

\$~7.

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

+ **MAT.APP.(F.C.) 43/2017**

DEVENDER KUMAR Appellant
Through: Ms. Anshu Priyanka, Advocate with
Mr. Utkarsh, Advocate

versus

PUSHPA RANI & ORS Respondents
Through: Ms. (appearance not given), Advocate
with respondent No.1 in person.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER
20.09.2017

%

1. Pursuant to the order dated 01.09.2017, SI Ram Lal Borghare, Pairavi Officer, Legal Cell, West District, Rajouri Garden, New Delhi, appears and hands over a letter dated 19.09.2017, addressed by the Deputy Commissioner of Police, West District, Delhi, stating *inter alia* that the appellant herein, who was working as a Constable in Delhi Police, was dismissed from service on 18.06.2013. An appeal filed by the appellant against his dismissal order was rejected by the Appellate Authority on 23.07.2015. Aggrieved by the said order, the appellant has filed a petition before the Central Administrative Tribunal, which is pending adjudication. It is thus stated that the appellant is not drawing any salary from the Department for being attached, in terms of the last order passed in this appeal. A copy of the letter dated 19.09.2017 issued by the DCP, West

District alongwith the relevant enclosures handed over by SI Ram Lal Borghare, is taken on record. The presence of SI Ram Lal Borghare is dispensed with.

2. On the last date of hearing, the appellant was directed to remain present. Despite the said order, he is absent. Counsel for the appellant seeks to explain the appellant's absence by submitting that he is indisposed and confined to bed. She is, however, unable to produce any medical certificate to substantiate the said submission. We are compelled to assume that the appellant has deliberately stayed away from the court today.

CM APPL. 9801/2017 (for condonation of delay of 18 days in re-filing the appeal)

1. For the reasons stated in the application, the same is allowed. The delay of 18 days in re-filing the accompanying appeal is condoned.

2. The application is disposed of.

CM APPL. 9799/2017 (for condonation of delay of 95 days in filing the appeal) and MAT.APP.(F.C.) 43/2017

1. Despite opportunities granted to the respondents to file a reply to the application, no reply has been filed. We therefore proceed to pass an order on the application, on the basis of arguments advanced by learned counsel for the appellant.

2. The present application has been filed by the appellant praying *inter alia* for condonation of delay of 95 days in filing the accompanying appeal. The only explanation offered in the application for the delay in filing the appeal is that the appellant has been suffering from chronic liver damage. Counsel for the appellant states that the appellant had fallen seriously ill between March, 2016 and July, 2016. But that period is of no consequence, inasmuch as the impugned judgment disposing of a petition filed by the

respondent under Section 18 and 20 of the Hindu Adoption and Maintenance Act for claiming maintenance for herself and the daughter of the parties, from 01.01.1996, by quantifying amounts that the appellant has been directed to pay to his wife and daughter from the year 1999 onwards, was pronounced on 28.09.2016. As per the records, the present appeal came to be filed only on 01.02.2017.

3. It has been averred in para 4 of the application that the appellant was unwell and had been visiting the doctor in September, October, November and December, 2016. To substantiate the said submission, a copy of the doctors' prescription has been enclosed with the application. A perusal of the said documents reveals that they are only prescriptions issued by the doctor on 2.3.2016, 4.7.2016 and updated till 17.11.2016, indicating the names of medicines prescribed but there is nothing stated therein to indicate the ailment from which the appellant was suffering or the line of treatment recommended, which as per learned counsel, kept him confined to bed from March, 2016, till the end of January, 2017.

4. In fact, there is no explanation whatsoever in the present application to explain the reason for not filing the appeal at least in the month of January, 2017, if not earlier. In the absence of any explanation for non-filing of the appeal in the month of January, 2017, the appellant's bald statement that he was confined to bed in all this duration, can be of no help. The doctor's certificate indicating the kind of illness that the appellant was suffering from, has also not been filed. The prescription of the doctor as filed, is not of any assistance in so far as the delay after 17.11.2016, is concerned. In fact the entire averments made in the application are vague and ambiguous and bereft of material particulars.

5. In such circumstances, we have no option but to conclude that no just or sufficient cause has been shown by the appellant for seeking condonation of delay of 95 days in filing the accompanying appeal. As a result, the present application is dismissed. Consequently, the accompanying appeal also stands dismissed.

HIMA KOHLI, J

DEEPA SHARMA, J

SEPTEMBER 20, 2017

rkb/ap