

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. No. 2149/92

DATE OF DECISION: 3.12.92,

KANWAR LAL

...APPLICANT

VERSUS

COMMISSIONER OF POLICE

...RESPONDENTS

MRS. AVNISH AHLAWAT

...COUNSEL FOR THE APPLICANT

SHRI GAJRAJ SINGH

....COUNSEL FOR THE RESPONDENTS

CORAM:

HON'BLE JUSTICE SHRI RAM PAL SINGH, VICE CHAIRMAN (J)

HON'BLE SHRI I.P. GUPTA, ADMINISTRATIVE MEMBER.

J U D G E M E N T (ORAL)

We have heard the learned counsel of both sides. Mrs. Avnish Ahlawat has taken us through the documents. filed along with the OA.

The impugned order of removal/dismissal from service has been passed by the respondents against the applicant under Article 311(2), proviso (2)(b) of the Constitution of India. She contends that as no Appellate Avenue is provided, she could not avail this remedy. The Apex Court on the subject in the case of Union of India & Ors. Vs. Tulsi Ram Patel (AIR 1985 SC 1416) has laid down the law. Though, when an order of removal/dismissal from service is passed under Article 311(2), proviso 2(b) of the Constitution of India, no statutory

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remedy of appeal may be available to the delinquent, yet the Apex Court in the case of Tulsi Ram Patel (supra) in the following words has provided the appellate avenue:-

"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 a 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 view was enunciated earlier in the case of Maneka Gandhi (AIR 1978 SC 597) and in the case of Liberty Oil Mills (AIR 1984 SC 1271). Thus an appellate avenue has been provided to the delinquent by the Apex Court by following the principles of natural justice. We are therefore, of the view that the applicant should also be provided appellate avenue as laid down in Tulsi Ram Patel. We, therefore, pass the following order:

- (1) This OA is dismissed as premature.
- (2) The applicant shall avail the remedy by filing an appeal against the impugned order ^{to} an authority superior to the one which has passed the impugned

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order, within a period of 15 days. Any delay caused in filing this appeal, shall stand condoned by this judgement.

- (3) That Appellate Authority shall after affording an opportunity of representation and of being heard to the delinquent, pass a speaking order on the appeal within the period of two months.
- (4) The applicant, if ~~shall~~ aggrieved by that Appellate order may invoke the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal's Act and all those grounds taken in this OA, shall remain open to him.

The parties shall bear their own costs.


(I.P. Gupta)
Member (A)


(Ram Pal Singh)
Vice Chairman (J)