

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 701/95

HON'BLE SHRI JUSTICE K.M. AGARWAL, CHAIRMAN
HON'BLE SHRI R.K. AHOOJA, MEMBER(A)

New Delhi, this the 15 day of August, 1999

Shri Mukarram Ali
S/o Shri Bandu Khan
R/o Village Basdhara
P.O. Dinkarpur
Distt. Muzaffar Nagar (U.P.)

...Applicant

(By Advocate: None)

Versus

1. Govt. of NCT of Delhi
through its Chief Secretary
5, Shyam Nath Marg, Delhi
2. The Commissioner of Police, Delhi
Police Headquarters
I.P. Estate, New Delhi

....Respondents

(By Advocate: Shri Surat Singh proxy of
Shri Vijay Pandita)

O R D E R

[Hon'ble Shri R.K. Ahooja, Member(A)]

The applicant, who was appointed as a temporary Constable in Delhi Police w.e.f. 4.9.1987, was discharged from service under Rule 51(1) of the Central Civil Service (Temporary Service) Rules, 1965 by order dated 19.4.1988. Against this order the applicant came before the Tribunal in O.A. No.48/89 and the same was partly allowed by the order dated 17.1.1992 in the following terms:-

"11. In view of the above discussion, the application is partly allowed. The impugned order dt. 19.4.1988 is quashed and set aside and the applicant shall be reinstated in his appointment within one month from the date of receipt of this order. However, regarding back wages for the period from 19.4.1988 till the time of his reinstatement he shall be governed by the final order passed in the disciplinary proceedings, if any, against him. If, however, no disciplinary proceedings are initiated against him, the applicant shall be entitled to full back wages. If disciplinary proceedings are initiated against him then the wages for the period from

19.4.1988 till the date of joining shall be governed by the order passed by the disciplinary authority in that case. In view of the above facts, the parties are left to bear their own costs."

3. The respondents thereafter reinstated the applicant in service w.e.f. 17.2.1992 followed by initiation of a regular departmental enquiry. On completion of the enquiry, the applicant was exonerated but in regard to the period intervening between termination of his services and reinstatement, the following order was passed:-

"His termination period from 19.4.88 to 16.2.92 is also decided as Leave of Kind Due. However, he is entitled all consequential benefits from the date of termination till his reinstatement in service."

4. It is against this part of the order of the disciplinary authority that the applicant has again come before the Tribunal.

5. None has appeared for the applicant. We have heard Shri Surat Singh for the respondents and have perused the record. Shri Surat Singh pointed out that in terms of order of this Tribunal in O.A. No.48/89 reproduced above, the disciplinary authority exercised the discretion granted to pass suitable orders in respect of the intervening period and in the facts and circumstances of the case, the disciplinary authority considered it appropriate that this period should be treated as leave of the kind due. We are unable to agree with this reasoning. Indeed, the Tribunal had in its order reproduced above stated that back wages for the period till applicant was reinstated shall be governed by the final order passed in the disciplinary proceedings. Now, if the applicant had been found at fault and a

penalty had been imposed on him then it would have been open to the respondents to treat that period as leave without pay or in any other suitable manner. However, this does not mean that if the applicant was found innocent of the charge against him even then it was open to the respondents to pass an order which would have penal consequences upon the applicant since necessarily part of the period would have to be treated as leave without pay. The observations and directions of the Tribunal in regard to the respondents responsibility to pass appropriate order did not mean that this responsibility could be discharged in an arbitrary manner. The natural consequences of an order of exoneration were that the period for which the applicant was kept out of service had to be treated as period on duty. The applicant was entitled to the consequential benefits. The respondents have, however, by their order modified the consequential benefits by denying monetary compensation to the applicant.

6. In the result, the O.A. is allowed. The respondents are directed to treat the intervening period as on duty for all purposes and to grant the applicant the full pay and allowances for that period.

7. There will be no order as to costs.

R.K. AHOOT
(R.K. AHOOT)
MEMBER (A)

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K.M. AGARWAL
(K.M. AGARWAL)
CHAIRMAN