

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

OA.No.447/94

Dated this the 1st of December, 1994

Shri C.J. Roy, Hon. Member 'J'.

Shri Kamal Prasad,
Sub Inspector D.1900,
R/o 19A, PS Mehrauli,
New Delhi 110 030.

...Applicant

By Advocate: Shri J.P. Verghese.

versus

1. National Capital Territory of Delhi
through its Chief Secretary,
Old Secretariat,
Rajpur Road,
Delhi 110 007.
2. The Commissioner of Police,
Police Head Quarters,
I.P.Estate,
New delhi 110 002.

...Respondents

By Advocate: Shri O.N. Trishal

O R D E R 'Oral'

'By Shri C.J. Roy'

The applicant is aggrieved by the non-payment of arrears and back wages by the respondents and denial of increments to him.

2. The facts of the case are that the applicant is a Sub Inspector working with the Delhi Police. On some allegations of bribery, the applicant was dismissed from service by the orders dated 12.4.90 and 2.8.90, which the applicant claims as wrong allegations. He states the above action of the respondents are illegal, contrary to the rules and violative of fundamental rights.

3. The applicant filed an OA.1891/90 assailing the above orders of dismissal, in the Principal Bench of the Tribunal which was disposed of on 5.3.93 'Annexure-1', with a direction

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to the respondents to dispose of the proceedings in accordance with law and the matter be finalised within a period of two months from the date of receipt of a copy of that judgement. The case was sent ^{back} on remand to the Disciplinary Authority with the above direction ^{by} and the applicant was directed to be reinstated in service with the observation that the applicant will not, however, be entitled to any back wages.

4. According to the applicant, subsequent to the above said judgement, he was reinstated in service by the respondents by their order dated 14.4.93 (Annexure-II), but was not paid any back wages and the period from dismissal to the date of reinstatement was treated as leave without pay. He claims to have made a representation on 15.9.93 (Annexure-V) requesting for payment of back wages including three increments and other consequential benefits of service, which was not disposed of, even after a period of six months. Hence he has filed this OA praying for the following reliefs:-

- (i) Direct the respondents to pay back wages from the date of dismissal till the date of reinstatement in service;
- (ii) Declare the period from the date of dismissal till the date of reinstatement of the applicant as spent on duty with all consequential benefits.

5. The respondents have filed their counter in which it is stated that in pursuance of the order of this Tribunal dated 5.3.93, the applicant was reinstated in service but could not proceed with the enquiry in view of the fact that the complainant Shri Harpal Singh could not be traced for recording his statement. The respondents then decided to drop the supplementary departmental enquiry by order dated 17.8.93. The applicant was not paid back wages in view of the directions of the Tribunal and the period from the dismissal of the applicant from service till the date of reinstatement, was treated as leave without pay.

6. Heard the learned counsel for the parties and perused the documents on record.

7. The short point involved in this case for consideration is whether the applicant is entitled for payment of back wages and increment, for the period from his dismissal to the date of reinstatement in service, as prayed for, by him in the OA, and whether it is a proper forum to decide the issue.

8. A copy of the judgement in OA.1891/90 decided by this Tribunal on 5.3.93 is placed as Annexure A-I at page-11 of the paper book. In that OA, the Tribunal had directed as follows:

"15. In view of the above mentioned legal infirmities appearing in the present case, we hold that the impugned orders dated 12.4.90 and 7.8.90 Annexure-6 and Annexure-8 dismissing the applicant from service and his appeal were bad in law and fit to be set aside. We further direct that the disciplinary authority to act according to law as indicated above and dispose of the proceedings according to law. The case is sent back on remand to the Disciplinary Authority with the above direction. We further direct that the matter should be finalised within two months from the date of receipt of a copy of this judgement. We further direct that the applicant be reinstated into service and while in service the disciplinary proceedings be disposed of according to law. The applicant will not, however, be entitled to any back wages.

9. It is relevant to note here that while parting the judgement, the Hon.Bench held that: 'The applicant will not, however, be entitled to any back wages.'

10. Subsequent to that judgement, the respondents have initiated the departmental proceeding afresh, but they did not go ahead with the enquiry and dropped the same. As per the judgement, the applicant was reinstated in service but he was not placed under suspension. He is still continuing in service. The applicant has made a representation on 15.9.93 (Annexure-V) requesting for payment of back wages including three increments and other consequential benefits of service, which was not disposed of, by the respondents even after a period of six months.

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11. The learned counsel for the applicant states that as per the directions of this Hon. Tribunal, the respondents did not finalise the proceedings and dropped the enquiry by order dated 17.8.93. He further states that even after the applicant was exonerated and the departmental proceedings were dropped the respondents refused to pay him the back wages from the date of dismissal to the date of reinstatement and also refused to pay him the increments due to him.

12. The learned counsel for the applicant further argues that at the time of passing the judgement, the Hon. Bench could not have ordered any back wages because it ordered a fresh enquiry. Therefore, he has not challenged that order by way of an appeal, since the main order was in his favour, whereas, the learned counsel for the respondents argues that when the Hon. Bench observed that he is not entitled to any back wages, he should mean that throughout the period the applicant is not entitled.

13. The applicant is now placed in a curious situation. He could not have filed a review petition because at that time, he could not have imagined that a fresh enquiry having been started, would be dropped.

14. I am of the view, that the judgement dated 5.3.93 is more or less in favour of the applicant and also a direction was given for holding a fresh enquiry since the Hon. Bench could not have ordered back wages. That order stands good. It does not require any clarification. But the clarification that is required is subsequent to the dropping of the enquiry, where the wording in the judgement 'that the applicant will not, however, be entitled to any back wages' even after the enquiry is conducted and dropped out is the point which stands for consideration.

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15. Now, in my opinion, this OA cannot be entertained by this Bench. He should first approach the same Bench which passed this order to clarify this position. In the circumstances I dispose of this OA with the following direction:

The applicant is directed to approach the appropriate Bench by way of any legal remedy open to him, within a period of one month from the date of receipt of a copy of this order.

16. This order is passed because, it is neither a review petition nor a clarificatory petition. If it is a review petition, this Bench would have disposed of it, if ordered by the Hon. Chairman to do so, and if it is a clarificatory petition, I could not have clarified it, because I am not a party to this OA. In the circumstances I deem it fit to refer it to the appropriate Bench for clarification with the above direction.

17. The OA is disposed of, with the above observation. No costs.

C.J. Roy
(C.J. Roy)
MEMBER (J)

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