

Central Administrative Tribunal, Principal BenchOriginal Application No.2054 of 2000

New Delhi, this the 30th day of July, 2002

Hon'ble Mr. Justice Ashok Agarwal, ChairmanHon'ble Mr. Kuldip Singh, Member (J)Hon'ble Mr. S.A.T. Rizvi, Member (A)

Const. Asha Ram,
 (PIS No.28823215)
 R/O B-206, Gali No.1,
 Raj Bir Colony, Gharoli
 Extn., Delhi-96

....Applicant

(By Advocate: Shri Anil Singal)

Versus

1. Govt. of NCT of Delhi through
 Commissioner of Police, Police
 Headquarters, I.P. Estate, New Delhi.

2. Joint Commissioner of Police,
 New Delhi Range, I.P. Estate,
 New Delhi.

3. D.C.P.,
 East District, Delhi.

....Respondents

(By Advocate: Shri George Paracken)

O R D E R (ORAL)By Justice Ashok Agarwal, Chairman

By an order passed by a Division Bench (Corum:
 Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J) and
 Hon'ble Shri M.P. Singh, Member (A) on 14.2.2002, following
 questions have been referred for decision by a Full Bench:

"(i) Which of the two orders of the Division
 Benches in **Ramesh Pal's** case (supra -
 O.A.No.1770/2000) or **Sushil Kumar's** case
 (supra - O.A.No.2059/2000) dated 3.10.2001
 or 11.10.2001, respectively, should be
 followed in the present case ?

(ii) Whether in the particular facts of the
 above two cases, a reference to
 Larger/Full Bench would have been the
 proper thing to do before the decision in
Sushil Kumar's case (supra) was
 pronounced ?

(iii) generally."

Ne. J.

2. Facts which have led to the making of the reference and which are relevant for deciding aforesaid questions are few and are as follows.

3. A joint disciplinary proceeding was initiated against the applicant in the present OA as also the applicants in the case of Constable Ramesh Pal who was applicant in OA No.1770/2000 and Constable Sushil Kumar, applicant in OA No.2059/2000. The enquiry officer, by a common order dated 15.5.98, had exonerated all the aforesaid delinquents. Disciplinary authority, by an order of 23.9.98, recorded a note of dissent and sent copies thereof to the delinquents in order to offer them an opportunity to submit their representations against the same. After the delinquents had submitted their representations, the disciplinary authority by an order of 12.11.98, imposed a penalty of dismissal from service upon the delinquents. Aforesaid order of the disciplinary authority was carried by the delinquents in appeal. By an order passed by the appellate authority on 18.8.99, aforesaid order of penalty was reduced to forfeiture of five years approved service permanently for a period of five years with a direction that their suspension period shall be treated as not spent on duty for all intents and purposes.

4. Being aggrieved by the aforesaid order of the disciplinary authority as also the appellate authority, three separate OAs have been filed by the delinquents. OA No.1770/2000 filed by the delinquent Constable Ramesh Pal



came to be first taken up for hearing before the Tribunal. By a judgement and order passed by a Division Bench on 3.10.2001 to which one of us (Shri Kuldip Singh, Member(J)) was a party, aforesaid order imposing penalty of forfeiture of service was maintained and OA was dismissed.

5. OA No.2059/2000 filed by the delinquent Constable Sushil Kumar came up for hearing sometime later. By a judgement and order passed on 11.10.2001, aforesaid OA was allowed and the aforesaid orders of penalty were quashed and set aside and the case was remanded back to the stage of service of the report of enquiry officer and the note of dissent of the disciplinary authority upon the delinquent Constable Sushil Kumar. Fortunes of aforesaid Constable Sushil Kumar had turned in his favour. The disciplinary authority has, at this stage, concurred with the findings of the enquiry officer and has exonerated him by an order passed on 17.7.2002. Proceedings against the said Constable Sushil Kumar have now finally been disposed of.

6. After the decision of this Tribunal on 11.10.2001 in OA No.2059/2000, Constable Ramesh Pal submitted a Review Application No.396/2001. By an order passed on 1.1.2002, the same has been dismissed. Hence as far as the aforesaid Constable Ramesh Pal is concerned, his case has also reached its finality.

7. We are now faced with the third delinquent Constable Asha Ram and are required to decide his fate in the context of the aforesaid conflicting decisions taken by



the Co-ordinate Benches of this Tribunal.

8. We have heard the learned counsel appearing for the contending parties and we hold that it was not open to this Tribunal while deciding the case of Constable Sushil Kumar to take a decision contrary to the decision taken in the case of Constable Ramesh Pal. It is not disputed rather it is common ground that all the three delinquents are similarly placed. The Supreme Court in the case of K.Ajit Babu & others vs. UOI & ors., JT 1997 (7) SCC 24, has ruled as under:

"Whenever an application under Section 19 of the Act is filed and the question involved in the said application stands concluded by some earlier decision of the Tribunal, the Tribunal necessarily has to take into account the judgement rendered in earlier case, as a precedent and decide the application accordingly. The Tribunal may either agree with the view taken in the earlier judgement or it may dissent. If it dissents, then the matter can be referred to a larger bench/full bench and place the matter before the Chairman for constituting a larger bench so that there may be no conflict upon the two Benches. The larger Bench, then, has to consider the correctness of earlier decision in disposing of the later application. The larger Bench can over-rule the view taken in the earlier judgment and declare the law, which would be binding on all the Benches". (emphasis supplied)

9. Apart from the aforesaid decision, the Supreme Court has time and again emphasised the significance of precedents in judicial proceedings. Justice should be so rendered as to make common litigants to understand what decision on facts and in law is likely to be rendered in their cases. Once a decision is rendered by a court, judicial discipline requires that a Co-ordinate Bench of the same court has necessarily to

follow the same. If it decides to differ, it cannot by itself take a view contrary to the view already taken and dispose of the case before it in terms of its differing view. It is obliged to refer the matter to a Larger Bench whose decision would be binding.

10. If one has regard to the aforesaid proposition of law succinctly declared by the Supreme Court, answer to the question no.2 is inevitable and we answer the same as follows:

"In view of the difference of opinion arrived at by the Co-ordinate Bench of this Tribunal in the case of Constable Sushil Kumar in OA No.2059/2000 and in view of a different view already taken in the case of Constable Ramesh Pal in OA No.1770/2000, it would have been proper rather it was incumbent upon the Tribunal to refer the case of Constable Sushil Kumar to a Larger Bench."

11. Coming to the first question which has been referred, we find that a piquant situation has arisen in the present proceedings. Having regard to the aforesaid law which has been referred to above, the Tribunal in the case of Constable Shushil Kumar should normally have followed the decision rendered in the case of Constable Ramesh Pal. If it had disagreed, it was not open to it based on the contrary view to have disposed of the OA. It was obliged to refer the matter to a Larger Bench.

12. In the circumstances, we would have ordinarily been inclined to review the orders passed in the case of Constable Sushil Kumar and would have passed orders consistent to the orders passed in the case of Constable

V. Ramesh Pal. However, we find it difficult to adopt the aforesaid course in the peculiar facts and circumstances of the present case. As far as Constable Sushil Kumar is concerned, after decision of the Tribunal was rendered in his case, disciplinary proceedings were continued against him and he has been finally exonerated. That exoneration has now become final. We, however, cannot permit different treatments being meted out to different delinquents though similarly placed. Hence the only option which we find would be just and proper is to extend the same benefit which has been extended in favour of Constable Sushil Kumar, both to Constable Ramesh Pal as also to the delinquent in the present OA Constable Asha Ram.

13. In the circumstances, we direct that suo-moto review proceedings be initiated in the case of Constable Ramesh Pal so that the said delinquent is also offered the same benefit which has ensued in favour of Constable Sushil Kumar.

14. Similarly we find that the applicant in the present case also deserves to be extended the same benefit as has been extended to Constable Sushil Kumar. Question no.1 is, in the circumstances, answered as follows:

"The decision rendered in the case of Constable Sushil Kumar on 11.10.2001 in OA No.2059/2000 should be followed in the present O.A. as well."

15. Present reference is accordingly answered as

12.12.01

under:

Question

Answer

"(i) Which of the two orders of the Division Benches in **Ramesh Pal's** case (supra - O.A.No.1770/2000) or **Sushil Kumar's** case (supra - O.A.No.2059/2000) dated 3.10.2001 or 11.10.2001, respectively, should be followed in the present case ?

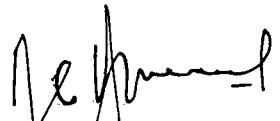
The decision rendered in the case of Constable Sushil Kumar on 11.10.2001 in OA No. 2059/2000 should be followed in the present case.

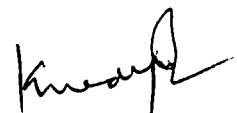
(ii) Whether in the particular facts of the above two cases, a reference to Larger/Full Bench would have been the proper thing to do before the decision in **Sushil Kumar's** case (supra) was pronounced ?

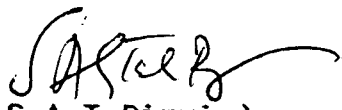
In view of the difference of opinion arrived at by the Co-ordinate Bench of this Tribunal in the case of Constable Sushil Kumar in OA No.2059/2000 and in view of a different view already taken in the case of Constable Ramesh Pal in OA No. 1770/2000, it would have been proper rather it was incumbent upon the Tribunal to refer the case of Constable Sushil Kumar to a Larger Bench.

16. Having answered the aforesaid reference, we find nothing now really remains to be done by a Division Bench in the present O.A. Having found that the applicant herein is entitled to be exonerated, we find that no useful purpose will be served by remitting this OA back to the Division Bench. The impugned orders passed by the disciplinary authority on 12.11.98 as also the appellate authority on 18.8.99 are quashed and set aside and the applicant is exonerated of all the charges levelled against him. Applicant will be extended the same benefits which

have been extended to Constable Sushil Kumar. Present OA is disposed of in the aforestated terms. No orders as to costs.


(Ashok Agarwal)
Chairman


(Kuldip Singh)
Member (J)


(S.A.T. Rizvi)
Member (A)

/dkm/