

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.2412/90

Date of decision: 16.7.1993. (10)

Ex. Constable Sultan Singh

...Petitioner

Versus

Commissioner of Police & Others

...Respondents

Coram:

The Hon'ble Mr. I.K. Rasgotra, Member (A)
The Hon'ble Mr. C.J. Roy, Member (J)

For the petitioner

Shri Shankar Raju, Counsel.

For the respondents

Shri B.S. Oberoi, proxy
counsel for Shri Anup Bagai,
Counsel.

Judgement(Oral)
(Hon'ble Mr. I.K. Rasgotra)

Shri Sultan Singh, Ex. Constable, Delhi Police has filed this O.A. aggrieved by the order of the respondents, dismissing him from service. The charge against the petitioner is at page 21 of the paperbook. The petitioner herein was co-accused with one Shri Aftab Ahmed. A joint enquiry was held and in the enquiry report the petitioners were found to be guilty. The disciplinary authority passed an order dismissing the petitioner from service with effect from the date of issue of the order. This order is dated 18.9.89. The petitioner filed an appeal which was rejected by the Additional Commissioner of Police vide order dated 5.3.1990. The learned counsel for the petitioner brought to our notice the decision of the Tribunal in OA No.1324/90 decided on 24.9.1991 between Ex. Constable Aftab Ahmed and Commissioner of Police and Others. The Constable Aftab Ahmed was co-accused with the petitioner in the said incident where they are stated to have stopped a truck driver and demanded Rs.100/- for return of the papers which they had

seized from him. After considering all aspects of the case, the Tribunal came to the conclusion:-

"14. In the conspectus of the facts and circumstances of the case, the application is allowed and it is disposed of with the following directions:-

(i) The impugned order dated 18.09.1989 of dismissal of the applicant from service passed by the Disciplinary Authority is set aside and quashed. The impugned orders passed by the Appellate Authority on 15.1.90 and passed by the revision authority on 14.5.90 are also set aside and quashed.

(ii) The applicant will be deemed to have continued in service during the period from 18.9.89 and will be entitled to all consequential benefits.

(iii) The respondents shall comply with the above directions within a period of 3 months from the date of receipt of this order."

2. Shri B.S. Oberoi, learned proxy counsel for Shri Anup Bagai, counsel for the respondents submitted that the Tribunal in the said judgement has not held Rule 16 (3) of Delhi Police (Punishment & Appeal) Rules, 1980 as ultra vires or illegal. In fact the Tribunal has not expressed any opinion on the said Rule. It was in accordance with this rule that the statement made by the key witness Shri Mahavir Singh during preliminary enquiry had ^{been} ~~taken~~ on record during departmental enquiry without giving an opportunity to the petitioner to cross examine the witness. The respondents submit that Shri Mahavir Singh was summoned five times by the Delhi Police but ~~he~~ ^{presence} could not be secured. In the circumstances, he was dropped from the enquiry. However, the fact which has been

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noted by the Tribunal in Aftab Ahmed's (supra) case is that Shri Mahavir Singh was a key witness and his absence is a fatal ~~flat~~ ^d in the enquiry. Having regard to this ~~flat~~ the entire proceedings of the enquiry stand vitiated.

3. Since the case involved the identical issues of law and of fact based on same set of facts against ~~me & the accused~~ ^{as to} ~~the persons have~~ already been decided, we do not see any good reason to ~~not~~ extend identical reliefs to the petitioners before us. The respondents had filed a SLP against the said judgement in Aftab Ahmed's (supra) case which was dismissed by the Hon'ble Supreme Court on 25.3.1992. In the above facts and circumstances we do not find any good reason not to extend the same relief which was granted to Shri Aftab Ahmed to the petitioner before us. The O.A. is disposed of with the following directions:-

- i) The impugned order of dismissal passed by the disciplinary authority dated 18.9.1989 and the appellate order passed by the Additional Commissioner of Police dated 5.3.1990 are set aside and quashed.
- ii) The petitioner shall be deemed to have continued in service during the period from 18.9.1989 and would be entitled to all consequential benefits, subject to his satisfying the authorities that he was not gainfully employed during the period he was out of service.
- iii) The respondents shall comply with the above directions as early as possible but preferably within a period of three months from the date of communication of this order. No costs.

Just
(C.J. ROY)
MEMBER(J)

Abhay
(I.K. RASGOTRA)
MEMBER(A)

San.