

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA No. 3233/2013

**Reserved On: 19.08.2016
Pronounced on: 29/08/2016**

**Hon'ble Mr. Justice, M. S. Sullar, Member (J)
Hon'ble Shri V. N. Gaur, Member (A)**

Ex. Const. Satender Pal,
PIS No.28871394,
Constable in Delhi Police,
Aged about 43 years,
S/o Shri Lal Singh,
R/o VPO : Ailum, PS : Kandhla,
Distt. Muzaffar Nagar, UP. .. Applicant

(Argued by: Shri Anil Singal, Advocate)

Versus

1. Govt. of NCT of Delhi,
Through Commissioner of Police,
PHQ, IP Estate,
New Delhi.
2. Special C.P. (Armed Police,)
PHQ, IP Estate, New Delhi. .. Respondents

(By Advocate:Shri K.M. Singh)

ORDER

Justice M. S. Sullar, Member (J)

The compectus of the facts & material, relevant for deciding the instant Original Application (OA) and emanating from the record, is that, applicant, Ct. Satender Pal, while working as a Naib Court, in the court of Special Metropolitan Magistrate (Traffic) Shyam Nath Marg, Delhi, demanded Rs.3000/- from Complainant Kapoor Singh, in lieu of illegally disposing of his challan, without any receipt or record, in the court. However on bargaining, the matter was settled for

Rs.1800/- . The applicant promised to the complainant that he would dispose off the challans and the seized documents will be returned to him on the next day. In the wake of receipt of information, a raid was organized & trap was laid and applicant was apprehended red handed while demanding & accepting the bribe money of Rs.1800/- in the presence of the witnesses. The tainted money was also recovered from him (applicant) and was taken into possession vide recovery memo by the raiding party.

2. As a consequence thereof, the applicant was dealt with departmentally under the provisions of the Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter to be referred as "D.P. Rules").

3. At the same time, a criminal case was also registered against the applicant, on accusation of having committed the offences punishable under Sections 7 and 13(i)(d) of Prevention of Corruption (POC) Act, 1988, vide FIR No.13/2009 by the police of Police Station, Anti Corruption Branch, Delhi.

4. Having completed all the codal formalities and taking into consideration the seriousness of the allegations and evidence on record, a penalty of removal from service was imposed on the applicant, vide order dated 22.01.2011, by the Disciplinary Authority (DA).Similarly, the appeal filed by him was rejected by means of an order dated 25.03.2011 by the Appellate Authority (AA) as well.

5. Dissatisfied thereby, the previous **OA** bearing **No.2088/2011** filed by the applicant, was disposed of with the direction to the authorities for passing fresh order, keeping in view the judgment of acquittal, in criminal case and the observations as made by the Full Bench of this Tribunal in case **Sukhdev Singh and Another Vs. Govt. of NCT of Delhi and Others (OA No.2816/2008)** decided on 18.02.2011, by virtue of an order dated 22.08.2012 by a Coordinate Bench of this Tribunal.

6. Thereafter, on remand of the case, the DA considered the judgment of acquittal, passed on the basis of evidence of hostile witnesses and reaffirmed the penalty of removal from service imposed on the applicant, vide order dated 22.10.2012.

7. Aggrieved thereby, the applicant filed the appeal, which was accepted, the punishment of removal from service awarded to him by the DA was set aside. He was reinstated in service. However, the period from 22.01.2011 till the date of issue of the order, was treated as a period “Dies Non” on the principle of “no work no pay”, vide impugned order dated 23.04.2013 (Annexure A-1) by the AA. The operative part of the order reads as under:-

“I have carefully gone through the appeal, impugned order dated 22.10.2012 and all relevant material available on record. Perusal of record available on DE file, reveals that the charge has been proved on the basis of testimony of officials of Anti Corruption Branch in the DE. The appellant has faced full flag trial in the court of law in the above mentioned POC Act case. Perusal of the judgment dated 06.07.2012 passed by the Hon’ble Court of Ms. Sangita Dhingra Sehgal, Special Judge, ACB, Delhi, established that the complainant and main witness, Shri Kapoor Singh (PW-6) has not supported the prosecution, even he did not identify the appellant and as such the demand and acceptance of bribe is not proved beyond reasonable doubt and acquitted the appellant. The Hon’ble Court has also observed that there is no evidence to prove the demand and voluntary acceptance of the alleged bribe so as to attract the offences under the Prevention of Corruption Act. DCP/3rd Bn. Clarified that no appeal against the judgment dated 06.07.2012 has been filed by Anti Corruption Branch as Law Department opined that the case is

not fit for appeal. The Hon'ble Apex Court and different Hon'ble High Courts have also observed in its judgment that mere acceptance of money or mere recovery of money from the accused is not sufficient to convict accused in the POC case. On perusal of the DE file, the complainant of the case had not supported the prosecution story and also failed to identify the appellant during the DE, hence the case against the appellant totally not proved by the prosecution as well as enquiry officer.

Considering overall facts and circumstances of the case and to meet the ends of justice, the punishment of removal from service awarded to the appellant by Disciplinary Authority is hereby set aside. The appellant is reinstated in service with immediate effect. His suspension period from 11.06.2009 to 21.01.2011 is decided as period 'spent on duty' for all intents and purposes. The intervening period from the date of his removal, i.e., from 22.01.2011 to the date of issue of this order would be treated as period "Dies Non" on the principle of "no work no pay". The period from the date of issue of this order to the date of joining his duties be treated as leave of the kind due".

8. Still aggrieved thereby, applicant has preferred the instant OA, partially challenging the impugned order, as it relates to non-payment of back wages, on the principle of "no work no pay", invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985 on the following grounds:-

"5.1 Because while issuing the impugned order dated 23.03.2013, the respondents failed to appreciate that the principle of "no work no pay" is not applicable in the case of applicant since he (sic) was willing to work but he was kept away from the work by the respondents and it was not the case where applicant remained away from work for his own reasons. Therefore, the principle of "no work no pay" is inapplicable in case of the applicant and he is entitled to be restored to all the benefits from which he was kept away unjustly.

5.2 Because once the order of removal was set aside and the applicant was reinstated in service, he is entitled to full pay and allowances for the period from the date of removal to the (sic) date of reinstatement. Therefore, the principle of "no work no pay" cannot be invoked by the authorities to deny him back wages from the date of removal to reinstatement when he has been exonerated on merits.

5.3 Because treating the intervening period as not spent on duty vide impugned order is bade in law and the payment of full pay and allowances for the intervening period and treatment of that period as spent on duty for all purposes will be automatic and compulsory. Thus the intervening period is liable to be treated as spent on duty for all intents and purposes with all consequential benefits that includes full pay and allowances for the intervening period.

5.4 Because the respondents failed to appreciate that during the period of removal the applicant was not paid even subsistence allowance. Thus, the applicant had to borrow money from the market to meet day to day expenses since he had no means of livelihood despite best efforts to get a job and had to pay heavy interest on the same. But the respondents even on the reinstatement has not illegally paid the pay and allowances for the intervening period.

5.5 Because the order regarding the pay and allowances (sic) to be paid to the applicant for the period from 22.01.2011 to 23.04.2013 is to be passed

as per FR 54(2) & (3), which provides that when the order of removal from service was set aside by the competent authority, the applicant was entitled to be paid full pay and allowances to which he would have been entitled, had he not been removed from service since the applicant was out of job during this period despite his best efforts to get the job. Thus, the impugned order to the extent challenged is in violation of (sic) FR 54(2) & (3) that is clear from the fact that suspension period has already been treated as period spent on duty for all intents and purposes.

5.6 Because the order dated 24.3.2013 regarding the pay and allowances (sic) to be paid to the applicant for the period from 22.01.2011 to 23.04.2013 has been passed without issuing any notice in this regard to the applicant though specific order is required to be passed separately in this regard since the applicant is entitled to be paid full pay and allowances for this period as the applicant was willing to work but he was kept away from the work by the department for no fault of his and it was not the case where applicant remained away from work for his own reasons.

5.7. Because the order dated 23.04.2013 whereby intervening period from date of dismissal to the date of reinstatement was treated as "Dies Non" is in violation of OM dated 27.05.1961 and 30.05.1962 provided under FR 54 at page 238 of Swamy's FR & SR".

9. The contesting respondents refuted the claim of the applicant and filed the reply, wherein, inter alia, it was pleaded as under:-

"The facts of the case are that a departmental enquiry was initiated against Constable Satender Pal, No.4385/T, 7503/DAP (PIS No.28871394) vide order No.13885-925/HAP (P-II)/III BN, DAP dated 08.12.2009, under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980, on the allegations that on 11.06.2009, Shri Kapoor Singh S/o Shri Kartar Singh, R/o H.No. 479, Ward No.12, Village Shershah, District Sonepat, Haryana approached AC Branch with a complaint alleging therein that he went to the Hon'ble Court of Shri Thakur Dass, Special M.M. (Traffic), Sham Nath Marg, Delhi in connection with some challans of the vehicles of his Company. In the Court, Shri Satender was working as Naib Court offered to get the challans disposed off without any receipt and demanded Rs.3000/- for this. On bargaining, the matter was settled for Rs.1800/-. The Naib Court promised that he would dispose off the challans and the seized documents will be returned next day. On this, a raid was organized and trap was laid to apprehend the Naib Court. The applicant was apprehended red handed while demanding, accepting and obtaining bribe money of Rs.1800/- in the presence of Panch Witness. The tainted money and two challans that were handed over to him by the complainant were also recovered from the possession of the applicant. A case FIR No.13/2009 dated 11.06.2009 u/s 7/13 POC Act, PS, A.C. Branch was registered against the applicant and he was arrested in this case. Later on, he was granted bail by the concerned Court on 07.07.2009".

10. The case of the respondents further proceeds that the DA has rightly considered the judgment of acquittal and maintained the penalty in the departmental proceedings. However, the AA has reinstated him in service without any back wages on the

principle of “no work no pay”. It was alleged that the applicant was not at all entitled for the amount of the period for which he has not actually worked.

11. Virtually acknowledging the factual matrix and reiterating the validity of the impugned order, the respondents have stoutly denied all other allegations and grounds contained in the main OA and prayed for its dismissal.

12. Controverting the allegations contained in the reply of the respondents and reiterating the grounds pleaded in the OA, the applicant filed his rejoinder. That is how we are seized of the matter.

13. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, we are of the firm opinion that there is no merit, and the instant OA deserves to be dismissed, for the reasons mentioned hereinbelow.

14. What cannot possibly be disputed here is that, the criminal court has not acquitted the applicant on merits but mainly on the technical ground that Complainant Kapoor Singh (PW-6) turned hostile and the Panch Witness was not produced by the prosecution, vide judgment of acquittal dated 06.07.2012 (Annexure A-2). In that eventuality, as to whether the applicant is entitled to the benefit under Rule 12 of the D.P. Rules or not, in view of exceptions contained therein, still remains to be examined by this Tribunal, as the respondents have not filed any independent OA to challenge the indicated order of the A.A.

15. Be that as it may, now the short and significant question, for our consideration, that arises for determination in this OA, is as to whether applicant is entitled to the amount of back wages, as claimed by him or not?

16. Having regard to the rival contentions of the learned counsel for the parties, we are of the considered view that answer must obviously be in the negative in this regard.

17. Ex-facie, the argument of learned counsel that since the applicant was reinstated in service by the AA, so he is entitled to back wages, is neither tenable nor the observations of Hon'ble Supreme Court in case ***M. Gopal Krishna Naidu Vs. State of Madhya Pradesh 1967 SLR 800 SC*** are at all applicable to the facts of the present case, wherein it was observed that FR-54 contemplates a duty to act in accordance with the basic concept of justice and fairplay, the authority, therefore, had to afford a reasonable opportunity to the appellant to show cause, why Clauses 3 and 5 should not be applied and that having not been done, the order must be held to be invalid and competent authority was directed to consider the question *de novo* after giving to the appellant a reasonable opportunity to show cause against the action proposed against him.

18. There can hardly be any dispute with regard to the aforesaid observations, but to our mind, the same would not come to the rescue of the applicant in the present controversy, for the reasons mentioned hereinbelow.

19. At the first instance, it is not a matter of dispute that the applicant was departmentally punished for a grave misconduct of demanding and accepting the bribe money with the intention to destroy the Court record, which indeed is a very serious matter (misconduct). No doubt, he was acquitted in the criminal case, for want of adequate evidence (not on merits) by the Criminal Court but, still he was removed from service by DA. However, the penalty imposed on him in DE, was set aside purely on technical ground by the AA. Therefore, the applicant cannot claim, the entire wages of the relevant period on the post on which he has never actually worked, as a matter of right, on such unsustainable grounds from Government exchequer, which is a hard earned money of the public at large, paid in the shape of taxes.

20. Moreover, the competent authority has inherent powers not to pay the entire amount of his salary during the period of his absence on the principle of no work no pay. This matter is no more *res-integra* and is now well settled.

21. An identical question came to be decided by the Hon'ble Apex Court in the case of ***Ranchodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) And Another (1996) 11 SCC 603***, wherein it was ruled as under :-

“ The reinstatement of the petitioner into the service has already been ordered by the High Court. The only question is whether he is entitled to back wages. It was his conduct of involving himself in the crime that was taken into account for his not being in

service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case requires to be considered in its own backdrop. **In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages.** The learned Single Judge and the Division Bench have not committed any error of law warranting interference.”

22. Sequelly, the Hon’ble Apex Court, in the case of **General Manager, Haryana Roadways Vs. Rudhan Singh (2005) 5 SCC 591** has observed that there is no rule of thumb that in every case the entire back wages should be awarded to a Government servant for the period he did not actually worked. Similarly, Hon’ble Punjab & Haryana High Court in case of *Mahesh Kumar Gupta Vs. Uttar Haryana Bijli Nigam Ltd.* in **Civil Writ Petition from 5139 of 2014** decided on 21.05.2015 has held that under these circumstances, a government servant cannot claim full salary for the period he did not work as per the principle of no work no pay. The petitioner (therein) was held not to be entitled to claim wages for the period he did not actually work.

23. Again the same view was reiterated by Hon’ble Apex Court in case of Head Constable of Delhi Police **Vijay Singh**

Vs. U.O.I. & Others AIR 2007 SC 1384 (2007) 9 SCC 63,

wherein it was ruled that having regard to the facts, and circumstances of this case, the nature of misconduct, that is alleged to have been committed by the appellant (therein), as a police officer, and applying the principle of 'no work no pay', it was held that he shall not be entitled to back wages during the relevant period.

24. As indicated hereinabove, in the instant case, very serious and specific allegations of demanding and accepting the bribe money, for disposing off the challans of the complainant without any receipt of, or record, with the intention to destroy the Court record, were assigned to the applicant. Indeed the involvement of the applicant in such a serious case itself is a grave misconduct. The Hon'ble Apex Court has examined similar matter in case **Mahinder Dutt Sharma Vs. UOI & Others in Civil Appeal No.2111/2009** decided on 11.04.2014 and has held, that if the act of the delinquent which resulted in the infliction of punishment of dismissal or removal from service involved in, (i) an act of moral turpitude, (ii) an act of dishonesty toward his employer, (iii) an act designed for personal gains involving acts of corruption, (iv) an act aimed at deliberately harming a third party interest and (v) an act otherwise unacceptable, in that eventuality delinquent official would not be entitled to any such monetary benefits.

25. Meaning thereby, it was the applicant who has himself invited the trouble of criminal prosecution. It was his conduct

involving himself in the criminal case, involving moral turpitude, corruption, dishonesty etc., which prevented him from performing his duty and remained out of the service of the respondents. He cannot possibly be allowed to shift his misconduct to respondents. At the same time, he cannot legally be permitted to take the benefit of his own wrongs. Therefore, we are of the firm view that the mere fact that he has won over the witnesses and secured the acquittal, and was reinstated on technical ground by the AA, *ipso facto*, is not a ground much less cogent to grant him back wages for the period he did not actually work on the principle of no work no pay.

26. Therefore, the ratio of law laid down in the indicated judgments by Hon'ble Apex Court and Hon'ble Punjab & Haryana High Court, *mutatis mutandis* is applicable to the facts of the present case and is the complete answer to the problem in hand.

27. Therefore, taking into consideration the indicated misconduct committed by the applicant, evidence on record, and totality of indicated peculiar facts and special circumstances, the legal position, as discussed herein above, indeed applicant is not entitled to any relief in the obtaining circumstances of the case and AA has rightly negated the claim of the applicant of back wages. There is no illegality,

irregularity or any perversity in the impugned order. Hence, no interference is warranted in this case by this Tribunal.

28. No other point, worth consideration, has been urged or pressed by learned counsel for the parties.

29. In the light of the aforesaid reasons and thus seen from any angle, there is no merit and hence the OA deserves to be and is hereby dismissed, as such. However, the parties are left to bear their own costs.

(V.N. GAUR)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
29.08.2016

Rakesh