

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1278 of 2002

New Delhi, this the 14th day of January, 2003

**HON'BLE MR. V. K. MAJOTRA, MEMBER (A)
HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)**

Narinder Singh
S/o Shri Siak Ram
R/o D/1-44,
Sector-16, Rohini,
Delhi-110 085.

-APPLICANT

(By Advocate: Shri Arun Bhardwaj)

Versus

1. Union of India
Through Commissioner of Police,
P.H.Q., I.P. Estate,
New Delhi.

2. Deputy Commissioner of Police,
IGI Airport,
New Delhi.

-RESPONDENTS

(By Advocate: Shri Rishi Prakash)

O R D E R (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant is aggrieved of orders dated 16.8.2001 and 11.4.2002 vide which back wages have been denied to the applicant as his intervening period from the date of dismissal to the date of reinstatement has been treated initially as spent on duty and later as dies non etc.

2. The applicant alleges that both these orders are illegal and not sustainable. He has taken various grounds to assail the same.

3. However, the facts reveal that the applicant was proceeded departmentally on the allegations that while posted in the Vigilance Cell at the IGI Airport, he

accepted illegal gratification for getting two Afgan Nationals cleared through Customs without paying the due custom duties. The amount of illegal gratification of 100 US Dollars and Rs.1500/- has been recovered from the possession of the applicant and the same was deposited in Makhana of PS, 1GI Air Port. After the departmental enquiry he was dismissed and his appeal against that order was also rejected. The applicant had challenged the same vide an OA 95/98 which was allowed. The respondents were directed to reinstate the applicant with immediate effect. While allowing the OA the court specifically observed "we do not consider it necessary to pass any order about back wages. However, it is clarified that the applicant will be entitled to his wages effective from today (from the date of judgment, i.e., 21.11.2000 upto the time of his actual reinstatement also)". The department had probably gone to the Hon'ble High Court in CWP but the same seems to have been dismissed and ultimately the department passed the impugned orders. First of such order was passed vide Annexure A-4 wherein it was stated that the applicant is reinstated in service w.e.f.21.11.2000, i.e., the date of judgment. He will be entitled to his wages from the date of judgment, i.e., 21.11.2000 till the date of joining his duty in Delhi Police will be treated in LKD but the said order shall be subject to filing of CWP in the Hon'ble High Court of Delhi. This was later modified vide another order dated 16.8.2001 wherein it was mentioned that the intervening period between the date of dismissal to the date of reinstatement shall be treated as period spent on duty. However, he would not be

6

.3.

entitled to draw back wages for the said period on the principle of 'No Work No Pay'. This order was again modified by order dated 11.4.2002 wherein the said period was treated to be allowed as dies non. Both these orders have been annexed as Annexure-A1 and Annexure-1 and are on pages 16 and 17 of the paper book. The applicant has challenged both these orders.

4. The OA is opposed by the respondents. The respondents submitted that since the court had not allowed back wages so they did not allow the back wages and by passing the order dated 16.8.2001 the intervening period shall be treated as already spent on duty and by passing another order dated 11.4.2002 treating the same as dies non the main purpose of the department is to deny back wages as the same had not been allowed by the court itself.

5. We have heard the learned counsel for the parties and gone through the records of the case.

6. The learned counsel appearing of the applicant submitted that recently the Court No.1 in a case in OA 1832/2001 in a similar situation had allowed the back wages and in this case also the applicant should be allowed back wages. The fact that the court while allowing the earlier OA of the applicant had simply mentioned that we do not consider it necessary to pass any order about back wages that means that the court had left it open for the department to pass order with regard to the back wages and in the judgment relied upon by the counsel for the applicant also, in a similar situation as

Kw

held in a previous judgment wherein it was mentioned that the applicant shall be entitled to reinstatement with consequential benefits including arrears of pay till reinstatement so the learned counsel for the applicant submitted that the ratio of the judgment in OA 1832/2001 squarely applies to the present case and the applicant is entitled to back wages also.

7. In our view, the contention as raised by the learned counsel for the applicant, has no merits because in the case relied upon by the applicant the court had allowed the consequential benefits and even thereafter the department did not allow the back wages so in the subsequent OA the Tribunal had allowed the back wages and in the OA of the present applicant wherein the dismissal was challenged the court had specifically mentioned that we do not consider it necessary to pass any order about back wages which amounts to denial of back wages so the applicant cannot insist that he is entitled to back wages and the OA should be allowed to that extent.

8. However, the counsel for the applicant then further submitted that the order dated 11.4.2002 which mentions that the intervening period shall be treated as dies non has again civil consequences and the order of dies non could not have been passed without issuing any show cause notice to the applicant. However, vide order dated 16.8.2001 it has been directed that the intervening period shall be treated as period spent on duty though the applicant may not be entitled to back wages, i.e., rather an inappropriate order and in our view also the order vide which the intervening period has been held

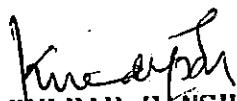
[Signature]

10

.5.

should have been declared only after giving a notice to the applicant and as such this order cannot be sustained in the eyes of law so the order dated 11.4.2002 is quashed. However, there does not appear to be any lapse in the order dated 16.8.2001, as such no order is required to be passed with regard to order dated 16.8.2001.

9. Accordingly, the OA is disposed of with the above directions. No costs.


(KULDIP SINGH)
MEMBER(J)


(V.K. MAJOTRA)
MEMBER(A)

Rakesh