

(2008) 09 DEL CK 0169

In the Delhi High Court

Case No : Writ Petition (Civil) No. 2195 of 2000

Ex. Head Constable Attar Singh

APPELLANT

Vs

Union of India (UOI) and Central Administrative Tribunal,
Principal Bench

RESPONDENT

Date of Decision : 24-09-2008

Acts Referred:

Citation : (2008) 09 DEL CK 0169

Hon'ble Judges : Suresh Kait, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : Arun Bhardwaj, for the Appellant; Anusuya Salwan, for the Respondent

Final Decision : Allowed

Judgement

Madan B. Lokur, J.—The Petitioner is aggrieved by an order dated 8th October, 1999 passed by the Central Administrative Tribunal, Principal Bench in OA No. 1678/1995.

2. It appears that a departmental enquiry was held against the Petitioner on the basis of a chargesheet and summary of allegations issued to him in 1978. As a result of the departmental enquiry, the Petitioner was found guilty of the allegations and an order was passed dismissing him from service.

3. The Petitioner challenged the order of dismissal by filing Original Application No. 1567/1991 in the Tribunal. The Original Application was allowed by an order dated 10th April, 1992 and the order of dismissal was set aside and it was directed that the Petitioner should be reinstated in service. The reason for setting aside the order of dismissal was that it was passed by an authority who was not the Disciplinary Authority. Under these circumstances, the Tribunal gave liberty to the Respondents to take further action against the Petitioner in accordance with law.

4. What the order of the Tribunal means is that the Respondents could have

proceeded from the stage of show cause notice having been issued to the Petitioner post the enquiry report.

5. It appears that for about 3 ? years no steps were taken by the Respondents pursuant to the order of the Tribunal in OA No. 1567/1991. Eventually, on 31st July, 1995 a show cause notice was issued to the Petitioner in respect of the punishment to be awarded to him. The Petitioner filed a reply in which he stated that he did not have the case papers because they pertained to an old matter. He requested for a copy of the case papers to file his reply. However, the relevant papers were not furnished to the Petitioner but he still gave a reply and after considering it, the Disciplinary Authority passed an order dated 18th February, 1997 dismissing the Petitioner from service.

6. The Petitioner challenged the fresh dismissal order by filing Original Application No. 1678/1995 out of which the present proceedings have arisen.

7. By way of justification for the delay in re-starting the proceedings against the Petitioner, the Respondents submitted that the file was misplaced by the Respondents and that there were several other enquiries pending against the Petitioner.

8. The Tribunal found both these reasons to be justified and came to the conclusion that the order of dismissal was also in accordance with law and, therefore, the Original Application was dismissed.

9. Learned Counsel for the Petitioner submits before us that the entire case papers were never before the Disciplinary Authority when he passed the order of dismissal on 18th February, 1997. As such, there was no proper application of mind by the Disciplinary Authority to the merits of the case. It is submitted that in the absence of the relevant file and the consequent non-application of mind by Disciplinary Authority, the order of dismissal must ex-facie be held to be vitiated.

10. We have gone through the order of the Disciplinary Authority and all that he has stated is that he has considered the overall circumstances and material available on record. We put it to learned Counsel for the Respondent whether the material available on record means the entire material pertaining to the disciplinary enquiry or only a part of the material. Learned Counsel candidly informs us, on instructions, that the entire material was not before the Disciplinary Authority. In fact, in the order passed by the Disciplinary Authority itself there is an admission that all the relevant records were not available when the order of dismissal was passed.

11. Under the circumstances, since the entire record was factually not before the Disciplinary Authority, he obviously could not have applied his mind to all the facts and circumstances of the case. It must, therefore, follow that the order passed by the Disciplinary Authority suffers from a non-application of mind to the relevant material. For this reason, the order of dismissal passed against the Petitioner on 18th February, 1997 must be held to be invalid.

12. Consequently, we allow the writ petition and set aside the order dated 8th October, 1999 passed by the Tribunal.

13. The Petitioner will, of course, be entitled to all consequential benefits including notional promotion, etc.

14. We have been told that the Petitioner has since expired. His legal heirs, who are on record, will be entitled to the monetary benefits that would accrue to the Petitioner as a result of this writ petition being allowed.

15. The Respondents will take necessary steps to pay the monetary benefits to the LRs of the Petitioner within a period of three months from today and, in any case, by 31st December, 2008