

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 547/2001

New Delhi, this 10th day of December, 2001

Hon'ble Shri M.P. Singh, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

Inderver Singh
Vill. & PO Mor Khurd
PS Hastna Pur. Dt. Meerut (UP) .. Applicant

(By Shri Bhaskar Bhardwaj, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Home Affairs
North Block, New Delhi
2. Commissioner of Police
Police Hqrs., MSO Building
IP Estate, New Delhi
3. Addl. Commissioner of Police (Armed Police)
Police Hqrs., MSO Building
IP Estate, New Delhi
4. Dy. Commissioner of Police
VIII Bn. DAP, Malviya Nagar
Delhi .. Respondents

(By Shri Ashvini Bhardwaj, proxy for Shri Rajan
Sharma, Advocate)

ORDER(oral)

Shri Shanker Raju, Member(J)

Applicant, a Constable in Delhi Police, on account of his involvement in a criminal case in FIR No.370/93 under section 393 IPC, has been dismissed from service by order dated 17.8.93 under Article 311(2)(b) of the Constitution of India. The disciplinary authority has held that it would not be reasonably practicable to hold an enquiry. Subsequently, the trial in the criminal has proceeded and by order dated 13.7.99, the Metropolitan Magistrate acquitted the applicant of the charge by holding that the prosecution has failed to prove the guilt of accused as per law. In pursuance thereof,

m

10

applicant preferred an appeal to the Addl. Commissioner of Police inter alia stating that the very basis of the dismissal has gone and having been acquitted from the charge in the criminal trial, his case may be reconsidered. The applicant has also enclosed a copy of acquittal order. However, the appellate authority vide order dated 28.7.2000 by resorting to Rule 25 of Delhi Police (Punishment & Appeal Rules, 1980 rejected the appeal as time-barred.

2. Learned counsel of the applicant has stated that there is no question of application of limitation in the present case as the applicant was not in a position to prefer an appeal and he could come before the appellate authority once the very basis of dismissal is gone. It was possible to make an appeal once the trial court has acquitted him in the criminal proceedings by taking a decision that the prosecution has failed to prove the guilt of the applicant. It is further stated that in view of the decision of the apex court in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr. JT 1999(2) SC 456 the findings recorded in the disciplinary proceedings and the dismissal thereof is different to the findings recorded by the judicial authority. In this background it is stated that as the applicant has been acquitted from the charge and the prosecution has failed to prove the guilt of the applicant, the appellate authority should have considered the case on merit in view of the findings of the trial court.

(11)

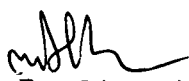
3. On the other hand, Shri Ashwini Bhardwaj, proxy for Shri Rajan Sharma, has contended that as the dismissal order was passed on 17.8.93, the appeal preferred by the applicant is hopelessly time barred as the same should have been preferred within a period of 30 days from the date of dismissal order. He also stated that the dismissal order has been passed after due application of mind keeping in view the involvement of the applicant in the criminal case. It is also stated that the present OA is hopelessly barred by limitation. Learned counsel further contended that as the prosecution witnesses have turned hostile and the applicant has got acquittal on technical grounds, it cannot be termed as acquittal on merit.

4. We have carefully considered the contentions of the parties. Without expressing any opinion on the decision of the trial court we are of the firm view that the action of the appellate authority stating that the appeal of the applicant is time-barred is absolutely not justified. The applicant after dismissal in 1993 was waiting for the outcome of the trial court which formed the basis of dismissal. Once the applicant is acquitted of the charge, the stigma is gone and appellate authority should have considered the case on merit which is warranted by the principles of natural justice and principles of fair hearing and should not have rejected the appeal on the technical ground of time-barred. In view of the law laid down in the case of Paul Anthony (supra), we find order passed by the appellate authority cannot be sustained.

5. Having regard to the reasons recorded above, we partly allow the OA and quash and set aside the order dated 28.7.2000. Respondents are directed to reconsider the appeal of the applicant and decide the same by passing a detailed and speaking order. If the applicant is still aggrieved, he is at liberty approach the appropriate judicial ^uform in accordance with law. The aforesaid exercise shall be completed by the respondents within two months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)
Member(J)


(M.P. Singh)
Member(A)

/gtv/