

(50)
CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA-1678/95

New Delhi this the 8th day of October, 1999.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN(J)
HON'BLE MRS. SHANTA SHAstry, MEMBER (A)

Head Constable Attar Singh,
through Mrs. Avnish Ahlawat,
243, Lawyers' Chambers,
Delhi High Court,
New Delhi. ...Applicant

(By Advocate Shri Shankar Raju)

-Versus-

1. Union of India through
Lt. Governor of Delhi
through Commissioner of Police,
Delhi Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi-110002.
2. Deputy Commissioner of Police,
Civil Line, North District,
Delhi Police, Delhi. ...Respondents

(By Advocate Shri Vijay Pandita)

O R D E R

By Reddy, J.

The applicant ~~while he~~ was working as a Constable in the Delhi Police in 1971. On grounds of misconduct a departmental enquiry was held and he was dismissed from service by order dated 4.8.80. The said order was challenged before the Delhi High Court by filing the Writ Petition, which was later transferred to the Tribunal and registered as TA-759/85. The Tribunal allowed the TA by an order dated 22.8.90 and quashed the impugned orders of dismissal. The applicant was ordered to be reinstated in service with arrears of pay and allowances at half of the rate of the normal pay and allowances.

2. The above order was passed by the

JK

Tribunal on the ground that the ~~ex parte~~ enquiry conducted by the department was illegal. Consequent upon the judgement the applicant was reinstated in service on 17.5.91. The applicant was, however, again dismissed from service in another departmental enquiry which was kept in abeyance in view of the departmental enquiry that was pending against him by order dated 7.8.91. Aggrieved by his dismissal he filed OA-1567/91 which was also allowed by an order dated 10.4.92 setting aside the order of dismissal and directing reinstatement in service. It was however, observed therein that it was open to the respondents to proceed further in the matter in accordance with law. It should be noticed that the OA was allowed on a technical ground that the punishment order was passed by an authority which was lower in rank than that of the appointing authority. The applicant was consequently reinstated in service on 6.5.92 and his suspension period was treated as period spent on duty and his pay was refixed.

3. There were four other departmental enquiries against the applicant. The disciplinary enquiry proceedings have thereafter commenced and been completed and the applicant was found guilty. In one case punishment of forfeiture of service of two years was awarded, in another order which was passed in 1993 he was awarded the punishment of censure and in the third case which was also completed in 1993 no punishment was awarded. Hence, the proceedings were dropped. In the fourth enquiry an order was passed in 1994 and the punishment of censure was awarded.

4. After all these enquiries were over the applicant submitted an application dated 22.2.94 wherein it was stated that all the enquiries pending against him have been finalised and that no departmental enquiry was pending against him and therefore, requested for his promotion as ASI.

5. At this point of time, the present show cause notice dated 31.7.95 was issued and this OA is filed questioning the legality and the propriety of the show cause notice and the final order of dismissal dated 18.2.97.

6. It is vehemently contended by the learned counsel that the impugned show cause notice dated 31.7.95 proposing to hold the enquiry after three and a half years of the judgement in OA-1567/91 dated 10.4.92 is wholly impermissible. It is contended that since the enquiry was not commenced within the reasonable time after the judgement and as it is sought to be commenced after about three and a half years, it cannot be allowed. It is, however, contended by the learned counsel for the respondents that the enquiry could not be commenced earlier in view of the fact that several other enquiries have been pending against the applicant and also in view of the fact that the applicant having stated in his application dated 22.2.94 that no enquiry was pending against him there was a delay in commencing the enquiry. It is also contended that the concerned file was misplaced in the office and it was traced only

✓

during the case of the applicant for promotion was being considered. Immediately thereafter the impugned notice has been issued. Hence, it is stated that the delay cannot be put against the respondents and that the applicant should not be allowed to be escaped without being enquired into as the allegations against him are serious.

7. We have carefully considered the rival contentions and perused the records of the case.

8. It becomes necessary to decide whether the impugned notice and the consequential order of dismissal are vitiated on the ground of delay. The applicant was a Constable in the Delhi Police at the relevant time and on the allegations of corruption and extortion an enquiry has been conducted in 1978 and he was dismissed from service. The applicant, however, challenged the order of dismissal in the Tribunal and succeeded in getting the order of dismissal quashed only on the ground that the exparte enquiry conducted was violative of the principles of natural justice. In accordance with the judgement of the Tribunal the department held the enquiry against the applicant and he was again dismissed from service. But the said order was set aside by the Tribunal only on the ground that the authority who awarded the punishment was lower in rank than the appointing authority of the applicant. The Tribunal, however, observed that it was open to the department to conduct a fresh enquiry. This order of the Tribunal was passed in 1992. It is not in dispute that several departmental enquiries

JK

5A

were pending against him. The applicant himself in the OA stated that there were four departmental enquiries pending against him which could be completed only after the judgement in the above OA has been rendered in 1992. In paragraph 4.15 he stated that in one case punishment of forfeiture of service of two years has been awarded and in another he was awarded censure in 1993, in the third case the proceedings were dropped and in the fourth enquiry, by order dated 7.1.94 he was awarded the punishment of censure. Hence, the applicant has been participating in the enquiry proceedings which were re-commenced only in 1993 after completion of the above proceedings. He filed an application in 1994 stating that no other departmental proceedings were pending against him forgetting the fact that the present proceedings have not come to an end and was exonerated only on technical grounds.

9. In the counter-affidavit it is clearly stated that the enquiry could not be proceeded against the applicant subsequent to the order of the Tribunal dated 10.4.92 in view of the pendency of several departmental enquiries against the applicant that the final the relevant file of the DE was therefore found misplaced. It was also averred "The suspension period was also decided as period spent on duty vide order No.:2890-2980-HAP-N dated 6.5.92 but it was done erroneously because in fact it was not the stage for the decision of suspension period as the action was pending decision. In fact final decision could not be taken by the respondent because of the fact that the

CW

relevant file of the DE alongwith Fauzi Missal was found misplaced in the office of DCP, Ist Bn. DAP and the action remained unattended inadvertently for want of file but it was detected at the time of examination of his promotion case and incidently the copy of finding of the DE was found in correspondence file and accordingly it was decided to finalise the issue. The matter was taken up from the stage of show cause notice i.e. stage it was challenged on technical ground. Accordingly the show cause notice for dismissal was issued under the signature of DCP North i.e. the authority equivalent to the authority who has appointed the applicant."

10. The learned counsel for the applicant relies upon 1990 (3) SLJ CAT 35, 1998 (3) SLJ SC 162 where it was held that the charges should be finalised expeditiously immediately and that the delay defeats justice. It is true that in the present case also though the charges have been levelled in 1978 they were still kept pending against till 1995 when the impugned notice was issued. But it has to be kept in mind that the delay in the proceeding could not be attributed to the department. The department has finalised the proceedings as early as in 1990. But, in view of the facts stated supra, it cannot be said that the impugned order is vitiated on the ground of delay.

11. It should also be seen that no prejudice is caused to the applicant by virtue of delay because he himself is responsible for the delay

✓

56

because of the pendency of the disciplinary proceedings and in several other cases and that the file relating to the present enquiry was misplaced in the proceedings of other cases relating to the applicant.

12. Considering the facts and circumstances of the case, the applicant was rightly dismissed from service. Though several grounds are urged in the OA, as to the validity of the order of dismissal, learned counsel for the applicant has chosen not to address any other argument before us. We do not, therefore, consider about the validity of the dismissal order dated 18.2.97.

13. In the circumstances, the OA fails and is accordingly dismissed. No costs.

Shanta J-
(Smt. Shanta Shastry)
Member (J)

'San.'

V.Rajagopala Reddy
(V.Rajagopala Reddy)
Vice-Chairman (J)