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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1781/1994

This the 17th day of July, 1997.

HON'BLE SHRI JUSTICE K. M. AGARWAL, CHAIRMAN

HON'BLE SHRI N. SAHU, MEMBER (A)

Ex. Const. Vashist Kumar No.637/SD,
son of Shri Ram Niwas,
previously employed in Delhi Police,
R/O Village & P.O. Khanpur,
Distt. Meerut (U.P.)

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... Applicant

(By Advocate Shri Shankar Raju)

- Versus -

1. The Lt. Governor of N.C.T. Delhi
(Through Commissioner of Police),
Police Headquarters, M.S.O. Building,
New Delhi.
2. The Additional Commissioner of Police,
Southern Range, Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi.

... Respondents

(By Advocate Shri Rajinder Pandita)

O R D E R

By Justice K. M. Agarwal :

By this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has made a prayer for reinstatement with all consequential benefits after quashing the order of dismissal dated 8.10.1992.

2. Briefly stated, the applicant was in the employment of Delhi Police. On 4.5.1992, he was arrested in connection with an offence under Section 302, read with Section 34 of the Indian Penal Code. He was, therefore, put under suspension. It appears that during the period of his suspension and detention in connection

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with the said offence the impugned order of dismissal from service was passed on 8.10.1992 without holding any departmental inquiry. The said order of dismissal was upheld in appeal by the Additional Commissioner of Police (Southern Range), New Delhi. The applicant was ultimately acquitted of all the charges against him in Sessions case No. 274/92 by judgment delivered on 21.9.1996 by the Additional Sessions Judge, New Delhi during the pendency of this O.A. No. 1781/94 which was filed after the dismissal of his departmental appeal against the order of the disciplinary authority.

3. After hearing the learned counsel for the parties and perusing the record, we are of the view that there was absolutely no ground for dispensing with the disciplinary inquiry as contemplated under Article 311 of the Constitution before passing the order of dismissal. If the applicant was arrested in connection with the criminal offence and subjected to criminal trial, the proper course for the respondents was to keep the applicant under suspension till the conclusion of the criminal trial, or to initiate a departmental inquiry against him which could go on or to be continued even during the trial of the criminal case against the applicant. If the D.E. was not held or could not be held during the pendency of the criminal trial for one reason or the other, it could be started after the conclusion of the criminal charge against the applicant, but without holding any departmental inquiry he could not be dismissed from service, as was done in the present

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case of the applicant. We are, therefore, of the view that the impugned order of dismissal, including the appellate order confirming the same, deserves to be quashed.

4. The next question that arises is about the consequential reliefs to be granted to the applicant. The respondents may still hold an inquiry into the alleged misconduct of the applicant even after termination of the criminal trial in his favour. On the date of the impugned order of dismissal the applicant was under suspension. Under these circumstances, we are of the view that the applicant cannot claim reinstatement and his backwages from the date of the impugned order of dismissal. The proper course would be to give liberty to the respondents either to reinstate the applicant or initiate departmental proceedings against him for the alleged misconduct. If the reinstatement is decided, the competent authority may pass appropriate orders in regard to arrears of pay and other consequential reliefs in terms of F.R. 54. If it is decided to hold inquiry against him, appropriate orders in regard to the subsistence allowance and/or the pay and allowances to be paid to the applicant for the period between 8.10.1992 to the date of this order may be passed after conclusion of the disciplinary proceedings. In so far as the period between the date of this order and the date of decision to hold disciplinary proceedings against him is concerned, the applicant may or may not be awarded subsistence allowance in terms of F.R. 53.

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5. As a result, this application succeeds and it is hereby allowed. The impugned orders of dismissal are set aside, but the applicant shall be treated to be under suspension till appropriate order as directed is passed by the competent authority. The respondents are given two months' time from the date of communication of this order to take a decision either to reinstate the applicant or to hold D.E. against him for the alleged misconduct and accordingly to pass further consequential orders as indicated in the preceding paragraph of this order about pay and allowances or subsistence allowance to be paid or not to be paid. No costs.

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(K. M. Agarwal)
Chairman

N. Sahu

(N. Sahu)
Member (A)

/sks/