

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2538 of 1998

New Delhi, this the 29th day of January, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Shri. Sitya Ram Yadav s/o Shri. Manu Ram
C/o Shri. Ved Prakash H/C, B-457, PTS
Malviya Nagar, New Delhi

-APPLICANT

(By Advocate: Shri B.S. Charya)

Versus

1. Commissioner of Police
Delhi Police, Police Headquarters
MSO Building, I.P. Estate
New Delhi
2. The Dy. Commissioner of Police (West)
Delhi Police, Police Headquarters
MSO Building, I.P. Estate
New Delhi
3. The Dy. Commissioner of Police (HQ-III)
Delhi Police, Police Headquarters
MSO Building, New Delhi
4. Union of India
Ministry of Home Affairs
Government of India
New Delhi (through its Secretary) -RESPONDENTS

(By Advocate: Shri T.D. Yadav, proxy for Shri Vijay Pandita)

O R D E R

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

Applicant in this case has a grievance that his retiral benefits have not been paid. He has, therefore, prayed for the following reliefs:

- (a) action of the respondents in not releasing the amount of gratuity, pension, commutation, leave encashment, provident fund and other retiral benefits be quashed;
- (b) call upon the respondents to release the aforesaid amount together with arrears of subsistence allowance from 15.9.92 to 31.3.95 and also hold that the action of the respondents in levying damages @ Rs. 1302.80 per month for the period from 15.9.92 to 30.9.95 vide letter dated 30.10.98 is illegal, invalid, arbitrary, whimsical and inoperative; and

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- (c) call upon the respondents to immediately pay the arrears accruing to the applicant on account of the aforesaid dues together with interest @ 18% per annum as is permissible under the law."

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2. Facts in brief are that applicant was working in Delhi Police in the rank of Sub-Inspector. On 11.3.85, he was placed under suspension on the ground that a case under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 read with Section 161 IPC was registered with the CBI against him. The said case was tried by the Special Judge and applicant was convicted vide order dated 20.4.89, inflicting the punishment of 2 years R.I. and fine of Rs.1000/-/. The applicant filed an appeal challenging the order of the Special Judge which is still pending. Despite the fact that applicant's appeal was pending, respondents are stated to have passed an illegal order 15.9.92, dismissing the applicant from service and further threatening to forcibly dispossess the applicant from Govt. accommodation. The said action of the respondents was challenged before this Tribunal in OA-2619/92. The Tribunal granted stay against the dispossession of the quarter and the interim order continued to operate till the final decision in OA-2619/92. The OA with regard to termination of services was also decided vide judgement dated 24.11.97 whereby the impugned order of dismissal was set aside. The respondents were directed to reinstate the applicant forthwith. Applicant states that the effect of reinstatement was as if he was never removed from service. In the meantime, applicant retired on 31.3.95

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on attaining the age of superannuation. Therefore, he became entitled to retiral benefits after 31.3.95 in accordance with CCS (Pension) Rules.

3. In compliance with the judgement of the Tribunal in OA-2619/92, the applicant was reinstated in service with immediate effect without payment of back wages by an order dated 6.3.98. This order further provided that the dues regarding rent/fine for the unauthorised occupation of Govt. quarter be recovered from the applicant in accordance with rules on the subject as he did not vacate the Govt. quarter. Applicant made a representation on 30.8.98 against the order dated 6.3.98 but respondent no.3 issued another memo dated 30.10.98 stating that the recovery of licence fee/damage charges of the quarter be recovered from the dues of the applicant for the period from 15.9.92 to 30.9.95 @ Rs.1302.80. Applicant claims that this order of respondents dated 30.10.98 is illegal and arbitrary as it was within the knowledge of the respondents that the son of the applicant H/C Ved Prakash was an employee of the respondents and as a family member of the applicant, he was residing with the applicant earlier in premises No.B-457, PTS Malviya Nagar, New Delhi. The son of the applicant H/C Ved Prakash was not claiming any HRA and after retirement of the applicant and upon representation made by him, the allotment of the said quarter was transferred in his name w.e.f. 1.4.95 itself. The allotment ceased to exist in the name of the applicant after 31.3.95. Even then, the respondents issued an order of recovery at the rate of Rs.1302.80 per month for the period from 15.9.92 to 5.2.98. The applicant claims

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that since the order of dismissal had been set aside, there was no ground for the respondents to treat him as an unauthorised occupant and applicant was not liable to pay anything towards penalty or damages. Respondents still insisted upon the applicant to pay licence fee/damages at the rate of Rs.1302.80 per month for the period from 15.9.92 to 31.3.95.

4. The O.A. is being contested by respondents. They have pleaded that applicant was dismissed from service on 15.9.92 and the Govt. quarter allotted to the applicant was regularised in the name of his son H/C Ved Prakash only w.e.f. 1.4.95. Though the Tribunal had set aside the order of dismissal but at the same time it was also observed that applicant was liable to pay all the dues as per rules and as such, the licence fee/damage charges levelled on the applicant are justified.

5. I have heard the learned counsel for the parties and gone through the records.

6. As for the retiral benefits are concerned, there is no dispute that applicant had been granted provisional pension pending his appeal before the Hon'ble High Court against his conviction. Therefore, the controversy has narrowed down to the extent whether the applicant was in unauthorised occupation of the quarter in question and was liable to pay licence fee/damage charges to the respondents. The fact remains that vide judgement dated 24.11.99 in OA-2619/92, the Tribunal had set aside the dismissal of the applicant. So he is deemed to have remained in employment of the respondents

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till his superannuation upto 31.3.95. The question to be seen is whether during the period from 15.9.92 to 31.3.95, the applicant was in unauthorised occupation of the Govt. quarter or not.

7. I am of the opinion that since the dismissal of the applicant had been set aside by the Tribunal, it is to be deemed as if the applicant had been reinstated in service with all his perks and facilities attached to the service. Though the Tribunal had observed that applicant was not entitled for payment of arrears but the fact remains that accommodation which was in his possession by virtue of his being in police service, has become a lawful possession of the accommodation as the Tribunal had set aside the dismissal of applicant. Therefore, the respondents were not entitled to charge any damages from the applicant on account of unauthorised occupation of the Government accommodation as immediately on his attaining the age of superannuation, the accommodation was regularised in the name of his son H/C Ved Prakash w.e.f. 1.4.95.

8. Under the circumstances, I find that the order levying damages at the rate of 1302.80 per month for the period from 15.9.92 to 31.3.95, cannot be sustained in the eyes of law. Accordingly I quash the impugned order dated 30.10.98 and direct the respondents to release the amounts to the applicant withheld by them, after adjusting the amount of normal licence fee, as per rules within a period of three months from the date of receipt of a copy of this order. No costs.

Kuldip Singh

(KULDIP SINGH)
MEMBER (JUDL)

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