

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.2936/2012

Order Reserved on: 21.12.2016
Order pronounced on 20.01.2017

Hon'ble Shri V. Ajay Kumar, Member (J)

Sh. Harinder Singh
S/o Late Sh. Mohinder Singh
R/o H.No.B-4-F, Delhi Police Apartment
Mayur Vihar Ph-1, Delhi-91. Applicant

(By Advocate: Shri Ajesh Luthra)

Versus

1. Commissioner of Police
PHQ, MSO Building
IP Estate
New Delhi.
2. The DCP
(Establishment)
PHQ, MSO Building
IP Estate, New Delhi.
3. The DCP (South District)
P.S.Hauz Khas
New Delhi. Respondents

(By Advocate: Ms. Harvinder Oberoi)

ORDER

In view of the divergent views expressed by two Hon'ble Members of this Tribunal, this OA has been referred to me, as a Third Member Reference.

2. Brief facts of the case, as narrated in the OA, are that the applicant was enlisted in Delhi Police as Constable (Executive) on 26.10.1998. Initially, he was inducted in the Commando Unit of Delhi Police. Appreciating his boldness, courageous and gallant acts during his initial posting, he was transferred to the special staff, the operational unit, of South District. Even thereafter, the applicant performed extremely well by solving sensational and important cases.

3. A team of Special Staff, South District, consisting the applicant and another Constable - Joginder Singh - and others under the supervision of Inspector Rajender Singh, the then Incharge-Special Staff of South Delhi, due to their bravery and efficiency, could able to arrest notorious snatchers, namely, Anoop and Sunil Sansi, on 09.07.2002 and could recover valuable property and information from them and due to that the South Delhi Police solved 114 cases of murder, attempt to murder, robbery, snatching, burglary and auto thefts. Again, in the month of September/October, 2002, the applicant along with the aforesaid Constable - Joginder Singh and others, nabbed of 5 members of Jaswant Babbe gang, risking their life and facing the gun point and could recover a stolen car and gold articles and with the information procured by them, the Delhi Police solved so many cases. Similarly, the applicant was shown his braveness and gallantry, on many times.

4. That for the aforementioned excellent performance, the then DCP, South District had recommended the applicant's name along with

Constable-Joginder Singh, for Out of Turn Promotion to the rank of Head Constable, vide Annexure A2-Letter dated 16.12.2002. Accordingly, Constable-Joginder Singh was granted Out of Turn Promotion to the rank of Head Constable vide Annexure A3, Letter dated 03.06.2003, but the name of the applicant was not considered by the Incentive Committee as the applicant was implicated in a case FIR No.360/2000 under Sections 452/323/506 IPC PS Haus Khas, Delhi.

5. It is submitted that the FIR No.360/2000 was registered against the applicant due to a petty quarrel between the two neighbouring families and case and a counter case were filed and pending. However, the said FIR No.360/2000, registered against the applicant, was quashed by the Hon'ble High Court of Delhi in its Order dated 04.02.2011 in Criminal MC No.345/2011 in view of the settlement arrived between the parties.

6. In pursuance of quashing of the pending FIR No.360/2000, against the applicant, by the Hon'ble High Court of Delhi, the respondents vide Annexure A5, Order dated 07.03.2011, ordered that no further departmental action is warranted against the applicant and accordingly removed the name of the applicant from the list of police personnel against whom criminal case is shown pending.

7. Thereafter, the applicant made a representation seeking Out of Turn Promotion on par with his colleague Shri Joginder Singh, from due date. But the respondents instead of granting Out of Turn

Promotion, on par with the said Joginder Singh from due date, vide Annexure-7 - Order dated 14.06.2012, awarded "Asadharan Karya Puraskar" with Cash Reward of Rs.10,000/- to the applicant for the exceptional act of arresting Anoop and Sunil Sansi.

8. Since the representations of the applicant for modification of the said order by granting Out of Turn Promotion on par with Joginder Singh were finally rejected vide Annexure A1-Order dated 30.07.2012, he filed the present OA. The respondents filed a detailed counter substantiating the impugned action.

9. After hearing both sides, the Hon'ble Members expressed divergent views, for the reasons mentioned in their respective orders. While the Hon'ble Judicial Member allowed the OA, the Hon'ble Administrative Member disagreed with the view of the Hon'ble Judicial Member and placed the OA before the Hon'ble Chairman for passing suitable orders for resolving the dissent.

10. This matter was originally referred to Hon'ble Shri A.K. Bhardwaj, the Hon'ble Judicial Member, as a Third Member reference. The said Hon'ble Member having found that though the Hon'ble Members expressed divergent views but not framed any specific issues for reference, returned the file to the concerned Hon'ble Members. Accordingly, the OA was referred to me thereafter, in view of the retirement of Shri A. K. Bhardwaj, and after framing issues for reference by the concerned Hon'ble Members, which read as under:

"1. What is the effect of an order under Section 482 of CRPC issued by the Hon'ble High Court at Delhi on the culpability or not of an accused?

2. What is the significance of Hon'ble Supreme Court ruling reported in AIR 1999 SC 495 wherein the Hon'ble Apex Court held that if there is a clash between two fundamentals, the fundamental which will advance the cause of morality and public policy must be chosen?

3. In this context as stated above in (1) and (2), what is the significance of Emperor Vs. Khwaja Nazir Ahmed reported in (1945) 47 Bombay Law Reports, Page 245?

11. I have carefully gone through the complete OA record and the divergent views expressed by the Hon'ble Members of the Division Bench and the issues of reference framed thereunder by them. When this matter is listed for hearing, after reference was made, both the counsel submitted that their respective contentions already on record may be considered and there is nothing further to submit.

12. In my considered view, the short issue involved in the case is the aforementioned 1st issue of reference, as framed by the Hon'ble Members of the Division Bench. Once the said issue is answered, nothing remains in the OA and even there is no necessity to answer the other issues, as they are superfluous and the discussion would be only academic. From the perusal of the pleadings of the OA, it is clear/manifest that Constable Joginder Singh and the applicant were identically placed in so far as their brave acts are concerned, and the Incentive Committee while considering the case of the applicant, after he was acquitted from the Criminal Case, granted him Cash Award instead of Out of Turn Promotion as Head Constable as granted to the said Joginder Singh, in view of his involvement in the criminal case, though it was quashed.

13. The Hon'ble High Court of Delhi vide its order dated 04.02.2011, in Criminal MC No.345/2011 quashed the FIR No.360/2000 under Sections 452/323/506 IPC PS Haus Khas pending against the applicant, in exercise of its inherent powers under Section 482 of Cr.PC, in view of the settlement reached between the parties.

14. Once, an FIR is registered against a person he can be acquitted from the said offence, on many ways. It may be clean acquittal or acquittal on a benefit of doubt etc. or on compounding of the offence. However, quashing of FIR goes to the route of the matter, and it cannot be said that the said person involved with any criminal offence, once the FIR is quashed. The same inference may not be given to all other modes of acquittal from the criminal offence, in view of the nature of the acquittal.

15. The justification in quashing the FIR, by the Hon'ble High Court of Delhi, was not an issue before this Tribunal. Even the respondents also cannot pass any order considering the fact of involvement or registration of a crime, once the FIR was quashed. The learned counsel appearing for the respondents has not placed any decision contrary to the aforesaid view. Even the Hon'ble Administrative Member, who opined that the impugned action is valid, also, had not considered any such decision. Though the respondents are empowered in spite of the brave acts of the applicant, to deny him the Out of Turn Promotion or even the cash award as was granted to him, on any other ground, if available, but not on the ground that the

applicant was involved in a criminal case, once the FIR itself was quashed by a competent Court of law. It is also not the case of the respondents that they have granted only cash award as against the granting of Out of Turn Promotion, on par with Shri Joginder Singh, on any ground other than the involvement of the applicant in the aforesaid FIR. It is also not the case of the respondents that the role played by the applicant in arresting the notorious snatchers, namely, Anoop and Sunil Sansi, is in any way inferior to that of Shri Joginder Singh.

16. Accordingly, the issue No.1 of the reference was answered in favour of the applicant and against to the respondents. As observed above, in view of answering the Issue No.1, there is no necessity to answer the issue Nos.2 and 3 as the same would be only for the academic purpose and won't serve any useful purpose in this case.

17. In the circumstances and for the aforesaid reasons, I agree with the view expressed by the Hon'ble Judicial Member, and accordingly, the OA is allowed, in terms of para 30 of the view expressed by Hon'ble Judicial Member, which reads as under:

"30. In the conspectus of what is discussed above, we therefore hold that in fairness, reasonableness and justice, the applicant is also entitled to equivalent benefits conferred upon Joginder Singh and it is declared that he is so entitled. The impugned order passed is hereby quashed. OA is allowed but with a rider. It is seen that he has approached the Hon'ble High Court only in the year 2011. Therefore, his promotion as a Head Constable will not date back to the earliest date ie., the date of promotion of Joginder Singh, but will only date back to the date of filing of the proceedings under Section 482 before the Hon'ble High Court of Delhi. Pursuance to this order all the

benefits are to be made available to the applicant from this date onwards, within three months next. No costs."

(V. Ajay Kumar)
Member (J)

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