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

% *Date of Judgment : 10th October, 2019*

+ W.P.(C) 10766/2019

EX. INSPECTOR LALA RAM (EXECUTIVE) Petitioner

Through Mr. Rajeshwar Singh, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through

Mr. Shankar Kumar Jha, Sr. Panel
Counsel for R-1/UOI.

Mrs. Avnish Ahlawat, Standing
Counsel for GNCTD (Services) with
Ms. Palak Rohmetra & Ms. Laveena
Arora, Advocates for R-2 & R-3.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

1. The present writ petition has been filed by the petitioner being aggrieved by decision dated 25.07.2019 rendered by the learned Central Administrative Tribunal ('Tribunal').
2. Notice. Counsels for the respondents, who enter appearance on advance copy, accept notice.
3. With the consent of counsels for the parties, we dispose of the writ petition at the admission stage itself.
4. Some necessary facts required to be noticed for disposal of this writ petition are that the petitioner herein was appointed as Sub-Inspector (Executive) in the Delhi Police on 13.04.1970. He claims that he served in the Delhi Police with an unblemished service record and was promoted to the rank of Inspector (Executive) on 09.03.1993. To enable him to meet his relatives in the United States of America (USA) he

sought 60 days earned leave w.e.f. 09.03.1993 to 07.05.1993 with the approval of the competent authority. During his stay in the USA, he sent various representations for extension of leave, which extension was not allowed.

5. Since the petitioner did not report back to work, a departmental inquiry was instituted against the petitioner. The petitioner claims that he had no knowledge of pendency of the inquiry which the respondents dispute; but in any case, the petitioner was proceeded ex-parte. Vide order No.2073-3023/HAP-SD dated 14.02.1995, the petitioner was dismissed from service for unauthorized and willful absence; and it was ordered that the period of absence be treated as leave without pay. The proceedings before the Enquiry Officer, the Disciplinary Authority, as also an appeal before the Appellate Authority culminated in the punishment being upheld.
6. The petition also reveals that the petitioner visited India on 21.01.2012; and approached the respondents for claiming his dues in respect of GPF, Delhi Police Welfare Scheme (DPWS) and group insurance, which claims were allowed.
7. The petitioner also filed a separate appeal under Rule 23 read with Rule 24(3) of Delhi Police (Punishment and Appeal) Rules, 1980 against the order of punishment alongwith an application seeking condonation of delay. By an order dated 12.12.2012, the grounds of appeal were examined but rejected as being not maintainable, on the ground that it was a second appeal, which was not permissible, the first appeal having been rejected by the Appellate Authority.

8. The petitioner thereafter approached the counsel for filing an O.A.; which was filed on 02.11.2015; and which stands rejected vide impugned order dated 25.07.2019.
9. One of the grounds for rejection of the O.A. is that order dated 12.12.2012 was passed in a second appeal, the first appeal having already been dismissed, the Tribunal observed that the petitioner had suppressed the fact of having filed an earlier appeal.
10. Counsel for the respondents submits that there is no infirmity, illegality or impropriety in order dated 25.07.2019 passed by the Tribunal, which would require interference by this court.
11. Attention of the court is drawn to the counter affidavit filed before the Tribunal. Counsel for the respondents submits that a departmental inquiry was initiated against the petitioner vide order dated 09.05.1994 under the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980 on the ground that the petitioner had proceeded on 60 days' earned leave to meet his relatives in the USA and had given an undertaking to the effect that he will not seek extension of leave however the petitioner remained absent even long after expiry of the period of leave. Since the petitioner was to be back on 08.05.1993, he was marked absent thereafter vide DD No.10 dated 10.05.1993. On 14.05.1993, an absentee notice was issued to the petitioner vide registered A.D. at c/o Laxmi Chand, 9007 George Town Pike, Great Falls, Virginia (USA).
12. Vide letter dated 06.05.1993 the petitioner requested for extension of leave by 60 days on the pretext of illness of his daughter, which request was denied and vide letter dated 19.05.1993 the petitioner was informed

that he is to resume his duties. Since the petitioner did not join duty, another absentee notice was issued on 20.09.1993 and sent again to his address in the USA directing him to resume his duties and cautioning him that in case he does not do so, disciplinary action would be initiated against him. However, inspite of such notice, the petitioner remained willfully and unauthorizedly absent.

13. A departmental inquiry was initiated and entrusted to DCP/D.E. Cell Shri S. Prakash, who completed the proceedings and submitted his findings, holding that the charge against the petitioner stood proved. The Disciplinary Authority thereafter examined the finding of Enquiry Officer (E.O.) and other relevant records and passed a well-reasoned, speaking order on 14.02.1995 dismissing the petitioner from service.

The observations of the disciplinary authority are extracted below :

“After preparing the summary of Allegations, he summoned the Applicant on 07.06.1994 directly and through Indian Embassy in USA. The Indian Embassy at U.S.A. directed him on 20.06.1994 to appear before the EO on 12.07.1994 but the Applicant did not respond to any of the letters. Then a set of summary of allegations along with the relied upon documents were sent on 12.07.1994 to the Applicant directly and through Indian Embassy in USA along with the direction to attend DE proceedings but nothing had been heard from him. The absence of Applicant had been causing unnecessary delay in the conduct of the departmental enquiry. Thus the EO obtained ex-parte DE proceedings by giving full opportunity to the Applicant at every stage though he remained absent. After the testimony of 2 PWs in favour of the report by EO, the Enquiry Officer framed charge upon the Applicant after getting it approved from the Disciplinary Authority and the copy of charge with the (Questionnaire form was sent to the Applicant's registered address at Delhi and U.S.A. through Registered A.D, acknowledgment slips of Delhi address were returned back

as undelivered and acknowledgment slip on USA address had not been received back. In spite of this, the copy of findings were sent at his residence PS. Kalkaji and 3688 Katra Ghasi Ram, Mori Gate, Delhi through Insp. South Zone and North Zone respectively and at the address of USA through registered A.D. That the Applicant was still not found and copy of findings was pasted at his residence in Delhi in the presence of two witnesses. Since no representation was received from the Applicant, the Authority is left with no other alternative but to dismiss the Applicant from service.”

14. Consequent thereupon the petitioner filed an appeal before the Appellate Authority against the order of dismissal but only after 5 years of passing of the order of punishment; which was considered by the Appellate Authority as being grossly barred by time; for which reason the appeal was dismissed by order dated 05.09.2001. In the counter affidavit, it was also brought to the notice of the Tribunal that even in the past, the petitioner had absented himself and had gone abroad for one year. Resultantly, his one year's approved service was forfeited by an earlier order dated 03.03.1989.
15. Counsel for the respondents has relied upon the following judgments in support of her submissions to contend that firstly, the scope of judicial interference in proceedings under Article 226 of the Constitution of India is narrow; and Tribunals and courts must refrain from reappreciating the evidence and substituting their own finding for those of the departmental proceedings :
 - (i) ***B.C. Chaturvedi Vs. Union of India & ors.***, 1995 (6) SCC 749;
 - (ii) ***R.S. Saini Vs. State of Punjab***, 1999 (8) SCC 90;
 - (iii) ***Government of A.P. Vs. Mohd. Nasrullah Khan***, 2006 (2) SCC 373; and

(iv) *Delhi Transport Corporation Vs. Sardar Singh*, 2004 (7) SCC 574.

16. We have heard learned counsels for the parties and have considered their rival submissions.
17. The facts which we have narrated in the foregoing paragraphs are not disputed, except that counsel for the petitioner submits that the petitioner had no knowledge of filing of an earlier appeal in his name nor was the order in the first appeal, ever served upon him.
18. The petitioner in this case was appointed as Sub-Inspector in Delhi Police which is a uniformed force. Having proceeded to USA after obtaining 60 days' leave w.e.f. 09.03.1993 to 07.05.1993, the petitioner remained absented for various reasons, which in our view are unsubstantiated, which led to initiation of a departmental inquiry and thereafter an order of dismissal in the year 1995. Although the petitioner claims that he had no knowledge of filing of the first appeal, his submission is difficult to accept. However, as observed by the Tribunal, this fact was not denied in the rejoinder filed by the petitioner. The first appeal was rejected as far back as in the year 2001; whereas the second appeal was filed only in the year 2013. Even after passing of the order rejecting the second appeal, the petitioner took his own time to approach the Tribunal in the year 2015.
19. In the above circumstances, we find no infirmity in the view taken by the Tribunal that the petitioner has in fact remained absent unauthorizedly and willfully; and that although he belonged to a uniformed force, the petitioner showed complete lack of discipline.

20. Resultantly, the writ petition is dismissed with costs of Rs.10,000/- to be deposited in the Delhi High Court Mediation Centre within six weeks from today.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

OCTOBER 10, 2019/ck

