

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.2391/2003

New Delhi, this the 3rd day of August, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A. SINGH, MEMBER (A)

Sunil Kumar Chaudhary
s/o Shri Sona Ram Chaudhary
r/o D-122, Mahendru Enclave
Opposite Model Town-III
Delhi - 110 033. **Applicant**

(By Advocate: Sh. S.K.Gupta)

Versus

1. Govt. of NCT of Delhi
through Chief Secretary
Delhi Secretariat
I.G.Stadium, I.P.Estate
New Delhi - 110 002.
2. The Principal Secretary (Home)
Govt. of NCT of Delhi
Delhi Secretariat
I.G.Stadium, I.P.Estate
New Delhi - 110 002.
3. Chief Fire Officer
Delhi Fire Service
Fire Headquarters
Connaught Circus
New Delhi - 110 001. Respondents

(By Advocate: Sh. Mohit Madan proxy of Mrs. Avnish Ahlawat)

O R D E R

Justice V.S. Aggarwal:-

Applicant (Sunil Kumar Chaudhary) seeks quashing of the order of 11.8.2003, by virtue of which, his period of suspension was not treated to be spent on duty.

2. The relevant facts which are not in controversy can be delineated. On 12.7.2001, applicant was working as Assistant Divisional Officer in Delhi Fire Service. On 23.7.2001, he along with one Shri S.P.Tyagi were suspended from the date when they were arrested. They faced the trial before the

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Special Judge, Tis Hazari, Delhi with respect to the offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and read with Section 120-B of the Indian Penal Code.

3. The applicant had been released on bail. On 18.11.2002, the Special Judge, Delhi acquitted the applicant and the other co-accused.

4. The grievance of the applicant is that so far as the other co-accused is concerned, after acquittal, his period of suspension has ~~been~~ treated as spent on duty and the applicant is being discriminated. The applicant had earlier filed OA 1769/2003 and this Tribunal had directed that decision should be taken pertaining to the suspension period of the applicant keeping in view the order passed on 27.12.2002 in the case of co-accused Shri S.P.Tyagi.

5. Needless to state that in the reply filed, the application has been contested.

6. Learned counsel for the applicant urged that in the case of the co-delinquent, the period of suspension, on reinstatement, has been treated as period spent on duty while it is not being so done in the case of the applicant who is being discriminated. It was also pointed that suspension was because of the criminal case pending in which the applicant had been arrested and not on account of any disciplinary proceedings and, therefore, the period should be taken to have been spent on duty.

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7. As per the respondents, disciplinary proceedings had been initiated against the applicant and the co-delinquent Shri Tyagi and because of the pending disciplinary proceedings for the said period, there is no ground to treat the period of suspension as spent on duty.

8. We have heard the parties' counsel.

9. On 23.7.2001, when the applicant was suspended, the following order had been passed:

"WHEREAS a case against Sh. Sunil Chaudhary, S.T.O., on current duty charge of Asstt. Divisional Officer, posted in Delhi Fire Service, Delhi in respect of a criminal offence is under investigation/inquiry/trial.

AND WHEREAS the said Sh. Sunil Chaudhary was detained in custody on 12.7.2001 for a period exceeding 48 hours.

Now therefore, the said Sh. Sunil Chaudhary is deemed to have been suspended with effect from the date of detention i.e. 12.7.2001 in terms of Sub-Rule (2) of Rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, and shall remain under suspension until further orders.

It is further ordered that during the period that this order shall remain in force, the headquarters of Sh. Sunil Chaudhary, S.T.O., on Current duty charge of A.D.O., should be Delhi Fire Service Head Quarters, Connaught Lane, New Delhi - 1 and the said Sh. Sunil Chaudhary shall not leave the headquarters without obtaining the previous permission of the undersigned.

Further the order of Current duty charge to the said Sh. Sunil Chaudhary vide letter No.F.26/10/97/Home-III/1182-88 dated 10.6.1998 is also hereby withdrawn.

(BY ORDER AND IN THE NAME OF THE CHIEF SECRETARY, GOVT. OF N.C.T. OF DELHI)

Sh. Sunil Chaudhary,
Delhi Fire Service,
Govt. of NCT of Delhi

Sd/-



Through Chief Fire (MUKESH PRASAD)
Officer (DEPUTY SECRETARY(HOME))
Delhi Fire Service. GOVT. OF N.C.T. OF DELHI"

Perusal of the aforesaid order, clearly shows that the suspension order had been passed because the applicant had been arrested and thereafter he faced a trial. Therefore, it cannot be an order passed under Rule 10(1)(b) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The applicant had not been suspended because of the contemplated or pending disciplinary proceedings.

10. In such an event, after the applicant had been acquitted by the competent jurisdiction, we find little reason to accept the respondents' submission.

11. Not only that, in the case of the co-accused the suspension period had been treated to have been spent on duty and the said order reads:

"O R D E R

Whereas Shashipal Tyagi, FM-898, was suspended w.e.f. 12/7/2001 for his involvement in Anti Corruption case. Now, designated court has been pleased to acquit Shashipal Tyagi from all charges vide its order dated 18/11/02. Keeping in view the judgement passed by Ld. Court and the merits of the case, the suspension of FM-898, Shashipal Tyagi, is hereby revoked. He is directed to furnish Affidavit to the effect that he has not been involved in any other criminal/police case or in any other job during the period of his suspension. Subsequent to filing of Affidavit, he is directed to report for duty at Laxmi Nagar Fire Station.

His suspension period w.e.f. 12/7/2001 to till date will be treated as period spent on duty.

This issues with prior approval of Chief Fire Officer.



Sd/-
ASSISTANT COMMISSIONER(F)
DELHI FIRE SERVICE"

12. As referred to above, the respondents explained that the said order had been passed by the Chief Fire Officer and not by the Chief Secretary while in the present case, the order is being passed by the Chief Secretary after the disciplinary proceedings had been initiated.

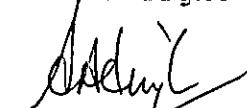
13. Both the authorities were functionaries of the State. In this view of the matter, when the State cannot discriminate between two similarly situated persons, we find no reason as to why the applicant should be treated differently. He has a just claim to contend that he has been discriminated.

14. The present order, which is being harped by the respondents on the ground that it has been passed after disciplinary proceedings had been initiated, would not help the respondents because unnecessarily there has been delay. It was in pursuance of the directions of this Tribunal that the order had been passed pertaining to the period of suspension. It cannot be said that in one case, it is done and in other case it is not, taking shelter of the proceedings having been initiated.

15. On totality of the facts and in the peculiar circumstances, we find no reason as to why two similarly situated persons should be treated differently by the Delhi Administration.

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16. For these reasons, we allow the present application and quash the impugned order dated 11.8.2003. The respondents should pass a fresh order in the light of the findings recorded above.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

/NSN/