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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2492/2003

M A M 21/4/2003

New Delhi, this the 21st day of May, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER (A)

1. Om Bati
w/o Late Shri Dharambir Singh
Ex. Const. No.3444/PCR
2. Jaideep s/o Late Shri Dharambir Singh,
3. Jaibeer s/o Late Shri Dharambir Singh
4. Phulan Devi wife of Late Sh. Neki Ram and
mother of Late Dharambir Singh,

All r/o Vill. & P.O. Khudan
Distt. Jhajjar (Haryana). . . . Applicants

(By Advocate: Sh. Sama Singh)

Versus

1. Govt. of NCT of Delhi
through its Chief Secretary
Delhi Secretariat, I.P.Estate
New Delhi - 110 002.
2. Commissioner of Police
Delhi Police Headquarters
MSO Building, I.P. Estate
New Delhi - 110 002.
3. Addl. Commissioner of Police
PCR & Communication
Delhi Police Headquarters
New Delhi - 110 002.
4. Addl. Deputy Commissioner of Police
Police Control Room
Police Headquarters
New Delhi - 110 002. . . . Respondents

(By Advocate: Sh. Anil Singhal proxy of Mrs. P.K.
Gupta)

O R D E R (Oral)

Justice V.S. Aggarwal:-

Applicants are the Widow and the Children of
Constable Dharambir Singh. By virtue of the present
application, they seek quashing of the order passed by
the disciplinary authority dated 27.7.2001 and of the
appellate authority of 21.9.2002. Needless to state

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that vide said orders, Shri Dharambir Singh (herein after called as 'deceased') had been dismissed from service. He had unfortunately expired and, therefore, the application has been filed by the aforesaid legal representatives of the deceased.

2. Some of the relevant facts are that the deceased was a Constable in Delhi Police. FIR NO. 792 dated 21.9.84 with respect to the offence punishable under Section 307 of Indian Penal Code had been registered against him. He was tried by the Court of the Learned Additional Sessions Judge. The deceased was held guilty of the offence punishable under Section 324 of the IPC but was released on his executing the personal bond of Rs.5000/- with a surety in like amount for a period of one year. The deceased, in pursuance of the said decision of the Court, was dismissed from service. In the meantime, he filed a criminal appeal in the High Court of Adjudicature at New Delhi against the Judgement and the order of sentence passed by the trial Court.

3. During the pendency of the criminal appeal, he had filed an appeal before the Commissioner of Police. He challenged the orders passed by the administrative authorities by filing Original Application in this Tribunal. The said orders were quashed. Result was that on 17.10.1991, the deceased was reinstated in service. There was no decision taken regarding the intervening period, i.e., from the date of dismissal to the date of joining duty. On 12.3.2001, the appeal filed by the deceased was

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dismissed by the Delhi High Court. After dismissal of the appeal by the Delhi High Court, the deceased was dismissed from service on 27.7.2001. Hence the present application.

4. According to the applicants the said order cannot be sustained.

5. Needless to state that the application is being contested.

6. From the resume of the facts given above, it is obvious that the deceased has been held guilty of the offence punishable under Section 324 of the Indian Penal Code.

7. The learned counsel for the applicant contended that in certain other cases, the persons had been held guilty of certain offences but Article 311(2)(a) of the Constitution had not been invoked in those cases. Our attention was drawn towards the decision in this regard in the case of Constable Ramesh Chand. According to the learned counsel, this tantamounts to discrimination between different persons.

8. The said argument of the learned counsel must be stated to be without any merit. This is for the reason that every case has its own docket. If on certain facts of a particular case it has been opined that it was not a proper case to remove/dismiss the person from service that by itself does not tantamount

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to say that in all cases similar orders should be passed. The claim of the applicants had to be considered and was considered on its own merits.

9. Learned counsel for the applicants in that event highlighted the fact that the deceased had been released on probation and as such the benefit of Section 12 of the Probation of Offenders Act should have been accorded.

10. The said contention must be stated to be without merit. Reference with advantage can be made to the decision of the Supreme Court in the case of THE DIVISIONAL PERSONNEL OFFICER SOUTHERN RAILWAY AND ANOTHER v. T.R. CHALLAPPAN, AIR 1975 SC 2216. The Supreme Court in unambiguous terms held that releasing convicted accused on probation does not obliterate stigma of conviction and that entire conduct of the said person has to be seen. Necessarily, the argument so much thought of by the learned counsel must be negatived.

11. In fact, the Supreme Court in the case of UNION OF INDIA AND ANOTHER, v. TULSIRAM PATEL, AIR 1985 SC 1416 has gone into this controversy and held that conviction should be of a magnitude and that it is improper to keep the said person in service. It is an enabling provision.

12. Therefore, the gravity of the offence cannot be ignored.



13. In the present case before us, the disciplinary authority has applied its mind to the gravity of the offence. This is obvious from the following passage:

"I have carefully gone through the criminal case, correspondance file of Const. Dharambir No.3444/PCR, other materials available on the file and also the above mentioned judgements/pronouncements of Hon'ble CAT/Delhi High Court, Delhi, under Rule-11 of Delhi Police (P&A) Rules - 1980 and found that the instant case is not a sudden provocation in huff and ruf case as Constable Dharambir No.745/SD (now 3444/PCR) attacked Const. Jitender with an ulterior motive, hatched a plan to take revenge over quarrel that had taken place on previous night; fortunately, Constable Jitender Kumar sustained simple hurt. In my opinion retention of such a criminal minded man in the disciplined force will set a bad example to others, encourage them to indulge them in such criminal activities and also can cause danger to the life of other and ultimately to go scotch free. Accordingly, I, Dr. P.S. Bhushan, Addl. Dy. Commissioner of Police, PCR, Delhi hereby order to dismiss Constable Dharambir No.3444/PCR from the force with immediate effect. His suspension period i.e. 21.9.84 to 11.11.86 is decided as period not spent on duty for all intents and purposes. He will not be entitled to claim any thing more whatever he has already drawn during the suspension period in the form of subsistence allowances from the department. His intervening period, date of dismissal i.e. 19.8.87 to date of joining the duty by Constable consequent upon his re-instatement in service vide DCP South Distt., Delhi order dated 17.10.91 is also decided as period not spent on duty for all intents and purposes. The constable is further directed to deposite the Govt. belongings i.e. I. Card, C.G.H.S. Card, and Appointment Card etc., at-once into the concerned branches before leaving the department."

The facts recited clearly show the nature of the act of the applicant and the gravity of the same was rightly highlighted. To contend, therefore, that

deceased had served for a long period and, therefore, in terms of Rule 16.2 of Punjab Police Rules, 1934 in case of dismissal, the length of service must be taken note of. The said contention will not hold good in the facts of the present case.

14. The deceased indeed had committed a serious offence and taking note of the same, we find no ground to hold that any lesser punishment would have met the ends of justice.

15. For these reasons, the application must be without merit and is dismissed.


(S.A. Singh)

Member (A)


(V.S. Aggarwal)
Chairman

/NSN/