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Central Administrative Tribunal, Principal Bench, New Delhi

O.A.No.2048/2004

New Delhi, this the 13th day of April, 2005

Hon'ble Mr.Justice V.S. Aggarwal, Chairman
Hon'ble Mr.M.K. Misra, Member(A)

Shri Mahesh Sabawal,
S/o Shri Roop Chand, aged about 37 years,
R/o House No. 583,
Village & P.O. Pooth Kalan,
Delhi-41

...Applicant

(By Advocate: None)

Versus

1. Union of India,
Through its Secretary,
Ministry of Home Affairs,
North Block, New Delhi
2. Commissioner of Police,
Police Head Quarters, I.P. Estate,
M.S.O. Building, New Delhi.
3. Dy. Commissioner of Police,
Provisioning & Lines,
5, Raj Pur Road,
Delhi

...Respondents

(By Advocate: Shri Ajesh Luthra)

Order(Oral)

Justice V.S. Aggarwal, Chairman

There is no appearance on behalf of the applicant. In these circumstances, we have only heard the respondents' counsel and did not have the advantage of hearing the applicant or his counsel.

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2. The facts are simple and can conveniently be delineated. The applicant applied for the post of Constable in Delhi Police in the year 1995. He had disclosed the pendency of a criminal case with respect to an offence punishable under Section 308 I.P.C. The applicant was selected for the post of Constable. His appointment was kept in abeyance till finalization of the criminal case pending against him vide order of 29.3.1996. Subsequently, a show cause notice was given to him dated 13.4.1998 as to why his candidature should not be cancelled. Meanwhile, it appears that the Supreme Court had rendered a judgment entitled Delhi Administration and others vs. Sushil Kumar, JT 1996 (10) SC 34. Keeping in view the same, the candidature of the applicant was cancelled. The applicant submitted a representation but it had been rejected.

3. The applicant had filed O.A. No.1742/99 in this Tribunal. The same was allowed with the following directions:

"5. The OA succeeds and is accordingly allowed. The impugned orders dated 6.8.1998 and 30.11.1998 are quashed. As it is now brought to our notice that the applicant is acquitted in the criminal case, the respondents are directed to consider the case of the applicant for appointment as Constable in terms of the judgment in the Criminal Case. In the circumstances, we order costs of Rs.3000/- on the respondents."

4. In pursuance of the directions of this Tribunal, on 1.6.2001, the applicant was offered an appointment letter. He joined as a Constable.

5. By virtue of the present application, the applicant seeks a direction to treat his date of appointment as 11.1.1996 rather than 1.6.2001 and he should be paid the salary from 11.1.1996 with interest.

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6. The petition is being contested.

7. There is no dispute with the basic facts. According to the respondents, the applicant had not served for the period for which he is claiming salary and, therefore, he is not entitled to the same. Learned counsel also urged that this relief could be claimed in the earlier O.A. and, therefore, it is barred by the principle of Order 2 Rule 2 of the Code of Civil Procedure.

8. It is not in dispute that the Code of Civil Procedure, in strict sense, does not apply to the proceedings before the Tribunal. However, this Tribunal certainly has the trappings of the Civil Court. The basic principles would remain the same.

9. In the O.A. that had earlier been filed, the applicant was only seeking that the order of 6.8.1998 whereby his candidature had been cancelled, should be quashed. Therefore, the question of claiming arrears or any other benefit was not available at that time. The said pleas of the respondents must fail.

10. So far as claiming of the arrears from 11.1.1996 onwards is concerned, a person who has not served for the period will not be entitled to arrears and to that extent, we have no hesitation in rejecting the claim.

11. However the applicant, as is apparent, was selected for the post of Constable in the year 1996. For certain reasons, orders had been passed by the respondents cancelling his candidature, which has been set aside by this Tribunal. Therefore, the applicant cannot be made to suffer for the fault of the respondents. Though, he will not be entitled to arrears for the period he had not served the department, he will certainly be entitled to notional benefit of seniority.

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12. Resultantly, we dispose of the present application holding:

- a) the applicant will not be entitled to arrears for the period he has not served the department; and
- b) he would notionally be given seniority as per the merit list that had been drawn by the respondents.



(M.K. Misra)
Member(A)



(V.S. Aggarwal)
Chairman

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