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

**Date of decision: 04.07.2018**

+ W.P.(C) 3252/2003 & CM APPL No. 17318/2018

EX.CONST.KRISHAN KUMAR ..... Petitioner

Through: Mr. Nikhil Bhardwaj and  
Ms. Gauraan, Advocate.

versus

UOI & ORS. .... Respondents

Through: Ms. Avnish Ahlawat, Standing  
Counsel, GNCTD (Services) and  
Ms. Palak Rohmetra, Advocate with  
ASI Rishi Raj, Delhi Police.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE A. K. CHAWLA**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT (ORAL)**

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The writ petitioner questions an order of the Central Administrative Tribunal (hereinafter 'CAT') rejecting his application on 23.10.2002.

2. The petitioner worked at the relevant time as a constable with the Delhi Police; he was initially recruited to that position in 1987. Apparently, he was involved in a criminal case i.e. FIR No.79 dated 02.06.1992 under Section 25/54/59 of the Arms Act at PS Beri District Rohtak Haryana. A charge-sheet was issued to the petitioner

for continued and unauthorised absence. In the proceedings before the CAT, the departmental inquiry and the consequential order of his dismissal, were challenged as illegal on the ground firstly, that such proceedings were *ex-parte* and had led to failure of principles of natural justice; the second argument was that the petitioner's explanation for the absence was not only plausible but ought to have been accepted since he was unable to report to duties and function in the post on account of the medical ailment. The CAT however rejected both arguments noticing that the departmental inquiry had been completed in 1993 and that the petitioner had also approached it after a considerable delay.

3. It is argued by learned counsel for the petitioner that the CAT fell into error in overlooking that for a considerable period i.e. 8 to 9 years the medical disability of serious heart ailment prevented him from approaching the Court. It is further submitted that atleast the petitioner ought to have been served with a copy of the charge-sheet and given full opportunity to defend himself. In this regard it is pointed out that the petitioner had in fact reported his illness from the place where he was hospitalised and this ought to have been taken into consideration. Learned counsel also relied upon copies of the medical records to say that even as late as in 1999 the petitioner suffered from blockage of the arteries which establishes that his case of being unable to report for duties, was justified. Learned counsel lastly submitted that the respondent-authorities ought to have taken note of the absence

and genuine reasons and imposed a proportionate penalty instead of the severe or extreme penalty of the dismissal.

4. The CAT, after extracting the relevant submissions, dismissed the application preferred by the petitioner, firstly, on the ground of limitation; it also noted the discrepancies and inadequacies in the medical evidence relied upon. The relevant part of the Tribunal's discussion, in this regard, is as follows:-

“12. Photo copy of the medical certificate shows discontinuity and is an anti thesis to his plea of serious illness. It is contended that if the applicant was so sick how he was arrested in a criminal case. Applicant himself has abundant the enquiry and despite notice has not filed any reply to the findings. The punishment order though received by him on 2.11.93 he preferred an appeal after more than 8 years without any request for condonation of delay and without any grounds. As such the same was rightly rejected as time barred by the appellate authority. It is denied that the past record was taken into consideration but the very misconduct of remaining absent for more than two years without any prior permission and submissions of medical record the same itself constitutes grave misconduct in a disciplined force to warrant the extreme punishment. In a service career of six years the applicant has shown carelessness and dereliction of duties. ...., it is contended that the orders passed by the respondents do not suffer from any legal infirmity.

13 to 16.      xxx                      xxx                      xxx

17. In the interest of justice we have also considered the case on merits and find that the applicants abruptly overstayed his leave and simply sent an application without annexing medical record. Applicant was also informed through absentee notices and as one of the notices was served through his father who assured that the applicant would appear in the enquiry after the conclusion of the trial which ended in November, 1992 but yet the applicant has not joined and had not bothered to submit his defense. No medical record etc. has been produced during the course of the enquiry. As per Rules 18 of Delhi Police (Punishment & Appeal) Rules, 1930 if it is found that the delinquent police officer is refusing to attend the enquiry or evading it without any just and reasonable cause the same can be proceeded ex parte to avoid delay in holding it. Moreover, nothing has been brought on record to establish that during the course of the enquiry applicant had ever requested the respondents to keep the enquiry in abeyance or informed through medical record regarding his server illness. It is only after the punishment of dismissal has been imposed upon him he has annexed all those medical record which he had failed to produce in the enquiry. Respondents have been deprived of an opportunity to ascertain the genuineness of this record as the same has not been tendered and as such the same could not be scrutinized in the second medical examination. Despite aware of the proceedings and service of the notices applicant failed to turn up either before the disciplinary authority or the enquiry officer.”

5. This Court is of the opinion that the conduct of the petitioner, in not notifying the nature of his illness and asking for leave of absence and rather relying upon certain medical records after becoming aware of the dismissal order (made in 1993) by approaching the Tribunal 8 years later in 2001, disentitles him to the relief claimed.

6. The petitioner nowhere states the circumstances which led to the initiation of the criminal proceedings and the trial, which ultimately resulted in his acquittal in 1992. If, indeed, that is the position – as it appears to be from the record, there is a serious discrepancy in regard to his assertion of his inability to attend his duties for a couple of years, when, he did face criminal proceedings and defended himself. Furthermore, the entire period of 8 years is sought to be explained by reliance on copies of some out-patient tickets issued by doctors. Neither the clinics nor the place where they are located, are discernible. Having regard to all these, the Court is of the opinion that the impugned order of the Tribunal cannot be faulted and accordingly petition is dismissed along with pending application(s).

**S. RAVINDRA BHAT, J**

**A. K. CHAWLA, J**

**JULY 04, 2018**

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