Const. Ram Chander Vs. Through the Commissioner of Police, Police Headquarters, I.P. Estate, M.S.O. Buiding, New Delhi and Others

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Jan-25-2012

Judge : V.K. Bali, Chairman &Amp; the Honourable Dr. Ramesh Chandra Panda, Member (a)

Appeal No. : OA No.31 of 2011

Appellant : Const. Ram Chander

Respondent : Through the Commissioner of Police, Police Headquarters, I.P. Estate, M.S.O. Buiding, New Delhi and

Advocate for Pet/Ap. : For the Applicant: Sachin Chauhan, Advocate. For the Respondents: Mrs. Renu George, Advocate.

Judgement :

Dr. Ramesh Chandra Panda, Member (A)

1. Constable Rama Chander, the applicant herein, working in Delhi Police is aggrieved by the Order dated 02.02.2010 (page-10) whereby his name has been removed from the Select List of Doubtful Integrity with effect from 14.11.2009 i.e. after completion of three years of doubtful integrity period and the Order dated 21.12.2010 by which his representation was rejected. Being aggrieved, he has approached this Tribunal in the present OA under Section 19 of the Administrative

Tribunals Act, 1985 seeking to quash and set aside the said impugned order dated 02.02.2010 with all consequential benefits.

2. The applicant along with three others (Constable Naresh Kumar, Constable Rajbir Singh and Constable Sunil Kumar) filed the OA No.2152/2007 challenging the order dated 01.6.2007 wherein the penalty of forfeiture of three years approved service permanently entailing proportionate reduction in their pay. While disposing of the said OA on 08.12.2009. The Tribunal passed the order in following terms:-

“7 We had dispassionately weighed the arguments that have been raised by the applicants as well as respondents. The statements of the drivers on which heavy reliance has been placed by the enquiry officer, of course, cannot be taken into account at least so far as the incriminating part might be concerned. But however, it cannot be disputed that they had given statements on the night. The signature in the document at least show that the claim of PW-I that the truck drivers had identified the applicants in fact goes to a long way against them and this fact has also not been subjected to any dispute as there is no cross examination on such account given. But, however, there is hardly any evidence to indicate that there was demanding and acceptance of illegal gratification. There can be strong amount of suspicion, in the manner in which the applicants had behaved themselves on the date of incident but clinching evidence sufficient to impose a major penalty is not there. Therefore, we quash the impugned orders, subject to the observations recorded herein below.

8. Taking into account the totality of the facts of the case, we however, maintain that part of the orders which prescribe that the period of suspension which the applicants had under gone is not to be treated as period spent on duty. By their conduct they have contributed to a situation where the tracks admittedly had been given across to areas which should not have been in their normal route. The period of suspension is not to operate as break in their service.”

In compliance of the above orders and directions of the Tribunal, the second respondent passed his order dated 12.3.2010 (page 15). As a follow up measure, the applicant represented on 30.6.2010 (page-16) to the concerned authorities to remove his name from the Secret List of Doubtful Integrity right from the date of its inception as he stood exonerated but the same was rejected in a non-speaking order dated 18.6.2010 (page-13) and 01.09.2010 (page-14). Feeling aggrieved by those two rejection letters, he approached the Tribunal in OA No.3500/2010 which was disposed of on 21.10.2010 (Annexure-A12) at the admission stage by quashing the order dated 01.09.2010 with a direction to the respondents to look into his representation dated 30.6.2010 and treat the OA as his supplementary representation and keeping in view the factual position of the case and the Standing Order No.265 /2009 and decide within a period of six weeks. Pursuant to the above directions, the 3rd respondent vide his letter dated 21.12.2010 (Annexure-A2) on consideration of his representation/appeal rejected the same. Thus, the applicant is before the Tribunal in the instant OA.

3. We heard Shri Sachin Chauhan, learned counsel for the applicant who would submit that the applicant having been exonerated of all charges on the basis of which his name was put in the Secret List of Doubtful Integrity, as per the S.O. No.265/2009, his name could not have been kept in the said list upto 13.11.2009. He, further contends that the applicant is not facing any criminal or departmental proceedings and as such his name cannot be kept in the said Secret List. It is further argued that though the names of his three co-delinquents have been removed from the Secret List of Doubtful Integrity only from the date of completion, but in case of Constable Jai Bhagwan, a co-delinquent in the departmental enquiry and exonerated of the charges approached the Tribunal in OA No.2061/2008 and his name was deleted from the Secret List of Doubtful Integrity by the respondents right from the date of inception. Same treatment needs to be extended to the applicant. He, therefore, urges to allow the OA by quashing both the impugned orders.

4. Opposing the grounds taken by the applicant in the OA and additional affidavit, the respondents have filed the counter reply in response to applicant’s additional affidavit through Mrs. Renu George, learned counsel. She submits that the applicant’s name has been brought on the Secret List of Doubtful Integrity w.e.f. 14.11.2006 for a period of three years vide order dated 13.12.2006 and the same was based on the surveillance report dated 17.9.2006 which revealed involvement

of the applicant in malpractice like demand and acceptance of illegal entry money from non-destined commercial vehicles and tractor for allowing them to enter Delhi in the Punjabi Bagh Traffic Circle on the night of 16th/17th September, 2006. On completion of the doubtful integrity period, his name was removed from the said list w.e.f. 14.11.2009. Mrs. George further submits that in case of Constable Jai Bhagwan, the Tribunal quashed the Appellate Authority's order and granted consequential benefits to him in OA No.2061/2010, whereas in case of the applicant the Tribunal in OA No.2152/2007 has observed that there can be strong amount of suspicion in the incident but clinching evidence sufficient to impose major penalty is not there. Thus, the Tribunal's observation was taken into account while continuing his name in the Secret List till completion of 3 years period. Her contention is that applicant's co-delinquents have been treated in the same manner and their name have been removed w.e.f. the date of completion of the period except Constable Sunil Kumar whose name still exists in the list as he is under suspicion. She, therefore, argues to dismiss the OA.

5. Admittedly, there was a joint departmental enquiry against the applicant and SI Dayal Singh, Constable Sunil Kumar, Constable Naresh Kumar, Constable Rajbir Singh and Constable Jai Bhagwan and all of them were awarded same penalty vide order dated 01.06.2007. Constable Jai Bhagwan's case was considered by this Tribunal and decided on 22.03.2010 in OA No.2061/2008 and the applicant's case was decided in OA No.2152/2009 on 08.12.209 by the Tribunal. Both, applicant and his co-delinquent Constable Jai Bhagwan initially suffered same charges, punished with same penalty but exonerated by the Tribunal in two different orders. Constable Jai Bhagwan's name has been taken out of the Secret List of Doubtful Integrity w.e.f. the date of inception i.e. 14.11.2006 whereas the applicant's name has been removed from the date of completion i.e. 14.11.2009. Applicant being similarly placed and circumstanced in a joint DE, cannot be treated differently from Constable Jai Bhagwan. This, in our view, is clear case of discrimination by the Appellate Authority. The Appellate Authority's order dated 21.12.2010 and the initial order dated 02.02.2010 are liable to be quashed. We order accordingly.

6. There is yet another angle in favour of the applicant. The S.O. 265/2009 envisages the grounds under which the names of the Police personnel to be kept in the Secret List of Doubtful Integrity. The impugned order has invoked the provision of Para 8(v) and the same para reads as follows:-

“in case the punishment is set aside on technical ground the name would continue on the D.O. list. However, if the appellate authority comes to the conclusion that the police officer concerned should be exonerated of the charges, accordingly, consequential benefits should be given and the officers name should be removed from DI (Agreed/Secret List) from the date of inception.”

7. It must be noted that the applicant was exonerated honourable and not on technical grounds. The Tribunal quashed the relevant penalty orders, on the basis of which the Competent Authority has passed order dated 12.3.2011. The Appellate Authority cannot go against the intention of the Tribunal order. If the penalty against the applicant does not exist, so also his name in the Secret List of Doubtful Integrity. Disciplinary case is the basis of his name being included in the List. Thus, we are of the considered view that on merits there is no ground not to remove the applicant’s name from the said list right from the date of inception i.e. 14.11.2006.

8. Considering the totality of facts and circumstances of the case and for the reason stated above, we are of the considered opinion that the applicant has established his case. Resultantly, the impugned orders dated 02.02.2010 and 21.12.2010 are quashed and set aside; respondents are directed to issue the orders removing applicant’s name from the Secret List of Doubtful Integrity with effect from the date of inception i.e. 14.11.2006; and the applicant shall be entitled to the consequential benefits.

9. Thus, finding merits in the case, the Original Application is allowed leaving the parties to meet their respective costs.