

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

CCP 153/90 in
O.A. No. 2052/88 and
T.A. No. MP 64/1991

199

DATE OF DECISION 04-06-1991

Shri Jagdish Ram Kataria

Petitioner

In person

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Mrs. AvAvnish Ahlawat

Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. P.C. JAIN, 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 ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The Petitioner in this CCP is the original applicant in OA 2052/88 which was disposed of by judgment dated 4.5.1989 to which one of us(Shri P.K. Kartha) was a party. While working as Sub-Inspector(Executive) in the Delhi Police, he was placed under suspension. The respondents had passed an order on 7.1.1988 to the effect that all persons under suspension shall be put for roll call duty at 9.00 AM to 5.00 PM. The question arose whether he would be entitled to claim conveyance charges from his residence to office to attend such roll calls twice every day during the period of his suspension. He had prayed for reimbursement of conveyance charges amounting to Rs.112 per day, as auto-rickshaw charges

from Mangol Puri to Lodi Road and back at the rate of Rs.28/- per journey.

2. After hearing the applicant in person and the learned counsel for the respondents, the Tribunal disposed of OA 2052/1988 by passing the following orders:-

" We have no doubt in our mind that in the absence of any specific provision in the Delhi Police Act, 1978 or the rules made thereunder, regarding reimbursement of conveyance charges incurred by a Police Officer placed under suspension who is required to attend roll calls every day, he would be entitled to reimbursement of conveyance charges to the extent as admissible under the Supplementary Rules. We, however, make it clear that it will be open to the Administrator to make a suitable provision in the rules made under the Delhi Police Act, 1978 to provide for the quantum of such charges which could be reimbursed to a Police Officer in such cases.

However, until the rules are made by the Administrator in this behalf, the provisions contained in the Supplementary Rules would be applicable. In this view of the matter, the applicant will be entitled to reimbursement of conveyance charges incurred by him from 15.1.1988 for the journeys undertaken from his residence in Mangol Puri to his office in Lodi Road to attend the roll calls to the extent admissible under the Supplementary Rules.

The respondents shall comply with the above directions within one month of the receipt of a copy of this order. There will be no order as to costs."

3. On 1.8.1989, the respondents filed MP 1667/89 seeking extension of time to comply with the judgment. It was stated in the MP that they had filed SLP in the Supreme Court against the Judgment dated 4.5.1989. This MP was disposed of by order dated 21.12.1989 to which one of us (Shri P.K. Kartha) was a party. The Tribunal observed that the claim of the applicant amounting to Rs.112/- per day appeared to be "beyond the realm of reasonableness and financial prudence. It is also not justified on a correct interpretation of the relevant rules".



The operative part of the order is as under:-

"Pending the amendment of the Rules as commended by the Tribunal to provide for such contingencies, we feel that having regard to the rank and status of the applicant, he should be reimbursed a reasonable amount to meet his expenses in connection with the journeys performed by him during the suspension period in question. In equity and fairness, we, therefore, order and direct that the applicant should be reimbursed at a flat rate of Rs.10/- per day from 15.1.1988 to 10.8.1989 and should comply with the above directions within a period of one month from the date of communication of this order. The amount already paid to him shall be adjusted against the payments due to him."

4. The petitioner filed SLP Civil No.4981/90 against the aforesaid order dated 21.12.1989 together with application for ex-parte stay. The same was dismissed by order dated 13.8.1990 which reads thus:-

"Having heard learned counsel for the petitioner at some length, we are of the view that on the facts pointed out by the Tribunal it is not a fit case for interference at this stage."

5. The present CCP was filed on 10.8.1990. At the hearing held on 10.8.89, the learned counsel for the respondents had sought for three weeks time to comply with the judgment dated 4.5.1989 and the time prayed for had been granted. The petitioner, therefore, prayed in the CCP that the respondents be punished for having committed contempt of this Tribunal by making wilful breach of the undertaking dated 11.8.1989.

6. On 17.10.1990, the petitioner filed MP No.64 of 1991 praying that the facts stated therein be allowed to be treated as part and parcel of the CCP. The facts brought out by him are the filing of an MP on 17.10.1990 praying that the matter may be referred to a larger Bench for final disposal, the passing of order dated 21.12.1989 on MP No.1667 of 1989 by the Tribunal and the order dated 13.8.1990 by the Supreme Court in SLP 4981 of 1990 filed by him against the order of the Tribunal dated 21.12.1989.



7. The petitioner has annexed to MP No.64 of 1991 a copy of the MP filed on 17.10.1990 containing the prayer for referring the matter to a larger Bench for final disposal. It has been stated therein that the order dated 21.12.1989 passed by the Tribunal is in violation of the principle of law enunciated by the Full Bench of this Tribunal in Vijaya Kumar Srivatsava and Others Vs. Union of India, 1986(4) SLJ 648(CAT) wherein it was observed as follows:-

"Judicial discipline requires that if a Bench of coordinate authority has expressed a view, another Bench of the Tribunal should not pronounce a judgment of different view and if it is unable to agree with the view expressed earlier, to avoid conflicting judgments the case should be referred to a larger Bench".

8. The respondents have stated in their reply to the CCP that there had been no violation of the Tribunal's order dated 4.5.1989. They have stated that on 4.9.1989, the petitioner received payment of Rs.4,472/- pursuant to the judgment dated 4.5.1989 and a further sum of Rs.1,118/- on 8.2.1990 pursuant to order dated 21.12.1989.

9. We have carefully gone through the records of the case and have heard the applicant in person and the learned counsel for the respondents*. On 22.4.1991, the petitioner has filed written submissions wherein he has relied upon several rulings of the Supreme Court* and we have duly considered them.

* Cases relied upon by the applicant are:-

Kiran Singh Vs. Chaman Paswan, AIR 1954 SC 340 at 342;
Anwar Ali Sarkar's case, AIR 1952 SC 75;
A.R. Antulay Vs. R.S. Nayak, AIR 1988 SC 1531;
S.P. Sampath Kumar Vs. Union of India, AIR 1987 SC 124.

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10. In OA 2052/88, the petitioner had prayed for a direction to the respondents to make the payment to the applicant at the rate of Rs.56/- for his each attendance at the roll calls during his suspension. In its judgment dated 4.5.1989, the Tribunal did not issue any such direction. Instead, the Tribunal held that until the rules are made by the Administrator in this regard, the provisions contained in the Supplementary Rules would be applicable and that the petitioner would be entitled to reimbursement of conveyance charges incurred by him from 15.1.1988 for the journeys undertaken from his residence in Mangol Puri to his office in Lode Road to attend the roll calls "to the extent admissible under the Supplementary Rules".

11. After the filing of MP 1667/89, the respondents had^a filed an affidavit on 10.11.1989 as to how they have implemented the judgment of the Tribunal dated 4.5.1989. The petitioner had also filed a counter-affidavit on 20.11.89. Both sides had referred to the provisions of the Supplementary Rules and the instructions issued thereunder. The Tribunal passed order dated 21.12.1989 after considering the rival contentions and on the correct interpretation of the relevant rules. In passing the aforesaid order, the Tribunal also had regard to the rank and status of the petitioner.

12. We do not agree with the contention of the applicant that the Tribunal had passed order dated 21.12.1989 after reviewing the judgment dated 4.5.1989 or that the order dated 21.12.1989 was without jurisdiction and per incuriam. In the order dated 24.9.1991 in RA No.155/90 in OA 219/89

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(M.R. Dewan Vs. Union of India), Hon'ble Chairman speaking for the Bench, observed that since the Tribunal does not have any inherent power, it is doubtful whether the principle of per incuriam can be invoked in the proceedings before the Tribunal. We reiterate the same view. If the petitioner is aggrieved by the decision of the Tribunal, the proper course for him would be to prefer an appeal in the Supreme Court. In the facts and circumstances, we see no merit in the CCP and MP 64 of 1991 filed by the petitioner. CCP 153/90 is dismissed and the notice of contempt is discharged. MP 64 of 1991 is also dismissed.

Clean
(P.C. JAIN) 4/6/91
ADMINISTRATIVE MEMBER

Sumit
(P.K. KARTHA) 4/6/91
VICE CHAIRMAN(J)