

30

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1651/2004

Hon'ble Shri Justice B. Panigrahi, Chairman
Hon'ble Smt. Chitra Chopra, Member (A)

New Delhi, this the 23rd day of August, 2006

Constable (Driver) Pawan Kumar,
S/o Shri Bhoop Singh,
R/o Village & P.O. Ladrawan,
District Jhajjar, Haryana

..... Applicant

(By Advocate: Shri Sachin Chauhan)

vs.

1. Addl. Commissioner of Police, Security,
Police Headquarters, I.P. Estate,
M.S.O. Building, New Delhi

2. Dy. Commissioner of Police,
10th Bn, DAP,
Delhi.

3. Union of India, through
The Secretary,
Ministry of Home Affairs,
North Block, New Delhi

..... Respondents

(By Advocate: Mrs. Avnish Ahlawat, through proxy counsel Ms. Simran)

O R D E R (ORAL)

By Justice B. Panigrahi, Chairman

The applicant was appointed as a Constable (Driver) in Delhi Police in the year 1991. In a disciplinary proceeding, he was removed from service under rule 25 (b) of Delhi Police (Punishment & Appeal) Rules, 1980. The applicant, therefore, being aggrieved by such removal order, filed a case in this Tribunal being C.A. No.396/99 challenging the validity of the order passed under rule 25 (b) of the aforesaid Rules but unfortunately, his claim was dismissed on 3.11.99.

The applicant approached the Hon'ble High Court by filing a C.W.P. No.3449/2000 and the Hon'ble High Court vide its order dated 17.9.2002 upset the order passed by the Tribunal by holding that rule 25(b) of Delhi Police (Punishment & Appeal) Rules was ultra vires. The Hon'ble High Court even imposed a cost of Rs.5000/- against the respondents. Pursuant to the direction issued by the Hon'ble High Court, the applicant was reinstated in service. Therefore, in this case, he has claimed full salary from the date of his termination till reinstatement, on the basis of F.R.54.

2. Shri Chauhan, learned counsel appearing for the applicant has submitted that the applicant was unreasonably kept out of service from 3.2.97 to 10.3.2003 by invoking rule 25 (b) of the aforesaid Rules, which has been declared as unconstitutional. Therefore, the applicant would be deemed to have been in service from the date of termination till reinstatement and as a consequence of the same, he is entitled to be given full wages for the aforesaid period.

3. Ms. Simran, learned proxy counsel appearing on behalf of respondents has repelled the above submission of Shri Chauhan by stating that since the applicant has not worked for the aforesaid period, therefore, he could not be allowed full wages. Another limb of submission advanced by Ms. Simran is that since the applicant's removal from service was set aside on a technical ground by declaring rule 25 (b) of the aforesaid Rules to be ultra vires, therefore, the applicant is not entitled to salary.

4. Upon hearing the learned counsel appearing for both the parties and on perusal of the record, we found that the applicant was removed from service by invoking rule 25 (b) of Delhi Police (Punishment & Appeal) Rules, 1980. The provisions of rule 25 (b) of the said Rules have been declared ultra vires by the Hon'ble High Court. The applicant challenged his removal order before this Tribunal by filing O.A. No.396/99 but his claim was dismissed. Of course, it is

true that the Hon'ble High Court has set aside the order of the Tribunal by declaring rule 25 (b) of Delhi Police (Punishment & Appeal) Rules, 1980 to be ultra vires. However, neither party can be found fault with for the delay caused in prosecuting the litigation. It was on account of law's delay that the matter of disciplinary proceeding could not come to an end. Since the applicant admittedly has not worked from the date of termination till reinstatement, therefore, the respondents cannot be saddled to pay entire salary for the aforesaid period. In this regard, we rely upon the judgment reported in 2006 AIR SCW 3216 in the case of U.P.S.R.T.C. v. Sarada Prasad Misra & another wherein it was observed:

"In our opinion, however, the limited grievance of the learned counsel for the Corporation is well founded. Admittedly, the order of termination was passed on September 6, 1975. Admittedly, an application was made to the Conciliation Officer, Allahabad by the workman on July 17, 1982, that is, after about seven years from the date of termination. In the circumstances, therefore, the Corporation is justified in raising legitimate objection as regards payment of wages for the said period. Since the respondent had invoked jurisdiction of Labour Forum after seven years, it would not be appropriate to direct the appellant-Corporation to pay wages for the intervening period."

5. There is no precise formula as to when the payment of full wages should be allowed by the Courts/Tribunal. It depends upon facts and circumstances of each case. The Court or Tribunal should not be rigid or mechanical but flexible and realistic. The delay caused in prosecuting the litigation before the Tribunal and the Hon'ble High Court cannot be attributable either to the applicant or to the respondents. It was Law's delay for which neither party was responsible.

6. In this background, we, therefore, direct the respondents to pay 50% of the salary to the applicant from the date of removal till the date of his reinstatement. No other claim put forward by the applicant can be allowed. This



exercise be completed within four months from the date of communication of this order. With the above observation, the C.A. is disposed of.

Chitra Chopra
(SMT. CHITRA CHOPRA)
Member (A)

B. Panigrahi
(B. PANIGRAHI)
Chairman

/dkm/

,

1