

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI**

O.A. NO.2411 of 2015

Orders reserved on : 29.01.2020

Orders pronounced on : 17.02.2020



**Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Pradeep Kumar, Member (A)**

SI Abhaya Narain Yadav,
(D/3775, PIS No.28821003)
S/o Sh. Sripati Singh,
R/o B, 3/3-4, First Floor,
Sector-11, Rohini, Delhi-85.
Group 'C', Aged – 49 years.

.... Applicant

(By Advocate : Shri Sourabh Ahuja)

VERSUS

1. GNCT of Delhi,
Through its Chief Secretary,
Delhi Secretariat, Players Building,
IP Estate, New Delhi.
2. GNCT of Delhi,
Through its Secretary,
Delhi Secretariat, Players Building,
IP Estate, New Delhi.
3. Union of India,
Through its Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
4. Lt. Governor,
GNCT of Delhi,
Raj Niwas,
Shamnath Marg, New Delhi.
5. Commissioner of Police,
Police Headquarters, IP Estate,
MSO Building, New Delhi.

..... Respondents

(By Advocate : Ms. Asiya for Ms. Rashmi Chopra)

ORDER**By Hon'ble Mrs. Justice Vijay Lakshmi, Member (J) :**

By means of this OA, the applicant has prayed for the following reliefs:-



- (a) To quash and set aside the impugned order dated 05-07.11.2014, whereby the applicant's request for grant of President Police Medal for Gallantry was rejected by the respondents.
- (b) Direct the respondents to grant President Police Medal for Gallantry to the Applicant w.e.f. 22/12/2006 (i.e. the date of brave act) with all consequential benefits including seniority, difference in pay, promotion etc.
- (c) Call for the records of the case pertaining to incentive committee which was held on 24.10.2014.
- (d) To award cost in favour of the Applicant and against the respondents.
- (e) To pass any further order, which this Hon'ble Tribunal may deem fit, just and equitable in the facts and circumstances of the case.

2. We have heard Shri Sourabh Ahuja, learned counsel for the applicant, Ms. Asiya for Ms. Rashmi Chopra, learned counsel for the respondents and have carefully gone through the records.

3. Shorn off unnecessary details, the brief facts of the case are that the applicant was working as Sub-Inspector in Delhi Police, when recommendations of the Award of President's Police Medal for Gallantry (hereinafter referred to in short as 'PPMG') were made for some officers of Special Cell (SSB) for



their exemplary gallant act and extra ordinary good work in respect of a successful encounter in which one gangster, namely, Kamal Mehta, who was involved in several criminal cases relating to murder, attempt to murder, robbery, kidnapping for ransom, extortion etc., in Delhi and Haryana, got killed. The gangster Kamal Mehta was carrying a reward of Rs.15,000/- from Haryana Govt and the aforesaid Police operation led to his elimination on 22.12.2006. A list of the following four officers, including the applicant was prepared with recommendations for grant of PPMG on 7.8.2007:-

1. Shri Sanjeev Kumar Yadav, ACP/Spl. Cell.
2. SI (Exe.) Abhaya Narain, No.D-3775 (PIS No.28821003)
3. Ct. (Exe.) Hari Ram, No. 219-SB (PIS No.28911878)
4. Ct. (Exe.) Man Singh, No.205-SB (PIS No.28902475)

4. However, the respondents did not approve the names of any of them for awarding PPMG. The two officials, namely, Sanjeev Kumar Yadav, ACP/Spl. Cell and Constable (Exe.) Hari Ram accepted their fate and did not pursue the matter further. Whereas the applicant and Constable Man Singh made representations before the respondents on 24.11.2008 to reconsider their cases for grant of PPMG. The respondents forwarded the recommendations of Constable (Exe.) Man Singh to Govt. NCT of Delhi but they did not forward the recommendation of the applicant, for the reason that a



departmental inquiry was pending against the applicant since 4.1.2008, at that time. A remark was made by the respondents on the file of the applicant that the recommendation qua him for grant of PPMG would be forwarded to Govt. of NCT of Delhi after conclusion of the departmental inquiry. The said departmental inquiry was concluded on 2.6.2009, whereby the penalty of withholding of next pay increment for a period of one year without cumulative effect, was inflicted on the applicant.

5. The team mate of the applicant, namely, Constable (Exe.) Man Singh was awarded the PPMG on Independence Day, i.e., on 15.8.2009 with all consequential benefits, e.g. extra increment, entry in the service record and other service benefits etc. The applicant being disappointed, made representations to the respondents on 26.11.2009 and 20.12.2009 with request that as the departmental inquiry initiated against him is finalized, his case may be forwarded to Govt. of NCT of Delhi, for award of PPMG on Republic Day, i.e., 26.1.2010. In pursuance of the said representations, the applicant was called upon to appear before the Commissioner of Police on 26.2.2010. The applicant appeared before the Commissioner of Police on the stipulated date and time. However, the representation of the applicant was rejected by the respondents vide order dated 30.6.2010 on the basis of the recommendations of the second Incentive Committee held on 5.4.2010.

6. The applicant by means of an earlier OA No.2356/2011, challenged the aforesaid order before this Tribunal and this Tribunal after taking into consideration the facts and circumstances of the case, disposed off the said OA vide Order dated 22.8.2014, directing the respondents to re-consider the case of the applicant for grant of PPMG.



7. The grievance of the applicant is that despite the aforesaid Order of this Tribunal, the respondents have once again rejected his valid claim by the impugned order dated 5/7.11.2014. Accordingly, it has been prayed that the aforesaid impugned order be set aside.

8. The legality and correctness of the impugned order has been challenged mainly on the following grounds:-

(i) In the earlier order dated 30.6.2010, the respondents have not mentioned anything about the disciplinary proceedings against the applicant, despite the fact that this ground was available to them at that time also. Whereas in the order impugned in the present OA, they have rejected the claim of the applicant on the ground of punishment in DE. Therefore, now the respondents should be estopped from taking this ground as it is barred by principle of *constructive res judicata*. It has been vehemently argued by learned counsel for the applicant that if a ground/plea/reason is available to the employer for denying the relief to the employee but the employer choose not to take such

ground/plea/reason at the first instance, then in that eventuality, the employer is precluded to take such ground/plea/reason in the subsequent order if the matter is remanded to them by any judicial forum.



(ii) The respondents by way of executive order dated 5/7.11.2014 have tried to make a judicial order dated 22.8.2014 passed by this Tribunal in earlier OA 2356/2011, redundant.

(iii) Because the impugned order is non-speaking and cryptic and hence, it is liable to be quashed.

(iv) The respondents have failed to appreciate that the applicant and his team mate Constable (Exe.) Man Singh have performed an identical work. The role of the applicant during encounter of the said gangster was totally identical to the role of Constable (Exe.) Man Singh, therefore, rejecting the claim of the applicant is violative of Article 14 of the Constitution of India.

(v) The applicant in the departmental inquiry has been inflicted with penalty for a misconduct which does not involve moral turpitude, disloyalty or cowardice in action. He has been penalized for misdemeanour and it does not mean that the good work performed by the applicant for which his name was recommended for PPMG, will be wiped out from his service record.

(vi) The respondents have adopted pick and choose policy because in the similar circumstances, they have granted PPMG to one Inspector Vimlesh Kumar in the year 2003 despite the fact that Vimlesh Kumar too was inflicted with the penalty of censure in the year 1999.



9. The respondents have filed counter affidavit in which they have denied all the averments of the OA and have stated that the recommendations were received from the Special Cell for the award of PPMG to the applicant along with other three teammates. The same was placed before the Incentive Committee and Incentive Committee after examining the case, did not recommend the names of any of the aforesaid officers for the award of PPMG. The applicant and Constable (Exe.) Man Singh submitted their representations and their names were reconsidered by the second Incentive Committee, which recommended the name of the Constable (Exe.) Man Singh for the award of PPMG and with regard to the applicant, the said Incentive Committee was of the opinion that his name could only be considered after conclusion of departmental inquiry which was pending against him at that time.

10. After finalization of departmental inquiry, the name of the applicant was once again placed before the Incentive Committee meeting held on 5.11.2009 but the said Committee did not recommend the name of the applicant for award of PPMG. The case of the applicant was reconsidered 4th time by

the Incentive Committee in its meeting held on 28.5.2010, but the applicant was not found suitable.



11. Learned counsel for the respondents has contended that ultimately the Incentive Committee in compliance of the Tribunal's Order dated 22.8.2014 in OA No. 2356/2011, once again considered the name of applicant for the 5th time for award of PPMG and after careful scrutiny of all the relevant documents, the said Committee held as under:-

“there is no change in the circumstances for consideration with reference to SI Abhay Narain Yadav. Further, the major penalty and adverse reporting is very much there in the record of the SI Abhaya Narain Yadav. Hence, the Incentive Committee after much of deliberations afresh finds that the suitability of the SI (Exe.) Abhaya Narain Yadav, in the recommended case does not hold much water and the name of SI (Exe.) Abhaya Narain Yadav, No.D-3775 is not recommended for the award of President's Police Medal for Gallantry.”

12. Learned counsel for the respondents has vehemently contended that award of Medal do not form part of the condition of service. Moreover, it is the prerogative of the Incentive Committee to recommend the name of any Police personnel for award of Medal or any other incentives on the basis of his performance and duties assigned to him in the background of his service record. Therefore, the applicant has no right to challenge it.

13. It is further contended by learned counsel for the respondents that the plea of *constructive res judicata* taken by

the applicant is not tenable in view of the fact that in the first round of litigation in OA 2356/2011 also, the respondents in paras 14 and 15 of their counter affidavit had stated about the departmental enquiry pending against the applicant which formed the basis for rejection of award of PPMG. The judgment passed in the aforesaid OA, copy whereof has been annexed by the applicant as Annexure 10 clearly indicates about the departmental enquiry. The relevant para of the aforesaid judgment is 5.5, which is quoted below:-



“5.5 We have seen the minutes of the incentive Committee held on 29.04.2009 available at Annexure R-3 of this O.A.. We find that both Constable Man Singh and the applicant were considered. While Constable Man Singh was recommended, the applicant’s case was kept in abeyance due to DE proceedings pending against him.”

Hence, it cannot be said that the respondents had not earlier raised this plea so as to create a bar of constructive res judicata.

14. We have considered the rival submissions of learned counsel for the parties.

15. Insofar as the contention of learned counsel for the applicant that nothing has been stated in the impugned minutes of meeting dated 28.5.2010 (communicated to applicant on 30.6.2010), about the departmental enquiry against the applicant, is concerned, we are of the firm view that it does not made any difference insofar as the bar of

constructive res judicata is concerned. Explanation IV of Section 11 of Code of Civil Procedure, 1908 provides that principle of *constructive res judicata*, which reads as under:-

“Explanation IV.- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly any substantially in issue in such suit.”



Thus, a bare perusal of the aforesaid provision makes it amply clear that the matter which might and ought to have been made ground for defence or attack, should be “**in any former suit**” whereas in the present case, the applicant has challenged the impugned order passed by the respondents, on the ground of *constructive res judicata*. The order passed by the respondents, by no stretch of imagination, can be termed as a suit or appeal.

16. In view of the above, the principle of *constructive res judicata* is not applicable in the present case. It is noteworthy that the objection on the ground of *constructive res judicata* has been raised for the first time, in the rejoinder affidavit by the applicant.

17. Admittedly, it is the third round of litigation. The impugned order dated 5/7.11.2014 shows that OA 2356/2011 was earlier dismissed by this Tribunal on 21.3.2013 because “during the arguments, learned counsel for the applicant agreed that his O.A. for grant of this Medal would survive only if the punishment awarded to him in



departmental enquiry is quashed.” However, a Review Application against the aforesaid Order dated 21.3.2013 was filed by the applicant, which was allowed by this Tribunal and the OA was restored. Thus, it is clearly evident that earlier the applicant himself had admitted that his claim for Medal would survive only in case the punishment imposed on him in departmental enquiry is quashed. The applicant has nowhere stated that the punishment imposed on him was challenged by him or it was quashed by any superior authority. Even for the sake of argument, if we ignore the aforesaid admission of the applicant, for a while, we do not find any good ground to direct the respondents to award PPMG to the applicant.

18. The award of PPMG is a prerogative of the concerned authority/Police Commissioner and if an employee has been punished in departmental inquiry, how can he be awarded PPMG? The PPMG and other police medals are conferred on the members of the Police force after considering the meritorious service, gallantry and outstanding devotion to duty. The applicant has not disputed the fact that at the time when the Incentive Committee for award of PPMG convened a meeting, a departmental inquiry was pending against him. He has also not disputed the fact that the departmental inquiry ended in his punishment of withholding of his one increment for one year without cumulative effect.

19. In view of the facts and circumstances of the case, the OA lacks merit and is liable to be dismissed. Accordingly, it is dismissed. No costs.



(Pradeep Kumar)
Member (A)

/ravi/

(Justice Vijay Lakshmi)
Member (J)