

Ramesh Chander and Others

Vs

Delhi Administration and Others

Civil Appeal No. 10382 of 1996

(B. P. Jeevan Reddy, K. S. Paripoornan JJ)

09.08.1996

JUDGMENT

PARIPOORNAN, J. –

1. Special leave granted. We heard counsel.
2. 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 of Police, 9th Battalion, D.A.P., Delhi.
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 OA No. 1583 of 1989 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 OA No. 1637 of 1990 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.
4. The relevant facts which have given rise to this appeal are as follows :

All the three appellants attached to the Delhi Police, 9th Battalion, 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 Mangolpuri, New Delhi. It was alleged that on 17-12-1985 at about 12.30 p.m. the abovesaid 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 Enquiry, the charges were held proved. On the same allegations, criminal cases were lodged under Section 395 IPC for gross misconduct under Section 21 of the Delhi Police Act, 1978 (34 of 1978) 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 Additional 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 OA No. 1583 of 1989 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 of 1990. 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 p. 21 of the paper-book.

"In pursuance of decision of the Central Administrative Tribunal, New Delhi's order dated 14-12-1993 in OA No. 1637 of 1990 Ex Const. Satya Parkash, No. 652/W v. UOI and PHQ's Memo No. F. 16/297/90/662/CR-I, dated 10-1-1994, who was dismissed from the service vide this Office Order No. 3554-3654/P(W), dated 24-7-1989 is hereby reinstated 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 FR 53(2) produced by him on an affidavit attested by a First 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, 17-1-1994."

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; and (ii) no prior permission of Additional Commissioner of Police was obtained for initiating the departmental enquiry 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 at 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 dated 2-3-1989.

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 of 1990, 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 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 OA No. 1583 of 1989, 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 p. 21 of the paper-book extracted hereinabove), reinstating him with all back wages and other consequential benefits. The order of the Tribunal in the case of Satya Parkash (OA No. 1637 of 1990) is dated 14-12-1993. The Tribunal passed the order against the appellants (OA No. 1583 of 1989) 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. 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 a very fragile foundation. Moreover, the consequential order passed in the case of Shri Satya Parkash (Annexure P-I) dated 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 ways 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. We, therefore, hold that the Tribunal acted arbitrarily and unreasonably in denying back wages and consequential benefits to the appellants. The order of the Tribunal in OA No. 1583 of 1989 dated 22-4-1994 is hereby set aside on that aspect. However, we direct the respondents to pass appropriate consequential 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 p. 21 of the paper-book). This shall be so done within a period of three months from today. It is seen from the records (p. 33 of the 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.