CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No. 895 of 2018

New Delhi this the 3rd May, 2019

HON'BLE SH. ASHISH KALIA MEMBER (J)

Smt. Suman Teotia
W/o Late Constable Shri Sukram Pal Singh
House No. 77, Khatu Shyam Colony,
Chipyana Bujurg, Distt. Ghaziabad,
Uttar Pradesh

…….Applicant

(By Advocate: Sh. Sudeep Kumar With Sh. Prakkar Singh)

VERSUS

Deputy Commissioner of Police
East District, Delhi

.....Respondent

(By Advocate : Sh. Kapil Agnihotri)

ORDER (ORAL)

1.0 This case has been filed by the applicant under Section 19 of the Central Administrative Tribunal's Act 1985, seeking for the following main reliefs -

> (a) issue appropriate orders/directions to the respondent quashing the order no. 13069/CR-III/PHQ dated 28.09.2017, passed by The Deputy Commissioner of Police, East District, Delhi whereby the Deputy Commissioner of Police refused to entertain the representation of applicant requesting

reinstatement of her deceased husband late constable Sukram Pal Singh and giving her the consequent and pensionary benefits treating her deceased husband's case at par with constable Om Prakash (Co-Accused in the FIR 171/2000);

(b) pass an order/direction to the respondent to give all the consequential benefits, back wage and pensionary benefits to the applicant as given to the other co-accused constable Om Prakash;

(c) such other/further order(s) as this Hon'ble Tribunal deems fit be made in favour of the Applicant and against respondents.

2.0 Applicant is wife of late constable Sh. Sukram Pal Singh has filed the present O.A, who has joined the service as a constable in Delhi Police on 02.01.1982. While he was serving the department being posted at East District Delhi, an FIR No. 171 of 2000 dated 27.05.2000 u/s 409/34 of IPC was filed against him and another Constable Sh. Om Prakash. The applicant herein was falsely implicated in the said case for dishonestly misappropriation of Rs. 70,000 from two accused persons in their custody and they have divided Rs. 35,000 each, which was recovered from their houses. During the pendency of the trial in criminal case pursuance to above FIR No. 171 of 2000, Deputy Commissioner of Police dismissed both of them by invoking Article 311 (2) (b) of the Constitution of India from immediate effect from 31.05.2000. They have preferred appeals against their dismissal before the Joint

Commissioner of Police, who has also rejected their appeals and upheld their dismissal from service vide order dated 07.06.2001.

3.0 The co-accused Sh. Om Prakash challenged the dismissal order before this Tribunal by filing O.A. No. 3107/2002. This Tribunal vide its order dated 09.09.2003 quashed the order of dismissal dated 31.05.2000 as well as the appellate order dated 07.06.2001 and Sh. Om Prakash was re-instated back in service but was placed under suspension with immediate effect till the conclusion of trial in FIR No. 171 of 2000.

4.0 It is further submitted that due to these circumstances, health of late constable Sh. Sukram Pal Singh got deteriorated and ultimate applicant died on 03.04.2004. He left behind a daughter and a son, both were school going at that point of time and they were needed utmost care and support. After the death of applicant criminal trial was abated against him but continued against co-accused and the acquittal order has been passed by the trial court against constable Sh. Om Prakash finally on

30.11.2016. The judgement of the trial court is annexed as Annexure A-7, which follows as under-

> *"10. I have perused the testimony of all witnesses examined by the prosecution and as per their testimony only amount of Rs. 2,60,000/- was recovered from accused Mahesh and Sanjeev. There is no explanation of recovery of amount of Rs. 60,000/- more from accused Mahesh and Sanjeev which was allegedly misappropriated by accused Sukhram Pal and Om Prakash.*
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> *11. Accused Om Prakash took defence that he had withdrawn an amount of Rs. 75,000/- on 27.04.2000 from his saving account no. 17174 at Central Bank of India, out of which he spent Rs. 40,000/- on his family expenses and Rs. 35,000/- was lying at his house. Accused examined DW1 who prayed that Om Prakash has a saving bank account with Central Bank of India. DW2 has placed on record his passbook EX.DW2/1 which shows the withdrawal of Rs. 75,000/- on 27.04.2000. There is no public witness of the recovery who can prove the recovery of amount of Rs. 69,000/- which was allegedly not deposited by accused Om Prakash and Sukhram Pal. The material available on record shows the recovery of Rs. 2,60,000/- only. As per PW2 SI Ramjeet from PS Lahori gate informed him about recovery of Rs. 3,29,000/- but SI Ramjeet has not been examined as witness. Hence, there is no explanation about the recovery of more amount than deposited by accused Om Prakash and Sukhram Pal.*
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> *12. From the above discussion, I am of the view that prosecution has not proved its case beyond reasonable doubt. Therefore, accused, Om Prakash is acquitted of the offences punishable U/S 409/34 IPC."*

5.0 The applicant had approached respondents by making representation on 14.07.2017 for seeking parity for getting pensionary benefits qua constable Sh. Om Prakash as both had suffered identical charges and for the same

offence in above said FIR. But the representation was rejected by the respondents at Annexure- 1 dated 28.09.2017 by citing-

> " Further at present, it is no provision of revision petition/representation i.e. second appeal lies with the department as the Hon'ble Court has already held that Rule 25-A of Deputy Police (Punishment & Appeal Amendment) Rules 1994 is ultra virus to the Delhi Police Act-1978.
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> In view of above, present request/representation addressed to Spl. C.P./HQ, Delhi is not maintainable and no action is required to be taken by this Headquarter at this stage."

6.0 During the course of arguments, it is also pointed out by the learned counsel for applicant, Sh. Sudeep Kumar that an amount of Rs. 34000/- which was recovered from Late Sh. Sukram mothers' house, was also refunded after the acquittal order passed in the trial court. Feeling aggrieved by rejection of representation for seeking similar benefit, the applicant approached this Tribunal being a legal heir of the applicant for redressal of her grievance.

7.0 Notices were issued to the respondents. In their counter reply filed by them, they have raised preliminary objection stating that present O.A. is barred by law of limitation. There is no denial of the factual aspect of the

case in the counter reply and it is stated that in Para 3 of the counter reply that both the constables Sh. Om Prakash and Late Sh. Sukram Pal Singh were dismissed from service under Article 311 (2) (b) of Constitution of India by the respondent's Order dated 31.05.2000. Both of them filed their separate appeal against dismissal but same were rejected by Appellate Authority.

8.0 It is further stated that pursuance to this order dated 09.09.2003 in O.A., constable Sh. Om Prakash was re-instated back in service and was kept under suspension. Since the husband of applicant expired during pendency of the trial i.e. on "03.04.2004", the proceedings against him were "Abated". Thus decision rendered in favour of Sh. Om Prakash only. The representation made by the applicant herein on behalf of her husband for grant of same benefit which were granted to constable Sh. Om Prakash of the acquittal in the criminal case. The representation was rejected by the impugned order submitting therein that there is no power vested under the Delhi Police Act for revision on the case of the applicant.

9.0 Heard the counsels for the parties at length and perused the pleadings available on record.

10.0 Learned counsel for applicant in support of his case has relied upon following judgements: –

(1) in the matter **of Govt. of NCT of Delhi and Ors. Vs. Bitty Khushwaha and Ors.** passed by the **Hon'ble High Court of Delhi** in WP (C) No. 1024/2007 order dated 23.08.2011 as follows:-

> "20. Merely because a criminal case was registered against the respondent, in which he was ultimately acquitted, on the sole ground that it would be very difficult to examine the respondent during trial/judicial custody in the criminal case and that meanwhile the respondent would become a liability upon the state exchequer and would have to be paid by way of subsistence allowance, in our opinion is not a justifiable ground to dispense with the enquiry. It is a well settled principle of law that a constitutional right conferred upon a delinquent cannot be dispensed with lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of enquiry. The Supreme Court in Tarsem Singh v. State of Punjab, (2006) 13 SCC 581 at page 586, after noting clause 2 of Article 311 of the Constitution of India in para 10, had held that a constitutional right of a delinquent cannot be dispensed with lightly. It was held in the said judgment as under:-
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> 10. It is now a well-settled principle of law that a constitutional right conferred upon a delinquent cannot be dispensed with lightly or arbitrarily or out of ulterior motive or merely in order to avoid the holding of an enquiry. The learned counsel appearing on behalf of the appellant has taken us through certain documents for the purpose of showing that ultimately the police on investigation did not find any case against the appellant in respect of the purported FIR lodged against him under Section 377 IPC. However, it may not be necessary for us to go into the said question.
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> 11. We have noticed hereinbefore that the formal enquiry was dispensed with only on

the ground that the appellant could win over aggrieved people as well as witnesses from giving evidence by threatening and other means. No material has been placed or disclosed either in the said order or before us to show that subjective satisfaction arrived at by the statutory authority was based upon objective criteria. The purported reason for dispensing with the departmental proceedings is not supported by any document. It is further evident that the said order of dismissal was passed, inter alia, on the ground that there was no need for a regular departmental enquiry relying on or on the basis of a preliminary enquiry. However, if a preliminary enquiry could be conducted, we fail to see any reason as to why a formal departmental enquiry could not have been initiated against the appellant. Reliance placed upon such a preliminary enquiry without complying with the minimal requirements of the principle of natural justice is against all canons of fair play and justice. The appellate authority, as noticed hereinbefore, in its order dated 24-6-1998 jumped to the conclusion that he was guilty of grave acts of misconduct proving complete unfitness for police service and the punishment awarded to him is commensurate with the misconduct although no material therefor was available on record. It is further evident that the appellate authority also misdirected himself in passing the said order insofar as he failed to take into consideration the relevant facts and based his decision on irrelevant factors.

12. Even the Inspector General of Police in passing his order dated 26-11-1999, despite having been asked by the High Court to pass a speaking order, did not assign sufficient or cogent reason. He, like the appellate authority, also proceeded on the basis that the appellant was guilty of commission of offences which are grave and heinous in nature and bring a bad name to the police force of the State on the whole. None of the authorities mentioned hereinbefore proceeded on the relevant material for the purpose of arriving at the conclusion that in the facts and circumstances of the case sufficient cause existed for dispensing with the formal enquiry. This aspect of the matter has been

considered by this Court in Jaswant Singh v. State of Punjab wherein relying upon the judgment of the Constitution Bench of this Court, inter alia, in Union of India v. Tulsiram Patel, it was held: (Jaswant Singh case, SCC p. 368, para 4) "Although Clause (3) of that article makes the decision of the disciplinary authority in this behalf final such finality can certainly be tested in a court of law and interfered with if the action is found to be arbitrary or mala fide or motivated by extraneous considerations or merely a ruse to dispense with the inquiry."

(2) **Kaushal Singh and Ors. Vs. Commissioner of Police Headquarters** in **O.A. 2592/2014**, **2067 & 2413/2015** passed dated 13.04.2018 by the Tribunal:-

"29. In Tarsem Singh's case (supra), the Hon'ble Apex Court while allowing the appeals categorically observed "if a preliminary enquiry could be conducted, we fail to see any reason as to why a formal departmental enquiry could not have been initiated against the appellant. Reliance placed upon such a preliminary enquiry without complying with the minimal requirements of the principle of natural justice is against all canons of fair play and justice". Accordingly, in the facts of the present OAs, we hold the issue in favour of the applicants.

30. In the circumstances and for the aforesaid reasons, all the OAs are allowed and the impugned orders are set aside with all consequential benefits. Since the applicants were under suspension as on the date of passing of the impugned orders, they would thus remain under suspension and the respondents shall take an appropriate decision regarding revocation or continuation of the same. The respondents shall proceed against the applicants 20 OA No.2592/2014 and connected cases departmentally, as per rules and the treatment of suspension period shall be dependent on the same. No costs."

(3) **Rajender Yadav Vs. State of M.P. and Ors, SCI judgement 2013 in Civil Appeal No. 1334 of 2013** dated 13.02.2013.-

> "13. The principle stated above is seen applied in few judgments of this Court. The earliest one is Director General of Police and Others v. G. Dasayan (1998) 2 SCC 407, wherein one Dasayan, a Police Constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The Disciplinary Authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India. In Shaileshkumar Harshadbhai Shah case (supra), the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of Page 9 9 voluntary retirement from service from the month on which the others were given the benefit."

(4) **Anand Regional Co-op. Oil Seedsgrowers Union Ltd. Vs. Shailesh kumar Harshadbhai Shah** in Civil Appeal No. 2417 of 2016 SCI judgement dated 08.08.2006.**:-**

> "14.There is, however, another aspect of the matter which cannot be lost sight of. Identical allegations were made against seven persons. The Management did not take serious note of misconduct committed by six others although they were similarly situated. They were allowed to take the benefit of the voluntary retirement scheme."

(5) **The Director General of Police and Ors. Vs. G. Dasayan,** in C.A. No. 497 of 1998 SCI judgement, 1998 dated 28.01.1998:-

> "8. The third ground that the co-delinquents except the Head Constable were let o ff though the charges were identical, it is stated by the learned

counsel for the appellants that the Disciplinary Authority did not agree with the findings of the Enquiry officer so far as those two delinquents were concerned. However, the Head Constable, Who was also charged along with the respondent, was compulsorily retired by the Disciplinary Authority."

(6) Judgment of Hon'ble High Court of Delhi in the matter of **Govt. of NCT Delhi Vs. Bhisham Kumar, W. P. (C) No. 12466/2006** order dated 08.12.2016:-

"The acquittal on account of prosecution failing to prove its case beyond reasonable doubt or on account of lack of evidence or no evidence cannot be termed as acquittal on technical ground. Such grounds i.e. technical ground, would be, to illustrate a few, limitation which has now been prescribed by recent amendment in Code of Criminal Procedure or trial without obtaining sanction as required u/s 197 Code of Criminal procedure in cases where it is required and the trial being held without obtaining such sanction. If the legislature intended that acquittal on account of benefit of doubt or prosecution failing to prove a case beyond reasonable doubt etc. were not to be a bar in the departmental proceedings, it would have so specifically provided as Exception in Rule 12. The legislature could not be oblivious of the situation as mentioned above, particularly when we know that most of the acquittals are based on the failure of the prosecution to prove the case beyond reasonable doubt or on account of benefit of doubt. The legislative wisdom only refers to acquittal on technical grounds as one of the exceptions for holding departmental proceedings. By any means we cannot hold that failure of the prosecution to lead evidence per se, would amount to acquittal leading evidence or leading insufficient evidence would definitely stand on different footing than acquittal resulting on technical ground. In the former case, the acquittal would be clean acquittal and even the words like "benefit of doubt" or "falling to prove beyond reasonable doubt" would be superfluous. The Petitioner was acquitted by learned MM because there was no evidence led by the prosecution for many years and even the case property was also

not produced for any justifiable reason. Such acquittal could not be said to be on a technical ground since the charges were not proved and the decision was arrived at on the basis of no evidence on record. A Division Bench of *Punjab and Haryana High Court in Bhag Singh V. Punjab and Sind Bank* MANU/PH/0494/2005 : 2006 (1) SCT 175 held that where the acquittal is for want of any evidence to prove the criminal charge, mere mention of "benefit of doubt" by a criminal court is superfluous and baseless and such an acquittal is an "honourable acquittal". Another Division Bench of Punjab and Haryana High Court in Shashikumari v. Uttari Haryana Bill Vitran Nigam 2005 (1) ATJ 154 has taken the same view. The instant case, however, appears to be on a better footing. Thus, we have no hesitation in arriving at a conclusion that exception (a) to the prohibition was not attracted in the present case."

(7) **O.A. No. 2212/2018** in the matter of **Ex constable (Dvr.) Sh. Vinod Kumar vs. Commissioner of Police** passed by the CAT dated 31.08.2018**:-**

"12. In Sukhdev Singh's case (supra), the Tribunal has observed as under :-

"9. In view of the discussion made above, we hold that there is no bar, express of implied, in the Rules of 1980 for holding simultaneous criminal and departmental proceedings. However, in case of departmental proceedings may culminate into an order of punishment earlier in point of time than that of the verdict in criminal case, and the acquittal is such that departmental proceedings cannot be held for the reasons as mentioned in rule 12, the order of punishment shall be re-visited. The judicial verdict would have precedence over decision in departmental proceedings and the subordinate rank would be restored to his status with consequential reliefs."

(8) Lastly **O.A. No. 4408/201**1in the matter of **Sh. R. B. Dubey Vs. Union of India passed by the CAT:-**

"11. If the matter is viewed in view of the settled principle laid down by the Apex Court in the said case, we are fo the firm

> view that the applicant has not made out any case for grant of relief. However, in the present case, the disciplinary authority has passed the order of removal from service taking into consideration all relevant documents, including the submission made by the applicant and the judgment of the CBI Court. However, the appellate authority while distinguishing the case of the applicant qua other accused who though convicted but have not been removed from service, in para (iii) has recorded a finding that the case of applicant is distinguishable qua other accused, as the applicant has been convicted on the charge of demand and acceptance of illegal gratification, which finding is not borne out from record. However, we are of the view that the order of the appellate authority is required to be quashed on this technical. Accordingly, the present O.A. is allowed to the extent that the impugned appellate order dated 21.09.2011. "

11.0 During the course of arguments, learned counsel for applicant has tried to convince this Tribunal that case applicant's husband is identical to Sh. Om Prakash, who is accused by trial court in the same FIR and he has been re-instated in service with all consequential benefits, if any and no appeal is preferred against the order of the learned trial court which assumed the finality. Thus, he should also be considered similarly by the department for grant of pensionary benefits, wages and other benefits. Lastly, learned counsel for applicant submitted that the rejection of the representation is only on the technical grounds stating that they no power of revision.

12.0 On the contrary, the respondent has submitted two judgements, one in the matter of **Union of India & Ors. Vs. M. K. Sarkar,** SCI judgment dated 08.12.2009 which as follows:-

> "10. Even on merits, the application has to fail. In Krishena Kumar vs. Union of India – 1990 (4) SCC 207, a Constitution Bench of this Court considering the options given to the Railway employees to shift to pension scheme, held that prescription of cut off dates while giving each option was not arbitrary or lacking in nexus. This Court also held that provident fund retirees who failed to exercise option within the time were not entitled to be included in the pension scheme on any ground of parity. Therefore, the respondent who did not exercise the option available when he retired in 1976, was not entitled to seek an opportunity to exercise option to shift to the pension scheme, after the expiry of the validity period for option scheme, that too in the year 1998 after 22 years."

Another SCI judgement in the matter of **C. Jacob Vs. Director of Geology & Mining & Anr. In SLA (C) No. 25795/2008** dated 03.10.2008-

> "6. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee

> files an application/writ petition before the Tribunal/High Court 7 seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding 8 the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."

13.0 Learned counsel for respondents made strenuous arguments on this account that this present O.A.is barred by limitation since after 28 years, the applicant has approached for redressal of his/her grievance. The fact remains the trial court, had given final verdict on 30.11.2016. Pursuance thereto money recovered from applicant mother's house as well from the co-accused has also been refunded. Thus, in my considered opinion, the

limitation in the present case would start from the date when the learned trial court has given its final verdict against both the constables not from the initial date as projected by the learned counsel for the respondents.

14.0 The other point raised by the learned counsel for respondent that the applicant herein is not entitled for any leniency as he was involved in a criminal case. This view is not acceptable for the simple reason that they have been acquitted by the trial court and the respondents have not preferred any appeal against the order passed by the learned trial court which has assumed finality. Thus, this Tribunal is of the view that the benefit of reinstatement back in service, consequential monetary benefits given to the co-accused, the same shall also be given to husband of applicant.

15.0 I see no reasons that as to why this O.A. should not have been allowed. In view of above, the present O.A. is allowed, hence I hereby set aside order dated 28.09.2017 passed by Deputy Commissioner of Police with the direction to respondents to consider that applicant deem to have been re-instated back in service and he should be entitled for grant of similar benefits which are

granted to constable Sh. Om Prakash (co-accused in FIR No. 171 of 2000). These benefits should be given to the widow applicant being legal heir after getting requisite formalities done. With the observation, present O.A. is allowed. No order as to cost.

(ASHISH KALIA)

Member (J)

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