

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

OA NO. 1854/89

Date of decision: 7.8.92

Sh. Gobind Singh .. Applicant

Sh. B.R. Saini .. Counsel for the applicant

Versus

U.O.I. .. Respondents

CORAM

Hon'ble Sh. P.K. Kartha, Vice Chairman (J)

Hon'ble Sh. B.N. Dhoundiyal, Member (A)

1. Whether the Reporters of local papers may be allowed to see the Judgement? *Yes*

2. To be referred to the Reporters or not? *Yes*

JUDGEMENT

(Of the Bench delivered by Hon'ble Sh. B.N. Dhoundiyal, Member (A))

This OA has been filed by Shri Gobind Singh, a confirmed Constable (since compulsorily retired), against the impugned order, issued by the Additional Deputy Commissioner of Police, New Delhi on 30.3.88, awarding the punishment of forfeiture of 4 years approved service permanently. He has also challenged the order dated 18.10.88, which rejected his appeal, but toned down the punishment from permanent forfeiture to temporary forfeiture.

2. The applicant had, earlier been dismissed from service by order dated 3.12.75, after an enquiry. The alleged misconduct was that pursuant to the orders of the DIC dated 11.6.74, the applicant was relieved by the Station House Officer, Mandir Marg on 22.8.74 with direction to report to D.A.P. (3rd Bn.) for duty, but the applicant did not comply with the orders and absented himself without permission. Another Bench of this Tribunal vide their judgement dated 6.3.87 quashed the order of dismissal dated 3.12.75 on the ground that the punishment of dismissal has been awarded in violation of sub-rule (1) of Rule 16.2 of the Punjab Police

*8/1*

Rules, 1934. The Tribunal found that there was no other flaw in the procedure followed by the respondents for conducting the enquiry and there was ample evidence to prove the charge of wilful absence from duty. It was left to the disciplinary authority to consider the question of punishment to be awarded to the applicant in view of the degree of the guilt. After the Tribunal's Judgement, the applicant was reinstated in service w.e.f. 29.4.87 but no consequential benefits including arrears of salary and allowances, seniority and revised pay scales were given to him. The applicant was harassed and posted in the same New Delhi District in spite of the request to the contrary. On 15.6.87, he wrote to the Commissioner of Police that either he should be transferred to some other district or he should be allowed to retire from service. He has also alleged that during the period from 3.12.75 to 29.4.87 he remained without job, causing immense hardships to him and to his family. The applicant is also aggrieved by the order issued by the respondents that the period from 3.12.75 to 5.3.87 be treated as 'dies-non' which tantamounts to double punishment. Except for a minor modification, his appeal to the Additional Commissioner of Police did not bear any fruit. The applicant has contended that after the earlier punishment of dismissal was set aside by the Tribunal by order dated 6.3.87, no further punishment could be awarded on the basis of the same charges. The applicant has prayed that the impugned order dated 30.3.88 and 18.10.88 be quashed and set aside and the respondents be asked to grant all consequential benefits of service including the arrears of salary, pay, allowances, seniority, promotion to the applicant.

3. The respondents have contended that the Tribunal's order dated 6.3.87 only quashed the order of <sup>dis</sup>dismissal and did not restrain them from imposing any other penalty.

*AM*

The applicant was reinstated in service from the date of the judgement without prejudice to imposing any other penalty vide order dated 28.4.87. The applicant rejoined the Department on 29.4.87. Thereafter the finding of the enquiry officer was reconsidered and fresh Show Cause Notice proposing award of punishment of forfeiture of 4 years approved service permanently was issued and the reply submitted by the applicant was duly considered. The suspension period from 28.10.74 to 2.12.75 was treated as period not spent on duty and the intervening period from 3.12.75 to 5.3.87 as dies-non. The applicant is not entitled to draw any arrears of pay and allowances.

4. We have gone through the records of the case and heard the learned counsel for both parties. As the disciplinary authority, the appellate authority as well as another Bench of the Tribunal have already reached the conclusion that the charge of wilful absence was established after due enquiry was conducted, affording adequate opportunity of self defence to the applicant, we need not go into these matters at this stage. As regards the quantum of punishment, the Tribunal cannot interfere in this matter as long as the enquiry has been conducted in accordance with the rules and the principles of natural justice. What punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the disciplinary authority. As the Hon. Supreme Court has observed in the Union of India Vs. Parma Nanda AIR 1989 SC 1185:-

"If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority."

5. In the instant case, the penalty of forfeiture of service imposed on the applicant cannot be said to be disproportionate to the gravity of the misconduct. The only question remaining

DN

for consideration relates to the treatment of the period between date of his earlier dismissal to the date of his reinstatement. It has to be examined whether the authorities were within their rights to treat this period as 'dies-non'.

6. The effect of quashing of the impugned order of dismissal is that the applicant is entitled to reinstatement. On reinstatement, he would be entitled to atleast the subsistence allowance and other allowances during the period of dismissal from 3.12.75 to 5.3.87. We, therefore, set aside and quash part of the impugned order dated 30.3.88 to the extent that the said period has been treated as dies-non. We direct the respondents to pay to the applicant, pay and allowances, from 3.12.75 to 5.3.87 equal to the amount of subsistence allowance and other allowances admissible to him. They shall do so as expeditiously as possible and preferably within three months from the date of receipt of this order. The said period shall also count as qualifying service for the purpose of pension.

There will be no order as to costs.

*B.N. DHOONDIYAL*  
(B.N. DHOONDIYAL)  
MEMBER(A)

*P.K. KARTHA*  
(P.K. KARTHA)  
VICE CHAIRMAN(J)