

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(1) Regn.No. 2086/90 Date of decision:25.8.93.

Shri Bishamber Singh & ors.... Petitioners
vs.

Delhi Administration & ors.... Respondents

(2) T-1077/85(CW 2897/84) Sh.Jaswant Singh ..Petitioiner

vs

Union of India & ors. ...Respondents

For the petitioners .. Sh.Gobind Mukhoy,
Sr.Counsel with
Sh.S.P.Sharma,
counsel.

For the Respondents .. Sh.Feroze Ahmed
proxy counsel
for Sh.Vinay
Sabharwal, counsel.

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. B.N. DHOUNDIYAL, MEMBER (A)

JUDGEMENT(ORAL)

(By Hon'ble Mr. Justice S.K.
Dhaon, Vice Chairman)

The controversy involved in both the above-mentioned cases is similar. They have been heard together and, therefore, they are being disposed by a common judgement.

2. On or about 17.4.67, by two different but similar orders, the services of the Constables (recruits) were terminated under the purported exercise of power under Rule 5 of the Central Civil Services(Temporary Service) Rules. 1014 Constables(recruits) were affected by such orders. Some of them challenged the legality of the orders. The orders were set aside in their cases. It now appears to be an admitted position that out of 1014 Constables(recruits), 717 Constables(recruits) have been reinstated.

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in pursuance of the orders passed by the High Court of Delhi and this Tribunal. The petitioners in these two cases are amongst/ remaining Constables(recruits) who are yet to be reinstated.

3. In the counter-affidavit filed on behalf of the respondents, it is not denied that the petitioners before us stand on the same footing as the Constables(recruits) who have already been reinstated in service. The only defence taken is that these applications are barred by time.

4. Transferred Application No.1077/85 had been received by this Tribunal on transfer from the High Court of Delhi where Shri Jaswant Singh had preferred a writ petition on 12.11.84, the petition being Civil Writ No.2897 of 1984.

5. The High Court of Delhi on 18.7.1983 while disposing of Writ Petitions No.270/78 & 937/78 quashed the orders of termination and directed that the petitioners before it would be deemed to be in continued service and be treated as such, but without prejudice to such action as the authorities may be advised to take in relation to the matter in accordance with law. The High Court also made certain other observations with which we are not concerned at this stage.

6. Some of the writ petitions which had been preferred by some of the Constables(recruits) and were pending in the High Court were transferred to this Tribunal. This Tribunal on 26.11.87 disposed of the said transferred cases by a common judgement. Following ^{it} the judgement of the High Court/ passed orders

in terms similar to those passed by the High Court. The result was that the petitioners before the Tribunal were reinstated in service.

7. On 4.5.1990, the Supreme Court in Civil Appeals No.3376-3382 of 1988 preferred by Lt.Governor of Delhi & ors. upheld the order of the Delhi High Court dated 18.7.1983 and dismissed the appeals. Soon thereafter, the petitioners in OA No.2086/90 filed a/petition under Article 32 of the Constitution before the Supreme Court. On 16.8.1990, the Supreme Court disposed of the said writ petition before it and directed the petitioners therein to approach this Tribunal. Thereafter, OA No.2086/90 was preferred in this Tribunal.

8. It is true that the petitioners are, in substance, challenging the legality of the orders passed way back in 1967. The question, therefore, is whether these / should be thrown out on the ground of limitation. In all fairness, the respondents should have given the benefit of the judgement of the High Court of Delhi, this Tribunal and the Supreme Court to the petitioners also. We see no reason as to why the petitioners should not be placed at par with those who have already been reinstated in service. Justice and fair play demand that, in the circumstances of these cases, we should not throw out these applications on the mere ground that they are barred by time. There appears to be a case where the delay, if any, should be condoned.

9. This matter had been called out in the revised list. We have been informed that

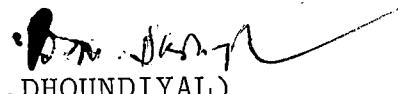
Shri Vinay Sabharwal, learned counsel who appears for the respondents, is in some personal difficulty and, therefore, is unable to attend to these proceedings. Such a request was not made when we assembled at 10.30a.m.. Such a request was made on his behalf when the case was called out in the revised list. A learned counsel from the Supreme Court is appearing in this case and he was asked to wait till the matter was taken up in the revised list. In the circumstances, we are unable to accommodate Shri Sabharwal. The learned counsel holding the 'brief' of Shri Sabharwal has placed reliance upon the judgement of the Supreme Court in the case of BHOOP SINGH Vs. UNION OF INDIA & ORS.

(JT(1992) 3 SC 322) on the question of limitation.

In this case, the order of termination was challenged after 22 years on the ground that similar dismissed employees had been reinstated in service. The Supreme Court held that in absence of any explanation of the inordinate delay, the relief prayed for should have been refused. This case, in our opinion, is not apposite. We have already indicated that the petitioners in OA 2086/90 lost no time after the Supreme Court dismissed the appeal preferred by the Lt.Governor and upheld the judgement of the High Court of Delhi. We have also indicated that the petitioner in the transferred case had sought relief way back in the year 1984. We have already emphasised in our order that we are entertaining these applications, even though they were filed at a belated stage, in the interest of equity and justice.

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10. These applications succeed and are allowed. The orders terminating the services of the petitioners are quashed. The petitioners shall be reinstated in service. We make it clear that we are passing this order strictly in accordance with the orders passed by the High Court of Delhi on 18.7.1983. There shall be no order as to costs.


(B.N.DHOUNDIYAL)
MEMBER(A)


(S.K.DHAON)
VICE-CHAIRMAN(J)

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