

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2299/1999

New Delhi this the 2nd day of May, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

Ex.Const.Hem Chander
S/o Shri Munsri Ram
R/O Village Mandari
Distt. Sonapat
(Haryana)

... Applicant

(By Advocate Shri V.P. Sharma)

-Versus-

1. N.C.T. of Delhi through the
Chief Secretary,
5, Sham Nath Marg,
New Delhi.
 2. The Commissioner of Police
Police Headquarters, I.T.O,
New Delhi.
 3. Joint Commissioner of Police
Southern Range, Police Headquarters
I.T.O.
New Delhi.
 4. Additional Deputy Commissioner of Police
South District,
New Delhi.
- Respondents

(By Advocate Mrs.Meera Chhibber)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

A penalty of removal from service issued by the disciplinary authority on grounds of unauthorised absence is impugned in the present OA. The said order, in our view, is liable to be set aside on the short ground, namely that the disciplinary authority by the very same order imposing the aforesaid penalty has directed the unauthorised absence to be treated as

leave without pay. In the case of **State of Punjab & Ors. vs. Bakshish Singh**, JT 1998 (7) SC 142, it has inter alia been held that an order such as the one impugned in the present OA cannot be sustained on the ground that the unauthorised absence has been duly regularised by treating the same as leave without pay. (7)

2. Mrs. Meera Chhibber, learned Advocate appearing on behalf of the respondents has sought to submit that the aforesaid order of the disciplinary authority was issued on 13.6.1995 when the aforesaid decision of the Supreme Court had not been rendered. According to her, at the relevant time, a Full Bench of this Tribunal had held to the contrary. In our judgement, once the aforesaid decision in Bakshish Singh's case is rendered, the same will overrule the decision of the Tribunal which is contrary to the one rendered by the Supreme Court. Decision of the Supreme Court will apply not only to the cases which are rendered thereafter but also to cases ^{and decisions} which have been rendered prior to that.

3. Mrs. Chhibber has next contended that appeal of the applicant has been dismissed on the ground that the same is time barred. In view of this, she contends that present OA will not be maintainable. Shri V.P. Sharma, learned Advocate appearing on behalf of the applicant on the other hand, placing reliance on the observations contained in the order of the Joint Commissioner of Police passed on 18.12.1998 has

12.12.1998

submitted that the delay in filing the appeal has already been condoned. The Joint Commissioner of Police in the aforesaid order dated 18.12.1998 has inter alia observed:-

"Although his appeal is time barred by a lapse of nearly 3 years, I have entertained it on account of extraordinary circumstances."

As against this, the Joint Commissioner of Police in the impugned order issued on 7.6.1999 has inter alia observed:-

"At this stage of his life, it may be perhaps impossible for him to recover his lost 6 years out of Police to get back into the uniform. He may not be able to do his work. As such, his time-barred appeal may not be accepted."

4. In our judgement, once the Joint Commissioner of Police has entertained the appeal though the same was time barred, the same amounted to condonation of delay. It was, therefore, not open to him to have dismissed the appeal on the ground that the same was time barred. Aforesaid contention of Mrs.Chhibber is accordingly rejected.

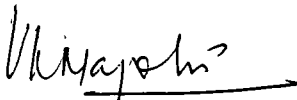
5. In the circumstances, for the foregoing reasons contained in para 1, the present OA succeeds. The impugned order of the disciplinary authority passed on 13.6.1995, Annexure A/1 as also the order of the appellate authority dated 7.6.1999 at Annexure A/2 are quashed and set aside. Applicant will now be entitled to be reinstated in service. He will also be


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entitled to the backwages ^{though} only with effect from
14.10.1999, the date of the filing of the present OA.

6. In the circumstances, there shall be no
order as to costs.


(V.K. Majotra)
Member (A)


(Ashok Agarwal)
Chairman

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