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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 2737 of 1990

New Delhi this the 15th day of December, 1993

Mr. Justice S.K. Dhaon, Vice-Chairman

Mr. B.N. Dhoundiyal, Member (A)

Shri Pradeep Kumar
R/O House No. 529,
Village & Post Office Khare Khurd,
Delhi-110042.

...Petitioner

By Advocate Shri A.K. Shukla

Versus

1. Delhi Administration,
Service through Chief Secretary,
Old Secretariat,
Delhi.

2. Joint Director of Industries,
Delhi Administration,
C.P.O. Building,
Kashmere Gate,
Delhi.

3. Deputy Director of Industries,
Delhi Administration,
C.P.O. Building,
Kashmere Gate,
Delhi.

...Respondents

None for the respondents

ORDER (ORAL)

Mr. Justice S.K. Dhaon, Vice-Chairman

The petitioner was appointed as a Sweeper on 04.12.1987. This was a temporary appointment on a probation of period of 2 years. On 30.04.1988 an order purporting to be under proviso to Rule 5(2) of the CCS (Temporary Service) Rules, 1965, was passed terminating his services. He made a representation to the Joint Director against the order of termination. He was informed that the proper authority to consider the representation was the Chief Secretary. He made a representation to the Chief Secretary which was finally rejected on 15.11.1990.

2. Before going into the merits of the case, we may first deal with the plea of limitation raised by the respondents. According to the respondents own case, the competent authority to consider the representation/appeal was the Chief Secretary. Admittedly, the Chief

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Secretary passed the order rejecting his appeal on 15.11.1990.

The O.A. was filed on 21.12.1990, the period of limitation commenced with effect from 15.11.1990. The O.A. was, therefore, filed well within time.

3. In the counter-affidavit filed, the averments are as follows. The Deputy Commissioner of Police, Special Branch vide his letter dated 5.2.1988 informed:-

(i) The petitioner was arrested under FIR No.77 of 1983 under Sections 457/511 Police Station, Narela Delhi. The case was discharged on 25.01.84 by the Court of Shri J.R. Aryan, M.M. Delhi.

(ii) The petitioner was arrested in FIR No.221/1983 under Sections 25/54/59 Arms Act P.S. Roshanara, Delhi but was acquitted by the Court of M.M., Delhi on 14.6.1984.

The petitioner had concealed the facts pertaining to his arrest and subsequent discharge in the case mentioned above and, therefore, also rendered himself liable to be unfit for Government service. We take judicial notice of the fact that Sweepers are required to be engaged by the departments and this requirement is perennial. The petitioner has suffered enough for the alleged concealment of some facts by him in the attestation form submitted by him alongwith the employment card given by him as Sweeper. The fact remains that the petitioner was ultimately discharged in the criminal cases which were instituted against him. Therefore, there is no stigma of any conviction.

3. But for the stand taken in the counter-affidavit, the impugned order of termination, on the face of it, is unassailable. However, for the reasons best known to the respondents, reasons have been disclosed in the counter-affidavit for taking action of terminating the services of the petitioner. It appears that before passing the impugned order of termination, the petitioner was not given any opportunity to explain his case. This may be a ground for quashing the impugned

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order. However, in view of the order we are about to pass we need not make any further comment on the impugned order.

4. If the petitioner is otherwise eligible for being given an appointment as Sweeper and if there is a vacancy, the respondents shall consider his case for appointment. While doing so, they shall give preference to the petitioner over freshers.

5. With these directions, this application is disposed of finally but without any order as to costs.

B.N. Dhoondiyai
(B.N. DHOUNDIYAI)
MEMBER (A)
15.12.1993

S.K. Dhoan
(S.K. DHOAN)
VICE CHAIRMAN
15.12.1993

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