

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH



OA No.2274/2004

New Delhi: this the 11th day of October, 2006

HON'BLE MR.JUSTICE B.PANIGRAHI, CHAIRMAN
HON'BLE MRS. CHITRA CHOPRA, MEMBER (A)

Constable Phool Singh
S/o Shri
R/o village & P.O- Gandura,
Tehsil – Laxman Garh,
District- Alwar, Rajasthan

(By Advocate: Shri Sachin Chauhan)

..... Applicant.

Versus

1. Govt. of N.C.T.D.
Through its Chief Secretary,
New Sachivalaya, I.P.Estate,
New Delhi.
2. Joint Commissioner of Police,
New Delhi Range,
I.P.Estate, M.S.O Building,
New Delhi.
3. Dy. Commissioner of Police
New Delhi District,
I.P.Estate, M.S.O. Building,
New Delhi.

.....Respondents.

(By Advocate: Shri Harvir Singh)

ORDER

Hon'ble Mrs. Chitra Chopra, Member (A)

Through this application, the applicant Phool Singh has challenged the legality, validity and propriety of impugned order dated 8.8.2003 whereby he has been imposed punishment of forfeiture of one year's approved service permanently entailing proportionate reduction in his pay from Rs.3125/- to Rs.3050/- w.e.f. 29.9.1999 and treating his suspension and dismissal period, as not spent on duty.

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The appellate order dated 9.7.2004 (Annexure A-2) rejecting his appeal has also been assailed by the applicant.

2. The factual background as submitted by the applicant in his application is as under:

3. The applicant Phool Singh was appointed as Constable in Delhi Police. He was dealt with departmentally on the allegations of demanding illegal gratification and also falsely implicating a person in a criminal case. A preliminary inquiry took place and on the basis of P.E., the applicant, along with co-defaulter ASI Sube Singh and Constable Harminder Singh was dismissed under Article 311 (2) (b) of the Constitution vide order dated 8.5.1992. Aggrieved with the decision of the disciplinary authority, the applicant and other co defaulters jointly filed OA 1758/1992 in the Tribunal. Vide judgment-dated 23.3.1998, the Tribunal directed the applicants to prefer an appeal before the appellate authority as per provisions of law. In the appeal, the appellate authority quashed the dismissal and ordered for regular departmental inquiry, placing the applicants under suspension vide order dated 10.9.98. On conclusion of disciplinary proceedings, punishment of forfeiture of one year's approved service for a period of one year permanently entailing consequent reduction of pay was imposed upon the applicant. Thereafter, he filed OA 2637/2002 before the Tribunal which was allowed vide order dated 20.5.2003 (Annexure A-5) and the impugned orders were quashed. In similar case of co-delinquent constable Harminder Singh, OA No.2968/2002 was decided by this Tribunal on 1.8.2003, on the ratio of the decision of Delhi High Court in the case of Shakti Singh vs. Union of India & Ors. (CWP No.2368/2000) decided on 17.9.2002 (Annexure A-4). The

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Tribunal allowed the OA on the grounds of dual punishment and further directed that the disciplinary authority, if deemed appropriate, may pass fresh orders in accordance with the law. Accordingly, in implementation of Tribunal's direction vide order dated 1.8.2003, disciplinary action was further taken.

4. The facts of the case leading to the series of litigation are that while the applicant Phool Singh was posted at P.S. Parliament Street, a complaint was received from the residents of Nangla Machi through one Sh. Raghubir Singh Kapoor r/o 1178, Dev Ram Park, Tri Nagar, Delhi alleging therein that one Sh. Nisar Ahmed was falsely implicated in a case by ASI Sube Singh No.1533/ND, on the instigation of one Salauddin. It was further alleged that ASI Sube Singh finding nothing illegal from him, put his Jhuggi on fire and took away Nisar Ahmed. That ASI Sube Singh then took Rs.2000/- from Smt. Shakila Begum w/o Nisar Ahmed in the presence of Prabhu Dayal and others on the promise that he would release her husband for which Smt. Shakila Begum arranged the money after mortgaging her ornaments. In the Vigilance enquiry, the allegation against the ASI Sube Singh and Ct. Phool Singh and Ct. Harminder Singh for falsely implicating Nisar Ahmed in case FIR No.344/1991 us 25/54/59 Arms Act P.S. Tilak Marg and for accepting Rs.2000/- by the appellant, were substantiated. The allegation that the appellant had put the Jhuggi on fire was, however, not substantiated.

5. One of the charges against all three police officers was of falsely implicating Nisar Ahmed in case FIR No.344/91 under Section 25/54/59 of Arms Act. The trial court let off the accused Nisar Ahmed by giving benefit of doubt.

6. Learned counsel for the applicant Shri Sachin Chauhan has emphatically submitted that there is no material against the applicant on the basis of which, the penalty can be sustained. It has been prayed that the impugned order dated 8.8.2003 and the appellate order dated 9.7.2004 (Annexure A-1 and A-2) be set aside and the applicant restored to his service with all the consequential benefits.

7. In the counter affidavit, learned counsel for the respondents has drawn our attention to the findings in the enquiry report to the fact that the charge of false implication of Nishar Ahmed was proved and hence the penalty awarded should not be set aside. It is undisputed that the applicant, along with the other two delinquents, namely, ASI Sube Singh and Constable Harminder Singh, was dismissed from service by order dated 8.5.1992 and was reinstated and again placed under suspension vide order dated 10.9.1998.

8. The main issue, which comes up for consideration, is as to whether the applicant shall be paid full wages from the date of dismissal to the date of reinstatement i.e. from 8.5.1992 to 22.7.1998 and also subsequently during the period of suspension i.e. from 22.7.1998 to 19.8.1999.

9. It is true that the order of the dismissal passed by the respondents authority was quashed by the Tribunal but it was challenged by the respondents before the Hon'ble High Court. In prosecuting the litigation, which has almost taken about six years neither party can be held solely responsible for such delay, as it was essentially on account of Laws' delay that the disciplinary proceedings was pending and could not come to an end. The respondents immediately reinstated the applicant in service as soon

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as the order passed by the Tribunal was received by them. Thus we are of the view that the respondents should not be saddled to pay the entire salary for the period 8.5.1992 to 22.7.1998. This view has been taken in the case of the co-delinquent ASI Sube Singh in OA No.779/2004 wherein while placing reliance on the judgement reported in **2006 AIR SCW 3216 in the case of U.P.S.R.T.C. v. Sarada Prasad Misra & another** it was observed:

"In our opinion, however, the limited grievance of the learned counsel for the Corporation is well founded. Admittedly, the order of termination was passed on September 6, 1975. Admittedly, an application was made to the Conciliation - Officer, Allahabad by the workman on July 17, 1982, that is, after about seven years from the date of termination. In the circumstances, therefore, the Corporation is justified in raising legitimate objection as regards payment of wages for the said period. Since the respondent had invoked jurisdiction of Labour Forum after seven years, it would not be appropriate to direct the appellant-Corporation to pay wages for the intervening period."


10. In the case of co-delinquent, namely ASI Sube Singh, it has been observed that "there is no precise formula nor 'cast iron rule' as to when the payment of full back wages should be allowed by the Courts/Tribunal. It depends upon facts and circumstances of each case. The Court or Tribunal should not be rigid or mechanical but flexible and realistic. The litigation continued for a period of six years before the Tribunal and the Hon'ble High Court. Such delay cannot be attributable either to the applicant or to the respondents. It was Laws' delay for which neither party was responsible."

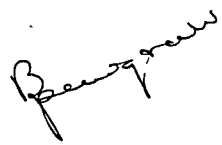
11. On this basis, it has been directed that the respondents would pay 50% of the Salary to the applicant for the period from 8.5.92 to 22.7.1998

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12. In the present case also we have no reason to take a different view. Accordingly, In view of the above background as well as the identical facts and circumstances, we direct the respondents to pay 50% of the salary to the applicant for the period 8.5.1992 to 22.7.1998. So far as the period of suspension is concerned, since the applicant has been subsequently reinstated, he shall be entitled to the full salary for the period from 22.7.98 to 19.8.99 by deducting the suspension allowance, if paid to the applicant. With these directions, OA is disposed off. No costs.


(Chitra Chopra)
Member (A)


(B. Panigrahi)
Chairman

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