

18

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

...

O.A. No. 1939 of 1995

New Delhi, this 16th day of March, 1999.

HON'BLE MR. JUSTICE S. VENKATRAMAN, VICE CHAIRMAN (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Sohender Kumar
S/o Shri Munshi Ram
Vill. Shahdabbar
P.O. Shahpur
Muzzafar Nagar (U.P.)

... Applicant

By Advocate: Shri George Paracken

versus

1. The Lt. Governor
National Capital Territory of Delhi,
Delhi.
2. The Deputy Commissioner of Police,
VI Battalion, DAP, Police Lane,
Model Town,
Delhi-110 006.
3. Sr. Addl. Commissioner of Police,
Armed Police & Training,
PHQ, ITO,
New Delhi-110 002. ... Respondent

By Advocate: Shri Ajesh Luthra, proxy for
Mrs Jyotsna Kaushik.

S O R D E R (ORAL)

HON'BLE MR. S. VENKATRAMAN, VC (J)

The applicant who was a police constable in the Delhi Police force, had been removed from service by order dated 13.9.1994 on the ground that he had been convicted for disorderly behavior in a public place under the influence of liquor and sentenced to pay a fine of Rs. 100/- by the Metropolitan Magistrate. The applicant preferred an appeal against that order on 30.10.94. He had received a copy of the order on 23.9.94. The appeal had to be filed

on or before 22.10.94. The appeal was filed on 13.12.94. The applicant had been informed by Annexure A-II dated 14.8.95 that his appeal was not entertained by the Senior Additional C.P.(AP&T), Delhi, as barred by time.

2. The learned counsel for the applicant has contended that the appellate authority had not even entertained the appeal and a junior officer had communicated that the appeal was not entertained because it was barred by time. He submitted that the applicant had raised various grounds in his appeal and that the appellate authority had not considered those grounds in his appeal only because the appeal was said to be barred by time. He has also submitted that the applicant had given a representation on 29.9.95 explaining the delay. The learned counsel for the applicant has also raised certain grounds on the legality of the order of termination. But we think we need not go into this aspect of the case as we feel that the appellate authority could have considered the appeal of the applicant on merits condoning the delay. It is no doubt true that under Rule 24 of the Delhi Police (Punishment and Appeal) Rules, 1980, an appeal has to be filed within thirty days and the appellate authority is empowered to condone the delay if the delay occurred due to circumstances beyond the control of the appellant. In the instant case, the appellate authority does not appear to have gone into the question as to whether he could exercise his discretion in condoning the delay taking into consideration the gravity of the punishment imposed on the applicant and the fact that applicant himself was residing

(P)

in a village at the time of submission of the appeal. In this case the career of the applicant was involved and he had been imposed the penalty of removal from service. The appellate authority should not have been very rigid in applying the law of limitation and should have entertained the same ^{even} considering whether ~~on~~ the facts and circumstances ~~the~~ ^{of} the delay could be condoned. It is no doubt true that the subsequent representation given by the applicant was after the passing of the order, we are now satisfied that there was good cause for the delay of ~~almost~~ ^{about} one month and twenty days. On the facts and circumstances of the case, we feel that the appellate authority should be directed to entertain the appeal and consider the same on merits.

3. The learned counsel for the applicant cited some authorities to contend that in a case of this type the penalty of removal from service should not have been imposed. We do not want to express any opinion in this regard. However, it is open to the applicant to urge those grounds already taken by him in this application before the appellate authority.

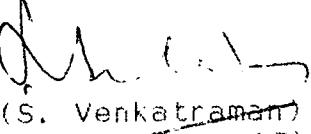
4. For the above reasons, this application is allowed in part setting aside Annexure A-2 the order of the appellate authority rejecting the appeal on the ground of limitation. The appellate authority is directed to decide the appeal on merits. The applicant is given liberty to raise additional grounds within three weeks from this date and if he raises such additional grounds the appellate

N

authority may consider them also while deciding the appeal on merits. The appeal shall be disposed of within three months from the date of receipt of a copy of this order.

No costs.


(K. Muthukumar)
Member (A)


(S. Venkatraman)
Vice Chairman (T)

dbc