

Central Administrative Tribunal, Principal Bench

Original Application No. 2727 of 2002

New Delhi, this the 22nd day of July, 2003

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Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K. Naik, Member(A)

Yad Ram
Constable of Delhi Police
R/o Villi.Bhadurpur,
PO Intoli, PS Rani
Dist. Alwar, Rajasthan

.... Applicant

(By Advocate: Shri Anil Singal)

Versus

1. Commissioner of Police,
Police Head Quarters,
I.P.Estate, New Delhi

2. DCP (PCR)
Police Head Quarters,
I.P.Estate, New Delhi

.... Respondents

(By Advocate: Shri Rishi Prakash)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The applicant was working as a Constable in Delhi Police. He was charged for misconduct involving himself in corrupt activities and dereliction of duties. It was alleged that he along with Head Constable Karan Singh and ASI Ishwar Singh while posted at PCR Van Z-50 based at Dwarka near Madhu Vihar from 8 PM to 8 AM on the night intervening 5/6.7.98 reached at Block No.16, Sector-5, Dwarka and started beating the Chowkidar and other labourers. They also beat up Om Prakash, the Supervisor when he intervened. The beating was done by Head Constable Karan Singh and ASI Ishwar Singh. They also overturned a drum full of mobil oil.

2. The applicant was placed under suspension w.e.f. 15.7.98. Departmental proceedings were conducted and

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enquiry officer concluded the enquiry and returned the findings that charge against the applicant was not proved. The disciplinary authority did not agree with the findings of the enquiry officer and issued a show cause notice concluding that there was sufficient evidence to prove the charge. The applicant submitted a detailed representation. Thereupon the disciplinary authority on 27.7.99 imposed a penalty of forfeiture of two years approved service with cumulative effect. The pay of the applicant was reduced by two stages in the time scale of pay from Rs.3575/- P.M. to Rs.3425/- P.M. for a period of two years. He preferred an appeal which was dismissed on 8.5.2000.

3. Thereupon O.A. 1626/2000 was filed and this Tribunal on 15.5.2001 had quashed the abovesaid orders with the following findings:

"6. After hearing both the learned counsel and perusing the record placed before us, we find that from the summary of allegations it is quite clear that applicant was not involved in the beating of labourers, Narain Singh and Om Prakash. It has been stated in the summary of allegations that beating was done by HC Karan Singh and ASI (Dvr) Ishwar Singh Tyagi. As far as the other allegation of corrupt activity is concerned, the same has not been proved during the enquiry. The disciplinary authority has not based his finding on any material evidence. Hence we are of the considered view that it is a case of no evidence.

7. In the light of the above discussions, the OA is allowed and the impugned orders, i.e. departmental enquiry order 22.9.1998 (Annexure A-2), summary of allegation dated 6.10.1998 (Annexure A-3), the charge dated 8.2.1999 (Annexure A-4), show cause notice dated 1.4.1999 (Annexure A-6), punishment order dated 29.7.1999 (Annexure A-8) and the appellate order dated (Annexure A-10) are quashed and set aside. Respondents are directed to grant all the consequential benefits to applicant, within a period of three months from the

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date of receipt of a copy of this order."

4. As a result of the said decision of this Tribunal, the Deputy Commissioner of Police, Police Control Room, Delhi on 10.7.2001 had passed the following order:

"In pursuance of judgment of Hon'ble Central Administrative Tribunal, Principal Bench announced on 15.5.2000 in O.A.No.1626/2000 - Yad Ram vs. UOI and/Vigilance, Delhi's memo No.6782/P.Cell/Vig. (P-V) dated 20.6.2001, order No.13042-60/HAP(P-II)/PCR, dated 29.7.99 regarding award of punishment of forfeiture of two years approved service with cumulative effect and appellate authority's order No.423-25/P.Sec. (A) Addl. CP (PCR) dated 8.5.2000 regarding rejection of appeal are hereby quashed and set aside. The applicant/Ct. Yad Ram, 2118/PCR is entitled for all the consequential benefits borne out to him. Besides, the period of suspension w.e.f. 15.7.98 to 29.7.99 is hereby decided as period spent on duty without any arrears as it is left to the discretion of the appointing authority since there is no order as to the fact from the Hon'ble C.A.T., Delhi."

5. To keep the record straight, we deem it necessary to mention that the applicant even had preferred a Contempt Petition No.593/2001 which was disposed of on 16.10.2001. This Tribunal recorded that a separate cause of action had arisen and, therefore, contempt petition was not maintainable. Liberty was granted to the applicant to file a fresh original application.

6. By virtue of the present application, the applicant seeks setting aside of the order of 10.7.2001 and further for a direction to treat the suspension period as spent on duty for all intents and purposes including arrears of pay.

7. The application is being opposed.

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8. Learned counsel for the respondents, at the outset, asserted that the present application is not maintainable because in the earlier O.A.No.1626/2000, this Tribunal had already directed that consequential benefits have to be given to the applicant and, therefore, the present application must fail.

9. One cannot ignore the subsequent facts because when contempt petition was filed for not giving the consequential benefits, this Tribunal recorded that this is a fresh cause and liberty had been granted to file a fresh O.A. In face of this fact, we have not the least hesitation in rejecting the contention that fresh application is not maintainable.

10. Once this Tribunal had already recorded that applicant is entitled to all the consequential benefits, the impugned order whereby the applicant has been denied the arrears, would not stand scrutiny. The order of this Tribunal referred to above, is clear and unambiguous. Now to state that discretion is left with the appointing authority whether to allow the arrears to be paid or not, would not be correct. We have already pointed above that this Tribunal had directed the consequential benefits which would necessarily also include the arrears of pay with respect to the period when the applicant was under suspension. The same has been taken to be spent on duty. In face of the decision between the parties in the earlier original application, we accordingly hold that applicant is entitled to the arrears of pay even for the period when he

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was under suspension.

11. For these reasons, the O.A. is allowed and it is directed that applicant would be entitled to all the benefits including arrears of pay. To that extent, the impugned order is quashed. Payment of the arrears, if any, should be made preferably within four months from the receipt of the certified copy of the present order.

S.K. Naik
(S.K. Naik)

Member(A).

V.S. Aggarwal
(V.S. Aggarwal)
Chairman.

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