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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

Regn.No. OA-913/91 with
MP-1211/91

Date of decision: 16.2.1993

Shri Inderjit Singh

.... Applicant

Versus

Chief Secretary,
Delhi Admn. & Anr.

.... Respondents

For the Applicant

.... Shri J.P. Verghese, Advocate

For the Respondents

.... Ms. Geetha Luthra, Advocate

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice-Chairman(J).

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member.

1. To be referred to the Reporters or not? *ye*

JUDGEMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The applicant, who has worked as a Constable Driver in the Delhi Police, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

- (i) To quash the impugned order of dismissal from service dated 15.3.1984 and the order in appeal dated 22.5.1984 and reinstate the applicant with all consequential benefits, including arrears of pay, promotion, seniority, etc.; and

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(ii) to direct the respondents to correct the

date of birth from 15.9.1956 to 15.9.1958.

2. By the impugned order dated 15.3.1984, the respondents had imposed on the applicant the penalty of dismissal from service after holding an enquiry under the Delhi Police (Punishment and Appeal) Rules, 1980. The misconduct alleged against him was that at the time of his enrolment as Constable (Driver) in the Delhi Police, he gave his date of birth as 15.9.1968 instead of his actual date of birth being 15.9.1958.

3. The applicant had filed in the Delhi High Court C.W. No. 2092/87 which was transferred to this Tribunal (TA-149/87). By order dated 23.7.1987, the High Court held that it had no jurisdiction to entertain the petition filed by him and ordered that it stood transferred to the Tribunal under Section 29 of the Administrative Tribunals Act, 1985. Section 29 had no application to cases filed after 1.11.1985, when this Tribunal was constituted. In view of this, the Tribunal held, by order dated 12.10.1987 that the application does not stand transferred to this Tribunal. However, if the applicant filed an application under Section 19 in respect of the grievance covered by the petition, it would be considered in accordance with law and in particular, subject to the period of limitation laid down in Section 21 of the Act. The petition was returned to the applicant.

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4. Thereafter, the applicant filed OA-1743/87 with MP-1721/87. By judgement dated 19.5.1988, OA-1743/87 was dismissed as time-barred. The petition for condonation of delay was also rejected. The Tribunal observed that "In any event, when a specific order was made by this Tribunal on 12.10.1987 that the Central Administrative Tribunal alone had the jurisdiction in the matter and the writ petition did not stand transferred from the High Court, at least then the applicant should have filed the application before the Central Administrative Tribunal. Instead, he waited for another one month five days for no good reason. We do not find any sufficient cause shown for condoning the delay".

5. The present application seeking the same relief as in OA-1743/87 was filed without making any reference to the judgement dated 19.5.1988 in OA-1743 of 1987. In MP-1211/91, the applicant has prayed for condoning the delay of about 5 years in the interest of justice. The reason given is that at the time of passing the order dated 12.10.1987 in TA-149/87, his advocate fell ill very seriously and there was nobody in his office who could advise the applicant as to what was happening in his matter. His Advocate died after serious illness. Thereafter, he came to know through somebody that some of the papers in his office were thrown away and, therefore, he went to his office and checked the papers. He

found his file there and subsequently, came to know that some order had been passed in his case in 1987. He applied for a copy of the order dated 12.10.1987 and took steps to file the present application.

6. The learned counsel for the respondents argued that after the Tribunal passed the order dated 12.10.1987, the applicant had filed OA-1743 of 1987 which was dismissed as time-barred by judgement dated 19.5.1988. The applicant cannot feign ignorance of his having filed OA-1743 of 1987 and of its dismissal by judgement dated 19.5.1988.

7. We have gone through the records of the case carefully and have heard the learned counsel for both the parties. The learned counsel for the applicant submitted that the applicant did not receive a copy of the judgement dated 19.5.1988 and that the judgement does not constitute res judicata as it did not dispose of OA-1743/87 on the merits. According to him, the dismissal of the said O.A. as time-barred, will not constitute res judicata and he relied upon numerous rulings in support of his contention (vide AIR 1923 Lah. 150; AIR 1929 Mad. 687; AIR 1932 Lab. 452; ILR (1950) All 564; AIR 1950 All 7).

8. We are not impressed by the aforesaid contentions raised by the learned counsel for the applicant. According to the case

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records, a copy of the judgement dated 19.5.1988, was despatched to the applicant on 23.6.1988. The facts and circumstances clearly indicate that the applicant did not pursue his case with the degree of care and vigilance expected of a litigant and he slept over his rights. The dismissal of OA-1743/87, though on the ground of being time-barred, constitutes res judicata. The proper course for him would have been to file a review petition in the Tribunal or to prefer an appeal in the Supreme Court.

9. In the light of the foregoing discussion, we are of the opinion that the present application is not maintainable in law and, accordingly, dismiss the same. There will be no order as to costs.

B.N. Dhoundiyal
(B.N. Dhoundiyal) 16/7/83
Administrative Member

P.K. Kartha
(P.K. Kartha)
Vice-Chairman (Judl.)