

(3)

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-81/2004
MA-558/2006
RA-315/2004

New Delhi this the 29th day of May, 2006.

Hon'ble Mr. Shanker Raju, Member(J)
Hon'ble Mrs. Chitra Chopra, Member(A)

Sh. Jai Kishan,
Constable of Delhi Police,
R/o 9-A, N-Block,
Opp. Nanak Paio,
Gopal Nagar,
Nazafgarh,
New Delhi-43.

.... Applicant

(through Sh. Anil Singal, Advocate)

Versus

1. Govt. of NCT of Delhi through
its Chief Secretary,
Delhi Secretariat,
I.P. Estate, New Delhi.

2. Commissioner of Police,
Police Headquarters,
I.P. Estate, New Delhi.

3. Jt. Commissioner of Police,
Armed Police, PHQ,
IP Estate, New Delhi.

..... Respondents

(through Sh. T.K. Samanth, proxy for Sh. Ram Kanwar, Advocate)

Order (Oral)

Hon'ble Shri Shanker Raju, Member(J)

MA-558/2006

By virtue of this MA filed in RA-315/2004 in OA-81/2004, orders passed in RA and O.A. are being sought to be recalled with extension of benefit of decisions of this Tribunal in Constable Ranbir Singh (OA-340/2004) dated 10.1.2006 and Constable Rai Karan (OA-1613/2004) dated 13.1.2006. which ultimately have been implemented by the respondents vide order dated 26.4.2006.

2. Learned counsel of the applicant states that in a similar situation, the matter has attained finality on dismissal of SLP and Review Application against it. In **Kamlakar & Ors. Vs. U.O.I. & Ors.** (JT 1999(4)SC 486), Apex Court held that when in any earlier case founded on the same facts and involving common question of law, relief has been given, Interlocutory Application was allowed. In this case, not only application for review was allowed but orders passed in RA and SLP were recalled granting the same benefits to the applicant.

3. Learned counsel would contend that in the above backdrop, the ratio laid down by the Apex Court (supra) would mutatis mutandis apply in the present case also.

4. Learned counsel has also drawn our attention to a decision of the High Court in **The Commissioner of Police Vs. Sh. Gulab Singh** (CWP-11631/2005) dated 18.4.2006 wherein on challenge to an order passed by the Tribunal dismissing the OA taking cognizance of the fact that in respect of a joint enquiry where two other persons on being successful there, the respondents having implemented the directions, accorded an identical relief. The petitioner also deserves the same treatment and the impugned order be quashed.

5. Learned counsel states that once the respondents themselves in a joint enquiry dismissed three police officials including the applicant and Ranbir Singh and Raj Karan and having implemented the directions of the Tribunal reinstated these two Constables with all consequential benefits, the applicant deserves the same treatment.

6. On the other hand, respondents' counsel vehemently opposed the contentions put forth by the learned counsel for applicant. In the reply,

they have stated that having attained the finality, order passed in RA cannot be reopened as the same would be hit by res judicata. On merit, it is stated that once there is a clear finding of the Tribunal, non-applicability of Rule 15 (2) of Delhi Police (Punishment & Appeal) Rules, 1980 on the analogy of the subsequent cases would not vitiate the finding of the Tribunal.

7. On careful consideration of the rival contentions of the parties and perusal of the material placed on record, we are of the considered view that in dispensation of justice not only justice is to be done but manifestly appears to be done. Miscarriage of justice would result in breaking of the rule of law. It is trite law that there are exceptions where in the interest of justice and to prevent miscarriage of justice, the judicial order has to be passed but upholding rule of law. In **Kamlakar's** case (supra) with the similar situation wherein SLP-19257/1995) filed against an order passed by the Tribunal was dismissed and review was also turned down. Meanwhile, identical situated employees brought decisions in their favour, which were implemented. When through a interlocutory application, the same has been brought to the notice of the Apex Court even without exercising powers under Article 142 of the Constitution of India on the analogy of equally placed should not be treated unequally, extending the benefit of the judgement, both the orders have been recalled to have consistency in law.

8. Hon'ble High Court in **Gulab Singh's** case (supra) held that if in a joint departmental enquiry three of the officers were dismissed but reinstated on implementation of the directions by the respondents themselves then dicta of the Tribunal dismissing the OA would not be sustainable. When the O.A. was allowed, respondents preferred W.P. before the High Court of Delhi against the order of the Tribunal and taking

cognizance of the fact that when in two other cases where the persons were in a joint departmental enquiry and were punished with the same punishment and the orders of the Tribunal allowing the OAs once implemented would also mutatis mutandis extend to the third case also and the order passed by the Tribunal was upheld.

9. In the light of above, we find that whereas an issue regarding preliminary enquiry had been referred to Full Bench, the applicant's case was dismissed on 25.10.2004, a review against which had also been dismissed. Subsequently in OA-340/2004 decided on 10.1.2006 (Constable Ranbir Singh Vs. Govt. of NCT of Delhi & Ors.), taking stock of the facts and violation of the rule, a case of no evidence in respect of co-defaulter, who had been jointly dealt with along with the applicant, the order passed by the respondents dismissing the applicant therein was set aside. The aforesaid decision was implemented on 26.4.2006 wherein by reinstating the applicant all consequential benefits had been accorded to him.

10. In our considered view, if in a joint departmental enquiry common illegalities had been committed and case of no evidence extends to all the delinquents as their role was attributed by common intention, finding recorded by the Tribunal subsequently, which culminated reinstatement of two others, applicant being identically situated cannot be discriminated in the matter of punishment. There would be an infraction to the principle of equality enshrined under Article 14 of the Constitution of India.

11. Though the Tribunal does not enjoy jurisdiction under Article 142 of the Constitution of India where any order can be recalled but once there is a dicta to that effect, which is binding precedent and the decision of the Hon'ble High Court to recall the order in review on the ground of extension

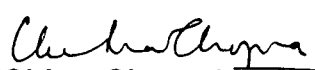
of same benefit in an identical situation is a sufficient ground to allow MA. Accordingly, the said MA is allowed.

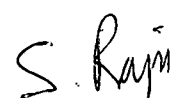
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12. In review the grounds are limited. Any error apparent on the fact of the record and discovery of new material would be one of the grounds but sometimes in the interest of justice as held by the Apex Court in **S. Nagaraj & Anr. Vs. State of Karnataka & Anr.**(JT 1993(5)SC 27), that apart from technical grounds, miscarriage of justice should not be done. Where two others i.e. co-defaulters in a joint departmental enquiry had been put back in service with consequential benefits on implementation of the directions of the Tribunal, applicant deserves the same treatment. Accordingly, the RA is allowed. Orders passed in OA 81/2004 dated 25.10.2004 is recalled.

OA 81/2004

13. As we find that the respondents themselves in co-defaulter cases on the same facts, evidence and imputation of misconduct complying with the directions of the Tribunal reinstated them in service, applicant being similarly situated in all respects deserves the same treatment. Accordingly, O.A. is allowed. Impugned orders are set aside. Respondents are directed to reinstate the applicant in service and the intervening period has to be regulated under FR 53 and also grant all benefits to the applicant at par with Constable Ranbir Singh and Raj Karan within a period of two months from the date of receipt of a copy of this order.


(Chitra Chopra)
Member(A)


(Shanker Raju)
Member(J)