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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2608/2003

New Delhi, this the 16th day of December, 2004

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)**

Mr. Prakash Chandra
S/o Late Sh. B.D.Sanwal
R/o Flat No.0145-D, Shipra Sun City
Indirapuram, Ghaziabad (UP). ... Applicant

(By Advocate: Sh. G.D.Gupta, Sr. Counsel with Ms. Bimla K. Kaul)

Versus

1. Commissioner of Police
Delhi Police Headquarters
I.P.Estate, New Delhi – 110 002.
2. Joint Commissioner of Police
Armed Police
New Police Line, Kingsway Camp
Delhi.
3. Deputy Commissioner of Police
2nd Btn. DAP
New Police Line, Kingsway Camp
Delhi.
4. Asstt. Commissioner of Police (DDO)
2nd Btn. DAP
New Police Line, Kingsway Camp
Delhi. ... Respondents

(By Advocate: Sh. Ashwani Bhardwaj proxy of Sh. Rajan Sharma)

ORDER

By Mr. Justice V.S.Aggarwal:

Applicant (Prakash Chandra) was appointed as Constable in Delhi Police on 19.11.1990. He had joined and was to undergo training in Commando course from 7.11.1991.

2. During the Commando training course, the applicant alleged that he sustained severe injury in his backbone. He was taken to Safdarjung Hospital for treatment and had been advised



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three weeks complete bed rest. The respondents had issued an office communication dated 17.2.1992 informing the applicant that he has been found absented from duty from 13.11.1991. Thus, notice was served to him at the residence of his brother where the applicant had moved due to strain relations in the family. The applicant contends that he had been advised rest by the Doctor from 22.3.1992 to 29.8.1992. Respondents issued another office communication directing to resume his duties.

3. On 9.7.1992, the applicant was placed under suspension for his alleged continued absence from duty and on 10.7.1992, the disciplinary authority had decided to initiate disciplinary proceedings against him. The same had been held and a report was submitted which was adverse to the applicant. The disciplinary authority acting on the basis of the inquiry report, removed the applicant from service on the alleged ground of unauthorized absence from 13.11.1991 to 31.8.1992. It was directed that the period of absence shall be treated as leave without pay. However, the appointing authority had passed an order sanctioning 61 days leave from 7.10.1992 to 16.12.1992. The applicant had preferred an appeal to the appellate authority which was dismissed.

4. Subsequently, the applicant filed OA 1897/1994 in this Tribunal. On 21.2.2000, the same was allowed. Consequent upon the decision of this Tribunal, the applicant was reinstated in service with immediate effect. His intervening period from the date of removal to the date of reinstatement was declared as spent on duty for all intents and purposes, subject to furnishing of a certificate, under FR 53(2). The applicant had submitted an



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application mentioning that he was involved in a criminal case vide FIR No.45/95 dated 23.1.1995. The information was given after two and a half months of the reinstatement, as a result of which a penalty of 'censure' was awarded to him. The applicant was found to have been involved in FIR referred to above pertaining to offences punishable under Sections 363/364/365/342/506/34 of Indian Penal Code.

5. Subsequently, the applicant was awarded a life imprisonment. He was again placed under suspension with effect from 31.8.2000. On further clarification, it transpired that the applicant was arrested in the above said matter and was released on bail only on 3.8.1995, i.e., after many days in custody. As per the provisions of Rule 28(A) of Delhi Police (Punishment and Appeal) Rules, 1980, the applicant was deemed to be placed under suspension from the date of detention. After that he had submitted an application pertaining to the Corrigendum that was issued and filed a representation pertaining to the said order.

6. To keep the sequence of events complete, reference can well be made to the Corrigendum of 12.12.2000 which reads:

CORRIGENDUM/ADDENDUM

This is in continuation to this office order No.2157-2256/HAP-II Bn. DAP dated 5.5.2000, so far as it relates the re-instatement of Ex-Const. Prakash Chand No.6594/DAP in service.

Please read these lines after the word dated 4.5.2000, and before the word subject to the, "Ex-Const. Prakash Chand No.6594/DAP is hereby re-instated in service from the removal with immediate effect. However, consequent upon his involvement in case FIR No.45 dated 23.1.95, u/s 363/364/365/342/506/34-IPC P.S. S.N.Puri, New Delhi and subsequent arrested on 23.1.95, Const. Prakash Chand



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No.6594/DAP will be deemed to be under suspension w.e.f. 23.1.95. The intervening period from the date of removal to 22.1.95 is decided as period spent on duty for all intents and purposes instead of the intervening period from the date of removal to the date of reinstatement is hereby decided as spent on duty for all intents and purposes.

After completion of three months of his suspension his subsistence allowance is also increased by 50% of the subsistence allowance already being drawn by him w.e.f. 23.4.95 under FR-53.

However, his absence period i.e. 13.11.91 to 8.7.92 is treated as period not spent on duty, hence the same is not being regularized in any manner.

The previous orders issued vide this office order No.4282-4381/HAP-II Bn. DAP dated 7.9.2000 and 5571-5670/HAP-II Bn. DAP dated 6.12.2000, are hereby cancelled."

Sd/-
DY. COMMISSIONER OF POLICE:
II BN. DAP DELHI

ASIP/OB

No.5736-5835/HAP-II Bn. DAP dated Delhi, the 12.12.2000"

7. By virtue of the same, the applicant was suspended retrospectively with effect from 23.1.1995, i.e., the date of registration of the FIR.

8. Another order in pursuance of the Corrigendum dated 12.12.2000 was issued on 8.1.2001. The pay of the applicant was regularized with effect from 1.8.1994 from Rs.990/- per month to Rs.1010/- per month and the previous regularization of pay in terms of the office order dated 23.6.200 was cancelled.

9. In pursuance thereto, the applicant was given a Cheque for Rs.3,43,308/-. He was asked to return Rs.69976/- in terms of the Corrigendum that had been issued on 8.1.2001 which reads:



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"O R D E R

In pursuance of corrigendum/addendum No.5736-5835/HAP-II Bn. DAP, dated 12.12.2000, the annual increment in regard of Constable Prakash Chand, No.6594/DAP is hereby regularized @ Rs.20/- PM and raising his pay from Rs.970/- PM to Rs.990/- PM w.e.f. 23.8.93 in the pay scale of Rs.950-20-1150-EB-25-1400 (Due to 9 months 27 days L.W.P. w.e.f. 13.11.91 to 8.7.92 and 17.10.92 to 16.12.98.

The next annual increment @ Rs.20/- PM and raising his pay from 990/- PM to Rs.1010/- PM w.e.f. 1.8.94.

Constable Prakash Chand, No.6594/DAP has been found involved in case FIR No.45 dated 23.1.95 u/s 363/364/365/342/506/34, IPC P.S.S.N.Puri, New Delhi and consequently arrested on 23.1.95. Constable Prakash Chand, No.6594/DAP will be deemed to be under suspension w.e.f. 23.1.95.

The previous regularized of pay order No.3006/CR-II Bn. DAP, dated 23.6.2000 and order book No.394/2000 are hereby cancelled.

This is subject to the audit verification.

Sd/-
DY. COMMISSIONER OF POLICE
II BN. DAP DELHI

ASIP/OB

No.147-51/CR-II Bn. DAP, dated Delhi, the
08/1/2001"

10. By virtue of the present application, he seeks the following reliefs:

- a) quash the office corrigendum dated 12.12.2000 and order dated 8.1.2001 issued by the respondents having the effect of suspending the applicant retrospectively w.e.f. 23.1.1995 and which impugned orders have been passed contrary to the letter and spirit of the judgement and order dated 21.2.2000 of the Hon'ble Tribunal in O.A.No.1897/1994 of the applicant;
- b) issue an appropriate writ, order or directions to the Respondents to restore the orders dated



5.5.2000 and 23.6.2000 of the respondents which were passed in pursuance of the judgement and order dated 21.2.2000 in O.A.No.1897/1994 in the matter of regularization of period of absence from 13.11.1991 to 8.7.1992 which has already been treated as leave without pay and fixation of pay of the Applicant in terms thereof, with all consequential benefits;

- c) quash the further action of the respondents in reducing the pay and allowances of the applicant and consequently the subsistence allowance of the applicant w.e.f. June 2003 which has been done without notice, without reason and at the back of the applicant;
- d) grant all consequential benefits including arrears of pay and allowances w.e.f. 23.1.1995 to 7.9.2000 and arrears of subsistence allowance payable under law w.e.f. 7.9.2000 onwards on the basis of basic pay of Rs.3575/- with interest;
- e) hold that the coercive action of the respondents seeking refund of Rs.69,976/- from the applicant as bad in law, quash the same and direct them to return the same to the applicant with interest; and
- f) ”

11. Needless to state that in the reply filed the application is being contested. Along with application, an **MA 2258/2003** has been filed seeking condonation of delay in filing of the application.

12. The applicant pleads that right from the date of issuance of the suspension order, he was not being allowed to contact the concerned departments dealings with pay and allowances and, therefore, he was not able to know the actual basis of reducing his pay vide Corrigendums of 12.12.2000 and 8.1.2001. Furthermore, the applicant had almost become indigent due to reduction in pay and allowances and meeting the litigation cost of the appeal that he has filed which is pending in the Delhi High Court. He had

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done all within his means and in this backdrop, it was prayed that delay in filing the application may be condoned.

13. In terms of the provisions of the Administrative Tribunals Act, 1985, a person can represent and wait for six months. Thereafter, he can file the application for redressal of his grievance in the Tribunal. The period of limitation prescribed is one year from the date the cause of action arose. Admittedly, the impugned orders are of 12.12.2000 and 8.1.2001. The present application had been filed in this Tribunal on 16.10.2003 and this is clearly barred by time.

14. However, if there are just and sufficient grounds, the delay can be condoned. Reply to the said Miscellaneous Application has been filed by the respondents but the facts asserted, do not find much contravention. It simply pleads that the reasons given are not satisfactory. In the peculiar facts of the present case, once the applicant has undergone departmental actions as well as the criminal litigations, one would not be surprised that he might well have become an indigent person because he was merely a Constable. Taking totality of the facts which have prevented him in filing of the present application in time, we have no just ground to reject the application. Consequently, in the peculiar facts, **we condone the delay in filing of the application.**

15. In the first instance, we will take up the claim of the applicant that he could not have been suspended retrospectively. According to the learned counsel, the applicant has been suspended from 23.1.1995. On the said date, the applicant was out of service because of the earlier order that had been passed



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removing him from service. As a consequence thereto, he contends that the earlier order should be restored and the said period in question should be treated as leave without pay and fixation of pay should be made in terms of the relevant rules with consequential benefits.

16. Under Rule 28 of Delhi Police (Punishment & Appeal) Rules, 1980, Sub-Clause (a) clearly provides that when a person is detained as a result of the proceedings on a criminal charge and if the period exceeds 48 hours, he shall be deemed to be under suspension from the date of detention until further orders. This is a deeming provision under the said Rule.

17. The contention of the applicant that at the relevant time he was out of service and, therefore, cannot be deemed to have been suspended in the year 1995, must be rejected. This is for the reason that as is apparent from the sequence of events which we have recited above, the order removing the applicant from the service had been quashed by this Tribunal on 21.2.2000. He was directed to be reinstated in service. For the intervening period from the date of removal till the date of reinstatement consequential benefits were directed to be given.

18. In other words, by virtue of the order of this Tribunal, it cannot be stated that on the date, i.e., when the applicant had been detained in January, 1995, he could be taken to be removed from service. Consequently, the contention so thoughtfully put forward that he could not have been suspended retrospectively must be rejected and the first two reliefs, therefore, cannot be granted.

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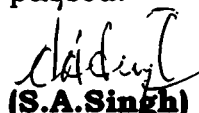
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19. However, it was still urged that so far as the action of the respondents in reducing the pay of the applicant and subsistence allowances is concerned, firstly the respondents have not fixed the salary taking note of the Fifth Central Pay Commission's report whereby the subsistence allowances as well as the pay has to be increased. The consequential benefits also, therefore, have to be increased. It was also pointed that in any case while asking to return Rs.69,976/- and reducing the pay, no notice to show cause had been issued.

20. It is a settled principle in law that whenever an order affecting the civil consequences has to be passed, a notice to show cause must be issued. We refer with advantage to only one such decision from the Apex Court in the case of **SAYEEDUR REHMAN v. THE STATE OF BIHAR & OTHERS**, 1973(1) SLR 761.

21. Indeed such a notice had not been given and to that extent, the applicant is entitled to the benefit.

22. Resultantly, for these reasons, we dismiss the application of the applicant pertaining to the reliefs (a) & (b) in paragraph 8 of the application. However, we quash the order whereby the salary of the applicant had been reduced and he had been made to pay Rs.69,976/- without issuing a show cause notice. It is directed that the same should be fixed taking into account the Fifth Central Pay Commission's recommendations and thereafter a notice to show cause should be issued to him and after considering the reply, appropriate order qua the same should be passed.


(S.A. Singh)
Member (A)
/NSN/


(V.S. Aggarwal)
Chairman