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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.No. 1336/92

Date of decision: 10.02.1993.

Shri Hari Kishan Applicant
versus
Delhi Administration Respondents

Coram:-

The Hon`ble Sh. I.K. Rasgotra, Member(A)

The Hon`ble Sh. J.P. Sharma, Member(J)

For the applicant : Sh. T.C. Aggarwal, counsel
For the respondents : Sh. D.N. Goburdhan, counsel

JUDGEMENT(ORAL)

(delivered by Hon`ble Sh. I.K. Rasgotra, Member(A)

Heard the learned counsel for both the parties.

The case of the applicant as put forth by the learned counsel for the applicant is that the Tribunal vide its order dated 31.1.1992 rendered in O.A.No.420/91 in the matter of Sh. Hari Kishan Vs. U.O.I. & Ors. have quashed the impugned order dated 12.3.1990 in terms of which the services of the applicants were dispensed with. The respondents were further directed to hold a proper enquiry after giving the applicant adequate opportunity to defend himself and to pass a speaking order. Thereafter the

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respondents issued an order on 22.4.1992 stating that Sh. G.S. Sharma, District Staff Officer (North) shall hold a fresh enquiry in compliance with the judgement dt. 31.1.1992 of C.A.T. into allegations against Sh. Hari Kishan giving him an adequate opportunity to defend himself and submit report of enquiry as early as possible and not later than 22.4.1991. The enquiry officer is said to have called the applicant when he was asked to give his explanation. Thereafter the enquiry officer submitted his report and the disciplinary authority passed the order on 27.4.1992 dispensing with services of the applicant in accordance with Section 6 B Sub Section IA of Bombay Home Guards Act 1947 as extended to UT of Delhi read with Rule 10 of Home Guards Rule 1959.

2. The grievance of the applicant is that in consequence of the Tribunal's order dt. 31.1.1992 he should have been, first, reinstated in service and then given proper opportunity to defend himself. The learned counsel Sh. T.C. Aggarwal stated that no show cause notice was issued to the applicant nor adequate opportunity given to him to cross examine the prosecution witnesses. The procedure adopted was this violative of principles of natural justice.

3. The learned counsel for the respondents brought to our notice the provisions made in the Bombay Home Guard Act, 1947 and Rule 10 in terms of which the services of the applicant have been dispensed with. He also referred us to

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sub section IA of Section 6 B of Bombay Home Guards Act, 1947 which entitles the applicant to file an affidavit. The Commandant General or the Chief Commissioner makes it incumbent on such authority to pass such order as he deemed fit. The learned counsel for the respondents submitted that as would be apparent from the above, the applicant has not exhausted the departmental remedies available to him and unless the departmental remedies are exhausted, his petition is not maintainable.

4. We have considered the matter carefully and gone through the record of the case. From the judgement dt. 31.1.1992, we find that the applicant in O.A.No.420/91 had challenged specifically the impugned order which was quashed. He had also prayed for reinstatement in the Home Guard service with all consequential benefits. Having noticed the prayers of the applicant in paragraph 2 of the order, the Tribunal chose not to pass any order in regard to his reinstatement and other consequential benefits. We are not, therefore, persuaded to accept the contention of the learned counsel for the applicant that the applicant should have been reinstated in consequence to the quashing of the order. If that was so, there is not doubt that Tribunal would ordered reinstatement with consequential benefits.

5. The other grounds referred to by the learned counsel for the applicant is that proper opportunity was not given to the applicant to defend himself in the fresh

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enquiry. We are inclined to take the view that the applicant should have raised all these points in the appeal to the Commandant General or the Chief Commissioner, as the case may be, in accordance with rules and awaited a decision for a reasonable time before coming to the Tribunal.

6. In the above facts and circumstances of the case, we do not propose to interfere in the matter at this stage and direct the applicant to avail of the departmental remedies as available to him. The O.A. is disposed of as above. The applicant shall, however, be at liberty to approach the Tribunal if so advised and if he is aggrieved by the final order so passed by the Commandant General or the Chief Commissioner. No costs.



(J.P. Sharma)

Member(J)

10.02.93



(I.K. Rasgotra)

Member(A)

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