

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(16)

O.A./T.A. No. 2005 of /1994 Decided on: 12.2.96.

G.K. Sharma

..... APPLICANT(S)

(By Shri mati Meera Chhibber Advocate)

VERSUS

N.C.T., Delhi & Ors.

..... RESPONDENTS

(By Shri Surat Singh Advocate)

CO RAM

THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE ~~SHRI S.R. ADIGE~~ / DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal ? No


(Dr. A. VEDAVALLI)
Member (J)

A. Adige
(S.R. ADIGE)
Member (A)

17

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
PRINCIPAL BENCH

O.A.No. 2005/94

New Delhi: this the 14th ^{February} 1996.

HON'BLE MR.S.R.ADIGE, MEMBER(A).

HON'BLE DR.A.VEDAVALLI, MEMBER(J).

1. Girinder Kumar Sharma,
S/o Late Shri L.R.Sharma,
R/o Block-Q, House No.28,
Sector XII, Noida.

2. Vinod Kumar Sharma,
s/o Shri C.R.Sharma,
R/o B-133, Ganesh Nagar,
Pandav Nagar Complex,
Delhi -92.

.....Applicants.

By Advocate Mrs. Meera Chhibber.

Versus

1. Govt. of National Capital,
Territory of Delhi,
through Lt. Governor,
Raj Niwas,
Delhi.

2. Commissioner of Police,
Police Head Quarters,
I.P.Estate,
New Delhi.

3. Dy. Commissioner of Police,
Delhi Police Security Lines,
Vinay Marg, New Delhi

.....Respondents.

By Advocate Shri Surat Singh.

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member(A).

In this application, Shri Girinder Kumar Sharma and one other have impugned the standing Order No.123/89 issued by the Deputy Commissioner of Police, Delhi on the subject of suspension and have prayed for quashing of the direction to them to mark attendance on both times daily as mentioned in the order dated 3.11.92 (Annexure-PI) and a further direction to the respondents to pay the conveyance allowances to them to come to the office daily to mark their attendance.

18

2. Shortly stated that the applicants, both of whom, are Constables in Delhi Police were suspended vide impugned order dated 3.11.92 (Annexure-PI) pending enquiry against them. In the suspension order, the applicants have been directed to attend the roll calls on both times.

3. The applicants contend that as one of them lives in Noida area and the other lives in Trans-Yamuna area, they have to travel approximately ~~2~~ ^{and respectively} 10 kms. every day merely to mark attendance at their headquarters which has been designated E-Block, Security Line to attend the roll calls and thereby they are being asked literally to remain in the office whole day. It is stated that no conveyance allowance is being paid to them for these journeys, and this direction to them to attend the roll calls both times daily is illegal and untenable in law.

4. The respondents in their reply have contested the OA and state that the direction to the applicants to attend the roll calls on both times is neither illegal nor is untenable in law. They also state that the applicants are bound to attend the roll calls in the morning and evening as per rules, and the applicants are residing at their private residence without the permission of the competent authority and therefore, they are not entitled to any TA.

5. The applicants in their rejoinder state that they were called for security duties from 8th Bn. in February, 1992 and December, 1991 respectively. In the security duties, Constables are required to do shift duties from 8 a.m to 2 p.m. and 2p.m. to 8 p.m. and the third category is reserved for night duties. After their shift duties the Constables used to go for rest. They state

19

that since the Barracks in E-Block Security have only three rooms which can adjust 11 beds in one room, and 24 in other and the third room is occupied by the guards and hence there is provision only for 35 persons, whereas the strength of security personnel is about 3500. Hence as the applicants cannot be accommodated in E-Block Security, they have their own private residential arrangement and the department had never asked them to shift to the line. The applicants state that they were never being paid HRA which shows that the department was aware and allowed them to live outside.

6. We have heard Mrs. Meera Chhibber for the applicant and Shri Surat Singh for the respondents.

7. Mrs. Chhibber has invited our attention to CAT PB's judgment dated 4.5.89 in OA No. 2052/88 Jagdish Ram Kataria Vs. UOI & others, wherein the question was ^{to} decide "whether a Sub-Inspector of Police appointed under the Delhi Police Act, 1978 would be entitled to claim conveyance charges from his residence to office to attend roll calls in the morning and evening while he is placed under suspension."

8. In that judgment, the Tribunal had held as follows:-

"We have no doubt in our mind that in the absence of any specific provision in the Delhi Police Act, 1978 or the rules made thereunder, regarding reimbursement of conveyance charges incurred by a Police Officer placed under suspension, who is required to attend roll calls every day, he would be entitled to reimbursement of conveyance charges to the extent as admissible under the Supplementary Rules. We, however, make it clear that it will be open to the Administrator to make a suitable

2D

provision in the rules made under the Delhi Police Act, 1978 to provide for the quantum of such charges which could be reimbursed to a Police Officer in such cases."

However, until the rules are made by the Administrator in this behalf, the provisions contained in the Supplementary Rules would be applicable. In this view of the matter, the applicant will be entitled to reimbursement of conveyance charges incurred by him from 15.1.88 for the journeys undertaken from his residence in Mangol Puri to his office in Lodi Road to attend the roll calls to the extent admissible under the Supplementary Rules."

9. The SLP filed against that judgment, in the Hon'ble Supreme Court with an application for an ex parte stay, was dismissed vide order dated 3.8.89.

10. This controversy again arose in O.A.No.2017/91 Lal Singh Vs. Delhi Administration & Ors., decided on 13.5.93, in which the respondents were directed to adhere to the directions given in Jagdish Ram Kataria's case (Supra) and pay to the petitioner the conveyance allowance in terms of the orders passed in that OA.

11. Yet another judgment relied upon by Mrs. Chhibber was delivered by the Calcutta High Court in Chittaranjan Ghose Vs. I.G. of Police W.B. & Ors. 1979 (2) SLR 194 in which it had been held that a person under suspension cannot be called upon to attend the roll calls during the period of suspension or to render any service, or to perform any duty. Attending roll call by a police personnel is a part of his duty, and if he has been suspended from performing his duty, the authority concerned cannot, at the same breath, call upon him to attend the roll call.

(21)

12. The CAT Allahabad Bench in Nazmul Hasan Vs. Sr. Supdt. RMS Gorakhpur & Ors- ATR 1986(2) CAT 554

held that a suspended employee is debarred from performing any duties, and to mark attendance is a duty and, therefore, it would be illegal to ask the ^{suspended} employee to mark his attendance. The employee is, therefore, entitled to reimbursement of the expenditure incurred by him in coming to the office to sign the register in compliance with the instructions given to him when he was under suspension.

13. In O.A.No.1991/88 Gopal Singh Vs. UOI & Ors. decided on 3.2.94 by the Principal Bench of the Tribunal also the view has been taken that during the period of suspension there is no question of anybody being marked present or absent at any place.

14. Again in CAT Calcutta in R.M.Mazumdar Vs. UOI & Ors. AISLJ X -1994(3) (CAT) 273 has held that a person under suspension cannot be treated to be absent from duty for not performing duties.

15. The respondents have relied upon Standing Order 123/89, Instruction 6 of which states that "During the term of such suspension the powers, functions and privileges vested in him as a Police Officer shall be in abeyance, but he shall continue to be subject to the same responsibilities, discipline and penalties and to the same authorities, as if he had not been suspended."

The second para of Instruction No.6 states that

"A Police Officer under suspension shall be transferred to the Lines, if not already posted there. He shall attend all roll calls and shall be required to perform such duties and to attend such parades as the Dy. Commissioner of Police may direct etc."

16. Mrs. Chhibber also invited our attention

A

22

to CAT PB's judgment dated 17.5.95 in OA No.2397/98 Ram Pratap Shukla Vs. Delhi Administration & others, in paragraph 18 of which, after discussing in detail the relevant provisions of the Punjab Police Rules as well as the Delhi Police Act, 1978 and the Delhi Police (Punishment & Appeal) Rules, it has specifically been held that

"the second para of Instruction 6 of the Standing Order 123/89 should, therefore, be considered to be contrary to the provisions of the [redacted] Act and the Rules, and hence ultra vires the Act and the Rules."

17. This finding has been reached on the ground that the Commissioner of Police could not bring through the back door as it were, in the shape of a Standing Order, provisions which had been discarded by the Legislature when it enacted the Delhi Police Act, 1978 and by the Administration, when it made the Delhi Police (P & A) Rules 1980.

18. The said judgment further went on to hold that neither the Act nor the Rules thereunder require a Police Officer under suspension to be either confined to the Lines or to attend the roll calls, while under suspension. The Standing Order 123/89, which provides for this requirement is ultra vires. The said judgment also noticed the Andhra Pradesh High Court's judgment in Zonal Manager Food Corporation of India Vs. K.A.Siddiqui-1982(2) SIR 779 wherein it has been held that Regulation 66 of the F.CI Staff Regulation 1971 did not authorise the employer to compel an employee under suspension to attend office, and any such direction/to that effect was illegal. The Home Ministry vide O.M. dated 6.4.83 (Page 211 of Swamy's Compilation of CCS(CCA) Rules-20th Edition) had brought this decision to the notice of all concerned.

63

19. Hence by that judgment in Ram Partap Shukla's case (Supra) it is concluded that no provision of Delhi Police Act, 1978 or the Delhi Police (P &A) Rules, 1980 empowers the Disciplinary Authority to require a Police Officer under suspension to attend the roll calls and absence from the roll calls by a suspended Police Officer was not a misconduct.

20. The respondents have not produced any materials before us to lead us to conclude that the said judgment in R.P.Shukla's case has not become final.

21. Hence in so far as the relief prayed for in respect of Standing Order 123/89 is concerned, in view of the contents of the judgment in R.P.Shukla's case holding the second para of Instruction 6 of the said Standing Order to be ultra vires of the Delhi Police Act, 1978 and the Delhi Police (P &A) Rules, no further directions appear necessary on that count. However, the direction to the applicants to mark attendance both times daily as mentioned in order dated 3.11.92(Annexure-PI) is quashed and set aside with immediate effect and the respondents are directed to reimburse the two applicants the conveyance charges incurred by them from 3.11.92 till date for journeys undertaken from their residence to E-Block, Security Line for attending the roll call to the extent admissible under rules, subject to the applicants satisfying the respondents that they had indeed incurred these expenses for each day the reimbursement is claimed.

22. This OA is partly allowed and is disposed of in terms of paragraph 21 above. No costs.

A.Vedavalli
(DR.A.VEDAVALLI)
MEMBER (J)

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(S.R.ADIGE)
MEMBER (A)