

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA 950/1991

Date of decision 29.07.1993

Shri Rakesh Kumar

...Petitioner

Versus

Deputy Commissioner of Police, Delhi

...Respondents

For the Petitioner

...Shri B.B. Raval, Counsel

For the Respondents

...Ms. Anju Doshi, proxy counsel for
Shri D.N. Gobarshan, Counsel

CORAM:

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

1. To be referred to the Reporters or not?

JUDGMENT

(of the Bench delivered by Hon'ble Mr. Justice
S.K. Dhaon, Vice Chairman)

Disciplinary proceedings were initiated against the petitioner. The Enquiry Officer on 6.12.1990 submitted his report to the punishing authority. On 21.12.1990, the punishing authority gave a notice to the petitioner to show cause within a specified time as to why he should not be dismissed from service and as to why the suspension period be not treated as period not spent on duty.

2. On 23.04.1991, the instant O.A. was filed in this Tribunal. The prayer in substance was that the said show cause notice issued by the punishing authority on 21.12.1990 may be quashed. Some orders passed by the enquiry officer were also sought to be quashed. On that day, the Tribunal directed that the respondents should not proceed with the departmental enquiry pursuant to the show cause notice. That order continues to operate even now.

3. A counter-affidavit has been filed on behalf of the respondents. In it, the material averments are these. The petitioner, a Constable, was dismissed from the Force vide order dated 4.4.1991. A copy of the said order of dismissal was sent to the petitioner at his residence through Registered Post A/D vide receipt No.3136 dated 10.04.1991. The same was received by the petitioner on 12.04.1991 ^{as will be evident} by a letter No.CR-3/363/91-92 dated 17.6.1991 received from Superintendent of Post Offices, New Delhi (copy enclosed). ~~The~~ Though the petitioner challenged the show cause notice in the O.A., he made no mention of the order of dismissal in the same.

4. In the rejoinder-affidavit filed, the material averments are these. It is denied that any order of dismissal was ever received by the petitioner. The respondents are put to strict proof thereof. The petitioner had attended the office of the Traffic Police at Civil Lines upto 16.4.1991, on which day he had also collected his subsistence allowance and till date neither anybody prevented him from attending office nor told him anything about his dismissal alleged to have been ordered on 4.4.1991. However, on 17.4.1991, when he went, as usual, to the Traffic Police Office at Civil Lines, he was verbally told that he was dismissed, but no copy of the order of dismissal was served to him even on that day, i.e., 17.4.1991, but he was asked not to attend the office any more. The petitioner reiterates that till date he was not served with the alleged order of dismissal and that he was within his rights to challenge the show cause notice.

5. The petitioner filed a Miscellaneous Petition No.699/1992 in the O.A. praying for some interim relief. On 18.05.1993, an order was passed that the matter may be listed on 27.07.1993 for directions/hearing on the application for interim relief.

6. On 27.07.1993, the matter came up before us. We pointed out to the learned counsel for the petitioner that in view of the fact that on 4.4.1991 an order dismissing the petitioner from service had been passed, the instant O.A. preferred on 23.4.1991 was an infructuous one and it continues to be infructuous. We pointed

out to the learned counsel for the petitioner that the petitioner had two options. The first was that he could amend the instant O.A. for the purpose of challenging the order of dismissal. The second was that he could prefer an appeal against the order of dismissal. Learned counsel stated that the petitioner would prefer an appeal. Therefore, we expressed our opinion that, since the O.A. does not survive, it should be dismissed. Learned counsel pointed out that no order of dismissal could be passed without hearing him on the merits of the O.A. We asked him to advance arguments in support of the O.A. He pointed out that since the O.A. has not been listed for final hearing, he would not advance his arguments. We expressed the opinion that we would direct that the O.A. shall be posted for final hearing after one week. Learned counsel insisted that the date of the hearing should be fixed by us after the decision of the appeal to be preferred by the petitioner. We reserved our orders in the O.A.

7. In our opinion, the petitioner on 23.04.1991 preferred an infructuous O.A. in this Tribunal. The O.A. continues to be infructuous even now. We accordingly dismiss the same. The interim order passed on 23.04.1991 is hereby vacated.

8. There shall be no order as to costs.

(B.N. DHOUDIYAL)
MEMBER (A)
29.07.1993

(S.K. DHAON)
VICE CHAIRMAN
29.07.1993

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