

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.1816/94

Friday this the 16th day of July, 1999



CORAM

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

Nanak Chand S/o Shri Kharu Ram,
R/o Vill. & PO. Husanpur,
Distt. Meerut. (UP). ...Applicant

(By Advocate Mr. V.P. Sharma)

Vs.

1. The National Capital Territory of Delhi,
through the Secretary,
Old Secretariat, Delhi.
2. The Commissioner of Police,
Police HQs, Delhi Police,
I.P.Estate, New Delhi.
3. The Additional Comissioner of Police (AP)
Delhi Police, HQs IP Estate,
New Delhi.
4. The Deputy Commissioner of Police,
Vth Battalior, DAP Kinsway Camp,
New Delhi. ...Respondents

(By Advocate Mr. Surat Singh)

The application having been heard on 16.7.1999, the
Tribunal on the same day delivered the following:

O R D E R

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

The applicant Nanak Chand who was a Safaiwala
in the office of the Respondent No.4, was proceeded
against departmentally for alleged misconduct of
unauthorised absence and by order dated 6.5.92
(Annexure.A.1) of respondent No.4 he was dismissed from
service. The appeal submitted by the applicant
belatedly was rejected by the order dated 7.3.94
(Annexure.A.7) on the ground of limitation. Aggrieved
by that, the applicant has filed this application
challenging the impugned orders for a direction to the

/...2



respondents to reinstate him in service with all consequential benefits.

2. In the impugned order dated 6.5.92, the disciplinary authority has stated as follows:

"I accept the finding and hereby dismiss Sweeper Nank Chand, No.1/2 from the force with immediate effect. The period of absence is treated as leave without pay."

Once the unauthorised absence is regularised by grant of leave it is not permissible to award any penalty for the same absence. On the above point there is catena of rulings of various courts including the Apex Court in State of Punjab Vs. Bakshish Singh, JT 1998 (7) SC. 142 that once a period of unauthorised leave is regularised by grant of any kind of leave, no penalty can be imposed for that unauthorised leave. However, as the appellate authority has not considered the appeal on merits on the ground that the appeal was filed belatedly.

3. In the light of the legal position, we are of the view that the impugned order of penalty cannot be sustained and therefore there is no meaning in remitting the case to the appellate authority for deciding the appeal condoning the delay. Though there has been some delay, the appellate authority should have in the light of the legal position decided the appeal on merits. Since the appellate authority's order dismissing the appeal is dated 7.3.94 this application is within the period of limitation.

(7)

4. In the result the application is allowed. The impugned orders are set aside and the respondents are directed to reinstate the applicant in service forthwith and to give him backwages and all other consequential benefits. Since the applicant has been responsible for the delay in finalisation of the case by not filing the appeal in time, we direct he may be given only fifty percent of the backwages. No order as to costs.

Dated this 16th day of July, 1999


S.P. BISWAS
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

dbc