



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 01st AUGUST, 2022

IN THE MATTER OF:

+ **W.P.(C) 3080/2003**

CONSTABLE SHAKEEL AHMAD

..... Petitioner

Through: Mr. Arvind Kumar Shukla,
Mrs. Neena Shukla, Ms. Anu Singla,
Ms. Prachi Goyal, Mr. Tushar Swami,
Mr. Amit Kumar, Advocates

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Naushad Ahmed Khan, Advocate

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present writ petition is arising out of order dated 01.01.2003 as well as order dated 13.03.2003 passed by the Central Administrative Tribunal dismissing O.A. No.2528/2001 & and the review petition, being R.A.No.76/2003, arising out of O.A. No.2528/2001, titled as Constable Sakeel Ahmed v. Govt. of NCT of Delhi & Anr.

2. The Petitioner has filed the instant writ petition under Article 226 of the Constitution of India with the following prayers:-

“(i) Issue a writ, order or direction in the nature of certiorari or any other writ, direction or order quashing the Impugned Orders dated 01.01,2003 & 13.03.2003 passed by Hon'ble Central Administrative Tribunal dismissing the O.A. No.2528 of 2001 and R.A.



No.76 of 2003 ; and

(ii) Issue a writ, order or direction in the nature of certiorari or any other writ, direction or order quashing the order dated 24.11.1999; and

(iii) Issue a writ, order or direction in the nature of mandamus directing the Respondents to give the benefits of two years of service which have been forfeited by order dated 24.11.1999, giving all consequential benefits as were available to the Petitioner;”

3. The facts of the case reveal that Petitioner herein was serving as a constable in the Delhi Police. It is stated that on account of a complaint given by one Smt. Kaushalya Jain against three Police constables, a departmental inquiry was initiated against them and all the three Police constables were placed under suspension *vide* order dated 23.10.1996.

4. The undisputed facts of the case make it very clear that the Inquiry Officer exonerated all the three Police constables. It is stated that the Disciplinary Authority disagreed with the findings of the Inquiry Officer and not being satisfied with the Inquiry Report, a show cause notice/disagreement note was also furnished to all the three Police constables *vide* order dated 02.02.1998.

5. Finally, an order dated 14.05.1998 was passed in respect of the three Police constables, dismissing them from service against which an appeal was preferred which was dismissed by the Senior Additional Commissioner of Police, New Delhi Range *vide* order dated 05.07.1999. Later on, a Departmental Revision Petition was preferred by the Petitioner before the



Commissioner of Police against the dismissal order dated 14.05.1998 and order dated 05.07.199. The Commissioner of Police *vide* order dated 24.11.1999 set aside the order of dismissal dated 14.05.1998 in respect of all three Police constables and modified the order of punishment of dismissal from service to the punishment of forfeiture of two years' approved service permanently for a period of two years and proportionate reduction in their pay from the date of dismissal to the date of joining their duty was inflicted upon them.

6. It is pertinent to note that two of the Police constables, namely, Brij Pal Singh & Jai Prakash being aggrieved by order dated 24.11.1999, jointly preferred an application bearing O.A. No.31/2000 before the Central Administrative Tribunal (*hereinafter referred to as 'the Tribunal'*) and the Tribunal allowed the said O.A. on 19.12.2000, setting aside the order dated 24.11.1999 passed by the Commissioner of Police and observed that the two Police constables would be entitled to all the consequential benefits as admissible to them.

7. It is stated that the Petitioner herein was under the impression that as the order passed by the Revisional Authority was a common order and he is not required to file an Original Application and under the same misconception, the Petitioner herein did not file any Original Application. However, later on, the Petitioner herein preferred an Original Application with a delay of 290 days and the same was dismissed by the Tribunal by placing reliance on the judgment of State of Karnataka & Ors. v. S M Kottryya & Ors., (1996) 6 SCC 267. The relevant portion of the order dated 01.01.2003 passed by the Central Administrative Tribunal reads as under:-

"9. Our attention has been drawn to apprise the



decision of the Apex Court in the case of State of Kamataka and others Vs. S.M. Kotrayya and others, (1996) 6 Supreme Court Cases 267, in the cited case, S.M. Kotrayya and others, who were Respondents before the Supreme Court, were working as teachers in the Department of Education. They had availed of Leave Travel Concession during the year 1981-82. But it was later found that they had never utilised the benefit of LTC had drawn the amount and used it. The recovery was made in the year 1984-86. Certain other persons who are similarly circumstanced had challenged the recovery before the Central Administrative Tribunal and their applications had been allowed. On coming to know all these facts, S.M. Kotrayya and others had filed the application before this Tribunal and prayed for condonation of delay. The Supreme Court repelled the said ground for condonation of delay and held as follows:

“9. Thus considered, we hold that it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-sections (1) or (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was



not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay.”

10. The decision of the Apex Court will have its binding force. The facts by and large are Para material as have been noted above with the present petition. Others having succeeded in challenging the said order, the Applicant did not care to challenge the said order at an appropriate time. It is too late for the Applicant to assail the same on the ground that the other persons have succeeded in getting the same order being quashed and the present application seeks condonation of delay should be allowed by not following the decision of the Supreme Court in the case of S.M. Kotrayya (Supra).

11. We find that there is no just and sufficient ground for condonation of delay.

12. Resultantly, both MA 2113/2001 and MA 2718/2001 as well as Original Application fail and are accordingly dismissed.”

8. This Court has carefully gone through the judgment of State of Karnataka v. S M Kottaiyya, (1996) 6 SCC 267.

9. In the aforesaid case, the Respondents therein were working as teachers in the Department of Education and they availed Leave Travel Concession (LTC) during the year 1981-82. The charge against them was that they never utilized the benefit of LTC but had drawn the amount and used it. Recovery was made in the year 1984-86 and certain employees being aggrieved by the recovery came before the Tribunal and the Tribunal allowed their applications in August, 1989.



10. In the aforesaid case, some of the persons also approached the Tribunal in the year 1989 and as the recovery was of the year 1984-86, the Tribunal condoned the delay in cases of persons who had approached the Tribunal in the year 1989. Even though some of the cases were allowed by the Tribunal, the matter was challenged in the Supreme Court. The Supreme Court has held that the delay could not have been condoned keeping in view Section 21 of the Administrative Tribunals Act, 1985.

11. In the considered opinion of this Court, the judgment is distinguishable on facts. S M Kottaiyya (supra) was the case pertaining to the year 1984-86, and the parties approached the Tribunal in the year 1989, and, therefore, the order passed by the Tribunal deserves to be set aside.

12. In the case of Tukaram Kana Joshi & Ors. v. Maharashtra Industrial Development Corporation & Ors., (2013) 1 SCC 353, the Apex Court in paragraph 12 has held as under:-

“12. The State, especially a welfare State which is governed by the rule of law, cannot arrogate itself to a status beyond one that is provided by the Constitution. Our Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as



the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience.”

13. In light of the aforesaid judgment, especially, keeping in view the fact that the Inquiry was common and the punishment was same for all the three Police constables, and in respect of two of the Police constables, the punishment has been set aside by the Tribunal, there appears to be no justification in denying the relief as prayed for by the Petitioner herein. Therefore, the writ petition is allowed. The order of punishment is set aside. The Petitioner herein shall be entitled to the same benefits which have been extended to the other identically placed parties, who were Applicants in O.A. No.31/2000.

14. The petition is disposed of with the above observations.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

AUGUST 01, 2022

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