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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 3282/2002

New Delhi, this the 30th day of May, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri Govindan S. Tampi, Member(A)

Malvinder Singh
S/o Shri Makhan Singh
House No. 381, Gali No. 2
Pachipitha Road, Baba Colony
Burari, Delhi

... Applicant

(Ms. Nandita Rao, Advocate)

versus

1. Commissioner of Police
Delhi Police Hqrs.
ITO, New Delhi
2. Joint Commissioner of Police
Prov. & Logistics Delhi
Police Hqrs., ITO, New Delhi
3. DCP, North District
Police Station Civil Lines
New Delhi
4. Govt. of NCT of Delhi
Chief Min. Office
Delhi Secretariat
IP Estate, New Delhi
5. Union of India, through
Ministry of Home Affairs
North Block, New Delhi

... Respondents

(Shri Ajesh Luthra, Advocate)

ORDER

Justice V.S. Aggarwal

Applicant (Malvinder Singh) was a Constable in Delhi Police. He was arrested and faced trial with respect to offences punishable under Sections 17/61/85 of the Narcotics Drugs and Psychotropic Substances Act (for short, "the Act"). He preferred an appeal in the Delhi High Court. The Delhi High Court acquitted him. The applicant requested the respondents to reinstate him. The same had been declined. It is not in dispute that

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the State had preferred a Special Leave Petition in the Supreme Court against the judgement delivered by the Delhi High Court. The same had been admitted for hearing, but the operative part of the judgement of the Delhi High Court has not been stayed.

2. By virtue of the present application, he seeks setting aside of the order dated 8.10.2002 passed by respondent No.2 rejecting the request of the applicant for reinstatement and further for a direction to reinstate him with continuity of service with full back-wages.

3. The application has been contested. The summary of the facts given above has not been disputed. It has been pointed that involvement of the applicant in such nefarious activities followed by registration of a case and conviction shows that he was a person of criminal inclination and desperate character. His continuance in police force is hazardous to the maintenance of discipline in a uniformed force. He is the protector of citizens and indulgence of a police officer in such criminal activities will certainly destroy the faith of the general public in the criminal justice system and his involvement in such activities was a grave indiscipline. His services, on conviction were dismissed under Article 311(2) of the Constitution. Since the appeal is pending in the Supreme Court against the judgement of acquittal passed by the Delhi High Court, therefore, the applicant

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is not being reinstated. The reasoning thus of the department can be spelt out from the order passed by the respondents rejecting his application which reads:-

"The involvement of the appellant in such criminal activity followed with his first conviction is reflection on the criminal propensity, which is hazardous for the general public and matter of shame for any uniform force. The appellant has been given benefit of doubt in the verdict passed by the Hon'ble High Court on points of law, which has been challenged by the department in the Supreme Court of India. The process of appeal against the acquittal has already been in motion by issue of notices to the party concerned and as such it is not found appropriate to give benefit of his acquittal in the High Court like reinstatement when the department has gone in appeal, which has been admitted and notices issued. Under the circumstances, his appeal for reinstatement in view of his acquittal in the High Court is rejected and appellant informed accordingly. The individual has tarnished the image of Delhi Police and shaken the confidence in the uniform force by the public. He was given an opportunity to appear before in person for making submission on Oct. 4, 2002. He visited the office but the time of his personal hearing, he slipped away which is indication of guilty conscious to face his senior officers. However, the opportunity of personal hearing is insisted upon him and he appeared before the undersigned on 7.1.2002. He has pleaded for his reinstatement on the grounds already submitted by him in his appeal."

4. The learned counsel for the respondents while opposing the application at the outset contended that the present application is barred by time because it seeks to set aside the order that had been passed dismissing the applicant from service in pursuance of conviction by the Special Court under the Act on 7.12.1991 and even from the date, he was acquitted on 1.5.2001 by the Delhi High Court. In answer, the applicant's plea was that thereafter this Tribunal had directed the respondents to

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decide the representation and from the said decision of 8.10.2002, the present application is within time.

5. The respondents' learned counsel relied upon a decision of the Supreme Court in the case of **Sukhmander Singh v. State of Punjab and Another**, (1999) 9 SCC 55. In the cited case, the concerned person had been appointed as a Constable in August 1981. Later on, it was found that he had produced a false Matriculation certificate. The services of the said Constable were terminated on the ground that he secured employment by producing a false Matriculation certificate. He was also prosecuted. The learned Judicial Magistrate acquitted the said person and he filed a suit for a declaration that the order terminating his services was null and void. The Supreme Court upheld the order passed by the Punjab and Haryana High Court that the suit was barred by time.

6. Perusal of the facts in the case of **Sukhmander Singh (supra)** clearly show that it has little application to the facts of the present case. That was a case where the period of limitation started running when the order was passed terminating his services. It was not an order passed under Article 311(2) on conviction of the said person. The present case is altogether on a different premise. Herein the applicant could only seek reinstatement when he was acquitted by the Delhi High Court. Thereafter this Tribunal had directed that his

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representation should be considered and once the same has been decided, necessarily when the application has been filed within one year from the same, it must be held to be within time.

7. As referred to above, it is not disputed by either side that after acquittal of the applicant by the Delhi High Court, an appeal has been preferred in the Supreme Court which has been admitted for hearing, but the operation of the order passed by the Delhi High Court has not been stayed. The short question that comes up for consideration in this backdrop is as to whether the applicant can seek reinstatement or not.

8. The effect of the orders passed by a court when the appeal against the same is pending in the appellate court has been considered by the Supreme Court in the case of **State of U.P. v. Mohammad Nooh**, AIR 1958 SC 86. The Supreme Court held that filing of the appeal or revision may put the decree or order in jeopardy, but until it is reversed or modified, it remains effective. The precise findings of the Supreme Court in this regard read:-

"The filing of the appeal or revision may ~~put~~ the decree or order in jeopardy but until it is reversed or modified it remains effective. In that view of the matter the original order of dismissal passed on April 20, 1948 was not suspended by the presentation of appeal, by the respondents nor was its operation interrupted when the Deputy Inspector General of Police simply dismissed the appeal from

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that order or the Inspector General simply dismissed the application for revision. The original order of dismissal, if there were no inherent infirmities in it, was operative on its own strength and it did not gain any greater efficacy from the subsequent orders of dismissal of the appeal or the revision except for the specific purposes hereinbefore mentioned. That order of dismissal having been passed before the Constitution and rights having accrued to the appellant State and liabilities having attached to the respondent before the Constitution came into force, the subsequent conferment of jurisdiction and powers on the High Court can have no retrospective operation on such rights and liabilities".

9. Similarly in the case of **Babu Lal v. State of Haryana and Others**, (1991) 2 SCC 335, Babu Lal had been suspended on the ground of pendency of criminal proceedings. He was acquitted of the criminal charge. The Supreme Court held that on acquittal from the criminal charge though the disciplinary proceedings can be started, but he can certainly ask for reinstatement.

10. We may also take advantage in referring to the decision of the Supreme Court in the case of **Union of India and Others v. Ramesh Kumar**, (1997) 7 SCC 514. In the cited case Shri Ramesh Kumar was arrested. The trial court convicted him. As a result of the conviction, the disciplinary authority dismissed him from service without holding an enquiry. The High Court had admitted the appeal and the sentence only was suspended. The question for consideration before the Supreme Court was as to the effect thereto. The Supreme Court held that the conviction continues and is not obliterated.

11. From the aforesaid, the following conclusions

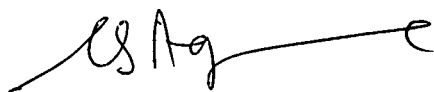
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are obvious:-

- (a) whenever an appeal is filed against an order, unless the operation of the order is stayed, the order that has been passed which is under appeal remains effective; and
- (b) if a person has been dismissed from service under Article 311(2) of the Constitution on his being convicted, then on acquittal subject to whatever may be the final outcome of further appeal, he can seek reinstatement if the said order has not been stayed.

12. More close to the facts of the present case would the situation that arose before the Supreme Court in the case of **State of T.N. v. P.Muniappan**, (1998) 1 SCC 515. The respondent before the Supreme Court had been found guilty by the trial court and he was dismissed from service. The High Court had accepted the appeal, but he was not reinstated. The Tamil Nadu Administrative Tribunal had directed his reinstatement. Thereupon when the Supreme Court upheld the order of the trial court, it was held that the earlier order requires to be restored, namely the order of dismissal.

13. The abovesaid conclusion gets support from Rule 11(2) of the Delhi Police (Punishment & Appeal) Rules, 1980. It clearly provides that if a person is acquitted, he has to be reinstated from the date of dismissal or



removal though the disciplinary authority in terms of sub-rule (3) to Rule 11 may examine the judgement and take such departmental action as deemed fit.

14. Identical is the position herein. As on this date, the applicant has been acquitted by the Delhi High Court. There is no conviction against him. The order of the trial court has merged with that of the Delhi High Court. The said order of the Delhi High Court has not been stayed nor operation of it has been put in abeyance. In that event, subject to any other action that the respondents may like to take, it is obvious that the applicant can seek reinstatement in this regard subject to the final decision of the appeal pending in the Supreme Court.

15. During the course of submissions, the learned counsel for the applicant stated that the applicant will not claim any arrears till the appeal by the Supreme Court is decided.

16. It was pointed that the applicant is involved in a serious crime and, therefore, he should not be reinstatement. The law indeed has to take its own course and if the respondents deem it appropriate, they can take care of the nature of the posting.

17. For these reasons, we allow the application,

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quash the impugned order and direct:-

- (a) subject to the decision of the pending appeal in the Supreme Court, the applicant should be reinstated;
- (b) the respondents can take any other appropriate action in this regard in accordance with law; and
- (c) the applicant will not be entitled to any arrears as was conceded at the Bar upto the date of this order.

No costs.

(Govindan S. Tampi)
Member (A)

/sns/

(V. S. Aggarwal)
Chairman