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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2719/1999

New Delhi, this the 22nd day of February, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Prem Kishore Gupta
S/o Late Shri Nand Kishore Gupta
R/o Q.No.6, Police Station Narela
Delhi - 110 040.

...Applicant

(By Advocate Shri S.K.Gupta)

V E R S U S

1. Govt. of NCT of Delhi
Through Chief Secretary
5, Sham Nath Marg,
Delhi.
2. Commissioner of Police
Police Headquarters,
I.P.Estate, New Delhi
3. Addl. Commissioner of Police,
Armed Police,
New Police Lines
New Delhi.
4. Deputy commissioner of Police,
IIIrd Bn. D.A.P.
Vikaspuri, New Delhi.
5. Prem Singh/Enquiry Officer
Deputy Commissioner of Police,
Spl.Branch, I.P.Estate, P.H.O.
Delhi.

...Respondents

(By Advocate Smt. Avnish Ahlawat through
Shri Mohit Madan)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)

The applicant is aggrieved by the punishment orders passed by the respondents dated 17-2-99 and 15-2-99 imposing on him a penalty of forfeiture of two years approved service permanently for a period of three years entailing the reduction of pay during which period he will not earn increments. These orders have been passed by the disciplinary authority

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and the appellate authority, respectively under the provisions of the Delhi Police Act, 1978 read with the Delhi Police (Punishment & Appeal) Rules, 1980.

2. This is the second round of litigation of the applicant. The earlier application being OA 253/90, was disposed of by Tribunal's order dated 2-9-1994. Para 8 of this order reads as follows :-

In the result, the impugned penalty order, appellate and revision orders are quashed and set aside without going into the merits of the charges, and the matter is remanded back to the respondents to conduct departmental proceedings afresh in accordance with law, from the stage of giving the applicant an opportunity to inspect all the records which he is alleged to have delayed, to enable him to prepare his defence.

3. In pursuance of the aforesaid order of the Tribunal, the respondents issued a summary of allegations to the applicant that (1) he failed to dispose of 36 cases from January, 1987 to 31 October, 1987, which were found lying pending on his seat and (2) regarding availing of the festival advance for the second time in the relevant years. The summary of allegations was issued to him on 15-6-98 which is not disputed by the respondents.

4. A number of grounds have been taken by the learned counsel for the applicant to assail the aforesaid punishment orders. One of the main grounds taken up by Shri S.K.Gupta, learned counsel is that there has been unreasonable delay on the part of the respondents in initiating the disciplinary proceedings again in furtherance of the Tribunal's order dated 2-9-1994 in OA 253/90. He has drawn our attention to

the averments in paragraph 4.4 of the OA in which reference to the applicant's representation which had been submitted to the Disciplinary Authority on 4-1-99 has been made. In this representation (Annexure A-6) paragraph 21 is relevant, which the applicant has submitted should be read as part of paragraph 4.4. In the reply to this paragraph, the respondents have nowhere denied the receipt of the representation dated 4-1-99, but have merely tried to justify the punishment awarded to him by the impugned orders.

5. Shri Mohit Madan, learned proxy counsel has submitted that the objection taken by the learned counsel for the applicant regarding delayed action of the respondents has not been taken as a specific ground in the OA and he sought further time to take instructions from the respondents to try to explain the delay in issuance of the summary of allegations on 15-6-98 in compliance with the Tribunal's order dated 2-9-94. He has also submitted that in Tribunal's order, no period was specified for conducting the department proceedings afresh in accordance with law.

6. Shri S.K.Gupta, learned counsel has relied on the judgement of the Supreme Court in Pritam Singh Vs. State of Haryana (1971 (1) SCC 653). He has submitted that although the provisions of Section 42 of the Punjab Police Act, 1861 are not there in the Delhi Police Act, 1978, however, the respondents have followed the principles in other cases that the disciplinary proceedings are to be dropped where there has been a lapse of over one year of receipt of the preliminary enquiry report. He has submitted the

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Office Order issued by the respondents dated 3-1-96 placing reliance on the earlier Office Order dated 30-8-1971, copies placed on record. Learned counsel for the applicant has submitted that in the circumstances of the case the respondents have not taken further action in accordance with law as directed by the Tribunal in its order dated 2.9.94.

7. On the aforesaid preliminary objection, we have considered the pleadings and the submissions made by the learned counsel for the parties.

8. We are unable to agree with the contentions of Shri Mohit Madan, learned proxy counsel that the delay on the part of the respondents can either be considered as reasonable or not arbitrary, as admittedly they have chosen to issue the Summary of Allegations in pursuance of the Tribunal's order dated 2-9-94 only on 15-6-98, that is after ^{a B} ~~the~~ period of nearly three years and nine months. In the facts and circumstances of the case, we respectfully agree with the observations of the Hon'ble Supreme Court in Pritam Singh's case (supra) that, even if it is considered that a new point has been raised by learned counsel for the applicant, it is a pure question of law, not involving any further investigation of facts. In the facts and circumstances, the delay of three years and nine months is not reasonable. Further, in view of what has been stated above with reference to the averments taken by the applicant in paragraph 4.4 read with annexure A-6, we are also unable to agree with the contentions of the learned counsel for the respondents that the point has been taken newly in the

arguments. From the reply filed by the respondents, it cannot be stated that they have denied the receipt of Annexure A-6 representation of the applicant dated 4-1-99 in which this plea has been clearly set out by him, as being against principle of natural justice. We agree with the contention of Shri S.K.Gupta, learned counsel that there has been undue delay on the part of the respondents in conducting the departmental proceedings afresh which deals with the issues, which had occurred in 1987. The Tribunal vide its order dated 2-9-94 has remanded the matter back to the respondents and, therefore, the further action as directed by the Tribunal had to be taken only by the respondents and the delay has occurred only by the action of the respondents.

9. In the circumstances of the case, another contention taken by Shri Mohit Madan, learned proxy counsel that the applicant could have also contributed to the delay in the proceedings does not appear to be either reasonable or plausible. Therefore, this argument is also rejected. In the facts and circumstances of the case, the conclusion that the respondents have unduly delayed the implementation of the Tribunal's order dated 2-9-94, on which they cannot take any advantage, is apparent from the records. The respondents ought to have implemented the Tribunal's order within a reasonable time and in any case, within one year from the date of the receipt of a copy of that order. The order passed by the respondents dated 3-1-96 in another case, which has been relied upon by the learned counsel for the applicant is also relevant to the facts and circumstances of the present case. It is also

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relevant to note that the disciplinary authority in his order dated 17-2-1999 has not dealt with the question of delay in issuing the summary of allegations and conducting the departmental proceedings afresh in spite of the representation made by the applicant dated 2-1-99. This point has also not been dealt with by the appellate authority in its order dated 15-9-99.

10. In view of what has been stated above, the impugned penalty orders issued by the respondents belatedly on allegations relating to the disposal of cases in 1987 and the festival advance taken in 1987 cannot be sustained. Further, the Tribunal's order dated 2-9-94 has also not been correctly implemented by the respondents who were directed to "conduct departmental proceedings afresh in accordance with law", which would include the principles of natural justice and the law of limitation. Section 21 of the Administrative Tribunals Act, 1985 would also be relevant, even if the Delhi Police Act, 1978 itself does not have a specific provision as contained in Section 42 of the Punjab Police Act, 1861.

11. In the result for the reasons given above, the OA succeeds and is allowed. The impugned punishment orders dated 17-2-99 and 15-2-99 are quashed and set aside. The respondents to grant consequential benefits to the applicant within two months from the date of the receipt of the copy of this order. No order as to costs.

Govindaraj S. Tampi)
Member (A)

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(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)