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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 11318/2015 & CM.APPL 29693/2015(stay)

% *Judgment dated 7th December, 2015*

JAWAHAR LAL UPADHYAY Petitioner

Through Mr. H.P. Chakravorti with Mr. P.S.
Khare, Advocates

versus

UNION OF INDIA & ANR. Respondents

Through Mr. J.K. Singh, Standing Counsel

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. OA filed by the petitioner before the Central Administrative Tribunal was initially allowed by an order dated 26.09.2013. Subsequently, a review petition filed by the respondents herein was allowed on 22.08.2014 and the OA was dismissed.
2. The facts which have given rise to the filing of the OA were that the petitioner had joined the respondent as a Junior Clerk in the year 1982. He claims to have met with an accident on 03.04.1984 as he fell from the train and became unconscious and was carried by some persons. His wife lodged a missing report at Police Station Hariparwat, Agra on 05.04.1984. Thereafter, it is claimed that the wife of the petitioner was getting him treated from the mental hospital at Agra. The respondents passed an order by which the petitioner was deemed to have resigned from service on 16.08.1984.
3. The counsel for the petitioner submits that no show cause notice was issued by the respondents. The respondents failed to take the representation made by the wife of the petitioner and she had informed the

Railways that on account of his accident, he was suffering from mental disorder and she was getting him treated at Agra. Learned counsel submits that in the review petition, the respondents had placed on record the rule as per which an employee would be deemed to have resigned in case of long absence. Counsel submits that Rule, sought to be relied upon by the respondent would not be applicable as the leave of the petitioner was not unauthorised.

4. In this case, no show cause notice was issued to the petitioner, no inquiry was initiated and the respondents did not take notice of his illness and his accident. Counsel for the petitioner submits that at the time of hearing of the review petition these, amongst other grounds raised by the petitioner, were not decided.
5. Issue notice to the respondents to show cause as to why *Rule nisi* be not issued. Notice in the stay application as well. Learned counsel for the respondents accepts notice.
6. Having regard to the facts that in the order by which the OA of the petitioner stands rejected, the learned Tribunal has failed to take notice of all the grounds sought to be urged by the petitioner, we deem it appropriate to remand the matter back for rehearing the matter on the merits. Parties agree to rely on the pleadings already placed on record.
7. The writ petition and CM.APPL 29693/2015 stand disposed of.
8. List before the Tribunal on 12.01.2016.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

DECEMBER 07, 2015pst