

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A.No. 2225/94

Friday this the 23rd day of July, 1999

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. S.P. BISWAS, ADMINISTRATIVE MEMBER

Ext.Const. (Driver) Rajinder Singh,
No.8848 DAP
Resident of Vill.&PO. MizryKalan,
Police Station Mandal,
Dist.Alwar (Raj).

...Applicant

(By Advocate Mrs.Avnish Ahlawat through counsel
Ms. Vibhy Mahajan)

Vs.

1. Govt. of National Capital Territory
of Delhi through Commissioner
of Police, Police Headquarters,
Delhi Police, New Delhi.

2. Addl. Commissioner of Police
(A.P. & T) Police Headquarters,
Delhi Police, New Delhi.

...Respondents

(By Bhaskar Bhardwaj for Mr.Raj Singh)

The application having been heard on 23.7.1999, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

This application is directed against the order
dated 9.5.94 (Annexure.A) by which the Additional
Commissioner of Police, the Second respondent, has
rejected the applicant's appeal against the order
dated 4.11.92 (AB) of penalty of dismissal from
service on the ground that the appeal was filed after
expiry of the period stipulated in Delhi Police
(Punishment & Appeal) Rules for filing of appeal. The
backdrop in which the Annexure.B order came to be
passed against the applicant can be briefly stated as
follows:

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2. The applicant was earlier proceeded with for unauthorised absence for certain period. A final order in that proceedings was passed imposing on him a penalty of forfeiture of two years approved service permanently for two years reducing his pay. The applicant was reinstated in service revoking the suspension but the applicant did not come for duty and therefore a fresh enquiry was initiated by serving a summary of allegation on the applicant on 4.8.92. Ultimately the impugned order Annexure.B was passed dismissing him from service holding the enquiry exparte on the ground that the applicant did not cooperate with the enquiry. The order of dismissal from service was allegedly pasted on the door of the house of the applicant in the presence of two persons. The applicant alleging that he did not know anything about the finalisation of the disciplinary proceedings initiated against him earlier and coming to know of the impugned order Annexure.B only in the year 1994 when he made enquiry preferred an appeal to the second respondent on 7.2.94. This appeal was rejected by Annexure.A order on the ground that he did not file the appeal within the time stipulated as per rules.

3. The applicant has alleged in the application that before passing the order Annexure.B no proper enquiry was held, that he was not served with the summary of allegations and therefore, the impugned order Annexure.B is unsustainable. It is also

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alleged that as the order was not served on him, he could not file the appeal in time and therefore, the rejection of the appeal by the appellate authority without going into the merits on the ground that it was time barred is also unsustainable.

4. We have heard Ms. Vibhy Mahajan appearing on behalf of Mrs. Avnish Ahlawat and Mr. Bhaskar Bhardwaj on behalf of Mr. Raj Singh and have gone through the documents on record. The contention of the applicant that the enquiry was held without serving on the applicant the summary of allegations, list of documents etc. has been found to be false on a perusal of the file relating to the enquiry made available for our perusal by the learned counsel for the respondents. It is seen that summary of allegations, list of documents and list of witnesses had already been received by the applicant under his signature. The ex parte enquiry came to be held because the applicant did not cooperate with the enquiry. Whether in holding the ex parte enquiry the legal requirements have been fully complied with was a matter the appellate authority should have addressed while considering the appeal. The appellate authority did not go into such matters because he felt that the appeal has been filed beyond the period of limitation prescribed in the Delhi Police (Discipline and Appeal) Rules in regard to filing of the appeal. The

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appellate authority would have been right in thinking so had the impugned order of dismissal been served on the applicant personally or, if such personal service found infeasible by making a publication in the local newspapers for it has been held by the Apex Court in many cases that an order of dismissal or removal from service would take effect only on service on the person dismissed or removed. It has not been alleged by the respondents in their reply statement nor is there anything on record to show that the respondents did make any attempt to personally serve the order of dismissal on the applicant or to send it by registered post and failing such attempt to make a publication so that it would amount personal service. Merely pasting an order on the door of the house would not amount to service on the applicant of an order of dismissal. If the first method of service failed, the respondents should have resorted to personal service or by sending it by Registered Post and if that also failed by publication in a newspaper. This has not been done. We are of the considered view therefore, that there was no communication of the order of dismissal on the applicant. As a consequence, we are of the opinion that the appellate authority had gone wrong in rejecting the appeal on the ground that it was time barred without going into the merits.

5. In the light of what is stated above, we find that the interests of justice would be met if the appellate authority, the second respondent, is directed to consider the appeal submitted by the applicant and to give him a reasoned order on merits

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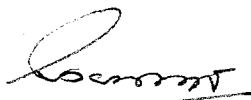
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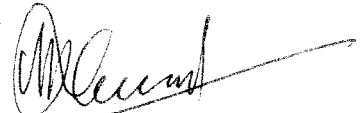
keeping in view the provisions of the Delhi Police (Punishment and Appeal) Rules in regard to holding of exparte enquiry and other relevant factors.

6. In the result the application is allowed in part. The impugned order Annexure.A is set aside and the matter is remitted to the second respondent with a direction that it shall consider the appeal of the applicant treating that it was submitted within time, decide it on merits in the light of the rules, rulings and instructions in regard to holding of exparte enquiry and also other relevant aspects and to give the applicant a speaking order within a period of two months from the date of receipt of a copy of this order. There is no order as to costs.

Dated the 23rd day of July, 1999



S.P. BISWAS
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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