

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

19-4-1996
O.A No.1818A/95 Date of Decision:

(2) Hon'ble Shri S.R. Adige, Member (A)
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Dinesh Kumar (1007/South West)
(PIS NO. 28860812) son of
Shri Om Pal Singh,
r/o Village and P.O. Jani Khurd,
District Meerut (U.P.) ... Applicant

By Advocate: Shri Shyam Babu

vs.

1. Commissioner of Police,
Police Headquarters, I.P. Estate,
New Delhi.
2. Additional Commissioner of Police
(Southern Range), Police Hqrs.
I.P. Estate, New Delhi.
3. Deputy Commissioner of Police,
South West District,
P.S. Vasant Vihar, New Delhi. ... Respondents

By Advocate: Shri Ajesh Luthra, proxy counsel for
Ms. Jyotsana Kaushik

ORDER

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The applicant who was working as a Constable in the Police Station, Mayapuri, New Delhi was dismissed from service by the impugned order dated 9.2.93 (Annexure 'A') passed by the Deputy Commissioner of Police, South West District, New Delhi. The applicant has filed this application under section 19 of the Administrative Tribunal Act against the order of dismissal dated 9.2.93 and the order dated 25.7.95 dismissing his appeal issued by the Additional Commissioner of Police, (Southern Range), New Delhi.

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2. We have heard Shri Shyam Babu, learned counsel for the applicant and Shri Ajesh Luthra, proxy counsel for Ms. Jyotsana Kaushik, learned counsel for the respondents and perused the record.

3. Shri Shyam Babu, learned counsel submits that the impugned order dated 9.2.93 dismissing the applicant from service has already been set aside in the case of a Constable Ramesh Chander by this Tribunal (O.A.No.390/94) decided on 28.11.95 (copy placed on record). Both the Constables Ramesh Chander and the applicant in this case namely Constable Dinesh Kumar were dismissed from service on the same facts and for the same reasons by the impugned order dated 9.2.93. Shri Shyam Babu also relies on the judgement dated 6.3.95 passed by the learned Additional District and Sessions Judge, New Delhi in which it was held that the prosecution has failed to prove its case against the accused persons namely Constables Ramesh Chander and Dinesh Chand in FI R No. 31/93. The learned counsel, therefore, submits that the impugned order dated 9.2.93 may also be quashed and set aside ^{in this case.} As regards the impugned appellate order he contends that since the order of the Addl. District and Sessions Judge was only passed on 6.3.95, the appeal filed by him on 27.4.95 against the impugned order dated 9.2.93 is not barred by limitation as contended by the respondents. He, therefore, submits that the impugned order dated 25.7.95 ^{also} may be quashed and set aside and the application may be allowed ^a and a similar order to re-instate the applicant be passed as given in O.A. 390/94.

4. Shri Ajesh Luthra, learned proxy counsel for the respondents has contended that the applicant in this case had not filed any appeal/revision or sought any other remedy against the impugned order dated 9.2.93. The only appeal he filed was that dated 27.4.95 which has been correctly dismissed on the ground of limitation by the impugned order dated 25.7.95.

5. We have carefully considered the arguments of both the learned counsel and the pleadings.

6. By the impugned order dated 9.2.93 Constables Ramesh Chander and Dinesh Kumar, the present applicant, were dismissed from service with immediate effect without conducting a regular departmental enquiry or affording any opportunity to them of being heard in respect of the charges, for the reasons mentioned in that order, namely that an FIR No.31/93 dated 9.2.93 had been filed before the criminal court under various sections of the IPC and the Arms Act. Admittedly both the accused persons have now been acquitted by the order dated 6.3.95 of the learned Additional District New Delhi. and Sessions Judge. In this order we note that the name of the applicant has been mentioned as Dinesh Chand whereas in the impugned order dated 9.2.93 it is mentioned as Dinesh Kumar. However, from the facts of the case, the order dated 6.3.95 of the learned Additional District and Sessions Judge and the reply filed by the respondents, we have no doubt that it is the same applicant Constable Dinesh Kumar, No.1007/sy

who has been involved in this case and dealt with in the impugned order of 9.2.93. That order has been set aside on the similar facts in O.A.No.390/94. The reasons given in that O.A. on merits are fully applicable to the facts of this case and hence this application is liable to succeed.

7. The only plea taken by the respondents in this case is the ground of limitation. The impugned order dated 9.2.93 has been passed under proviso II(b) of Article 311(2) of the Constitution holding that it was not practical to hold a regular departmental enquiry for the reasons given therein. As mentioned above, the case filed against the applicant by FIR No.31/93 has resulted in an acquittal. After the acquittal the appeal filed by the applicant on 27.4.95 has been summarily dismissed on the ground of limitation. In the impugned order dated 9.2.93 the respondents have failed to mention that the applicant could file an appeal against that order. In any case, after the applicant was acquitted in the criminal case on 6.3.95, he submits that he filed a representation on 28.3.95. The impugned appellate order dated 27.4.95 states that the appeal filed by the applicant has been dismissed as time barred. In the facts and circumstances of the case, the respondents plea that the case is barred by limitation is rejected because the basis of the impugned order dated 9.2.93 itself has no legs/stand in the face of the judgement of the criminal court acquitting the applicant dated 6.3.95. Thereafter the appeal has been filed within 45 days and cannot be considered as time barred.

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8. In the result, the application succeeds, the impugned orders of dismissal dated 9.2.93 and the appellate order dated 25.7.95 are quashed and set aside. ^{The} L.O.A. is allowed with the direction to the respondents to re-instate the applicant in service within one month of the receipt of the copy of this order. However, we make it clear that this order will not preclude the respondents from proceeding against the applicant holding a regular departmental enquiry in accordance with law. In case the decision is taken to institute such a disciplinary proceeding against the applicant, the same shall be instituted within a period of two months from the date of service of this order on respondent No.2. The second respondent shall accordingly pass an order regulating the period of absence from the date of dismissal upto the date of reinstatement in accordance with the rules. In case disciplinary proceedings are commenced as per the directions given above, such an order may be passed on the conclusion of these proceedings in accordance with law.

9. The application is allowed ^{as} above. No costs.

Lakshmi
(SMT. LAKSHMI SWAMINATHAN)
MEMBER(J)

Adige
(S.R. ADIGE)
MEMBER(A)

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