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

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Date of decision: 23.04.2024+ **LPA 407/2022****RAJESH KAPOOR**

..... Appellant

Through: Mr Deepak Biswas, Ms Ruchika
Rathi, Ms Varsha Agarwal,
Advocates.

versus

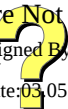
**LD PRINCIPAL DISTRICT AND SESSIONS
JUDGE (HQS), TIS HAZARI COURTS**

..... Respondent

Through: Mrs Avnish Ahlawat, Standing
Counsel with Mr N.K. Singh, Ms
Laavanya Kaushik, Ms Aliza Alam,
Mr Mohnish Sehrawat, Advocates.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL)**

1. This appeal is directed against the judgment dated 31.05.2022 passed by the learned Single Judge.
2. Besides this, in the appeal, a challenge is also laid to the circular dated 04.08.2018 issued by the respondent.
3. In addition, thereto, the appellant also seeks to assail the order dated 31.01.2022 passed by the respondent, whereby, the respondent declined the appellant's request to visit Harare, Zimbabwe from 16.03.2022 to 19.04.2022.

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4. At the outset, Mr Deepak Biswas, learned counsel, who appears on behalf of the appellant, says that the appellant does not wish to assail the circular, although, as noticed above, reference is made to it in the prayer clause embedded in the above-captioned appeal.

5. It is common ground that after the rejection of the application preferred by the appellant for grant of earned leave *via* an order dated 31.01.2022, the appellant did not travel abroad to visit his wife, who was posted in the Indian mission located in Harare, Zimbabwe.

6. The record, however, discloses that the appellant travelled to Harare on 08.07.2022, and returned to India on 07.08.2022.

7. We are informed that the appellant joined office on 08.08.2022.

8. According to Mr Biswas, the appellant had to undertake the journey in July 2022, *albeit*, without prior permission of the respondent due to a medical emergency.

8.1 Mr Biswas submits that since the appellant's wife suffered a brain haemorrhage, the appellant could not wait till such time his application for granting earned leave was approved.

9. What is not in dispute is that the absence of the appellant between 08.07.2022 and 07.08.2022 is the subject matter of disciplinary proceedings. We are told that the disciplinary proceedings are in progress.

10. Clearly, the disciplinary proceedings are not the subject matter of the instant appeal.

11. As noted above, the appellant did not travel to Harare, Zimbabwe, pursuant to the rejection of his application by the respondent on 31.01.2022.



12. Therefore, in our view, nothing survives in the appeal. The only concern that Mr. Biswas expresses revolves around the observation made in the order dated 31.01.2022, amongst others, that the application for grant of earned leave was declined as he had availed leave for more than 3 years between 2017 and 2020. Admittedly, during this period, the appellant was not in the country.

13. According to Mr Biswas, this aspect could be held against the appellant in the disciplinary proceedings initiated against him concerning the period when he was absent without permission, i.e., between 08.07.2022 and 07.08.2022.

14. In our opinion, the concern is misplaced as a perusal of the Article of Charges and Statement of Misconduct does not advert to this aspect of the matter.

15. Counsel for the respondent takes a similar position in that regard, therefore, the appeal is closed.

16. Needless to add, the closure of the appeal, one way or the other, will not affect the outcome in the disciplinary proceedings currently pending before the concerned authority.

RAJIV SHAKDHER, J.

AMIT BANSAL, J.

APRIL 23, 2024

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