

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

**O.A. NO. 4320 of 2018**

This the 31<sup>st</sup> day of October, 2019

**Hon'ble Ms. Nita Chowdhury, Member (A)**

1. Kehar Singh, Age 73 years,  
Service No.2981/D,  
S/o Lt. Shri Bhart Singh,  
R/o Gurkul Wali Gali,  
Police Station, Kharkhoda,  
Distt. Sonipat, (UR).  
'C' A.S.I.

.... Applicant

(By Advocate : Shri Ravinder Kumar Sharma)

VERSUS

1. Union of India,  
Through its Secretary,  
Ministry of Home Affairs,  
North Block, New Delhi.
2. Commissioner of Delhi Police,  
Police Headquarters I.P. Estate,  
MSQ Building, New Delhi-110002.
3. Joint Commissioner of Delhi,  
Police Southern Range Police,  
Headquarters I.P. Estate,  
M.S.O. Building, New Delhi.
4. Additional Deputy Commissioner of Police (I),  
South District, Police Station Hauz Khas,  
New Delhi.

..... Respondents

(By Advocates. Ms. Esha Mazumdar for R-2 to R-4 and Shri Shailendra Tiwari for R-1)

**O R D E R (Oral)**

By filing this OA, the applicant is seeking the following reliefs:-

- “i) To quash and set aside the impugned order dated 18.6.2018.
- ii) To direct the respondent, release the retiral dues of S.I. as per order dated 15.02.2017 for the period from 17.09.2017 to 30.04.2005.
- iii) directs the respondents to pay interest on the arrears of pay & pension from dated of 16.01.1997 till the date of payment.
- iv) Award the cost of the O.A.
- v) To pass any other orders as deemed fit and proper in the facts and circumstances of the case.”

2. The brief facts of the case are that the applicant was enlisted in Delhi Police as a Constable (Executive) on 16.3.1964. He was promoted to the ranks of Head Constable w.e.f. 10.10.1972 and ASI w.e.f. 29.6.1988. The applicant was dismissed from service vide Order No.2212-72/SD(P-II) dated 04.03.1998 on the allegation that while posted at PP Sarita Vihar, PS Badarpur, he was instructed to go to Tond (U.P.) to collect Vehicle Car No.DNC-2157 stolen vide case FIR No.368/94 u/s IPC vide DD No.25 dated 21.07.1996 PP Sarita Vihar but he did not return till 03.08.1996 from there. His appeal against the order of punishment of dismissal from service was also rejected by the respondents vide Order No.6043-44/SO(AC-II)/SR, dated 10.09.1998.

2.1 The applicant approached the Hon'ble Delhi High Court by filing Writ Petition (Civil) No.3421/2001 challenging the aforesaid orders of dismissal from service in which the

applicant's main contention was that the punishment awarded to him is too harsh and disproportionate and further submission was that other persons who have remained unauthorizedly absent from duty have been given a punishment much lesser than that of dismissal from service. The Hon'ble High Court vide Order dated 18.12.2013 disposed of the said Writ Petition with the following observations:-

"13. Ordinarily, after setting aside the penalty of dismissal from service we would have remanded the matter to the Disciplinary Authority requiring a penalty to be imposed, but keeping in view the passage of time, we would prefer to adopt the course chartered by the Supreme Court in the decision reported as (2004) 4 SCC 560 Sh.Bhagwan Lal Arya Vs. Commissioner of Police Delhi & Ors. wherein, on the charge of unauthorized absence penalty of removal from service was opined to be harsh because of the enwombing circumstance of Bhagwan Lal Arya's health becoming his compulsion not to report for work, the penalty levied was quashed and none was levied for the reason the period interregnum removal from service till reinstatement was directed to be treated not to be counted for purposes of service. In other words Bhagwan Lal Arya got no wages from December 31, 1994 till when he was reinstated in the year 2004 pursuant to the order passed by the Supreme Court.

14. We dispose of the writ petition quashing the order dated March 04, 1998. The petitioner would not be reinstated in service pursuant to our order because he would be deemed to have superannuated on April 30, 2005 since he attained the age of 60 years on April 02, 2005. The period post March 04, 1998 till petitioner would have superannuated from service would be treated as period not spent on duty. The petitioner would be entitled to pension keeping in view pensionable service of 34 years, with effect from May 01, 2005, and the same shall be with reference to his last drawn salary. Arrears of pension and other dues to which petitioner would be entitled pursuant to the

present order shall be paid to the petitioner within 16 weeks from today.”

Thereafter in pursuance of the aforesaid Order dated 18.12.2013 passed by the Hon'ble Delhi High Court in the said Writ Petition and opinion of LA to CP Delhi conveyed vide Jt. CP/SER, Delhi's office order No.2212-72/SD (P-III) dated 04.02.1998, the order regarding award of dismissal in service was quashed. However, the applicant was not reinstated in service because he was deemed to have been superannuated on 30.04.2005, since he attained the age of 60 years on 02.04.2005 vide Order No.2438-83/SD/HAP(PIII) dated 07.03.2014. The period post 04.03.1998 to 30.04.2005, i.e., till he was deemed to have superannuated from service is treated as period 'not spent on duty'. The applicant would be entitled to pension keeping in view pensionable service of 34 years, with effect from May 01, 2005, and the same shall be with reference to his last drawn salary. Arrears of pension and other dues to which petitioner would be entitled pursuant to the said order shall be paid to the applicant within 16 weeks from the date of the said Order, i.e., 18.12.2013.

2.2 According to applicant, after several representations, he was promoted as Sub-Inspector from the post of ASI as per letter dated 15.2.2017 but he has not been paid arrears of

pay for the period from 17.9.1997 to 30.4.2005 as per pay scale of Sub-Inspector.

2.3 The applicant made representations to the respondents on 22.1.2018 and 23.4.2018. The respondents have passed the order dated 18.6.2018 with order dated 31.5.2018 and order dated 1.3.2018. Although the applicant was promoted vide order dated 15.2.2017 with his juniors' but his juniors are drawing more pension and arrears. Hence, the applicant has filed this OA seeking the reliefs as quoted above.

3. Pursuant to notice issued to the respondents, they have filed their reply in which they stated that in pursuance of the aforesaid Order dated 18.12.2013 passed by the Hon'ble Delhi High Court in the said Writ Petition and opinion of LA to CP Delhi conveyed vide Jt. CP/SER, Delhi's office order No.2212-72/SD (P-III) dated 04.02.1998, the order regarding award of dismissal in service was quashed. However, the applicant was not reinstated in service because he was deemed to have been superannuated on 30.04.2005, since he attained the age of 60 years on 02.04.2005 vide Order No.2438-83/SD/HAP(PIII) dated 07.03.2014. The period post 04.03.1998 to 30.04.2005, i.e., till he was deemed to have superannuated from service is treated as period 'not spent on duty'. The applicant would be entitled to pension keeping in view pensionable service of 34 years, with effect from May 01, 2005, and the same shall be with reference to his last drawn

salary. The applicant was granted notional promotion of SI (Exe.) from 17.9.1997 to 30.4.2005 vide PHQ's order No.10582-93/CB-II/PHQ dated 15.02.2017. During this period, the applicant was not entitled to draw any arrears of pay and allowances (except the sums paid to him) of the post of SI (Exe.) as per FR 17 (i) which provides as under:-

“...an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties..”

This period will otherwise count towards fixation of his seniority and increments.

3.1 They further stated that the aforesaid Order of the Hon'ble Delhi High Court was implemented vide order dated 7.3.2014. Accordingly the pension case for grant of pension/gratuity, as the applicant was deemed to have superannuated from service on 30.4.2005, was sent to Pay & Accounts Officer-II(DP) vide letter dated 24.3.2014.

3.2 They also stated that on promotion of the applicant as SI (Exe.), the pay of the applicant was fixed @ Rs.5500/- per month in the pay scale of Rs.5500-175-9000 w.e.f. 17.9.1997 vide office order dated 31.5.2017. The applicant is not eligible to draw annual increments w.e.f. 1.9.1998 onwards due to his dismissal period w.e.f. 4.3.1998 to 30.4.2005 that is the date of his superannuation, as the said period was treated as period not spent on duty vide order dated 7.3.2014. The

pension of the applicant was also revised and sent to the Pay & Accounts Officer-II(D) vide office letter dated 6.6.2017.

3.3 Applicant submitted representations dated 22.5.2017/22.1.2018 for grant of arrears against notional promotion as per the scale of SI (Exe.), which were considered by the respondents as per existing rules and the same were rejected vide order dated 1.3.2018.

3.4 Pension of the applicant was also revised (Pre-2016) vide order dated 24.4.2018.

4. During the course of hearing the main contention of the learned counsel for the applicant is that the action of the respondents in not fixing the pay & pension as per order dated 15.2.2017 is illegal in the eyes of law as the applicant was promoted on the post of S.I. (Exe.) w.e.f. 6.1.1997 as per the order dated 15.2.2017 and although the applicant was dismissed from service by the respondents but by virtue of the aforesaid Order of the Hon'ble Delhi High Court, he superannuated from the service on 30.4.2005.

4.1 Counsel further submitted that applicant's juniors are drawing higher pay and pension as per the order dated 15.2.2017 where as he is drawing less pension in comparison to his juniors. As such discriminatory treatment is meted out with the applicant. In support of this contention, counsel placed reliance on the decisions of the Apex Court in the cases of ***K.C. Sharma and others vs. Union of India and***

*others*, 1998 (1) SLJ SC 54 and ***Union of India vs. P. Jagdish*** (1997 (3) SCC 176).

5. On the other hand, learned counsel for the respondents by referring to the Hon'ble Delhi High Court's directions passed vide Order dated 18.12.2013 in WP(C) No. 3421/2001, as quoted above, as also the submissions made in the counter affidavit submitted that the Hon'ble High Court has already held that applicant would not be reinstated in service pursuant to their Order because he would be deemed to have superannuated on April 30<sup>th</sup> 2005 since he attained the age of 60 years on 2.4.2005 and further held that the period from 4.3.1998 to 30.4.2005 would be treated as period '**not spent on duty**'. He further submitted that in pursuance of the aforesaid Order of the Hon'ble Delhi High Court, the recommendation made in his case, which were kept in sealed cover for admission of his name to Promotion List E-I (Exe.) w.e.f. 16.1.1997, was opened by the competent authority and he was found 'FIT' for the same. Accordingly, his name was admitted to Promotion List E-I (Exe.) w.e.f. 16.1.1997 vide order dated 15.2.2017 and as he was deemed to have superannuated on 30.4.2005, he could not be deputed for training in Upper School Course and his name was also admitted to Promotion List E-II (Exe.) w.e.f. 16.9.1997 and promoted to the rank of SI (Exe.) on officiating basis w.e.f. 17.9.1997, i.e., the date when his counterparts were so

admitted/promoted vide notification dated 15.2.2017. However, he was granted notional promotion in the rank of SI(Exe.) for the period from 17.9.1997 to 30.4.2005.

5.1 Counsel further submitted that during the period from 17.9.1997 to 30.4.2005, he was not entitled to draw any pay and allowances as categorically observed by the Hon'ble Delhi High Court in WP No.3421/2011 and in view of the provisions of FR-17(i) as quoted above. And hence, there is no illegality in the action of the respondents.

5.2 Counsel further emphasized that consequent upon his promotion to the post of SI (Exe.), the pension of the applicant was also revised and sent to the Pay & Accounts Officer-II(DP) vide order dated 6.6.2017 and his pension was also revised (Pre-2016) vide Order dated 24.4.2018.

6. Having heard learned counsel for the parties and perused the pleadings available on record, it is observed that applicant challenged his dismissal before the Hon'ble Delhi High Court by filing Writ Petition (Civil) No.3421/2001 and the High Court vide Order dated 18.12.2013 disposed of the said Writ Petition with the following observations:-

“14. We dispose of the writ petition quashing the order dated March 04, 1998. The petitioner would not be reinstated in service pursuant to our order because he would be deemed to have superannuated on April 30, 2005 since he attained the age of 60 years on April 02, 2005. **The period post March 04, 1998 till petitioner would have superannuated from service would be treated as period not spent on duty. The petitioner would be entitled to pension keeping in view**

***pensionable service of 34 years, with effect from May 01, 2005, and the same shall be with reference to his last drawn salary. Arrears of pension and other dues to which petitioner would be entitled pursuant to the present order shall be paid to the petitioner within 16 weeks from today.”***

(emphasis supplied)

It is an admitted position that applicant has not sought for any modification of the aforesaid Order nor any appeal has been filed challenging the said Order before the Higher Form. Thus the said Order of the Hon'ble Delhi High Court has attained finality.

7. However, since the applicant was deemed to have superannuated on 30.4.2005 as he had attained the age of 60 years on 2.4.2005, the period from 4.3.1998 to 30.4.2005 would be treated as ***period not spent on duty*** and the applicant would be entitled to pension keeping in view pensionable service of 34 years, w.e.f. 1.5.2005 and the same shall be with reference to his last drawn salary. Arrears of pension and other dues to which the applicant would be entitled pursuant to the said order of the Hon'ble High Court were granted to the applicant and it is also an admitted fact that consequent upon grant of promotion to the rank of SI (Exe.) from 17.9.1997 vide order dated 15.2.2017 as recommendations which were kept in sealed cover were opened, the applicant was rightly granted notional promotion for the said period in accordance with the provisions of FR-

17(i) as quoted above and having regard to the observations of the Hon'ble Delhi High Court (supra). Applicant has also admitted that his pension was revised but his only plea was that he has not been granted arrears of pay and allowances consequent upon grant of promotion to the rank of S.I. (Exe.) w.e.f. 17.9.1997. This contention is not sustainable in the eyes of the law keeping in view of the aforesaid observations of the Hon'ble Delhi High Court in which specifically held that during the period from 4.3.1998 to 30.4.2005 would be treated as period '**not spent on duty**' as per the directions of the Hon'ble Delhi High Court and the applicant would be entitled to pension keeping in view pensionable service of 34 years, with effect from 1.5.2005 and the same shall be with reference to his last drawn pay.

8. So far as reliance placed on the decisions of the Apex Court in the cases of ***K.C. Sharma and others vs. Union of India and others*** and ***Union of India vs. P. Jagdish*** is concerned, we have carefully perused the said judgments but found that the same are not relevant to the facts and circumstances of the present case and in view of the specific facts of this case and also with regard to the Hon'ble Delhi High Court's Order dated 18.12.2013 in WP(C) No.3421/2001, vide which Writ Petition preferred for challenging the dismissal of this applicant was disposed of with the following observations:-

“14. We dispose of the writ petition quashing the order dated March 04, 1998. The petitioner would not be reinstated in service pursuant to our order because he would be deemed to have superannuated on April 30, 2005 since he attained the age of 60 years on April 02, 2005. ***The period post March 04, 1998 till petitioner would have superannuated from service would be treated as period not spent on duty. The petitioner would be entitled to pension keeping in view pensionable service of 34 years, with effect from May 01, 2005, and the same shall be with reference to his last drawn salary. Arrears of pension and other dues to which petitioner would be entitled pursuant to the present order shall be paid to the petitioner within 16 weeks from today.***”

(emphasis supplied)

9. In view of the above, and for the foregoing reasons, this Tribunal does not find any illegality in the action of the respondents. Accordingly, the instant OA is dismissed. There shall be no order as to costs.

**(Nita Chowdhury)**  
**Member (A)**

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