

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 850 of 2000

New Delhi, this the 3rd day of October, 2001

HON'BLE MR. V.K. MAJOTRA, MEMBER (A)
HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

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Madan Lal Machine Man,
Government of India Press,
Ring Road,
New Delhi
S/o Shri Milkhi Ram
R/o A-41 Mansa Ram Park,
Uttam Nagar,
New Delhi.

...Applicant

(By Advocate: Shri N.S. Bhatnagar)

Versus

1. Union of India through the Manager,
Government of India Press,
Ring Road,
New Delhi.
2. The Director, Directorate of Printing,
Government of India Press,
Nirman Bhavan,
B-Wing,
New Delhi. ..Respondents

(By Advocate: Shri R.N. Singh, proxy counsel for Shri R. V. Sinha, Counsel)

ORDER

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant has filed this OA under Section 19 of the Administrative Tribunal's Act, 1985, whereby he has challenged the order dated 25.1.2000 passed by the disciplinary authority treating the period of suspension of the applicant from 10.5.92 to 27.7.97 as non-duty and thus denied him payment of full pay and allowances from the date of suspension to the date of reinstatement.

2. The applicant has also challenged the subsequent rejection of his appeal by respondent No. 2 vide order dated 24.3.2000. The applicant has also

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challenged order dated 8.11.2000 vide which a memo has been issued to the applicant for the purpose of holding an enquiry against the applicant.

3. Facts, as alleged by the applicant in brief are that the applicant was involved in a criminal case under FIR No.270/92 under Section 304 IPC from P.S. Janak Puri in case titled as State Vs. Madan Lal and Others. The applicant was one of the accused in the said case. The criminal trial of the case concluded and the applicant was acquitted by the Learned Sessions Judge vide his judgment dated 24.8.99. The disciplinary authority after perusal of the judgment came to the conclusion that the acquittal was not an Hon'ble acquittal and issued a show cause notice and ordered that the period of suspension, i.e., from 10.5.92 till the date of reinstatement, i.e., 27.7.97 should be treated as non-duty and nothing more would be paid to him except subsistence allowance that has already been paid to him. Thus he is denied full pay and allowances from the date of suspension. The applicant has filed an appeal against that order which was also rejected and in the grounds to challenge the same the applicant alleges that since he was acquitted Hon'bly so under FR 54(A)(3) the suspension period preceding that should be treated as duty for all purposes and the applicant is entitled to full pay and allowances for the entire period.

4. It is further stated that the reasons given by the disciplinary authority in their order are not sound and are not sustainable and are in contravention of the



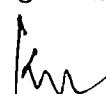


rules so it is prayed that the impugned orders be quashed and the respondents be directed to pay full back wages from the date of suspension to the date of reinstatement.

5. While the OA was pending the applicant was also issued another memo whereby the department had taken a decision to conduct an enquiry under Rule 14 of the CCS(CCA) Rules, 1965 for the alleged misconduct with regard to his involvement in a criminal case where he had been acquitted and now again he has been issued charge-sheet as per Annexure A-1 order dated 8.11.2000, so the applicant amended his OA and also prayed for quashing of the memo vide which the charge-sheet has been issued.

6. The defence of the respondents in their counter-affidavit is that disciplinary authority after carefully studying its judgment, vide its order dated 25.1.2000 ordered that the applicant shall be paid proportionate pay and allowances restricted to subsistence allowance already paid to him during the period of suspension and the period from 10.5.92 to 27.2.97 be treated as non-duty for all purposes except for pension purposes.

7. Disciplinary authority had also come to the conclusion that the Learned Sessions Judge did not find sufficient evidence to prove the involvement of the applicant and the other accused persons having common intention to inflict fatal wound upon the deceased and at the same time the Learned Sessions Judge observed that all the accused were having common intention to pick



quarrel with the deceased though not constructively liable for the homicide of the deceased. Hence the orders were passed under FR 54A and the fresh memo was issued vide order dated 8.11.2000.

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8. We have heard Shri N.S. Bhatnagar for the applicant and Shri R.N. Singh for the respondents.

9. The short question involved in this case is whether the applicant has been Hon'bley acquitted by the criminal court or had been given some benefit of doubt and whether the department is justified to restrict the pay and allowances for the period of suspension to the subsistence allowance paid to the applicant to the applicant during he period of suspension. In this regard though the counsel for the applicant has submitted that he had been honourably acquitted but the department submitted that the applicant was given benefit of doubt. There is a difference of opinion between the applicant and the department about the interpretation of the judgment given by the Learned Sessions Judge. So considering these submissions we have to examine the judgment given by the Learned Sessions Judge and we find that both the parties are relying upon picking up certain observations made by the Learned Sessions Judge at random by both the parties. But the relevant paragraph of the judgment is being reproduced hereinbelow:-

"13. From the above sequence of events, the only active role which the accused played was that Shyam Lal caught hold of Brahm Pal and the other two accused slapped him in response to an exhortation made by Kaval Krishan. Did they know at that stage that Keval Krishan



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had something dangerous in his mind? The words used by him did not suggest so. He simply said "Hold him, I will teach him a lesson in a short while". These words did not at all betray the intention when Shyam Lal took Brahm Pal in his grip and the other two accused gave him fist blows and slaps, they did not appear to have known that Brahm Pal was going to be fatally injured by their companion. So it cannot be said that they shared a common intention with Keval Krishan to cause the death of Brahm Pal. At the most it can be said that they shared a common intention to give some beating to Brahm Pal and nothing more. In 1985 (2) Crimes 424 Inderjeet V/s State, the case of the prosecution was that Inderjeet had caught hold of the deceased and after Prem Shanker inflicted stab wounds on the victim, he escaped with Prem Shankar. In these circumstances the Hon'ble High Court of Delhi acquitted Inderjeet and made the following observations:-

"In the first place there was exchange of abuses and then there was a quarrel. It was in that quarrel that Inderjeet caught hold of the deceased but then suddenly Prem Shankar is said to have taken out a dagger from his dub and inflicted stab wounds on Rajinder Kumar which ultimately resulted in his death. It is difficult to believe that the appellant Inderjeet had any knowledge that Prem Shankar was carrying a dagger or that Prem Shankar was going to attack the deceased with knife and inflict fatal blows."

In the present case also first there was quarrel and then suddenly accused Keval Krishan went to his house, brought a knife and stabbed Brahm Pal on his thigh. There is nothing to suggest that when Shyam Lal called Brahm Pal from his house or when he took Brahm Pal in his grip, he or the other two accused had knowledge that Keval Krishan was going to his house to bring a knife or that he had the intention to stab Brahm Pal. So it cannot be said that accused Shyam Lal, Madan Lal and Ramesh shared a common intention to inflict any fatal wound. None of them had any weapon and none of them could probably have an inkling of what was passing through the mind of Keval Krishan. The maximum that can be said of them is that they shared a common intention to pick up a quarrel with the deceased."



10. The respondents have relied upon the sentence used by the Learned Sessions Judge that the "maximum that can be said of them is that they shared a common intention to pick up quarrel with the deceased". It is so reflected even in the counter-affidavit and the charge-sheet now issued vide memo dated 8.11.2000 recites about the presence of the applicant at the scene of the crime and sharing a common intention of giving beating to Shri Brahm Pal. However, from the perusal of paragraphs of the judgment quoted above in which the observation of the Learned Sessions Judge has come, that clearly rules out the applicant having a common intention to inflict any fatal wound. It is not on the basis of giving any benefit of doubt, rather it is based on the evidence which had come during the trial before the Learned Sessions Judge and after discussing the entire evidence the court came to the conclusion that the applicant had not any intention to cause any fatal injuries to the deceased. In the said criminal case the court had only observed that "the maximum that could be said of them is that they shared a common intention to pick up quarrel with the deceased". This is also an inference drawn by the court because of his presence on the spot and that is why while acquitting the applicant, the Learned Sessions Judge did not use the words that the applicant is given any benefit of doubt, rather the Learned Sessions Judge on the legal preposition held that the applicant could not be held even constructively liable for the homicide of the deceased.

11. Assuming for the sake of arguments that the applicant had shared common intention to pick up quarrel and gave beatings to the deceased in the said criminal

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case but the Learned Sessions Judge even did not hold them responsible for any minor offence short of causing homicide and did not hold the applicant guilty for any offence whatsoever.

12. Thus we are of the considered opinion that the applicant has not been given any benefit of doubt rather he had been acquitted as legally he could not be convicted for the homicide or even for picking up quarrel with the said deceased before his death. As such, we hold that the orders passed by the disciplinary authority and the appellate authority restricting the pay and allowances is in contravention of Rule 54(a) and cannot be sustained. The applicant is thus entitled to the full back wages and salary and on the same grounds the charge-sheet dated 8.11.2000 issued to the applicant is liable to be quashed. Accordingly, we quash the charge-sheet dated 8.11.2000. These directions may be complied with within a period of 3 months from the date of receipt of a copy of this order. No costs.

Rakesh
(KULDIP SINGH)
MEMBER (JUDL)

V.K. Majotra
(V.K. MAJOTRA) 31/10/2001
MEMBER (A)

Rakesh