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

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Date of decision : October 12, 2018

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WP(C) 7622/2002

SURENDER SINGH

.... Petitioner

Through: Mr. L.R. Khatana, Adv.

versus

THE GOVT. OF DELHI & ORS.

..... Respondents

Through: Ms. Rashmi Gupta and
Ms. Asiya, Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

J U D G M E N T

A.K. CHAWLA, J.

1. By the writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner seeks quashing of two orders dated 16.08.2001 and 19.11.2001 passed by Central Administrative Tribunal in short 'CAT', whereby, his challenge to the order dated 30.12.1994 of removal, was dismissed; the application seeking review of that order was also dismissed.

2. The relevant facts are that in 1981 the petitioner was appointed as a 'Watcher' in the office of the Warden of Fisheries, Delhi Administration in the pay scale of `196-232/- and subsequently, made permanent. Thereafter, he was promoted from Group 'D' post to Grade IV (DASS) in the scale of `950-

1500/- on regular basis on 18.05.1993; and joined the office of the respondents as LDC on 12.07.1993. The petitioner claimed that on 29.07.1993, he suddenly fell ill and requested for leave w.e.f. 30.07.1993 to 29.08.1993. On 02.09.1993, his wife is said to have sent intimation of his bad mental condition and requested grant of leave furnishing a medical certificate through UPC. On 08.10.1993, the petitioner's wife is then said to have sent another intimation about his mental condition enclosing a medical certificate. Similar intimation is said to have been sent by the petitioner's wife on 10.02.1994, referring to medical certificates sent on 02.09.1993 and 08.10.1993. The petitioner alleges that while he was yet to recover from his mental illness, on 23.02.1994 he became victim of dacoity and sustained head injuries and was admitted to GTB hospital at about 1.30 a.m. on 24.02.1994. Thereafter, he was admitted to a Nursing Home in Shahdara as his condition deteriorated. It is stated that the said incident was covered by an FIR registered at Police Station, Loni, Ghaziabad. Thereafter, he claims to have suffered from mental depression.

3. In the absence of grant of leave, the petitioner's absence from duty was treated as unauthorized and the Govt. of NCT initiated disciplinary proceedings and issued charge-sheet under Rule 14 of CCS (CCA) Rules, 1965 vide O.M. dated 18.07.1993, for the absence w.e.f. 30.07.1993. The enquiry concluded ex-parte. By order dated 30.12.1994, the disciplinary authority, imposed a penalty of removal from service upon the petitioner.

4. In the writ petition, it is stated that after recovering from his illness and unfortunate circumstances, the petitioner went to join his duties on 26.12.1997 and only then, he became aware of his removal from service, and was provided with a copy of the order at his request. He preferred an appeal thereafter only. The appeal preferred by him was rejected by the appellate authority on 10.08.1999. In June, 2000, the petitioner assailed the order of the appellate authority by an application (OA) before CAT. This OA was dismissed on 16.08.2001. The review of that order was declined on 19.11.2001. Said orders are now the subject matter of the instant writ petition filed sometime in November, 2002.

5. Mr. Khatana, learned counsel for the petitioner urges that the penalty order suffers from serious legal infirmities and is not sustainable in law inasmuch as the petitioner was never served with any memorandum of initiation of any departmental inquiry against him. In his submissions, the petitioner was unaware of either the initiation or the conclusion of the departmental inquiry, which culminated with imposition of penalty of removal. It was therefore strenuously contended that in the absence of any notice of departmental inquiry, the petitioner was deprived of opportunity to explain the reasons for his absence and that, this caused serious prejudice to him and resulted in violation of the principles of natural justice. According to him, neither the inquiry nor any conclusions founded in the report were thus sustainable in law. It was also urged that the petitioner suffered from mental ailment and was a victim of circumstances, therefore his failure

to attend duties was not wilful and consequently, he did not deserve the treatment met out to him. The petitioner's counsel also urged that the petitioner had served the respondent for about 13 years with dedication and due diligence and the penalty imposed was disproportionate to the misconduct attributed to him.

6. Ms. Chopra, learned counsel for the respondents submitted that repeated memos/notices were sent to the petitioner for his unauthorized absence and it is not that he was unaware of initiation as well as the conclusion of the departmental enquiry proceedings. According to her, the petitioner's absence from duty was willful and the FIR lodged for an alleged incident of dacoity and his sustaining head injury was cancelled as no incident of that kind took place. It was also urged that at no stage of any proceedings, the petitioner ever produced any cogent medical record of his illness or injury, which leads to irresistible conclusion that the pleas of any illness or injury were an afterthought and malafide. It was also contended that even post imposition of the penalty, the conduct of the petitioner in approaching the appellate authority and then CAT after considerable delays and without any material to show that his absence from duties was not willful, only demonstrated that his pleas and the defence were unfounded and meritless.

7. It is not in dispute that the petitioner on promotion from Group D post joined as LDC in PAO-IV, Tis Hazari on

12.07.1993. His absence commenced from 30.07.1993. Petitioner asserts that before proceeding on leave, he had made an application seeking leave from 30.07.1993 to 29.08.1993 on account of sudden illness. It is so averred in the instant petition as follows:

"3.3 That on 29.7.1993, the petitioner suddenly fell ill and intimated his office about the illness and requested for leave w.e.f. 30.7.1993 to 29.8.1993."

8. In terms of the above averments, the petitioner applied on 29.07.1993 due to alleged illness seeking leave w.e.f. 30.07.1993 to 29.08.1993. What was the nature of the illness and as to whether any doctor advised to so apply (when he made such application), the petitioner is totally silent. For the penalty of removal from service imposed upon him on 30.12.1994, he preferred an appeal to the appellate authority only on 26.12.1997 i.e. almost three years later and it appears, it was on an entirely different premise. He has annexed a copy of the order dated 11.08.1999 passed by the appellate authority and relevant to the context, the observations and the conclusions drawn by the appellate authority are, as follows :

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AND WHEREAS Shri Surinder Singh, Ex-LDC has preferred an Appeal on 26.12.97 against the final orders of Disciplinary Authority issued on 30.12.94 after a gap of three years i.e. after period of limitation. The appeal is mainly on following grounds:

i) That he met with an incident on 25.2.94 and FIR was lodged.

ii) That his personal circumstances in 1993-94 were such that he was facing mental agony due to some trouble which arose while going back to his village. In support of this he has enclosed a press clipping of 'Dainik Punjab Kesri' dated 26.2.94 and a copy of FIR lodged in Police Station, Loni Distt., Ghaziabad, (UP).

I being Appellate Authority have carefully gone through the case records and points raised in appeal. The press cutting in 'Dainik Punjab Kesri' dated 26.2.94 enclosed in support of appeal read that the incident took place on 25.2.94 while Shri Surinder Singh was returning to his village from Delhi. But as per records, Shri Surinder Singh is absenting himself unauthorisedly since 30.7.93 and not reported for duty inspite of letter dated 30.8.93, 29.9.93, 7.10.93, 19.11.93, 9.2.94. These all letters were sent prior to the date of this so called incident. Thus the enclosed press cutting does not give any justification for his absence from 30.7.93 to the so called date (i.e. after six months 25 days from the date of his unauthorised absence). Thus he failed to give any justification for his long absence of six months 25 days; prior to the date of so called incident. So far outcome of this so called incident is concerned the Sr. Superintendent of Police (S.S.P.), Ghaziabad, vide his letter No. R/SSP-11/98, dated 13.10.98 has informed that the FIR No. 108/94 was lodged on 24.2.94 as per information given by the father of Shri Surinder Singh was found false/non happening of event and FIR cancelled on 25.2.94. The other documents like Medical Certificate from Verma Clinic and Karuna Clinic enclosed in support of his case bears the date of happening of Head

injury on 24.2.94 while the paper cutting enclosed in support, shows the date of incident as 25.2.94 at 5.30 p.m.

Now, therefore, in the light of above, Shri Surinder Singh has not been able to give any cogent reason for his unauthorised absence and the submission put forth have effectively been negated by the Police Report of SSP, Ghaziabad, UP. Further no convincing ground has been given for not filing the appeal in time. Even on merit, there is no substance in the appeal. The appeal is therefore rejected."

9. It is thus apparent that inspite of the fact that the appeal was time barred, the appellate authority afforded opportunity of hearing and dealt with the petitioner's pleas to delve into the facts relating to his absence. An opportunity to explain his conduct was therefore given; the petitioner did not avail it. Observations made by the appellate authority are self explanatory and one need not advert further on that, more so, for the reason that no explanation, which could even *prima facie* have the effect of disturbing the findings of the appellate authority was given by the petitioner either before CAT or before this court.

10. This court has also perused the record of the respondent/NCT and observe that repeatedly memos were sent and notices were issued to the petitioner with respect to his absence from duties at his correct residential address. It is pertinent to note that in terms of the records of the NCT, the memorandum dated 18.07.1993 intimating about the enquiry under Rule 14 of the CCS (CCA) Rules, 1965 and the

memorandum dated 02.12.1994 on the imposition of penalty and to afford him an opportunity to make representation there-against, were both sent to the petitioner through Regd. post at his correct residential address; these were received back with the report that the addressee was not available despite repeated visits.

11. Given these facts and circumstances, we do not see any reason why the presumption of due service of the said memos and notices be not drawn. More so, for the reason that the petitioner on his part did avail an opportunity of hearing before the appellate authority and did not plead anything to the contrary. The contention raised by Mr. Khatana to the contrary is therefore devoid of any merit. Besides that, the plea of absence on account of any illness, this court observes, does not even *prima facie* emerge from the record. According to the petitioner, the petitioner's wife only sent some communication to the respondents intimating his sickness of the petitioner enclosing some certificates through UPC. Was the petitioner by himself hospitalized and/or terminally sick to such extent that he could not apply with medical documents? Nothing to that effect was either pointed out during the course of hearing nor we find such material from the record.

12. In view of the foregoing, this court finds no reason to exercise of powers of judicial review under Article 226. We however hasten to observe that the petitioner had worked for about 12/13 years of service and for his misconduct of

unauthorized absence, he is penalized with removal from service. During the said period of 12/13 years, the petitioner does not appear to have committed misconduct. He apparently has a family - a wife and small children to support. The Court cannot be oblivious of the fact that the petitioner joined as a Group 'D' employee as a Watcher of Fisheries department and perhaps, is not educated enough. The fact however, remains that he served the respondent NCT for 12/13 years; during such period having been made permanent he was promoted as well. The fact that he has to support himself as also his wife and the small children, is undeniable. Therefore, keeping in view the totality of the facts and circumstances of the case, we are of the view that even while declining the relief we observe that if he represents to the Competent authority within 45 days from today and makes out a case for deserving special consideration, the competent authority would consider the request and sanction a compassionate allowance as envisaged by Rule 41 of the CCS (Pension) Rules after exercising discretion. The order shall be made within 30 days of receipt of such application or representation.

13. The writ petition is disposed of in the above terms.

A. K. CHAWLA, J

S. RAVINDRA BHAT, J

OCTOBER 12, 2018/rc