on 19.06.2009, he had proceeded to his home town on 5 + 3 days Casual Leave. While on vacation, he fell sick and remained under treatment in the Primary Health Centre, Rabbupura, Jewar, Gautambudh Nagar, Uttar Pradesh for pulmonary Tuberculosis (TB). Due to

weakness, he could not inform the respondent as he was on bed rest. After being declared medically fit, he joined his duties on 08.03.2010. He also raised a plea that over 300 days of earned leave and medical leave are lying to his credit. While taking into account the past conduct of the petitioner wherein on 48 different occasions, he remained absent unauthorisedly and the fact that the petitioner had a younger son who could intimate the department, the stand taken by the petitioner that there was none available in the family to inform the respondent was rejected by the Inquiry Officer. The Inquiry Officer submitted his report and the disciplinary authority imposed a major punishment of forfeiture of three years services which was upheld by the Appellate Authority.

5. Learned counsel for the petitioner submits that the respondent could not have relied on the past record of the petitioner whereas his past record was relied upon which found mentioned in the examination of PW1, who also produced the file Ex.PW1/C.
6. Mr. Raman Duggal, learned counsel for the respondent submits that the respondent had not disputed his absence but the only ground raised by him was his ill health which prevented him from attending his duties. Mr. Duggal further submits that the petitioner did not inform the department regarding his illness.
6. The learned Tribunal has passed a detailed order and dealt with all the submissions made by the counsel for the parties.
7. We find that the submissions sought to be urged before this Court today, have not been raised before the Tribunal.

However, the reliance on the previous conduct of the petitioner has been dealt with in para 13 of the order, which reads as under:

“In view of the past record of the applicant, we are not able to accept the plea of the applicant that his ailment such that he could not have obtained permission for medical rest leave. As far as his plea regarding consideration of his previous record, we find that in Rule 16 (xi), it is specifically provided that if the disciplinary authority considers it necessary, by taking into consideration his previous bad record and forming the same as definite charge against the delinquent and after giving him an opportunity to defend himself as required under the rules, may impose severe punishment upon the charged official. Thus, the mention of previous record of the applicant in the charge was in consonance with the provisions of Delhi Police (Punishment and Appeal) Rules, 1980. The misconduct of unauthorized absence becomes of greater magnitude when it is committed by the member of a disciplined force. Misplaced sympathy for indisciplined employees not only encourages the tendency of indiscipline in the individual who is benefited by such sympathy but would also send a wrong message to others and encourage indiscipline.”

8. In our view, the learned Tribunal has also correctly relied upon the case of ***State of U. P. & Others Vs. Ashok Kumar Singh & Another : (1996) 1 SCC 302***, wherein it has been held :

“8. We are clearly of the opinion that the High Court has exceeded its jurisdiction in modifying the punishment while concurring with the findings of the Tribunal on facts. The High Court failed to bear in mind that the first respondent was a police

constable and was serving in a disciplined force demanding strict adherence to the rules and procedures more than any other department. Having noticed the fact that the first respondent has absented himself from duty without leave on several occasions, we are unable to appreciate the High Court's observation that his absence from duty would not amount to such a grave charge. Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that 'the punishment does not commensurate with the gravity of the charge' especially when the High Court concurred with the findings of the Tribunal on facts. No case for interference with the punishment is made out."

9. Similar reliance has also been placed on the cases of ***Maan Singh Vs. Union of India & Others : (2003) 1 SCC 329, Government of Tamil Nadu & Another Vs. K. Rajaram Appasamy, JT 1997 (5) SC 178 and Durga Prasad (05/RB) (Constable) Vs. Govt. of NCT of Delhi : (2003) 63 DRJ 63.***
10. The order of the learned Tribunal in our view requires no interference. We find no infirmity in the order passed by the Central Administrative Tribunal. There is no merit in the present writ petition. Accordingly, the same is dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 07, 2015

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