

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 572/89
T.A. No.

1989

DATE OF DECISION 10.11.1989

Shri Jagdish Ram Kataria Applicant (s)

In person Advocate for the Applicant (s)

Versus
Union of India & Ors. Respondent (s)

Shri M.M. Sudan Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. I.K. Rasgotra, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. To be circulated to all Benches of the Tribunal ? *No*

JUDGEMENT

(delivered by Hon'ble Shri P.K. Kartha, V.C.)

The question whether an officer who has been placed under suspension and who is receiving the subsistence allowance at the highest rates admissible under the rules during the period of suspension is also entitled, in addition, to claim damages for the alleged illegal suspension, has been raised in this application filed under Section 19 of the Administrative Tribunals Act, 1985 by the applicant who is a Sub-Inspector (Executive) in the Delhi Police. The application came up for admission on 6.11.1989 when it was felt that it could be disposed of at the admission stage itself.

2. We have heard the applicant and the learned counsel for the respondents and have perused the records carefully.

3. The applicant joined the Delhi Police as Sub-Inspector (Executive) in 1979. His services were terminated w.e.f. 17.10.1980 by invoking Rule 5(1) of the C.C.S. (Temporary Services) Rules, 1965. He made a representation against the said order and ^{he} was reinstated in January, 1981. He was placed under suspension on 18.12.1982, pending inquiry into his alleged misconduct. After holding the inquiry, he was dismissed by order dated 24.8.1983. This was challenged in Suit No.765/85 before Senior Sub-Judge, Delhi, which stood transferred to this Tribunal as TA-404/86. In the light of the judgement of the Tribunal dated 2.1.1987, he was reinstated in service. However, by order dated 25.3.87, while reinstating him in service, it was directed that he will remain under suspension from the date of dismissal till the finalisation of the departmental inquiry from the initial stage as per the judgement of the Tribunal.

4. The respondents have stated that the Inquiry Officer has completed the inquiry and submitted the findings holding the applicant guilty of the charge. Tentatively agreeing with the findings of the Inquiry Officer, a show-cause notice for dismissal has been issued to the applicant vide letter dated 18.9.1987. The applicant submitted his reply to the said show-cause notice on 6.10.1987. In the meanwhile, he has filed two applications in this Tribunal (OA-1369/87 and OA-1370/87). The Tribunal has passed an interim order directing the respondents not to impose any penalty on the applicant in pursuance of the show-cause notice.

5. The relief sought in the present application is that the respondents be directed to pay to the applicant.

6
a sum of Rs.1,000/- per day from the date of suspension, i.e., 18.12.1982 to the date of reinstatement on account of compensation to the alleged irreparable losses which are being caused wrongfully to him by wilful breach of their statutory duties. The applicant has stated that these irreparable losses include loss of his reputation in the society, loss of health, mental peace and livelihood, loss of money and time incurred in the litigation, loss of privileges which were vested in him as a Police Officer, loss to his dependents on account of the statutory rights available to them under Section 125 Cr.P.C. and Section 18 of the Hindu Adoption and Maintenance Act, 1956

6. The applicant, who appeared in person, argued that this Tribunal has jurisdiction to adjudicate upon the claim for damages prayed for by him as it is a "service matter" within the meaning of Section 3(q) of the Administrative Tribunals Act, 1985. Section 3(q) reads as follows:-

"(q) "service matters", in relation to a person, means all matters relating, to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation (or society) owned or controlled by the Government, as respects -

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever."

7. In our opinion, while the claim for payment of subsistence allowance is a service matter within the

meaning of Section 3(q) extracted above, any claim for damages on the grounds alleged by the applicant would fall outside the jurisdiction of this Tribunal. In this context, we respectfully follow the line of decisions of this Tribunal holding to the same effect (vide Lakshmi Ponnappan Vs. Controller, V.S.S.C., ISRO, Trivandrum, 1987 (2) A.T.C. 838; Dr. Dhum Singh Vs. Union of India 1986(4) SLJ 307; K.K. Khanna Vs. Miss Meera Saxena, 1989(9) A.T.C. 378; and Radhakant Jha Vs. Union of India, 1989 (11) A.T.C. 297). A question whether the Supreme Court can award damages in proceedings under Article 32 of the Constitution, came up for consideration in Kamal Kumar Puri Vs. Bombay Marine Engineering Works (P) Ltd., 1982 S.C.C. (L&S) 112. In that case, the petitioner, who was employed as a Seaman Crew in a private company, contended that since the respondents withheld his service-book without any lawful excuse and thus deprived him of the chance of employment, they are liable to pay damages to him. Rejecting this contention, the Supreme Court observed as follows:-

"Unfortunately, however, in proceedings under Article 32 of the Constitution, we cannot award damages for which the petitioner can file an appropriate civil suit, if so advised."

We, therefore, hold that in case the applicant wants to claim damages, over and above the subsistence allowance he is receiving from the respondents, he may file a civil suit, if so advised. In that event, the Civil Court may consider the tenability of the claim in the light of the principles laid down by the Supreme Court in regard to the tortious liability of the Government for the acts of its servants.

8. In the light of the foregoing, the application is dismissed at the admission stage itself with the aforesaid observations. The parties will bear their own costs.

I. K. Rasgotra
(I. K. Rasgotra) 17/11/89
Administrative Member

P. K. Kartha
10/11/89
(P. K. Kartha)
Vice-Chairman (Judl.)