

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 1242 of 1992

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New Delhi, dated the 30th June, 1997

HON'BLE MR. S.R. ADIGE, MEMBER (A)
HON'BLE Mrs. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri Anand Prakash,
S/o Shri Daya Nand,
R/o vill. Keharka,
P.O. Dutt Nagar,
P.S. Pilana,
Dist. Meerut, U.P.

.... APPLICANT

By Advocate: Shri Shankar Raju

VERSUS

1. Commissioner of Police, Delhi
Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi.
2. Addl. Dy. Commissioner of Police,
North East Dist.,
Welcome Seelampur,
Delhi. RESPONDENTS

By Advocate: Shri Vijay Pandita

ORDER (Oral)

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

Applicant impugns the order dated 7.4.92 (Ann. A-2) dismissing him from service with immediate effect under Article 311 (2) Proviso (b) of the Constitution.

2. From the impugned order it appears that on 17.3.92 at around 2.30 p.m. an information was received that one Shri Darshan Lal was admitted at Mohan Nursing Home, Jafrabad by the police in injured

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condition. It was alleged that the injured Darshan Lal was picked up by Anand Tyagi, constable on the night between 10/11.3.92.

It was alleged that Darshan Lal was tortured by the constable and he did not allow his relatives to meet Darshan Lal. They alleged that whenever they went to see Darshan Lal they were threatened by ^{applicant} Constable Anand Prakash with a warning that if they talked to any of the senior officers, he would break their legs. However, if they cooperated with him, he would release Darshan Lal. It was further stated that during the preliminary enquiry it was found that Darshan Lal was picked up by the AATS Staff comprising Head Constable, Mahipal Singh, Applicant Anand Prakash, Constable Sunil Kumar and Constable Neeraj Kumar on the night between 10/11.3.92 from his residence and was confined and tortured at various places.

3. It appears that Respondents have dismissed the applicant from service under Article 311 (2) ^{Proviso (b)} L of the Constitution on the ground that it was not expected that witnesses will come forward to justify action against the applicant.

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4. We are informed separately that a criminal case has been instituted against the applicant as well as other afore-mentioned persons alleged to be involved under Sections 302/342/323 I.P.C.

5. Applicant's counsel Shri Shankar Raju admits that no appeal has been filed against the impugned order, perhaps under the impression that no appeal could be made against the order passed under Article 311(2) Proviso (b) of the Constitution. In this connection

we note that Section 21 Delhi Police Act which prescribes various punishments that can be inflicted for misconduct, by the competent authority, itself is subject to the provision of the Art. 311 (2) ^(b) of the Constitution and the Delhi Police (P&A) Rules. Section 23 Delhi Police Act provides for an appeal against any order passed against any police officer under Section 21 of the aforesaid Rules.

6. We note that in the impugned ^{dismissal} order no liberty was given to the applicant to file an appeal against the same, which is admittedly ^{other} normal provision followed in disciplinary proceedings.

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7. Respondents' counsel Shri Pandita states that Respondents would have no legal objection to consider an appeal filed even at this stage and dispose of the same in accordance with law.

8. Under the circumstances, we are of the view that in the event applicant files an appeal against the impugned order dated 7.4.92 within two weeks to-day Respondents will condone the delay in filing the same, and consider and dispose of that appeal in accordance with law within three months from the date of receipt of the appeal. While doing so they should also keep in view the CAT, Full Bench ruling dated 17.12.87 in D.N.Singh & Ors. Vs. U.O.I. (Full Bench Judgments of CAT 1989-91 Vol. II Bahri Bros.) wherein it is enjoined upon the Appellate Authority that in cases where the departmental enquiry has been dispensed with, the Appellate Authority should consider whether it was reasonably practicable to hold an inquiry at the time of hearing the appeal.

9. The O.A. is disposed of as aforesaid.
No costs.

Lakshmi Swaminathan
(Mrs. LAKSHMI SWAMINATHAN)
/GK/ Member (J)

Adige
(S.R. ADIGE)
Member (A)