

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1602/1994

New Delhi, this 16th day of July, 1999

Hon'ble Shri A.V. Haridasan, VC(J)
Hon'ble Shri S.P.Biswas, Member(A)

Constable Somabhai No.924/W
Barrack No.8, PS Model Town
Delhi-110 009

... Applicant

(By Shri M.K. Gupta, proxy for Shri Ashish Kalia,
Advocate)

versus

Union of India, through

1. Administrator/Lt. Governor of Delhi
Raj Niwas, Govt. of NCT of Delhi
Delhi

1. Commissioner of Police
PHQ I.P.Estate
New Delhi

... Respondents

(By Shri Surat Singh, Advocate)

ORDER(oral)

Hon'ble Shri A.V. Haridasan

This application is directed against the order dated 9.11.89 of the Deputy Commissioner of Police, imposing on the applicant penalty of dismissal from service with immediate effect for unauthorised absence after holding an enquiry. In the impugned order the disciplinary authority has stated "Accordingly he is dismissed from the force w.e.f. the date of issue of this order. The period of unauthorised absence shall be treated as leave without pay". The applicant filed an appeal which was rejected by the Additional Commissioner of Police vide his order dated 8.6.90. The applicant has filed this application impugning these two orders and praying that he may be directed to be reinstated on setting aside the impugned orders.

2. This OA has been filed belatedly. Applicant has also filed an MA with an affidavit stating he had received the appellate order quite late against which he preferred an appeal to the Commissioner of Police, that thereafter he submitted a review petition on 18.9.92 to the Administrator/Lt. Governor and that for all these reasons he could not file his OA in time.

3. MA for condonation of delay and also OA for admission came up for hearing on 4.8.95 when respondents were given time to file reply to the MA as also OA and these were listed for hearing on 6.9.95. On that date, the OA was admitted.

4. Respondents have filed a detailed reply to the OA contesting the claims of the applicant and have raised the plea of limitation. When the matter came up for hearing today, learned counsel for the respondents argued that application may not be heard on merits because the case is barred by limitation. The Tribunal after notice to either side and after reply has been filed to the MA as well as to the OA admitted the application vide its order dated 6.9.95. Admission of the application is by a judicial order. Relevant part of Section 21 of the AT Act, 1985 reads as under:

"21(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in

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sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period"

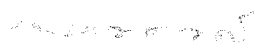
5. A clear reading of the same would show that if the application is filed beyond the period of limitation prescribed and the applicant satisfies the Tribunal that he had sufficient cause for not making the application within the stipulated period, the same can be admitted. When a decision was taken on 6.9.95 to admit the application and as it has been admitted, the same cannot be dismissed without going into the merits of the case. Since the Division Bench admitted the OA on 6.9.95, it has to be held that the delay was condoned. We therefore reject the argument of the learned counsel for the respondents that the OA cannot be heard on merit.

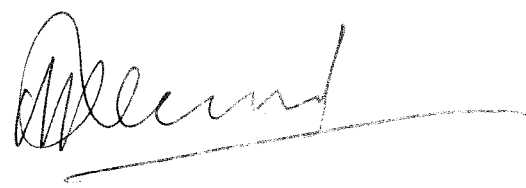
6. Now coming to the merits of the case, in the impugned order as extracted in paragraph 1 above, the period of unauthorised absence for which the proceedings was held has been treated as leave without pay. Following the ruling of the apex court in the case of **State of Punjab Vs. Bakshish Singh JT 1998(4) SC 142**, this Tribunal in OA 223/95 decided on 13.1.99 held that once the period of unauthorised absence is regularised by grant of leave, penalty for the same absence cannot be imposed. The same view was taken by the Delhi High Court in the case of **S.P.Yadav Vs. UOI 71 (1998) Delhi Law Times 68**.

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7. In the light of the above legal position, the impugned order of dismissal from service as also the appellate order are liable to be set aside.

8. In the result, the impugned orders are set aside. Respondents are directed to reinstate the applicant in service and grant him all consequential benefits including backwages deemed that the impugned order of dismissal from service did not take effect at all. However, as there has been delay in filing the original application, we direct that payment of backwages will be limited i.e. from the date of filing of this original application till the date of reinstatement. The above rulings shall be complied with within a period of two months from the date of receipt of a copy of this order. No costs.


(S.P. Biswas)
Member(A)


(A.V. Haridasan)
Vice-Chairman(J)

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