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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.

Regn. No. 212 of 1992

Date of decision 20.1.93

Harpal Singh

Applicant

Shri A.K. Bhardwaj,

Counsel for the applicant

vs.

Delhi Administration & Ors.

Respondents

Shri Mukul Dhawan

Counsel for the respondents

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The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman(J).

The Hon'ble Mr. I.P. Gupta, Member (A).

1. Whether Reporters of all papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

(Judgment of the Bench delivered by Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J).)

J U D G M E N T

By this O.A., filed under Section 19 of the Administrative Tribunals Act of 1985, the applicant challenges Annexure A-1 dated 17.1.92 by which a departmental enquiry has been ordered against him by the Addl. Deputy Commissioner Police (Traffic), Delhi. The applicant obtained the post of a constable by recruitment in the year 1985 in the Delhi Police Force. The applicant is being proceeded in this departmental inquiry for having obtained the enlistment in the Force by deceitful means and by producing a certificate of date of birth which was false. A perusal of the impugned order also indicates that the applicant is also alleged to have obtained entry in the Force by showing his age as below 21 years of age. The applicant challenges the order at Annexure A-1 by which he

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has been suspended. When this O.A. was filed, the applicant had prayed for interim relief and the prayer was granted ex-parte that the respondents shall conclude the departmental inquiry against the applicant, but shall not pronounce the final result until directed to do so. /6

2. The learned counsel for the applicant, Shri A.K. Bhardwaj, contended that the alleged conduct which is being inquired into in the departmental inquiry concerns for the period when he was not in the service of the Delhi Police. He also contends that after a long lapse of time of 7 years, this departmental enquiry is being launched against him. He has placed reliance upon the case of SK. MD. SHAQUE Vs. U.O.I. & ORs. (1986 (6) A.T.C. 828) and on the strength of this judgment argues that after a long lapse of time, the chargesheet cannot be served upon him and no departmental inquiry can be held. We have perused this judgement. It was after 32 years of service that a chargesheet was served upon the applicant and the court had proceeded ex-parte against the respondents as they had not filed their counter. The inquiry was quashed only because it was being taken up after a long lapse of 32 years and hence on the ground of laches, the departmental inquiry was quashed. No such situation in this case exists and hence the decision rendered in Shaque's case does not apply to the fact and circumstances of this case. The applicant is alleged to have obtained the employment as constable in the Police Force of Delhi in the year 1985 and he is being proceeded by the order dated 17.1.92. The applicant is still in his initial stage of employment and the employer has every right to inquire into the alleged misconduct of the applicant.


3. The learned counsel for the applicant, Shri A.K. Bhardwaj, has also placed reliance upon the Single Bench judgment of the Allahabad High Court in the case of Abdul Aziz Khan vs. U.O.I. (1974 (1) S.L.R. p. 67) in which it has been held that a Government servant getting employment by deceitful means is not guilty of the misconduct as the deceitful act was not made ^{by} him during the course of the performance of the duties. We have gone through this lengthy judgment of the Single Judge and with great respect we do not agree with the proposition laid down in this case. Furthermore, the facts and circumstances of this case are completely different

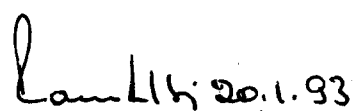
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from the case in hand. In fact, by commencing disciplinary proceedings, the respondents have provided an opportunity to the applicant to defend his case in enquiry or else ^a to resort to other alternative of treating the appointment as void ^{alleged} initio on the ground of having obtained it by fraud after giving a opportunity to the appointee to represent would have been less protection^e in so far as the applicant is concerned.

4. The next argument of the learned counsel for the applicant is that misconduct is not defined in the Delhi Police Act and Annex. A-1 has been ordered for the alleged misconduct committed by the applicant. Section 21 of the Delhi Police Act provides for power to punish in a departmental inquiry. It is for the employer to judge whether the conduct of the applicant is a misconduct or a good conduct. If he has committed, in the opinion of the Department, an act which in their view is a misconduct, the employer has got every right to punish him under Section 21 of the Delhi Police Act. Shri Bhardwaj also placed before us the judgment of a Coordinate Bench in OA 363/90 dated 9.10.90. In this judgment, the subject matter is quite different from the one in hand. In this the barbers and dhobis were said to be performing identical and similar functions and hence the payment of two pay scales to them, i.e., a higher pay scale to the barbers and a lower pay scale to the Dhobis was held to be unjust.

5. This Tribunal shall not interfere with the progress of the departmental inquiry unless and until it is upon unjust or illegal grounds. It would, therefore, not be just and proper to interfere with the departmental inquiry which is being proceeded against the applicant. This O.A. is, therefore, dismissed which has no merit, with no order as to costs. The interim order passed earlier by this Bench stands vacated.


(L.P. GUPTA) 20/1/93
MEMBER (A)


(RAM PAL SINGH) 20.1.93.
VICE-CHAIRMAN (J)