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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.344 of 1987
(W.P. No.1906 of 1979)

Bali Ram Applicant

Versus

Union of India & Others Respondents

Hon.S.Zaheer Hasan, V.C.
Hon. Ajay Johri, A.M.

(By Hon.S.Zaheer Hasan, V.C.)

Writ petition No.1906 of 1979 pending in the Hon'ble High Court of Judicature at Allahabad has been transferred to this Tribunal under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The applicant Bali Ram is employed in the Diesel Locomotive Works in Varanasi. Due to old enmity an incident took place on 5.3.70 at 6.00 A.M. during which one Chhannu was killed and some other witnesses received injuries. On the side of the accused five persons received injuries. The applicant alongwith others were tried under Section 302 Indian Penal Code and they were convicted by the Sessions Judge on 29.8.1972. On 16.6.76 the applicant was dismissed from service due to aforesaid conviction. On 8.12.77 he was acquitted by the Hon'ble High Court. He was reinstated on 22.3.1978. In July, 1978 the following order was passed by Dy.C.M.E. vide Annexure-VII :

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" Further to the orders issued, setting aside

the orders of your dismissal from service, vide this office letter of even No. dated 22.3.78, I have on careful consideration of the case, decided that the period from the date of your dismissal from service to the date of your rejoining duty should be treated as under :-

1. (i) From 16.6.76 to 7.12.77

(i.e. the date of your dismissal from service to the date of acquittal from Hon'ble High Court.)

An amount equal to the leave salary which you would have been entitled had you been on half average pay or on half pay plus allowances thereon, as admissible subject to your furnishing requisite certificate of non-employment.

(ii) From 8.12.77 to 22.3.78

(i.e. the date after your acquittal from the Hon'ble High Court to the date of your joining duty as MCT in LMS).

Full pay and allowances.

2. The period of your absence from duty should be treated as under :-

(i) From 5.3.70 to 7.12.77

(i.e. from the date of your detention in police custody to the date of your acquittal.)

The period will not be treated as duty for any purpose.

(ii) From 8.12.77 to 23.3.78

(i.e. the date of your acquittal to the date of your joining duty).

The period will be treated as duty for all purposes.

Sd/-
Dy.C.M.E./Engine.

The applicant has challenged this order on the ground that he has been acquitted.

3. The defence version is that the applicant was not fully exonerated and since he was given benefit of doubt by the Hon'ble High Court the impugned order was passed and full payment was not made.

4. It was alleged that there was enmity between the applicant and his relation on one side and Panna Lal (PW.1) in the Sessions Trial on the other side. The prosecution case was that on 5.3.1970 at about 6 A.M. while Panna Lal (PW.1) and his brother Chhannu deceased were proceeding from their house to the Diesel Locomotive Works where they were employed and ~~hardly~~ ^{hardly} had covered a distance of about 50 to 60 paces from their house, the applicant Baliram and six others armed with lathis etc. came out of the field and assaulted Chhannu deceased and others with iron rods and lathi. The deceased fell in the field of Kailash Singh and died on the spot. Dular, Mannu, Ramnath and Lalji accused persons started running but they were chased by the villagers and arrested after Marpit and were brought to the house of Panna Lal (PW.1). Chulbul, Bhannan and Baliram, applicant ran towards their house and closed the door from inside. The Investigating Officer reached the place of occurrence at about 10.30 A.M. and arrested Mannu, Lalji, Ramnath and Dular who were in the custody

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of the villagers. He was told that Chulbul, Baliram and Bhannan were inside the house so he went there alongwith constables and found the house locked from inside. The police party used ~~the~~ ladder but in the meantime Bhannan, Baliram and Chulbul jumped from the roof of their house in order to escape. They were arrested after Marpit. Panna Lal (PW.1), Munni Lal, Smt. Chandri and Bhullan received injuries on the side of the complainant.

5. The defence was that Panna Lal (PW.1), Chhannu deceased and others were cutting Arhar from the field of Chulbul accused. When Chulbul objected they abused him and started assault. When Bhannan, Baliram (applicant in this case), Mangla Singh, Babai, Puttan and Ramdeo came to intervene they were also assaulted and they wielded their lathis in self defence. Thereafter Lalji, Dular, Mannu and Bannath came to the place of occurrance and tried to intervene but they were also assaulted and they also wielded lathis in self defence.

6. Chulbul accused received 11 injuries, Baliram (applicant) received 8 injuries, Bhannan accused received 6 injuries, Mannu accused received 5 injuries, and Lalji accused received 8 injuries.

7. In short the prosecution version was that

Mannu, Lalji, Ramnath and Dular were arrested while they were running away and the villagers beat them so they received injuries. The Investigating Officer reached the place of occurrence at about 10.30 A.M. and when he was told that Chulbul, Baliram and Bhannan were inside the house he went there alongwith police constables and found the house locked from inside.

The police party used ~~the~~ ladder to enter the house but in the meantime Bhannan, Baliram and Chulbul jumped from the roof of their house in order to escape. The police party arrested these three persons after Marpit so they received injuries. The learned Judges disbelieved this version regarding the injuries received by the five persons on the side of the accused and at page 19 the learned Judges observed :-

" The result, therefore is that the injuries found on the person of Chulbul, Baliram, Bhannan, Mannu and Lalji appellants which appear to have been received at the time of the incident have not been satisfactorily explained by the eye witnesses. On this ground alone the version of the incident given by them is liable to be rejected. "

Non explanation of major type of injuries received by the accused persons ^{or} manufacturing a false story about receipt of those injuries by the accused persons probablises the defence version i.e. right of self defence. The Hon'ble Court ^{now} ~~further~~ observed that the witnesses were not independent. The learned Judges further observed that it was

difficult to believe that the appellants would have concealed themselves in that Arhar field at such a close distance from the house of Panna Lal (PW.1). So they rejected the prosecution version about ~~the~~ concealment of the accused persons in the Arhar field and then assaulting the deceased and his helpers who came to intervene. The defence version was that these persons were cutting crop and when a protest was made they started assaulting with their lathis etc. From the above it would appear that the prosecution case as it is was not accepted by the Hon'ble High Court and the Hon'ble Judges were of the opinion that the eye witnesses ~~could~~ cannot be relied upon and the possibility, of the appellants having caused injuries to the deceased and other persons on the side of the complainant in the exercise of the right of private defence, cannot be ruled out. The prosecution has to prove the case beyond reasonable doubt. Prosecution has to stand on its own legs. Accused persons had not to prove their case with the same rigour of proof which the prosecution ~~had~~ to undergo. If the prosecution case as it is, is false and there are good reasons to believe that defence version may be true the accused persons are entitled to acquittal specially when the story is cooked up to explain the major injuries of five accused persons inflicted in broad day light. With this background and under the peculiar circumstances of the case it cannot be said that the accused

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persons were ^{not} fully exonerated. ~~It may be repeated~~
that the Hon'ble High Court has clearly stated
that the prosecution case cannot be relied upon
and since ~~the~~ a story was cooked up regarding the
injuries of the accused so on that ground alone the
prosecution version was liable to be rejected. To
repeat under the peculiar circumstances of this
case referred to above the view that the applicant
was not fully exonerated is clearly wrong and the
impugned order was wrongly passed. It may be added
that the accused persons were not acquitted on any
technical ground like want of sanction, lack of
jurisdiction or due to the fact that all witnesses
have not supported the prosecution case and they
have been won over. As such the impugned order
passed in July, 1978 (Annexure-VII) is hereby quashed
and the relevant period would be treated as period
spent on duty for all purposes and the necessary
payment of the salary etc. may be made after adjusting
the amount already paid during the suspension period
and further the consequential benefits be also given
to the applicant provided the applicant furnishes the
requisite certificate of non-employment. In case
the applicant was employed for entire or part of the
relevant period the authority ~~is~~ ^{concerned with} ~~are directed to~~ pass
suitable order. Parties to bear their own costs.

BSR SKR
Member (A)

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Vice Chairman

Dated the 12 Jan., 1988

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