

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH.

REGN. NO. OA 1276/87

DATE OF DECISION: March 23, 1990.

Shri Chhida Singh Rawat ... Applicant.

Versus

Union of India & Others ... Respondents.

For the Applicant Applicant in person.

For the Respondents Mrs Avnish Ahlawat,
Counsel.

CORAM: The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. B.C. Mathur, Vice-Chairman.

J U D G E M E N T

(Judgement of the Bench delivered by
Hon'ble Mr. Justice Amitav Banerji, Chairman)

Shri Chhida Singh Rawat, the applicant, was a constable in Delhi Police. He was dismissed from service in the year 1967 but subsequently by an order dated 15.4.1971, the said dismissal order was converted into removal from service. The applicant's case was that he too had participated in the police agitation of 1967. 58 other colleagues of the applicant had also been visited with various types of punishment and had all been taken back in service except the applicant. The applicant had prayed that he may be reinstated with consequential benefits as in the case of other dismissed constables. He further prayed that consequential benefits be also granted as in the case of similarly placed police constables. He had also prayed for costs and for condonation of delay in filing the O.A.

The O.A. was filed on 3.9.1987. Notice was issued to the respondents on 11.9.87 and six weeks' time was granted for filing a counter affidavit and rejoinder, if any. Shri G.C. Lalwani entered appearance for the respondents and was granted four weeks' time to file a counter affidavit. However, nothing was filed

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when the matter was listed on 5.1.88. There was a request by the learned counsel for the applicant that the matter be listed before Court No. I on 8.1.1988. On that day, the case was listed with two other Transferred Cases No. T.1260/86 and T.949/85. It was stated on behalf of the learned counsel for the applicant that all three cases were covered by a Division Bench judgement of the Tribunal in T-950/85 and batch of cases decided on 26.11.1987. The matter was taken up by the Division Bench and the Tribunal allowed the Application and a direction was issued that the applicant will be entitled to the same reliefs as have been granted to the petitioners by Hon'ble Anand J. in the Writ Petitions CWP 270/78 and CWP 937/88 by the Delhi High Court dated 18.7.1983. A plea was raised before the Tribunal that the reliefs may not be granted to the applicant as he had not moved the Tribunal expeditiously. This plea was rejected and it was observed that the applicant could not be denied the reliefs as were given to the other members of the Delhi Police Force. On the above date, Shri G.C. Lalwani did not appear.

The respondents Union of India had filed a Special Leave Petition before the Hon'ble Supreme Court of India. Their Lordships passed the following order on 7.3.1988:-

"Heard learned Solicitor General in support of the petition. One of his points is that the real facts have not been taken into consideration by the Tribunal and the same were not placed and the matter has been disposed of in the absence of the Union of India in the present proceedings. If that be so, it is open to the petitioner to go before the Tribunal to ask for such reliefs as are admissible, but we express no opinion as to tenability of such a move. The Special Leave Petition is disposed of accordingly."

It appears from the above order that the Delhi Administration took up the plea that the real facts have not been taken into consideration by the Tribunal and the same were not placed and the matter had been disposed of in the absence of Union of India. It was left open to the Applicant to go before the Tribunal and ask for such reliefs as were tenable. The question of tenability of such an Application was left open to the Applicant if and when any such Application was moved for recalling the order dated 1.11.88.

The matter had come up before this very Bench. Mr. J.P. Verghese appeared for the applicant and Mrs Avnish Ahlawat for the Delhi Administration. After hearing learned counsel for the parties and considering the pleas raised, we held that the Miscellaneous Petition filed by the respondents was tenable. We ordered recalling of the order dated 11.1.1988 and directed it to be restored to its original number and heard afresh. The respondents were given 4 weeks' time and no more to file their counter and another 4 weeks' time for filing rejoinder affidavit by the Applicant. The matter was ordered to be listed for hearing in the first week of December, 1989. The above order was passed on 29.9.1989.

On 4.12.1989 we directed the matter to be listed on 7.12.1989. On that date, a prayer was made to pass over for the day as Shri Verghese was busy in the Supreme Court. The matter was ordered to be listed for hearing on 18.12.1989. The case was adjourned again as the learned counsel for the respondents Mrs Avnish Ahlawat was unwell and had to undergo an operation. The matter was directed to be listed on 15.1.1990. On 15.1.1990 it was ordered to be placed before a Special Bench in Court No.I

on 16.1.1990. On that date, the applicant appeared in person and Shri Mukul Talwar, Counsel, appeared for the respondents.

~~At that time~~, Shri Talwar stated that the applicant was dismissed from service in 1968 for absenting himself from duty in 1966 and it was a mistake to include his name at Sl. No. 54 in the order dated 15.4.1971. The applicant stated that he had been agitating against the Police Administration right from 1966 and his dismissal was related to the same agitation. We directed the production of original record of the Departmental Enquiry against the applicant and the orders dated 5.1.1968 passed by the Supdt. of Police. The matter was directed to ^{be} taken up for final hearing on 24.1.1990. The matter could not be taken up for some time more as the Bench was busy in urgent matters. On 13.2.1990, the applicant made a request that the case be passed over for ^{applicant} the day. On 14.2.1990, the ~~he~~ did not have counsel to appear for him and he prayed that he be heard in person. We heard him and learned counsel for the respondents Mrs. Avnish Ahlawat, Counsel, and reserved the orders.

Meanwhile, it appears that the applicant's Writ Petition (Civil) No. 3174/85 had come up before the Hon'ble Supreme Court for orders on 12.2.1990. Their Lordships passed the following orders:-

"The Writ Petition is disposed of with the direction that the Central Administrative Tribunal before whom the petitioner's claim is pending shall dispose of the same within two months from today."

The above order was received on 27.2.1990 i.e. after the hearing had been completed.

We now take up the Application on the merits. The applicant's case was that there were a large number of policemen, who had been dismissed from service for having taken part in the police agitation of 1967, the applicant was treated at par with other cases and the similar order was passed in the O.A. by the same Bench of the Tribunal. Since the order of the Bench dated 11.1.89 was not complied with, a contempt petition was filed 7 months later. Appropriate orders were passed by the Tribunal and the applicant was reinstated, as like other constables. Subsequently, after the order dated 16.1.1990, the respondents had passed an order recalling the order of reinstatement. With the result, the applicant was being asked to return his Identity Card, Uniform etc.

In other words the Applicant's case was that all those who had participated in the police agitation of 1967 were either dismissed or removed or visited with other penalties, were reinstated in the police service with the solitary exception of the applicant. The case of the respondents was that he had not been dismissed as a sequel to the police agitation of 1967 but as a sequel to a disciplinary proceeding for absence from duty on an earlier occasion. The applicant heavily relied on the F.I.R. dated 14.4.1967 (P.S. Chanakyapuri) and the order dated 15.4.1971 by which his dismissal order was converted into removal order along with many other constables. The applicant stated that he was in police agitation, arrested, suspended and subsequently punished with the order of removal from service. Consequently, original order of

dismissal did not stand. He was also entitled to be reinstated in service, as like all other constables who had also been dismissed or removed from service as a sequel to the police agitation in 1967.

The respondents' case was that the applicant may have participated in the police agitation but his dismissal was for a breach of disciplinary rule after proper departmental enquiry. It was urged that absence from duty without leave is a serious offence and entails the punishment of dismissal. Learned counsel for the respondents stated that the applicant had not mentioned the correct date of dismissal order. It was urged that the applicant had concealed the fact that he was dismissed from service after separate disciplinary proceeding. Consequently, he had misled the Tribunal that he was dismissed in 1967. Learned counsel also argued that the order dated 15.4.1971 wrongly mentioned the name of the applicant as he had already been punished for absence from duty in a separate proceeding.

We have heard learned counsel for the parties and perused the material on the record and have come to the conclusion that the Application is liable to be allowed. The reasons are as follows:-

There is no manner of doubt that the applicant had taken leading part in Police agitation of 1967. Earlier also he had been one of the persons who had been advocating for certain benefits to the members of the Police Force and complaining about the certain orders and directions of the superior officers. He had actually participated in the police agitation in April, 1967 is clear from as the F.I.R. No. 87/67 dated 14.4.67 recorded in Police Station Chanakyapuri. ~~Shri Chhida Singh Rawat's~~ Shri Chhida Singh Rawat's name -

finds place in the F.I.R. which was recorded in the PS Chanakyapuri on 14.4.1967. The applicant along with Sarvashri Om Prakash Mehtani, Bakshi Sardari Lal, Bhagwan Das Shastri, Shyam Singh were raising slogans. They were leading a procession which was not dispersing. Consequently, 20 Shells of Teargas were thrown and busted ^{and there-} after the procession dispersed and it was stated that the policemen taking part in the procession had committed an offence under Section 144 IPC. @

Annexure VI is a statement made on the floor of the Parliament. It was stated that about 1014 policemen were involved. Fifty one responded to the call for sanity and no action was taken against them. Criminal prosecution was started against 963 policemen. Their cases were pending in the Courts. 18 persons were dismissed by the President, invoking clause (c) of the proviso to Article 311(2) of the Constitution. 780 persons were suspended, out of which 63 were dismissed for further misconduct during the period of suspension. Services of 163 temporary employees were terminated. The House had shown a sympathetic attitude towards these policemen and the Government in deference to the wishes of this house, agreed to have a fresh look at the matter. The Government had re-examined the matter in consultation with Lt. Governor and the Inspector General of Police. The Government had decided to advise the public prosecutors to apply to the courts for permission to withdraw cases against the policemen who tendered unqualified written apology. 717 persons under suspension were to be reinstated in the Delhi Police; 165 temporary persons, whose

services were terminated were to be taken back in Delhi Police as fresh entrants; and 62 persons dismissed for misconduct during suspension were to be ^{vided} ~~pro-~~ fresh employment in other Central police formations. 18 persons, who were dismissed, invoking clause (c) of the proviso to Article 311(2) were to be considered for grant of compassionate allowance.

We may now refer to Annexure-I dated 15.4.1971. The order reads as under:-

"ORDER No. F.21(30)/71 Home(P):- In exercise of the powers conferred by Section 3 of the Police Act, 1861; and in pursuance of the provisions of the Punjab Police Rules as amended vide notification No. F.5(258)/7C-Home(P) dated the 2nd December 70 the Lt. Governor, Delhi is pleased to convert the punishment orders passed by the Superintendents of Police concerned in the cases of the following 59 Ex-Police personnel from 'dismissal' to 'removal' from service, for grave misconduct in connection with the police agitation of 1967."

The name of Shri Chhida Singh Rawat exists at Serial No. 54.

There is no dispute that his name is there. It is also not in dispute that no correction of the aforesaid list was ever issued. It was urged on behalf of the Delhi Administration that the name of Shri Chhida Singh Rawat had been wrongly included in Annexure I of the aforesaid. If it was so, one would have expected that a correction was issued soon thereafter, but till date there is no such order correcting Annexure I.

It appears to us that the case of Shri Chhida Singh Rawat was not treated differently by the Lt. Governor, Delhi. He was pleased to convert the punishment order passed by the Supdt. of Police concerned in the cases of 59 police personnel from 'dismissal' to 'removal from service'. What is significant is that these conversions were in respect of "grave misconduct"

in connection with the police agitation of 1967". There is no correction of the order in respect of Shri Chhida Singh Rawat.

In view of the above, the applicant cannot be treated differently from the rest of the police constables, who had been reinstated. He was also entitled to be reinstated.

It is true that there was a disciplinary proceeding against the applicant. An order of dismissal had been passed in 1968 but he was also named in the order (Annexure-I) dated 15.4.1971 and his dismissal order was changed to the removal from service. Subsequently, all the police personnel mentioned in Annexure-I were reinstated except the applicant. Consequently, after the order dated 11.1.1988 by the Tribunal, he had to apply for the implementation of the order by filing a contempt petition in the Tribunal and thereafter he was reinstated. Similar cases of the Delhi Police had also come up before the Delhi High Court in the case of Shri Fateh Singh Vs. Union of India (C.W. No. 65/71) and Shri Bhopal Singh Vs. Union of India & Ors (C.W. No. 214/70).

We are convinced that the applicant had taken part in police agitation even before 1967 and also in April, 1967 and the order dated 15.4.1971 is fully applicable in his case and that he cannot be treated differently from any other police personnel, who were removed from service for grave misconduct in connection with the police agitation of 1967. It is significant to note that he was not dismissed before the police agitation of 1967 but on a later date. Since he had participated in the police agitation, he was to be treated in the same manner as other had been treated by the respondents.

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The applicant had also made representations to the President of India vide Annexure VII-A dated 15.3.1980, Annexure VII-B dated 19.6.1980 and Annexure VII-C dated 9.11.1982. Reference may also be made to the letter dated 26.11.1987 indicating that the applicant was dismissed from the force during police agitation of 1967 from South District, Delhi. It is also a fact that the enquiry was conducted by Shri Amrik Singh, Station House Officer, Chanakayapuri. He was charged for absence from duty for 14 days from 7.7.1966. He could not explain his absence without permission to the satisfaction of his superior officers. The enquiry officer recorded the statement of prosecution witnesses. The charge was served on the applicant. He pleaded not guilty to the charge. He was given several opportunities to produce his defence but failed to do so. Supdt. of Police, South District by his order dated 5.1.1968 came to the conclusion that the charge stood proved against the applicant, and tentatively decided to dismiss him from service. A show cause notice was issued, but no reply was received from the applicant. In the absence of reply, notice was made absolute.

The stand taken by the applicant that he had made representations to the concerned authority that the enquiry officer Shri Amrik Singh was the same station House Officer who had appeared as / witness against him in certain other proceedings and he was biased against the applicant. His case was that he did not appear for no orders were passed on his above representations.

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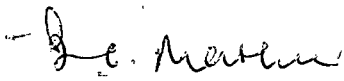
We do not see **any necessity** to go into all these matters for we are satisfied that the applicant's past record also shows that he had been agitating as one of the leader of the Delhi Police. It was clearly established that he had participated in the police procession and was the leader of the processionist in the incident dated 14.4.1967. The punishment dated 5.1.1968 came after the incident of April, 1967. It is obvious from the fact that his name was included in the order dated 15.4.1971 that he was a participant in the police agitation.

We fail to understand as to why the applicant should be visited with a different punishment than other agitating policemen. The charge against the other policemen was far more serious than the charge against the applicant (of being absent from duty). All others who participated in what is termed Police Rebellion of 1967 have been reinstated. The applicant also participated in the above and we see no reason for him being treated differently.

We are further of the view that although his case was taken up on 11.1.1988 along with some other cases and that the respondents' counsel did not appear to argue the case on behalf of the respondents and that the order directing the case to be heard along with some other cases in the absence of the counsel for the respondents, may not have been quite in order yet we are of the view that the applicant cannot be discriminated against and he has to be treated similarly as all those whose dismissal order had been changed to an order of removal and subsequently withdrawn and reinstated. We are, therefore, of the view that the applicant deserves to be treated similarly and ordered to be reinstated in Delhi Police.

In the result, the Application is allowed. The applicant will be reinstated in the Delhi Police as in the case of other police constables whose dismissal order had been converted into an order of removal and subsequently withdrawn and reinstated. The applicant is entitled to similar ^{as} **treatment** as has been given to other police personnel as in the case of Shri Bhopal Singh, dated 13.11.1988, decided by the High Court of Delhi. The applicant will also be entitled to the consequential monetary benefits for the period he was kept out of service, less whatever may have been paid to him already.

We leave the parties to bear their own costs.


(B.C. MATHUR)
VICE-CHAIRMAN (A)


(AMITAV BANERJI)
CHAIRMAN

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