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Central Administrative Tribunal
Principal Bench: New Delhi

(30)

(42)

OA No. 1337 of 1994 decided on 17.10.1997

Name of Applicant: Suresh Kumar

By advocate: Shri Shanker Raju

Versus

Name of Respondents: NCT Delhi & another

By advocate: Shri Vijay Pandita

Corum

Hon'ble Mr. N. Sahu, Member (A)

1. To be referred to the Reporter or not? .....

2. Whether to be circulated to other Benches of the Tribunal? .....

(N. Sahu)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1337 of 1994

New Delhi, this the 17th day of October, 1997

Hon'ble Mr. N. Sahu, Member (Admnv)

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Suresh Kumar S/o Shri B.R.Sharma, Aged about 46 years,R/o C-295,Albert Square Gole Market, New Delhi - 110 001 and employed as Inspector(No.D/879) in the Delhi Police:Delhi(Under orders of suspension) - APPLICANT
(By Advocate Shri Shanker Raju)

Versus

1.N.C.T.Delhi.Through the Chief Secretary, National Capital Territory, 5 Sham Nath Marg, Delhi -54.

2.The Commissioner of Police,Delhi Police, Police Headquarters,Near I.T.O., New Delhi - 110 002. - RESPONDENTS
(By Advocate Shri Vijay Pandita)

J U D G M E N T

By Mr.N.Sahu,Member (Admnv)-

The relief claimed in this Original Application is for declaring the adverse ACR as null and void.

2. The applicant was communicated the following remarks vide letter no.4046/Z dated 15.9.1992 -

> "In the annual confidential report of Inspector Suresh Kumar, No.D-879, for the period from 24.4.89 to 31.3.90, it has been recorded doubtful against his honesty. His moral character, personality and initiative are satisfactory. He is impartial. He is loyal to the Govt.in power without regard to political and party feelings. His reliability needs improvement. He was posted in Operation Cell. He was arrested in case FIR No.181 dated 29.9.89 u/s 382/342/34/ IPC, P.S. Lodhi Colony for extorting money from Praduman Singh and others. He is most undependable and disloyal officer with criminal bent of mind. He can prove a liability for the department in future also. He has been graded as below average."

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3. During the course of hearing the records of the respondents were summoned. File No.D/879 was produced.

4. The applicant submitted a representation. There was a considerable delay in disposing of the same. Ultimately the representation was rejected. It does not serve any purpose to go into the reasons for delay in disposing of this representation. The applicant was aggrieved also about this delay and in the O.A. he prayed for quashing the adverse entries on this ground alone. However, the ground taken by the learned counsel for the applicant at the time of hearing was not on the ground of delay. He stated that the Special Judge Delhi in his judgment dated 10.3.1997 in Sessions Case No.CC-2/1995 at para 18 found as under-

> "As stated above, the witnesses produced by the prosecution have denied the theory of wrongful confinement or demand of money by accused Suresh Kumar Sharma for their release. Thus no offence whatsoever stands established against any of the accused. Both the accused are accordingly acquitted of the charges framed against them. Their bail bond stands discharged."

5. The applicant was acquitted completely and honourably. The learned counsel states that as the only basis of the adverse reporting was on account of the criminal trial under Sections 120-B, 342, 392 IPC and Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 registered in FIR No.187/89 at Lodhi Colony, New Dedlhi; and as the Special Judge completely acquitted the applicant of those charges

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the basis of making the remarks is no longer valid and, therefore, the adverse remarks deserve to be expunged.

6. The learned counsel also brought to my notice Clauses 7(1) and 8(a) of Standing Order No.265 issued by the Commissioner of Police, Delhi which deals with the maintenance of secret and agreed list of persons of doubtful integrity. Clause 7(1) requires the authorities to include the names of such officers who are convicted in a Court of law either on a charge of lack of integrity or for offence involving moral turpitude on whom ~~and~~ penalty of dismissal or removal could not be imposed. Under the heading of 'Exceptions' under clause 8(a) it is stated that the names of officers who have been acquitted honourably as a result of disciplinary proceedings or court trial should not be included in the said secret list. He has also relied on Standing Order 263, clause 8(d) of which stipulates that where the defaulter is honourably acquitted in a criminal case or exonerated in a departmental enquiry he would be given all the consequential benefits. The learned counsel, therefore, submitted that the adverse remarks should be expunged and the applicant's record restored as though these remarks did not exist.

7. The learned counsel for the respondents defended the action of the respondents and cited the following decisions in support of his stand - **Bharat Ram Meena Vs. Rajasthan High Court at Jodhpur**, (1997)

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(3)SCC 233, **B.G.Chitale** Vs. **Union of India and others,** 1992(2)SLR 690 (CAT:Delhi);and **Air Vice Marshal S.L.Chhabra** Vs. **Union of India** 1993(Supp)4 SCC 441.

8. In the course of hearing on 24.9.1997 it was stated that the applicant was reinstated in service and his suspension period starting from 29.9.1989 till date of reinstatement was treated as spent on duty for all intents and purposes. Because the case of the applicant was one of complete and honourable acquittal statutory orders were passed treating him as though he was on duty for the above period by order no.2758-2800/HAP(SB) dated 23.5.1997. In view of this, the respondents were directed to produce the full confidential report as well as the self appraisal report of the applicant. It is necessary to record that when the representation was disposed of by order dated 1.2.1995 rejecting the claim for expunction of the adverse remarks the criminal trial was still pending. Now that the applicant was acquitted his ultimate grading as 'below average', which hits him directly in his career, would no longer be sustainable.

9. The confidential records maintained by the respondents were perused to find out whether there is any other material except the FIR and the criminal case noted above which formed the basis for the adverse remarks. I have perused the parawise comments, on the representation of the applicant, by the concerned authorities recorded at pages 195 to 197 of the departmental file. With regard to remark "doubtful" against the column "honesty" rebutting the

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grievance of the applicant that the recording is biased and capricious, the Reporting and Reviewing Officers noted that this remark was made because of registration of a criminal case against him for extorting money from a public person Shri Praduman Singh. Regarding the adverse remarks 'undependable and disloyal officer' the comments of the Reporting/Reviewing Officer are as under :

> "Being a factual facts, the case FIR has been mentioned in his A.C.R. Since no complaint against him about his integrity before registration of case was received there was no reason to doubt on his integrity. But when a case for extorting money from Sh.Praduman Singh & Ors. was registered against him it was a clear proof that his integrity was doubtful and he was not a dependable officer."
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> (emphasis supplied)

10. In view of the above I find that all the adverse remarks are based only on one instance of alleged misdemeanour registered in FIR No.187/89. As the acquittal is complete and honourable there is absolutely no basis to sustain those remarks. The learned counsel for the respondents no doubt cited the case of Swatantar Singh Vs.State of Haryana and others, 1997 SCC (L&S) 909 but the Hon'ble Supreme Court there held that remarks relating to integrity/honesty based on general reputation of an employee cannot be treated as vague. Their Lordships

further observed that it would be impracticable for the Reporting Officer or the Controlling Officer writing the CR to give specific instances of short falls supported by evidence. This case is not of assistance to the respondents at all. The remarks made are not directed against the general reputation of the employee. On the contrary the respondents have stated that there was no complaint against the applicant's integrity before the registration of the case. Thus, this is a case of a specific comment about integrity based only on one particular instance. In fact all the adverse remarks are point specific and based only on one instance and as the Court recorded an honourable acquittal I find no justification to sustain those remarks. Even otherwise, I find that the adverse observations are wholly inconsistent with the other observations. If his moral character, personality and initiative are satisfactory and if he is impartial regardless of the party in power, how can he be considered undependable and disloyal and how can his reliability be doubted? Such blatant inconsistency only shows lack of objectivity.

11. In view of the conspectus of peculiar facts recorded above I hereby direct that all the adverse remarks extracted above for the period 24.4.1989 to 31.3.1990 recorded on 9.11.1990 and reviewed on 3.12.1990 hereby stand expunged. I further direct respondent no.3, Commissioner of Police to ensure that the confidential report of the Inspector for the relevant period is rewritten by the same Reporting Officer and Reviewing Officer under whom he worked on

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a fresh appraisal of his performance with a strict direction that the criminal trial which was the basis for the adverse remarks in the impugned ACR shall no longer influence their assessment of his performance. The ACR for the above period shall be re-written on a fresh appraisal within a period of 8 weeks from the date of communication of this order. If as it happens in Government service either the Reporting Officer or Reviewing Officer is not available for commenting on the applicant's performance, respondent no.3 shall write the ACR of the applicant after himself making an appraisal of the applicant's performance.

12. The O.A. is allowed leaving the parties to bear their own costs.

(N.Sahu) 17.x.97
Member(Admnv)

rkv.