

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.630/2004

New Delhi, this the 17th day of November, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member (A)

Insp. Raj Kant Jha
No.D/1444
S/o Late Sh. Rameshwar Jha
R/o H.No.75, Sector-4, R.K.Puram
New Delhi - 110 022. ... Applicant

(By Advocate: Sh. Arun Bhardwaj)

Versus

1. Union of India
Through Commissioner of Police
PHQ, I.P.Estate, ITO, New Delhi.
2. Addl. Commissioner of Police
Crime, PHQ, I.P.Estate, New Delhi. ... Respondents

(By Advocate: Sh. Ajesh Luthra)

ORDER

By Mr. Justice V.S. Aggarwal:

Applicant (Raj Kant Jha) is an Inspector in Delhi Police. A complaint was made against him with respect to the offences punishable under Sections 7, 13(2) read with 13(I)(d) of the Prevention of Corruption Act, 1988. On 30.5.1995, the applicant was arrested in the above said matter. He was placed under suspension on 5.6.1995 by virtue of the following order:

"On having been arrested in case RC No.40(A)/95-DLI dated 29.5.95 u/s 7 of P.C.Act, 1988, Insp. R.K.Jha No.D/1444 PIS No.16750039 is hereby placed under suspension w.e.f. 29.5.95 i.e. the date of arrest."

During the first three months he will draw subsistence allowance at an amount equal to leave salary which they would have drawn, if he had been on leave on half average pay in addition to dearness allowance based on such leave salary. He will draw other allowances



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which he is drawing on the date of suspension. In case, suspension period exceeds three months, the order will be reviewed under the provision of FR-53.

During the period of suspension the headquarters of the Inspr. will be DRP Lines, Delhi. He will not leave his headquarter without obtaining prior permission of the competent authority and shall deposit his uniform articles with I/C Clothing store, DRP Lines, Delhi."

2. On 17.2.1999, his name was brought on the secret list of doubtful integrity from 8.7.1996. His representation in this regard has been rejected. He was tried as accused in the above said case. On 22.9.2000, the applicant was acquitted by the Learned Special Judge, Delhi. The Learned Special Judge, Delhi had directed that the complainant Shri Baljeet Singh should be prosecuted. On 10.8.2001, pertaining to the same assertions, disciplinary proceedings were ordered against the applicant. He was served with the summary of allegations along with the list of witnesses. An Inquiry Officer was appointed. The Inquiry Officer examined the witnesses and concluded that the charge against the applicant was not proved.

3. On 20.5.2003, the disciplinary authority passed an order dropping the proceedings against the applicant. The applicant was reinstated. However, it was further directed that his suspension period was justified and that period should not be taken to have been spent on duty. The operative part of the said order reads:

"..... I have also gone through the evaluation and discussions of evidence in D.E. that there is no evidence to frame the charge against the defaulter Inspr. R.K.Jha., No.D/1444. Therefore D.E. is accordingly dropped and closed. He is reinstated from suspension with immediate effect. His suspension period from 29.5.95 to 22.9.2000 (date of announcement of judgement) was fully justified and hence be not treated as pent on

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duty. Period from 23.9.2000 to the date of issue of this order may be treated as spent on duty.

Let the Inspr. be informed accordingly."

The appeal filed by the applicant has been dismissed. Simultaneously, the name of the applicant was removed from the Agreed list of doubtful integrity with effect from 22.9.2000 when he was acquitted. The order reads:

"With the approval of Jt. CP/Vigilance, Delhi vide order No.802-03/Vig./CA dated 29.01.2004 the name of Inspr. R.K.Jha, No.D/1444 has been removed from Agreed List of doubtful integrity w.e.f. 22.9.2000 i.e. date of judgement."

4. By virtue of the present application, the applicant seeks setting aside of the order to the extent by which his suspension period from 29.5.1995 to 22.9.2000 was treated as not spent on duty. He further contends that his name should be removed from the Agreed list of doubtful integrity not from the date he was acquitted, i.e., 22.9.2000 but from 8.7.1996 when it was so brought on the secret list of doubtful integrity. He also prays for consequential benefits.

5. The application has been contested. The basic facts, to which we have made a reference, are not in dispute. The respondents contend that from the judgment of the Learned Special Judge, Delhi, it is clear that Shri Baljeet Singh had given false evidence in Court and had fabricated the false evidence in the statement before the Court so that the applicant could be acquitted. It is insisted that the applicant had demanded bribe from the complainant but during the trial, the complainant and other witnesses had been won over. Because of lack of evidence,



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the disciplinary proceedings were dropped. In face of these facts, the impugned orders mentioned above are being defended.

6. We have heard the parties' counsel and have seen the relevant record.

7. So far as the contention that the name of the applicant should be removed from the Agreed list of doubtful integrity, we take advantage in referring to the Standing Order No.265. In order to locate and identify the officials of doubtful integrity, the said orders have been issued. Under Paragraph-4 of the said Standing Order, there are two lists of the staff pertaining to the doubtful integrity - (1) Agreed List (2) Secret List. According to this Standing Order, names of the officers and men have to be entered in the list in whose cases enquiries do not substantiate dishonesty against the concerned officers/men but there remains sufficient suspicion about their integrity. The relevant Paragraphs read:

"5. AGREED LIST:

The agreed list of officials of doubtful integrity shall be maintained, according to DA's instructions contained in letter No.F.10(19)66-V dated 17/5/66 (Annexure-I). Names of such officers and men shall be entered in this list in whose cases enquiries do not substantiate dishonesty against the officers/men concerned but there remains sufficient suspicion about their integrity. The names of such persons shall be brought on the agreed list with the approval of the controlling Addl. Commissioner of Police, in the cases of Upper subordinates i.e. ASIs to Insprs. and with the approval of DCP/Vigilance in the case of lower subordinates. However, such approval of DCP/Vigilance, if contested by the concerned Distt./Units DCP, will be reviewed for final decision, by the controlling Addl. Commissioner of Police of the lower subordinates in question. The Distt./Units DCs shall furnish relevant details to DCP/Vigilance who shall maintain this information centrally in respect of all police personnel and G.Os. of Delhi Police, after obtaining necessary orders of the competent authority in the manner specified

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above. Details of officers/men whose names are brought on the agreed list will also be furnished by DCP/Vigilance to DCP/HQ-I for taking action regarding shifting of such men out of security category and 'A' category units.

6. The agreed list of doubtful integrity will be a confidential list to be used primarily for deciding postings. It will not have any bearing on the promotion of the staff placed on this list."

8. When the facts of the present case are examined on the touchstone of the aforesaid, it is clear that the plea of the applicant necessarily must succeed. This is for the reason that as already referred to above the applicant has since been acquitted by the Court of the Learned Special Judge and even the departmental proceedings initiated, have since been dropped. In other words, there was no material against the applicant and, therefore, his name had been removed from the Agreed list of doubtful integrity. Once there was no material against him, we find no reason as to why it should not be removed from the date when his name was entered in that list, i.e., 8.7.1996.

9. A similar question had arisen before this Tribunal in the case of **HARJINDER SINGH GILL v. GOVT. OF NCT DELHI AND OTHERS**, 2001(2) ATJ 607. This Tribunal held:

"The contention of the learned counsel for the applicant is that after exoneration from the departmental enquiry as admittedly an order was passed by the disciplinary authority on 9.1.98 dropping the departmental enquiry against the applicant, his name which had been entered in the secret list of officials having doubtful integrity should have been removed from its inception i.e., w.e.f. 8.6.1995. The learned counsel for the applicant has drawn our attention to judgment of this Tribunal dated 18.8.1998 in OA 827/1998 where it has been held as under:

"In view of the above, we are convinced that the OA deserves to be allowed. We accordingly allow

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this OA and set aside the order dated 28.10.1997 by which the applicant's name has been removed from the secret list only w.e.f. 6.6.1997. We further direct that the applicant's name shall be deemed to have been removed from the secret list from the date of its inception i.e. 6.6.1994. It shall be open to the applicant to make necessary representation claiming consequential benefits following from its order."

In this case also the name of the applicant was removed from the secret list from the date of his exoneration from the departmental charges. But the Tribunal was pleased to direct the respondents to remove the names from the date of his inception. We are in conformity with the judgment delivered by the Tribunal and held that the action of the respondents by removing the name of the application from the secret list of officials having doubtful integrity w.e.f. 8.6.1998 and not from 8.6.1995 is not legally sustainable. As a result the applicant's name would stand removed from the secret list of officials having doubtful integrity w.e.f. 8.6.1995."

Same view was taken by this Tribunal in OA No.2039/2003

(MALUK SINGH v. THE GOVT. OF NCT OF DELHI & OTHERS),

decided on 6.2.2004. We find no reason to take a different view.

Accordingly, we hold that the name of the applicant has to be removed from the Agreed list of doubtful integrity from 8.7.1996.

10. The other controversy agitated was as to whether the suspension period of the applicant should be treated as spent on duty or not. Learned counsel for the applicant contended that the applicant had falsely been implicated and, therefore, there was no justification to pass such an order. On the contrary, the respondents' counsel urged that the witnesses were won over and consequently the impugned order passed is justified. He relied upon the decision of the Supreme Court in the case of

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KRISHNAKANT RAGHUNATH BIBHAVNEKAR v. STATE OF

MAHARASHTRA AND OTHERS, AIR 1997 SC 1434. In the cited case, the appellant was working as Compositor in the Government of India Printing Press. He faced trial with respect to offence punishable under Section 409 of the Indian Penal Code and was acquitted. He was not given the consequential benefits. The Supreme Court held that if a person is suspended on valid considerations, he should not get full back-wages as a matter of course, on his acquittal. In the facts of that case, the Supreme Court held that he was not entitled to the said consequential benefits. He was not treated to be on duty. The findings of the Supreme Court read:

"4. If the conduct alleged is the foundation for prosecution, though it may end in acquittal on appreciation or lack of sufficient evidence, the question emerges: whether the Government servant prosecuted for commission of defalcation of public funds and fabrication of the records, though culminated into acquittal, is entitled to be reinstated with consequential benefits? In our considered view, this grant of consequential benefits with all back-wages etc. cannot be as a matter of course. We think that it would be deleterious to the maintenance of the discipline if a person suspended on valid considerations is given full back wages as a matter of course, on his acquittal. Two courses are open to the disciplinary authority, viz., it may enquire into misconduct unless, the self-same conduct was subject of charge and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at all; but acquittal is not on benefit of doubt given. Appropriate action may be taken thereon. Even otherwise, the authority may, on reinstatement after following the principle of natural justice, pass appropriate order including treating suspension period as period of not on duty. (and on payment of subsistence allowance etc.) Rules 72(3), 72(5) and 72(7) of the Rules give a discretion to the Disciplinary Authority. Rule 72 also applies, as the action was taken after the acquittal by which date rule was in force. Therefore, when the suspension period was

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treated to be a suspension pending the trial and even after acquittal, he was reinstated into service, he would not be entitled to the consequential benefits. As a consequence, he would not be entitled to the benefits of nine increments as stated in para 6 of the additional affidavit. He is also not entitled to be treated as on duty from the date of suspension till the date of the acquittal for purpose of computation of pensionary benefits etc. The appellant is also not entitled to any other consequential benefits as enumerated in paragraphs 5 and 6 of the additional affidavit."

11. Indeed, this is the binding law on the subject. But, in this backdrop, one necessarily has to revert back to the facts of the present case. Perusal of the decision of the Learned Special Judge, Delhi, reveals that the Learned Special Judge held that the complainant had reasons to falsely implicate the applicant. He had a strong motive to do so and even the punch witnesses have not supported the case of the respondents. The findings of the Learned Special Judge in this regard are:

"36. So, from the entire evidence on record I have no hesitation in holding that the complainant is a liar and has told lie on oath in this court which I will discuss hereinunder and false implication of accused R.K.Jha by him in this case cannot be ruled out because complainant has strong motive to implicate the accused since accused was investigating a serious criminal case against the nephew of the complainant. Further, the shadow as well as recovery witness have also not supported the prosecution case and as such prosecution has failed to prove its case against accused R.K.Jha, that he while being a Public Servant has either demanded or accepted any bribe from the complainant. Further, no recovery was affected from the accused R.K.Jha and as such he is liable to be acquitted."

12. Subsequently, the complainant was directed to be prosecuted by the Learned Special Judge, Delhi. In addition to that, the Learned Special Judge even held that the complainant was a liar and he had no regard for truth. It is true that at certain

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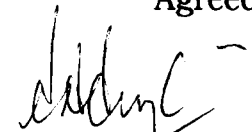
places, the Learned Special Judge referred to the fact that the applicant had won over the complainant but keeping in view the facts and circumstances and on reading the Judgment of the Learned Special Judge, as a whole, it is obvious that the findings arrived at were, as already referred to above, that the applicant could have been implicated falsely.

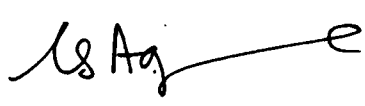
13. In addition to that, the departmental proceedings were also initiated. The applicant had been exonerated and the proceedings had to be dropped. It is in these facts that the suspension order, in the peculiar facts of the case, is not justified and resultantly, the applicant should be held to be entitled to have spent the period of suspension on duty. Therefore, directions have to be issued to treat the suspension period as spent on duty.

14. For the reasons given above, the Original Application is allowed. It is directed:

- a) The period of suspension should be treated as on duty.
- b) The name of the applicant should be removed from the

Agreed list of doubtful integrity from 8.7.1996.


(S.A.Singh)
Member (A)


(V.S.Aggarwal)
Chairman

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