

A

RAMESH CHANDER AND ORS.

v.

DELHI ADMINISTRATION AND ORS.

AUGUST 9, 1996

B

[B.P. JEEVAN REDDY AND K.S. PARIPOORNAN, JJ.]

Service Law :

C

Back wages—Denial of—Central Administrative Tribunal passed different order in respect of persons involved in same incident which resulted in discrimination—Held : the Tribunal acted arbitrarily and unreasonably in denying back wages—Hence, order passed by Tribunal not justified.

D

The appellants and one S were involved in the same incident of extracting money from a person and proceedings against them were initiated departmentally and in Criminal Court on identical charges. They were dismissed from service and the revision filed by them was also dismissed. However, the disciplinary authority, who passed the order and the appellate authority, who affirmed it in the case of S, were different. In the meanwhile, the alleged victim had also launched a criminal prosecution against the appellants and S. The appellants and S filed representation before the Department for their reinstatement in view of the judgment of the Session Court, which ended in "clean acquittal" of all the appellants and also S, but it was dismissed. Thereafter, the appellants and S filed applications before the Central Administrative Tribunal for reinstatement in service with all consequential benefit including back wages.

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In the case of S, the Tribunal quashed the order of the disciplinary as well as that of the appellate authority as one based on no evidence. The Tribunal did not pass any consequential order in the case of S and the Department passed the consequential order reinstating him with all back-wages and other consequential benefits. Similarly, in the application filed by the appellants the Tribunal annulled the orders of punishment passed against the appellants as based on no evidence, and not in accordance with law. But the Tribunal declined to award back-wages to the appellants on the ground that the application filed before the Tribunal was not amended challenging the later order passed by revisional authority. Being aggrieved the appellants preferred the present appeal for setting aside or annulling

the order of the Tribunal to the extent of denial of back-wages on reinstatement. A

Allowing the appeal, this Court

HELD : 1. The reason stated by the Central Administrative Tribunal to deny back-wages to the appellants is an irrelevant one and rests on very fragile foundation. Moreover, the consequential order passed in the case of S was not adverted to by the Tribunal. On facts, when the appellants as well as S, were proceeded against both departmentally and by way of criminal prosecution on similar charges and all of them have been acquitted by the Sessions Court and the Tribunal also held that the punishment imposed on all of them is based on "no evidence" and not in accordance with law, in the absence of very relevant and exceptional circumstances, the consequential order should also be of similar import in both the cases. If it is not so, it will be arbitrary and unfair. No exceptional circumstances are stated by the Tribunal. It must, therefore, be held that the Tribunal acted arbitrarily in denying back wages and consequential benefits to the appellants. [535-A-D] B C D

CIVIL APPELLATE JURISDICTION : Civil Appeal no. 10382 of 1996.

From the Judgment and Order dated 22.4.94 of the Central Administrative Tribunal, New Delhi in O.A. No. 1583 of 1989. E

Ms. Mcena Chhiber and Ashok K. Mahajan for the Appellants.

Ms. K. Aruneshwari and S.N. Terdol her for the Respondents. F

The Judgment of the Court was delivered by

PARIPOORNAN, J. Special leave granted. We heard Counsel.

There are three appellants in this appeal. They are - (1) Shri Ramesh Chander, Ex. Head Constable No. 10152 D.A.P., (2) Shri Devinder Singh, Constable No. 10744, D.A.P. and (3) Shri Dharambir Singh, Constable No. 10724, D.A.P., attached to Delhi Police, 9th Battalion, D.A.P.. The respondents herein are - (1) the Delhi Administration, Delhi, (2) Commissioner of Police, Police Headquarters, New Delhi, (3) Additional Commissioner of Police, Police Headquarters, New Delhi and (4) Deputy Commissioner H

A of Police, 9th Bn., D.A.P., Delhi.

B 3. The appellants have prayed for setting aside or annulling the order of the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'the Tribunal') dated 22.4.1994 rendered in O.A. No. 1583/89 to the extent of denial of back-wages on reinstatement. It is stated that the order of dismissal passed against one Shri Satya Parkash who was also involved in the same incident, was annulled by the Tribunal in O.A. No. 1637/90 by order dated 14.12.1993, and in giving effect to the said order the respondents by order (Annexure P-I) dated 17.1.1994 reinstated the said Shri Satya Parkash with back-wages and other consequential benefits. The appellants, who are similarly situate, are discriminated against. They have not been treated fairly or reasonably in the matter.

D 4. The relevant facts which have given rise to this appeal are as follows :

E All the three appellants attached to the Delhi Police, 9th Bn. D.A.P. along with Shri Satya Parkash, working in West District, were posted in Jeep No. DID-4625 in the area of Police Station Mangole Puri, New Delhi. It was alleged that on 17.12.1985 at about 12.30 P.M. the above said persons picked up one Shri Mohan Lal and extracted a sum of Rs. 365 giving him a threat of arrest, stating that he was a smack drug addict. In the Departmental Inquiry, the charges were held proved. On the same allegations criminal cases were lodged under section 395 I.P.C. for gross misconduct under Section 21 of the Delhi Police Act against the delinquents. The appellants herein were suspended on 18.12.1985. They were dismissed from service by order dated 23.9.1988. The appeals filed by them were dismissed by the Addl. Commissioner of Police on 2.3.1989. The revision filed by them was also dismissed on 21.2.1990. In the meanwhile, Shri Mohan Lal, the alleged victim, had also launched a criminal prosecution against the appellants and Shri Satya Parkash. The said criminal case ended in "clean acquittal" of all the appellants and also Shri Satya Parkash. The Sessions Court passed the judgment dated 25.11.1989. the appellants filed representation before the Department for their reinstatement in view of the judgment of the Sessions Court, but it was dismissed. It is thereafter, they filed O.A. No. 1583/89 before the Tribunal and prayed for reinstatement in service with all consequential benefits including back-wages.

5. It is on record that Shri Satya Parkash filed a separate application before the Tribunal as OA No. 1637/90. By its order dated 14.12.1993, the Tribunal quashed the order passed by the disciplinary authority as well as the appellate authority. The order so passed was given effect to by the Deputy Commissioner of Police, West District, New Delhi, in the following terms, as is evident from Annexure P-1 at page 21 of the paper-book.

"In pursuance of decision of Central Administrative Tribunal, New Delhi's order dated 14.12.1993 in OA No. 1637/90 *Ex. Const. Satya Parkash, No.652/W v. UOI and Ors.*, and PHQ's Memo No. F. 16/297/90/662/CR-I, dated 10.1.94, who was dismissed from the service vide this office order No. 3554-3654/P(W), dated 24.7.89 is hereby *re-instated in service from the date of his dismissal i.e. 24.7.1989. He will draw pay and allowances admissible to him under rules from the date of dismissal together with all the consequential benefits* subject to the declaration under F.R. 53(2) produced by him on a affidavit attested by a Ist Class Magistrate.

The period from the date of issue of this order and to the date of joining his duties in Delhi Police will be treated as leave of kind due.

Sd/-
(DEEPAK MISHRA)
DY. COMMISSIONER OF POLICE;
WEST DISTRICT : NEW DELHI.

SIP/08

No.227-325/P(W), dated New Delhi, the 17.1.94."

(emphasis supplied)

6. In the application filed by the appellants, the Tribunal held that the judgment of the Sessions Court dated 25.11.1989 is one of "clean acquittal" of the appellants. On facts, it was held that the punishment imposed on the appellants is vitiated for two reasons — (i) the punishment violated rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980, since the appellants were acquitted by the Criminal Court on the same charge and they cannot be punished departmentally as per the said rule;

A and (ii) no prior permission of Additional Commissioner of Police was obtained for initiating the Departmental inquiry against the appellants, as enjoined in rule 15(2) of the Rules. It was held that this is a case of "no evidence" and the finding arrived by the Inquiry Officer is unsustainable on facts. It was further held that the disciplinary authority dealt with the matter rather casually and the appellate and the revisional authorities "did not apply their mind". The Tribunal annulled the order of punishment imposed against the appellants, as one not in accordance with law. However, the Tribunal declined to award back-wages on the ground that the application filed before the Tribunal in August 1989 was not amended challenging the later order passed by the revisional authority dated 21.2.1990. It should, however, be stated that when the appellants approached the Tribunal, they had challenged the order of dismissal dated 23.9.1988, as affirmed in appeal by the order of the Additional Commissioner of Police date 2.3.1989.

D 7. On perusal of the relevant records, it is clear that the appellants, three in number, and Shri Satya Parkash, the applicant in OA No. 1637/90, were involved in the *same incident* and proceedings against them were initiated departmentally and in criminal court *on identical charges*. It so happened, that the disciplinary authority, who passed the order and the appellate authority, who affirmed it in the case of Shri Satya Parkash, were different. In *Satya Parkash's* case the Tribunal by order dated 14.12.1993 quashed the order of the disciplinary as well as that of the appellate authority as one based on no evidence. Similarly, in the application filed by the appellants herein as O.A. No. 1583/89, the Tribunal annulled the orders of punishment passed against the appellants as based on no evidence, and not in accordance with law. The Tribunal did not pass any consequential order in the case of Shri Satya Parkash and the Department passed the consequential order (Annexure P-1 at page 21 of the paperbook extracted hereinabove), reinstating him with all back-wages and other consequential benefits. The order of the Tribunal in the case of Shri Satya Parkash (O.A. No. 1637/90) is dated 14.12.1993. The Tribunal passed the order against the appellants (O.A. No. 1583/89) on 22.4.1994. On merits, identical conclusion was reached by the Tribunal in both the cases. Normally, the consequential orders passed cannot be different. But, in the case of the appellants, the Tribunal has stated a flimsy reason to deny back-wages, namely that the appellants did not challenge the later order passed by the revisional authority dated 21.2.1990. The revisional authority only

affirmed the decision of the disciplinary authority, as affirmed in appeal. A
 The order of revision was passed long after the filing of the application
 filed by the appellants before the Tribunal. In our opinion, the reason
 stated by the Tribunal to deny back-wages to the appellants is an irrelevant
 one and rests on very fragile foundation. Moreover, the consequential
 order passed in the case of Shri Satya Parkash (Annexure P-I) dated B
 14.12.1993, was not adverted to by the Tribunal. On facts, when the
 appellants as well as Shri Satya Parkash, were proceeded against both
 departmentally and by way of criminal prosecution on similar charges and
 all of them have been acquitted by the Sessions Court and the Tribunal
 also held that the punishment imposed on all of them is based on "no
 evidence" and not in accordance with law, in the absence of very relevant C
 and exceptional circumstances, the consequential order should also be of
 similar import in both the cases. If it is not so, it will be arbitrary and unfair,
 No exceptional circumstances are stated by the Tribunal. We, therefore,
 hold that the Tribunal acted arbitrarily and unreasonably in denying back-
 wages and consequential benefits to the appellants. The order of the D
 Tribunal in O.A. No. 1583/89 dated 22.4.1994 is hereby set aside on that
 aspect. However, we direct the respondents to pass appropriate conse-
 quential orders in the case of the appellants herein, bearing in mind the
 consequential orders passed in the case of Shri Satya Parkash (Annexure
 P-I at page 21 of the paper-book). This shall be so done within a period
 of three months from today. It is seen from the records (page 33 of the E
 Paper-book) that all the three appellants have been reinstated on 17.6.1994.
 The appeal is allowed. There shall be no order as to costs.

V.S.S.

Appeal allowed.