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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1116/2004

New Delhi, this the 16th day of December, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)

Jai Chand
S/o Mr. Kali Charan
Resident of the Address
369, Type-II, Meer Dard Lane
L.N.J.P. Hospital Campus
New Delhi – 110 002. ... Applicant

(By Advocate: Sh. Tarun Sharma with Ms. Anjali Chauhan)

Versus

1. Government of N.C.T., Delhi
Through its Chief Secretary
Delhi Secretariat
Indra Prastha
New Delhi – 110 002.
2. Lieutenant Governor of Delhi
Raj Niwas
New Delhi.
3. Principle Secretary (Medical)
Department of Medical and Public Health
Government of N.C.T.
Delhi Secretariat
Indra Prastha
New Delhi.
4. Medical Superintendent
Guru Nanak Eye Centre
New Delhi – 110 002. ... Respondents

(By Advocate: Mrs. P.K.Gupta)

O R D E R

By Mr. Justice V.S.Aggarwal:

Applicant (Jai Chand) was appointed as Nursing Orderly in Guru Nanak Eye Centre, Delhi On 15.4.1991, a First Information Report (for short 'FIR') was registered against him with respect to offences punishable under Sections 376/323/511 of the Indian

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Penal Code. The applicant was arrested. In pursuance of his arrest, he was placed under suspension invoking Sub-rule (1) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. A chargesheet was served on the applicant for initiation of the departmental proceedings. The learned Additional Sessions Judge on 19.3.1993, held the applicant guilty of the above said offences and sentenced him for a period of three and half years rigorous imprisonment along with a fine of Rs.500/- As a result of the action of the respondents, Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 had been pressed into service. Thereafter the applicant was given opportunity of appearance. An order was passed dismissing him from service. The said order reads:

“O R D E R

Whereas Shri Jai Chand, Nursing Orderly has been convicted on a criminal charge under section 376/511/323 IPC in the session case No.82/91 in the Court of Sh. H.C.Mittal, Additional Session Judge Delhi.

And where as it is considered that the conduct of the said Shri Jai Chand, Nursing Orderly which has led to his conviction is such as to render his further retention in the public service undesirable.

Now in exercise of the powers conferred by Rule 19(i) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 undersigned hereby dismissed the said Shri Jai Chand, Nursing Orderly from service with effect from 17.6.1993.”

2. In the meantime, the applicant even had filed an appeal in the Delhi High Court. It is relevant to mention that the appeal filed by him under the CCS (CCA) Rules had been dismissed. The applicant contends that in the Delhi High Court, he was only held guilty of the offence punishable under Section 354 of the Indian

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Penal Code and the sentence had been reduced to the one already undergone since the applicant had been behind the Bar for 18 months. On the strength of the same, he contends that the order dismissing him from the service should be quashed besides the order dismissing his appeal dated 22.6.1993.

3. In the reply filed, application is being contested. The basic facts are not in dispute but it is contended that the order so passed is in accordance with law and there is no ground to review the same.

4. We have heard the parties' counsel and have seen the relevant record.

5. Learned counsel for the respondents at the outset, took up the objection that the present application is barred by time because according to her, order dismissing the applicant was passed on 22.6.1993 and his appeal was dismissed on 13.6.1996. The present application has been filed on 28.4.2004, i.e., more than one year after the appeal was dismissed. According to her, the review application was not maintainable and, therefore, the subsequent appeal would not extend the period of limitation.

6. In the facts of the case, we find that the contentions so raised cannot be ignored. The period of limitation of one year expired after the order dismissing the applicant was passed. Subsequent representation and order on appeal after the limitation has expired would not be maintainable and it will not extend the period of limitation. Otherwise also, the Delhi High Court had decided the criminal appeal filed by the applicant and held him guilty of the punishment under Section 376 of IPC on 2.2.1996. After the dismissal of the same, even the applicant had not cared

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to take any steps. He has not even filed an application for condonation of delay. Resultantly, we have no hesitation in holding that the application is barred by time.

7. There is another way of looking at the matter. The review application has been sent only on 20.5.1998. It was much after the entire period of limitation had expired and even more than two years after the criminal appeal was decided. The net result, therefore, is the same.

8. Even on merits of the matter, the allegations against the applicant were that the prosecutrix was on duty from 9 P.M. to 7.30 A.M. in the Operation Theatre. The applicant was also on duty. At about 9.45 PM after the prosecutrix had finished her routine work, she came to the Post Operation room of the Theater. The applicant also arrived at and he caught hold of her forcibly, laid her down on the bed, broke the string of her Pyjama, gave a tooth bite on her left cheek and ~~turned~~^{to} her underwear. He even had removed her sanitary pad. Prosecutrix had not given up. She had pushed the applicant and ran to the Reception at the first floor of the building. She narrated the incident to Sister A. Mathew. Later the Head of the Department had arrived.

9. The facts clearly show that applicant was held guilty of the offence punishable under Section 354 of IPC and was involved in a moral turpitude. Taking stock of these facts, indeed a lenient view will not be permissible and the penalty cannot be stated to be disproportionate to the alleged dereliction of duty.

10. No other arguments have been advanced.

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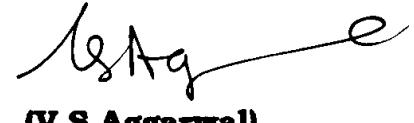
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11. For these reasons, the Original Application being without merit must fail and is dismissed.



(S.A. Singh)

Member (A)



(V.S. Aggarwal)

Chairman

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