

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(8)

O.A. NO.2312 of 1993

This the 28th day of July, 1997.

HON'BLE SHRI JUSTICE K.M.AGARWAL, CHAIRMAN.

HON'BLE SHRI N.SAHU, MEMBER (A).

Ex. Head Const. (Driver) Phool Chand No.988/Security,
son of Shri Ram Ujagar Tiwari,
previously employed in Delhi Police,
R/o A-16, Ibrahim Pur Extension,
P.O.Mukhmail Pur, Delhi-110036.

....Applicant.

(By Advocate Shri Shankar Raju)

Versus

1. Delhi Administration
through Additional Commissioner of Police,
(Security & Traffic) Police Headquarters,
M.S.O. Building, I.P.Estate,
New Delhi.

2. Additional Dy. Commissioner of Police,
(Security) Main Line,
New Delhi-110001.

....Respondents.

(By Advocate Shri Vijay Pandita)

ORDER

By Justice K.M. Agarwal:

By this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant wants his reinstatement with consequential benefits after quashing the impugned order of dismissal dated ^{4.8.1992} and the appellate order dated 22.7.1993 confirming the order passed by the disciplinary authority.

2. The applicant was initially appointed as a Constable (Driver) in Delhi Police in 1981. He was promoted to the rank of Head Constable (Driver) in 1986. In 1992, offences under Sections 363 and 376 IPC were registered against him in P.S. Civil Lines, Delhi. He was tried for the said offences in Sessions Case No.6/93 by the Court of Additional Sessions Judge, Delhi. He was given the benefit of doubt and accordingly

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acquitted in the Sessions case by judgment dated 21.4.1993. This O.A. was filed in 1993 for the aforesaid reliefs.

3. It is not denied that without holding any inquiry as contemplated under Article 311 of the Constitution, the applicant was dismissed from service. The reason given for dispensing with the inquiry was that the inquiry would not be practicable "because the main witness, the victim is just an infant and cannot stand as a witness against him and the other witnesses who are very poor and residing in Jhuggi cannot dare to depose any thing against the accused HC (driver) Phool Chand a Police officer, the witnesses will take very sufficient time to recover from this traumatic shock and threats from accused. ..." We are, therefore, of the view that it was not a fit case where the departmental inquiry could be dispensed with before imposing the major penalty of dismissal from service. In similar facts and circumstances in **EX. CONST. VASHIST KUMAR vs. THE LT. GOVERNOR OF N.C.T. DELHI, O.A. No.1781/1994** decided on 17.7.1997, the impugned order of dismissal was set aside and following orders and directions were made:

"4. The next question that arises is about the consequential reliefs to be granted to the applicant. The respondents may still hold an inquiry into the alleged misconduct of the applicant even after termination of the criminal trial in his favour. On the date of the impugned order of dismissal the applicant was under suspension. Under these circumstances, we are of the view that the applicant cannot claim reinstatement and his backwages from the date of the impugned order of dismissal. The proper course would be to give liberty to the respondents either to reinstate the applicant or initiate departmental proceedings against him for the alleged misconduct. If the reinstatement is decided, the competent authority may pass appropriate orders in regard to arrears of pay ;and other consequential reliefs in terms of F.R. 54. If it is decided to hold inquiry against him, appropriate orders in regard to the subsistence allowance and/or the pay and allowances to be paid to the applicant for the period between 8.10.1992 to the date of this order may be passed after conclusion of the disciplinary proceedings. In so far as the period between the date of this order and the date of decision to hold disciplinary proceedings against him is concerned, the applicant may or may not be awarded subsistence allowance in terms of F.R. 53."

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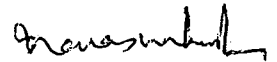
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We are, therefore, of the view that this case also deserves to be disposed of in terms of the aforesaid orders and directions made in O.A. No.1781/1994.

4. In the result, this application succeeds and it is hereby allowed. The impugned orders of dismissal are set aside, but the applicant shall be treated to be under suspension till appropriate order as directed is passed by the competent authority. The respondents are given two months time from the date of communication of this order to take a decision either to reinstate the applicant or to hold D.E. against him for the alleged misconduct and accordingly to pass further consequential orders as indicated in paragraph 4 of the order in O.A. No.1781/94, decided on 17.7.1997 about pay and allowances or subsistence allowance to be paid or not to be paid. No costs.



(K.M.AGARWAL)
Chairman



(N. Sahu)
Member (A).