

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

Date of Decision: 13.11.92

OA 1284/92

RAGHUBIR SINGH. ... APPLICANT.

Vs.

COMMISSIONER OF POLICE & ANR. ... RESPONDENTS.

CORAM:

THE HON. MR. JUSTICE RAM PAL SINGH, VICE CHAIRMAN (J).
THE HON. MR. I.P. GUPTA, MEMBER (A).

For the Applicant ... SHRI SHANKAR RAJU.

For the Respondents ... SHRI P.K. BAHL.

1. Whether Reporters of local papers may be allowed to see the Judgement ?

2. To be referred to the Reporters or not ?

JUDGEMENT (ORAL)

Both the learned counsels were heard finally. In this application, the applicant was removed from service under Article 311, proviso (2)(b) of the Constitution of India. The learned counsel for the applicant contended that in such a case there is no provision for appeal. However, attention in this connection is drawn to the observations of the Apex Court in the case of Tulsi Ram Patel (AIR 1985 SC 1416). Their Lordships observed therein that a Government servant is not wholly without any opportunity of being heard, whenever the second proviso applies, though there is no prior

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opportunity to a Government servant to defend himself against the charges made against him. The following may be cited from the observations of the Apex Court:

"102. In this connection, it must be remembered that a government servant is not wholly without any opportunity. Rules made under the proviso to Article 309 or under Acts referable to that Article generally provide for a right of appeal except in those cases where the order of dismissal, removal or reduction in rank is passed by the President or the Governor of State because they being the highest Constitutional functionaries, there can be no higher authority to which an appeal can lie from an order passed by one of them. Thus, where the second proviso applies, though there is no proper opportunity to a government servant to defend himself against the charges made against him, he has the opportunity to show in an appeal filed by him that the charges made against him are not true. This would be a sufficient compliance with the requirements of natural justice....."

This very principle was also enunciated in the case of Menaka Gandhi (AIR 1978 SC 597) and in the case of Liberty Oil Mills (AIR 1984 SC 1271).

Though, an appeal is not provided for statutorily in the present case but the judgement of the Constitution Bench lays down a law of the land which is to be followed.

Keeping in view the observations of the Apex Court in the case of Tulsi Ram Patel and the principles of natural justice, we direct that the applicant should be allowed a remedy of filing an appeal against the impugned order and any

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delay caused in filing such an appeal shall also stand condoned. The applicant may prefer an appeal to the Commissioner of Police, Delhi, within a period of 15 days from the date of communication of this order and thereafter the Appellate Authority (Commissioner of Police) should dispose of the appeal by a speaking order within three months from the date of receipt of the appeal after giving an opportunity of personal hearing to the applicant. If the applicant feels still aggrieved by such an order, he may approach again this Tribunal and the issues raised in the present OA will remain open for consideration at that stage.

With this direction the OA is disposed of finally with no order as to costs.

I.P. Gupta
(I.P. GUPTA)
MEMBER (A)

13.11.92

Ram Pal Singh
(RAM PAL SINGH)
VICE CHAIRMAN (J)
13.11.92