

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 252/96 alongwith ~~198~~
T.A. No. the batch.
(Common order)

DATE OF DECISION 20.01.2000

Satveer Singh Petitioner (s)

None is present Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent (s)

Mr. Vineet Mathur, Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. A.K. Misra, Judicial Member

The Hon'ble Mr. Gopal Singh, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? ~~NO~~
2. To be referred to the Reporter or not ? Yes
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~~

SD/-

(GOPAL SINGH)
MEMBER (A)

SD/-

(A.K. MISRA)
MEMBER (J)

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क.प्र.प्र. (प्रक्रिया) नियमावली के विध्या 22 के अंतर्गत वि:शुद्ध प्रति

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH : JODHPUR

Date of order : 20.01.2000

1. O.A. No. 252/96

Satveer Singh son of Shri Bali Ram, Ex-Conservancy Safaiwala, Stn. Hqs. Sri Ganganagar, C/o. Shri B.M. Aggarwal, Advocate, 79-N Nlock, Sri Ganganagar.

2. O.A. No. 249/96

Kartar Singh son of Shri Gopi Ram, Ex-Conservancy Safaiwala, Stn. Hqrs. Sri Ganganagar, C/o. Shri B.M. Aggarwal, Advocate, 79-N Block, Sri Ganganagar.

3. O.A. No. 248/96

Kali Ram son of Shri Chandki Ram, Ex-Conservancy Safaiwala, Stn. Hqrs., Sri Ganganagar, C/o. Shri B.M. Aggarwal, Advocate, 79-N Block, Sri Ganganagar.

... Applicants.

v e r s u s

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Commander Headquarters, Ambala Sub Area, Ambala Cantt., Haryana.
3. Station Commandant, Station Headquarters, Sri Ganganagar.

... Respondents.

None is present for the applicants.

Mr. Vinit Mathur, Counsel for the respondents.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

ORDER

(Per Hon'ble Mr. Gopal Singh)



Comptroller
J.P.

The controversy involved and the relief sought in these applications is same and, therefore, all the three applications are being disposed of by this single order.

2. The applicants have prayed for a direction to the respondents to take them back on the post of Conservancy Safaiwala with full back wages and all other consequential benefits of seniority etc.

3. Applicant's case is that they had been working with the respondent-department from 1977 and 1978 as Conservancy Safaiwala. On 26.8.1987, one Shri Phoola Ram got seriously injured in an accident with a Military truck and later on he died. Because of this accident, many of the staff members including Safai Karmcharis assembled at the site of the accident and demanded immediate help to the victim from the respondents. However, their action of assembling together and demanding immediate relief to the victim was taken to be an attempt of obstructing the respondents in providing necessary help. All these applicants were charge-sheeted for the same and on conclusion of the departmental enquiry, all of them were imposed the penalty of dismissal from service with effect from 3.4.89 vide Annexure A/6 in O.A. Nos. 252/96 and 249/96 and vide Annexure A/3 in O.A. No. 248/96. Simultaneously, the respondent-department had also filed a report with the Superintendent of Police, Sri Ganganagar District against Kali Ram (applicant in O.A. No. 248/96), Kartar Singh (applicant in OA No. 249/96) and one Shri Dharamveer Singh. Investigative Officer filed the charge sheet against the abovenamed officials under Sections 441 and 323 of IPC in the Court of Additional Chief Judicial Magistrate (ACJM, for short), Sri Ganganagar. The learned ACJM, Sri Ganganagar, acquitted all of them vide his order dated 22.4.95, by giving them benefit of doubt. On acquittal by the Court, the applicants approached through their advocates the respondent-department for their reinstatement. The respondents vide their letter dated 20.7.95 (Annexure A/1) addressed to the advocate informed that the applicants were dismissed from service on the disciplinary grounds other than the grounds of criminal case adjudicated by the ACJM, Sri Ganganagar on 22.4.95 and, therefore, the applicants are not entitled for reinstatement on acquittal in the criminal case. Feeling aggrieved, the applicants have approached this Tribunal.



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4. Notices were issued to the respondents and they have filed the reply.

5. We have heard the learned counsel for the parties and perused the records of the case.

6. The learned counsel for the applicants has contended that the applicants were proceeded against in a Court of law as also in the departmental enquiry on the same alleged misconduct and on acquittal by the Court, the respondents cannot take disciplinary action for the same misconduct. The learned counsel for the applicant has cited a case, 1999 (3) Supreme 376, Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and Anr., in support of his contention. Contesting the application, the learned counsel for the respondents has argued that the said judgement is not applicable in the instant case and the department can proceed on the same charge in the departmental enquiry for which a case is registered in the Court. He has further argued that the allegations of misconduct in the Court case and in the departmental enquiry are not the same and, therefore, the applicants cannot derive any benefit from the above cited judgement.



7. It would be relevant to go through the allegations of misconduct as also the charges levelled against the applicants in the Court case. All these applicants have been charged with the following misconduct:-

ARTICLE - I

"That the said Shri.....while functioning as Safaiwala with Station Headquarters, Sri Ganganagar during the period from Aug 87 to Oct 87, on 26 Aug 87 between 0830 hours and 1000 hours caused to delay the evacuation of injured Shri Phoola Ram (he succumbed to the injuries after a few hours) S/o Shri Hira Ram to 176 Military Hospital by NTS-17438Y Lt TD Bhatt. This has been established by a staff court of inquiry held vide Headquarters 15 Infantry Brigade convening order No. 4813/PR7A dated 26 Aug 87."

8. It is seen from the order dated 22.4.95 of ACJM, Sri Ganganagar, that Major P.K. Bali sent an information to the Superintendent of Police, Sri Ganganagar, to the effect that while Major R.L. Singh and Umed Singh were going from the Headquarters to their Units, Kali Ram, Kartar Singh, Dharamveer alongwith 25 other Safai Karmacharies ghereaod and obstructed them from discharging their duties. Their vehicle was stopped and the accused used foul language. They also incited other

staff members to lie down in front and back of the vehicle. On this information, the case was registered.

9. A careful reading of the charges levelled against the applicants and the contents of F.I.R. as noted above would reveal that they pertain to the same incident where Phoola Ram died in an accident with a Military truck. However, it is seen from records that the witnesses produced in the criminal case were entirely different than the witnesses examined in the departmental enquiry. Hon'ble the Supreme Court in 1999 (3) Supreme 376. (supra), has observed that where allegation and evidence is same without an iota of difference then the department cannot proceed against the accused if they have been acquitted by the Court. In the instant case, though the accused were acquitted of the charge by the Court, the witnesses examined by the departmental authorities were different than the witnesses produced before the Court and, therefore, in our opinion, the applicants cannot get any help from the above cited judgement of Hon'ble the Supreme Court.

10. As has been mentioned above, both the cases (criminal as well as departmental) pertain to the same incident, i.e., death of Phoola Ram in an accident with a Military truck, however, in our view, the delinquent official cannot be held responsible for the death of Phoola Ram. In this connection, it would be relevant to go through the order of ACJM, Sri Ganganagar. The ACJM, Sri Ganganagar, while acquitting the applicants vide his order dated 22.4.95 has observed as under:-

"It is true that the incident took place on 26.8.87. But the F.I.R. was sent on 29.8.97 and the Suit was filed on 3.10.87. No explanation for late registration of F.I.R. had been given. Witness P.K. Bali has also not given any explanation for the late registration of F.I.R. in his affidavit. The investigating officer has supported the story of the prosecution. Besides, other witnesses have also admitted that on the date of incident the Safai Karamchari Phoola Ram died in an accident with an Army truck and the accused had protested against that. Witness P.K. Bali could not tell as to on what demands Safai Karamcharies had gone on strike and on what date they went on strike. It appears that no action was taken by the Army Headquarters after the accident of Phoola Ram and on his subsequent death. It was for this reason that the accused and 20-25 other persons were protesting and Major R.L. Singh might have passed through during this period when he was stopped and compelled to take some action. But this witness could not identify the accused. All the staff members were demanding action in this regard collectively. It also appears that this F.I.R. was lodged with an object to suppress their demands. In this connection, late filing of F.I.R. has adversely affected the story of the prosecution. The prosecution has failed to prove their story beyond shadow of doubt and it has proved the story of defence. It is proved that on the death of Phoola Ram in an accident, 20-25 staff members were expressing their protest. No criminal act by the accused has been proved beyond doubt. Therefore, the accused persons are entitled to acquittal by giving them benefit of doubt." (translated in English)



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11. It is clear from the above order of the learned ACJM that the F.I.R. was lodged by the respondents to suppress the demands of the accused. The accused were demanding swift removal of Phoola Ram for necessary medical assistance. The story made-out by the prosecution has also not been accepted by the learned ACJM. We are, therefore, inclined to agree with the view of the ACJM, Sri Ganganagar, that the criminal case was lodged against the accused so as to cover up the inaction on the part of the respondents.

12. In the light of above discussion, we do not find that the penalty imposed upon the applicants is commensurate with their alleged misconduct. Their misconduct can at best be considered as obstruction in discharge of duties of the concerned officers. For such an alleged misconduct, the penalty of dismissal from service is highly shocking, perverse and vindictive. In our view, for the alleged misconduct minor penalty like stoppage of grade increment or such similar punishment could be awarded to meet the ends of justice. We are, therefore, of the view that the case of the applicants deserves reconsideration by the respondents so far as the penalty is concerned and orders of the disciplinary authority for dismissal of the services of the applicants deserve to be set aside. The applicants would also be entitled to half the wages for the period of dismissal.

13. All the three O.As are, therefore, partly accepted. The orders of the disciplinary authority dated 3.4.1989 dismissing the applicants from service are hereby quashed. The respondents are directed to reinstate the applicants in service on the same posts from which they were dismissed by the impugned order, within a period of three months from the date of communication of the order. The applicants would be entitled to half the wages of the said post for the period of dismissal. The said period shall be counted for the purposes of calculation of pension and other retiral benefits but this period shall not count for any kind of leave whatsoever and shall also not count for increments in the regular pay scale. The respondents are further directed to reconsider the matter for imposition of penalty upon the applicants as per our observation vis-a-vis their alleged misconduct. For such consideration, they are given six months period from the date of communication of the order. No orders as to cost.



Sd/-
(GOPAL SINGH)
ADM. MEMBER

Sd/-
(A.K. MISRA)
JUDL. MEMBER

CVR/JM

प्रमाणित सही प्रतिलिपि
24-1-2000
अनुभाग अधिकारी (न्यायिक)
केन्द्रीय प्रशासनिक अधिकरण
जयपुर

On Common order. Free Copy

Issued to Counsel for Applicant.

and Counsel for Respondent.

vide Register entry s.no 45 to 47

[Signature]
25/1/2000.