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Central Administrative Tribunal
Principal Bench, New Delhi.

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OA-2429/94
MA-3958/94

New Delhi this the 31st Day of July, 1995.

Hon'ble Sh. J.P. Sharma, Member(J)
Hon'ble Sh. B.K. Singh, Member(A)

1. Shri Balwan Singh,
(Const.Drivers No.303/DAP)
1st Bn. D.A.P. Delhi),
S/o Sh. Hukam Singh,
R/o V.P.O. Bawana, Delhi.

2. Sh. Balwan Singh,
(Const.Drivers No.286/DAP,
1st Bn. DAP, Delhi),
S/o Sh. Bhoop Singh,
R/o V.P.O. Ladpur, Delhi.

Applicants

(through Sh. D.B. Goswami, advocate)

versus

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

2. Deputy Commissioner of Police,
1st Bn. DAP, Delhi,
Police Head Quarter,
I.P. Estate,
New Delhi.

3. Sh. R.C. Kohli,
Addl. Commissioner of Police,
(P.A.&T) Police Head Quarter,
I.P. Estate, New Delhi.

Respondents

(through Sh. B.S. Oberoi, proxy counsel for
Sh. Anoop Bagai, advocate)

ORDER(ORAL),
delivered by Hon'ble Sh. J.P. Sharma, Member(J)

Both the applicants carry the same name were posted at C.P's Reserve, Vijay Ghat, Delhi during the year 1989. It is stated that they had committed rape on one Smt. Mohini Devi W/o Sh. Kuldeep who was a Cook in the RAC/Camp and F.I.R.No.197 dated 23.5.1989 U/S 376/506/34-IPC, PS Kotwali, Delhi was lodged. The competent authority considering this case on part of the applicants that they entered into alleged intimation

committing of gang rape of said Smt. Mohini Devi and belonging to Disciplinary Force passed an order terminating their services under provisions of Article 311(2) proviso of the Constitution of India i.e.t 27.5.1989. Both the applicants did not project any grievance against that order and that order has become final of terminating the services of the applicant now subject to the impugned order. However, as a result of the investigation of FIR No.197 of 1989, referred to above, a chargesheet was submitted before the criminal court and the case came for trial before the Additional Sessions Judge, Delhi Sh. S.M. Aggarwal. In that case, the evidence of the prosecution witnesses and the defence of the applicants were considered and the Learned Addl. Sessions Judge by the order dated 17.10.1992 acquitted both the accused giving them benefit of doubt (emphasis supplied). It appears that on this acquittal, both the applicants made certain representations against the order of dismissal to the respondent No.2 in which they prayed that since they have been acquitted from the criminal court, they should be reinstated in service and an appeal for redress of their grievance, referred to above. The Addl. Commissioner of Police considered the matter sympathetically holding that there is no bar in holding disciplinary departmental enquiry as envisaged under Rule 12(b) of Delhi Police (Punishment & Appeal) Rules, 1980 on the same charge or on different charge upon the evidence cited in the criminal case and directed the Disciplinary Authority to act accordingly. The period intervening between the date of their dismissal i.e. 27.5.1989 and 29.5.1989 respectively and the date on which they rejoined their duties will be treated as 'dies

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non' and their appeals to that extent were accepted. This order was passed on 24.3.1994. It appears that it was conveyed to the applicant on 4.4.94. The applicants have filed this application on 6.12.94. Aggrieved by the aforesaid order, the applicants have prayed for the grant of the reliefs that the intervening period of five years from the date of their dismissal i.e. 27.5.1989 and 29.5.1989 respectively and the date on which they rejoined their duties the order as 'dies non', may kindly be set aside and the respondents be directed to give all the salary, back wages, seniority, promotion and other benefits the applicants are entitled for in the case.

On notice the respondents contested this application and stated that in the criminal court by the aforesaid judgement of the Addl. Sessions Judge, the 'benefit of doubt' was given to the applicants and there was not clean acquittal and the applicants were not completely exonerated. It is stated that the applicants cannot be given the benefit of the service from the date of dismissal to the date of reinstatement either in seniority or for back wages.

The applicants have also filed rejoinder reiterating the stand that since the applicants have been acquitted by the criminal court, they are entitled to the benefit of the period intervening between the date of dismissal from service and the date of reinstatement.

We heard the learned counsel Sh. D.S. Goswami for the applicant and the learned counsel Sh. Anoop Bagai for the respondents on 14.7.95. On that day,

after hearing the arguments, the learned counsel for the applicants prayed for time to cite the law covering the case of the applicants. The matter, therefore, came up today. Sh. B.S. Oberoi, proxy counsel for Sh. Anoop Bagai is present and he initially prayed for some time. Since we have already heard Sh. Anoop Bagai and only the law is to be cited by the learned counsel for the applicants in support of his contention so we commenced the hearing of this case.

The stand of the learned counsel for the applicants is that the acquittal in the case is not technical one but it is a complete exoneration. However, after going through the judgement of the Addl. Sessions Judge and after discussing the evidence of the prosecution, the conclusion drawn by the learned criminal court is that the applicants are acquitted by giving them the benefit of doubt. The phrase 'benefit of doubt' that the evidence produced by the prosecution cannot be said of such a convincing nature and there is room of doubt whether the accused has committed the crime alleged or not. This benefit of doubt, therefore, cannot be equated with complete exoneration as defined under FR 54(1). FR 54(1) gives the administrative power to pass an order while reinstating the employee who has been earlier dismissed/removed or terminated from service and while passing an order of reinstatement, the authority will also pass an order whether the period which elapsed between the order of dismissal or termination till the order of reinstatement on duty should be treated as period spent on duty or not. We have read alongwith the learned counsel for the applicants the provisions of FR

54(1) and FR 54(b). There is a clear mention that if the criminal court has not completely exonerated then in that case the competent authority may pass an order in the circumstances of the case and in that event the applicants or the employee cannot claim that their services which elapsed between the order of dismissal and the reinstatement be counted as service spent on duty.

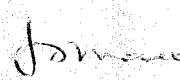
(See, Management of R.B.I. New Delhi Vs. Bhopal Singh Panchal (1994) 1 S.C.C. Page 541).

The Court cannot interfere in the administrative realm to substitute its own opinion but we find that the order passed by the Addl. Sessions Judge is not an order completely exonerating the applicants from the charge of rape of Smt. Mohini Devi. No precedent has been cited by the learned counsel to substantiate his contention that benefit of doubt given by the criminal court amounts to complete exoneration of the charge. For the purposes of culpability, benefit of doubt gives acquittal and the charge is not established against the accused, it is for the administration to consider whether the order passed by the criminal court giving benefit of doubt for the period between the period of termination till reinstatement should be period as spent on duty or not. We, therefore, do not find any illegality or irregularity in the impugned order. However, if the respondents undertake to proceed against the applicants in disciplinary departmental enquiry and if the applicants in the enquiry are exonerated then the respondents will reconsider about this period according

to law and provisions of FR 54(1) as well as 54(B). The present application is disposed of accordingly but without any order as to costs.


(B.K. Singh)

Member (A)


(J.P. Sharma)

Member (I)

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