

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 1488/2016

New Delhi this the 30th day of August, 2019

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N.Terdal, Member (J)

Umar Mohammad, Age-61 years (Ex. ASI)
S/o Sh. Chand Khan,
R/o Village-Akera, PO-Akera,
The-Nuh, District- Mewat,
Gurgaon, Haryana.

... Applicant

(By Advocate: Mr. Sachin Chauhan)

VERSUS

1. Govt. of NCTD through the
Chief Secretary,
Govt. of NCTD, A-Wing,
5th Floor, Delhi Secretariat,
New Delhi-110113
2. The Commissioner of Police,
Delhi Police, PHQ,
I.P. Estate, New Delhi.
3. The Spl. Commissioner of Police,
Armed Police,
Through the Commissioner of Police,
PHQ, I.P. Estate, New Delhi.
4. The Dy. Commissioner of Police,
1st Bn., DAP,
Through the Commissioner of Police,
PHQ, I.P. Estate, New Delhi.

... Respondents

(By Advocate: Mrs. Sumedha Sharma)

ORDER (ORAL)

Hon'ble Mr. S.N. Terdal, Member (J):

We have heard Mr. Sachin Chauhan, counsel for applicant and Mrs. Sumedha Sharma, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

"8.1 To quash and set aside the impugned order dated 24.04.2012 whereby the punishment of dismissal from service is being imposed upon the applicant, order dated 30.10.2012 is being challenged to an extent it imposes the major punishment of forfeiture of 2 years approved service upon the applicant despite the fact that 5 years of forfeiture of service is already being imposed upon the applicant vide an order dated 31.05.2011, order dated 15.01.2016 whereby the annual increment granted to applicant from 4800 to 5000/- w.e.f. 01.06.2003 has been cancelled and further increment has been granted in the pay scale of Rs.4000-100-6000 resulted into a huge recovery is being imposed upon the applicant and order dated 21.03.2016 whereby the applicant has been directed to deposit a sum of Rs.2,03,352/- so that pension paper of applicant could be processed and to further directs the respondents that forfeiture years of service be restored as it was never forfeited with all consequential benefits.

8.2. To quash and set aside the amended Rule 11 (1) of Delhi Police (Punishment and Appeal) Rules 2011 vide notification dated 30.11.2011.

8.3 To direct the respondents to release the regular pension and retiral benefits to the applicant alongwith 9% interest from the date of superannuation to the date of actual payment with all consequential benefits.

Or/and

i) Any other relief which this Hon'ble Tribunal deems fit and proper may also be awarded to the applicant."

3. The relevant facts of the case are that on the allegation of demanding money from one Shri Nar Singh and threatening him that if he does not pay money, he would be booked under false cases etc. and in that episode the applicant being trapped by the Anti Corruption Branch, a departmental enquiry was initiated against him. The summary of allegation is extracted below:

"It is alleged that on 23.09.2004 one Sh. Nar Singh S/o Sh. Nathu Ram r/o Village Hari Nagar, Badarpur, Delhi made submitted a complaint in A.C.Branch on 18.09.2004 that when he was coming from Railway Station by his Maruti Car, he was detained by ASI Umar Ali and Const. Salim at Molarband Check Post. Both the police officials threatened him to book in any false case and demanded Rs.4000/- for not taking any action. The matter was settled in Rs.1500/- and complainant was released with the direction to procure Rs.1500/- in the same night but complainant did not pay the same. On this Const. Salim made telephonic calls and demanded Rs.1500/- and threatened the complainant to book him in a false case on 22.09.2014 at about 9PM Const. Salim made a telephone call and threatened the complainant that in he did not pay Rs.1500/- by tomorrow till 12.30PM he will be booked in false case.

On the basis of above complaint a trap was laid by the officials of A.C.Branch, Delhi and Const. (Exe.) Salim Mohd Khan No. 2500/SD now 199/DAP (Salam Mohammad as per his service record) (PIS No. 28831293) was caught red-handed while demanding, accepting and obtaining Rs.1500/- from the complainant Sh. Nar Singh as illegal gratification through a tea vender Sh. Ram Bilas in the presence of punch witness Sh. Deep Chand, LDC, Employment Exchange, New Delhi Distt. The bribe money was recovered from the inside pocket of pant and a case FIR No. 51/04 dated 23.09.2004 u/s 7/8/13 POC Act P.S. A.C. Branch was registered against him. He was arrested on the same day. During the course of investigation ASI (Exe) Umar Mohd Khan no. 2764/SD(Umar Mohammad as per his service record) (PIS No. 28770338) was also arrested in the above mentioned case on 27.09.2005 Const.(Exe) Salam Mohammad No. 2500/SD now 499/DAP was placed under suspension w.e.f. 23.09.2004 vide order No. 8581-8600/SD(P-II) dated 25.09.2004 and ASI (Exe.) Umar Mohammad No. 2764/SD was placed under suspension w.e.f. 27.09.2005 vide order No.8433-55/SD (P-II) dated 04.10.2005."

4. Alongwith the summary of allegation, list of documents and list of witnesses were served on the applicant. As the applicant did not admit the allegation, an Inquiry Officer was appointed. The Inquiry Officer following the principles of natural justice as well as rules governing the conduct of the departmental enquiry examined the witnesses and after

discussed and analysed the evidence brought on record and came to the conclusion that the charge levelled against the applicant was proved. Copy of the inquiry report was served on the applicant. The applicant submitted his representation against the inquiry report. The disciplinary authority after considering the entire evidence on record and discussing all the grounds raised by the applicant in his representation against the inquiry report imposed a punishment of forfeiture of 5(five) years approved service permanently on the applicant vide order dated 31.05.2011 without prejudice to further departmental action for his misconduct that would be decided after the decision in the criminal case which was started simultaneously under the FIR no 51/04 u/s 7/8/13 of Prevention of Corruption Act. Vide order dated 12.12.2011, the Court of Shri B.R. Kedia, Spl.Judge-07, Central Distt. Tis Hazari Court convicted the accused. The relevant portion of the conviction order is extracted below:-

"I hereby sentence the convict Saleem Khan and Umar Mohd. Khan to undergo RI for a period of two and half years and a fine of Rs.5000/- each for offence punishable u/s 7 of the Prevention of Corruption Act, 1988 r/ w Section 120-B IPC and in default of payment of fine. They shall undergo SI for a period of 3 months. Said convict Saleem Khan and Umar Mohd are further sentenced to undergo SI for a period of 3 months. Said convict Saleem Khan and Umar Mohd are further sentenced to undergo for a period of two and half years and a fine of Rs.5000- each for offence punishable u/s 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act, 1988 and Section 120-B IPC and in default of payment of fine, they shall further undergo SI for a period of 3 months. Both substantive sentences of imprisonment shall run concurrently and both the convict will be entitled for the benefit u/s 428 Cr. P.C."

On the basis of the said conviction invoking the powers under the amended Rule 11 (1) of the Delhi Police (Punishment and Appeal) Rules, 1980, the disciplinary authority imposed the penalty of dismissal of the

applicant vide order dated 24.04.2012. The applicant filed an appeal. The appellate authority after hearing the applicant reduced the penalty of dismissal from service to the punishment of forfeiture of two years approved service permanently on the applicant vide order dated 30.10.2012. Subsequently, the applicant retired on superannuation on 31.10.2015. After his retirement vide order dated 15.01.2016, a pay fixation order was passed taking into account the forfeiture of two years approved service permanently as per the punishment imposed on him. The said order dated 15.01.2016 is extracted below:-

"The annual increment granted to ASI (Exe) Umar Mohammad No. 2764/SD (PIS No. 28770338 from Rs.4800/- to 5000/- w.e.f. 02.06.2003 is hereby cancelled and further increments is hereby granted in the pay scale of Rs.4000-100-6000 is as under:-

Rs.4800/- to Rs.4900/- w.e.f. 01/06/2003
Rs.4900/- to Rs.5000/- w.e.f. 01/06/2004
Rs.5000/- to Rs.5100/- w.e.f. 01/06/2005

In consequent upon the revision of pay scale with effect from 01.01.2006 under CCS (Revised Pay) Rules March, 2008 read with the G.O.I. Notification No. GSR No. 622 (E) dated 29/08/2008, Ministry of Finance, Deptt. of Expenditure OM No.F1/1/2008/IC dated 30/08/2008 and direction of PHQ received vide TPM No. 16001/CR-II/PHQ dated 02/09/2008, and one increment in the pre-revised pay structure under rule-10 of the CCS (Revised Pay) Rules March, 2008, read with the GOI Notification No. Ministry of Finance Deptt. Of Expenditure OM No. 10/02/2011-E.III/A dated 19/03/2012 and direction of PHQ received vide Memo No. 4162-96/CR-II/PHQ dated 29/03/2012, the pay of ASI (Exe) who is placed under suspension w.e.f. 27.09.2005, is hereby fixed @ Rs.9490+2800=12290 in the pay Band Rs.5200-20200+2800(GP) w.e.f. 01.01.2006.

Consequent upon the punishment of forfeiture of five years approved service permanently vide order No. 8481-8520/HAP (P-1) Ist Bn.DAP dated 31.05.2011, his pay is hereby reduced by five(5) stages @ Rs.9490+2800=12290 to Rs.7790 +2800=10590 w.e.f. 31.05.2011. He is still under suspension.

On dismissal from service vide order No. 7446-90/HAP-III/Ist Bn, DAP dated 24.4.12 and suspension period from 27/09/05 to 24.04.2012 decided as not spent on duty and in appeal

made by the ASI (Exe) the punishment of dismissal from service is reduced by Spl. CP/AP to that forfeiture of two years approved service permanently and he will be deemed under suspension from the date of dismissal vide order No. 1360-63/P.Sec./Spl.CP/AP dated 30/10/12, the pay is hereby reduced by two stages from Rs.7790+2800=Rs.10590/- to Rs.7180/-+2800=Rs.9980/- PM w.e.f. 24/04/2012.

On re-instatement from suspension w.e.f 28.02.2013 and due to non deciding his suspension period vide order No. 2095-2137/HAP-Ist Bn.DAP dated 28.02.2013, the annual increments is hereby granted as under:-

Rs.7180/+2800=Rs.9980/-PM to Rs. 7480+2800=Rs.10280/- w.e.f. 01.07.2014

Rs.7480+2800=Rs.10280/-PM to Rs.7790+2800=Rs.10590/- w.e.f. 01.07.2015

Previous orders regarding grant of annual increments and reduction of pay on or after 01.06.2003 are hereby cancelled."

5. At the time of hearing, the counsel for the applicant submitted that he wants to give up his challenge to the order passed by the disciplinary authority dated 24.04.2012 and that of the appellate authority dated 30.10.2012, but, however, he submits that the order dated 15.01.2016 and the recovery order dated 21.03.2016 are passed after his retirement and that after his retirement under the CCS (Pension) Rules, 1972 it is only the President who has got the power to pass such orders. Admittedly, the orders dated 15.01.2016 and 21.03.2016 are not passed as per the CCS (Pension) Rules, 1972 and, therefore, we are of the view that these orders dated 15.01.2016 and 21.03.2016 are passed without complying with the provisions of law, as such, we set aside these two orders dated 15.01.2016 and 21.03.2016, but, however, the respondents are at liberty to pass order regarding revision of pay and the order

regarding forfeiture of his service after complying with the provisions of CCS (Pension) Rules, if they so advised.

6. Accordingly, the OA is allowed in the above terms. No order as to costs.

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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