

(2003) 03 DEL CK 0119
In the Delhi High Court
Case No : CW No. 4780 of 2002

Commissioner of Police and Others

APPELLANT

Vs

Om Kumar and Others

RESPONDENT

Date of Decision : 24-03-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 25, 25F

Citation : (2004) 73 DRJ 172 : (2004) 3 SLJ 272

Hon'ble Judges : Madan B. Lokur, J;D.K. Jain, J

Bench : Division Bench

Advocate : George Paracken, for the Appellant; Meenu Mainee, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Jain, J.—In this writ petition by the Union of India a challenge is laid to the order passed by the Central Administrative Tribunal, Principal Bench, New Delhi (for short the Tribunal) on 22 April 2002 in OA No.1978/2001. By the impugned order, the Tribunal has allowed the applications filed by the respondents and has directed the Commissioner of Police to release back wages to the respondents within a period of two months from the date of receipt of the said order.

2. The applicants before the Tribunal had earlier filed three separate applications challenging the orders of punishment awarded to them on the basis of the departmental inquiries. The said applications were allowed by the Tribunal quashing the orders of punishment. While doing so, the Tribunal had directed the department to accord consequential benefits to the applicants.

3. In compliance of the said orders the department passed order dated 2 March 2001, allowing all the consequential benefits except the back wages for the period of suspension of all the three respondents. These orders were challenged before the Tribunal, which resulted in the passing of the impugned order.

4. Assailing the order passed by the Tribunal, Mr.George Paracken, learned

counsel for the petitioners submits that the discretion to pay or not to pay the back wages for the period an employee remains suspended vests with the employer and, Therefore, the Tribunal was not justified in interfering with the discretion exercised by the department in not granting the back wages to the respondents. In support of the proposition, learned counsel has placed reliance on the decision of the Apex Court in P.G.I. Of M.E. and Research Vs. Raj Kumar, etc, AIR 2001 SC 479, wherein while dealing with the question of award of back wages u/s 11A of the Industrial Disputes Act, 1947, their Lordships of the Supreme Court have observed that in the event of failure to comply with section 25(F) read with section 25(b) of the said Act, in the normal course of events the Tribunal is supposed to award the back wages in its entirety but the discretion is left with the Tribunal in the matter of grant of back wages. It was held that when the Labour Court, being the final Court of facts came to the conclusion that payment of a particular percentage of wages would comply with the requirement of law, the High Court was not justified in denouncing the decision of the Labour Court and directing the payment of back wages in its entirety.

5. We are unable to persuade ourselves to agree with learned counsel for the petitioners. F.R. 54-A(3) clearly provides that if the dismissal of a Government servant is set aside by the Court on the merits of the case, the period intervening between the date of dismissal, including the period of suspension preceding such dismissal, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid full pay and allowances for the period to which he would have been entitled to prior to such dismissal.

6. In view of the said statutory provision, the decision in the case of Raj Kumar (supra) is of no avail to the petitioners and the respondents are entitled to full back wages, as has been directed by the Tribunal.

7. We do not find any perversity in the impugned order warranting our interference. The petition, being devoid of any merit is, accordingly, dismissed with no order as to costs.

8. The respondents shall comply with the order of the Tribunal within six weeks from receipt of this order.