

(2018) 12 CAT CK 0069
In the Central Administrative Tribunal
Case No : Original Application No. 210 Of 2018

Raj Kumar And Anr

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 11-12-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 307, 384
Delhi Police Act, 1978 — Section 140
Code Of Criminal Procedure, 1973 — Section 197
Protection Of Human Rights Act, 1993 — Section 18(C)
Administrative Tribunals Act, 1985 — Section 19
Constitution Of India, 1950 — Article 21, 32, 226

Citation : (2018) 12 CAT CK 0069

Hon'ble Judges : Nita Chowdhury, Member (A)

Bench : Single Bench

Advocate : Ajesh Luthra, B.K. Barera, Esha Mazumdar

Final Decision : Dismissed

Judgement

1. The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"a) Quash and set aside the impugned order dated 20/12/2017 placed at Annexure A/1 above and

b) Accord all consequential benefits

c) Award costs of the proceedings; and

d) Pass any other order/direction which this Hon"ble Tribunal deem fit and proper in favour of the applicants and against the respondent in the facts and circumstances of the case."

2. Brief facts of the case as enumerated in the OA are that the applicants (Constables in Delhi Police) while posted at Police Station Neb Sarai and were discharging their duties as Beat Officer at Beat No.6 during the year 2013. On 9.

11.2013, a person named Shri Uday Chand Committed suicide by burning himself in the area covered under the said beat. As FIR No.536/2013, PS Naib Sarai was registered u/s 302/384/34 IPC in which the applicants are facing trial before the Hon"ble Court of Ms. Sunaina Sharma, ASJ, New Delhi and the matter is at the evidence stage.

2.1 However, vide impugned order dated 20.12.2017, the respondents have issued directions of recovery of Rs. 2,50,000/- from the monthly salaries of the applicants in equal quantity.

2.2 From the impugned order, it is gathered that National Human Right Commission had ordered the State to pay a compensation of Rs. 2,50,000/- to the family of deceased Uday Chand. It is further revealed from the impugned order that respondent no.1/MHA while conveying sanction of the monetary relief to be paid to the next of kin of deceased Shri Uday Chand as recommended by Hon"ble NHRC, MHA has directed fixing responsibility of the erring police official and the recovery of entire amount of compensation from the erring police official, considering the same to be a pecuniary loss to the Government of India.

2.3 The grievance of the applicants that the said impugned order dated 20.12.2017 ordering recovery of the said amount from the salaries of the applicants has been issued by the respondents without giving them any show cause notice and without giving any opportunity of hearing or fixing any responsibility.

2.4 This case was came up for admission on 18.1.2018 and this Tribunal vide interim order restrained the respondents from making any recovery from the applicants.

3. Pursuant to notice issued to the respondents, respondent nos.2 and 3 have filed their reply in which they stated that on 9th November, 2013, at around 17.20 hRs. , information was received at PS, Neb Sarai that policeman were beating the son of Udai Chand (Deceased). Thereafter information was received at about 18.45 hRs. that police staff had tried to burn the father of one Sh. Naveen and the caller is taking him to the hospital.

3.1 After receiving the said information, SI Rohit Kumar of PS Neb Sarai reached the spot and after conducting local inquiries, the IO reached the burn ward of Safdarjung Hospital, where one Uday Chand S/o Sh. Ram Nath R/o H.No. 1775, Sangam Vihar, Delhi, was found admitted after sustaining burn injuries.

3.2 The complainant Uday Chand (Deceased) made a complaint alleging that he was set ablaze by the applicants herein, i.e., Ct. Raj Kumar and Ct. Surender Mohan and the said Uday Chand further stated that his son Naveen, an auto rickshaw driver, plies his TSR from Gali No.1 of Sainik Vihar to Sangam Vihar and that the applicants had harassed, beaten his son Naveen and also asked for bribe/ money for plying TSR, but his son refused to pay. He further stated that when he intervened in the matter the applicants set him ablaze.

3.3 Pursuant to aforesaid, the case vide FIR No.536/13 dated 10.11.2013 u/s 307/384/34 IPC PS Neb Sarai was registered. Thereafter, the complainant Udai Chand succumbed to his injuries but before dying he got his dying declaration recorded. In his dying declaration, he stated that he was set ablaze by the applicants and the same was corroborated by his son Naveen.

3.4 After the death of Shri Udai Chand, the section was amended to 302 IPC and further investigation of the case was transferred to Crime Branch. During investigation, it came to light that public persons, namely, Govind and Deep Chand collected money from other TSR Drivers at the behest of applicants, but no cogent evidence came on record to chargesheet them. The names of Govind and Deep Chand were kept in column no.12 in the charge sheet and after completion of investigation, charge sheet was filed by the then IO Inspector Virender Singh against the applicants before the concerned Court. That at the time of framing charge, the learned ASJ framed charge against both the applicants u/s 302/384/34 IPC and against Govind and Deep Chand u/s 384/34 IPC. Further both the applicants were placed under suspension vide order dated 11.11.2013 and thereafter reinstated from suspension vide order dated 12.6.2017. A departmental inquiry was also initiated against the applicants vide order dated 22.9.2014, which was kept in abeyance vide order dated 12.1.2015 and both the applicants were in judicial custody in case FIR No.536/13 dated 10.11.2013 u/s 307/384/34 IPC, PS Neb Sarai and amended Section 302 IPC.

3.5 Thereafter, when the applicants were released on bail, the said departmental inquiry was reopened vide order dated 14.8.2017 and the same is at initial stage.

3.6 Currently the above-mentioned case is pending trial in Saket Court and that both the applicants remained in judicial custody at Tihar Jail from 14.11.2014 to 12.5.2017 and are presently on bail.

3.7 The respondents further stated that the Hon"ble National Human Rights Commission vide order dated 16.12.2015 (Annexure R-1) had asked Chief Secretary, IP Estate, New Delhi to pay a monetary relief of Rs. 2 lakh to the next of kin of the deceased Uday Chand and Rs. 50,000/- to the injured Naveen (son of the deceased) in the case, FIR No.536/2013 u/s 307/384/34 IPC PS Neb Sarai and sent a compliance report within six weeks along with proof of payment.

3.8 Shri Ashish Kumar, Dy. Secretary (Home), GNCT of Delhi, Home (Police-II) had forwarded the directions of NHRC to the Jt. C.P. (Vigilance), Delhi vide his Office Order dated 6.1.2016 which was received in the respondents office vide DPC/Vigilance, Delhi"s office vide Memo dated 18.1.2016 for sending compliance report as desired by NHRC. Therefore, as per the directions of NHRC, received through GNCT of Delhi and DCP/Vigilance, Delhi, the facts of the case were forwarded to worthy Jt. C.P./SR, New Delhi vide office Note sheet dated 17.5.2016 for obtaining expenditure sanction of the competent authority for the payment of monetary relief of Rs. 2,50,000/- as per the directions of the NHRC.

3.9 Thereafter the case was referred to Ministry of Home Affairs through PHQ

along with the facts of the case for expenditure sanction by the competent authority. Vide Order dated 6.7.2017, MHA conveyed the sanction of the competent authority for Rs. 2,50,000/- as recommended by NHRC vide its communication dated 16.12.2015, on the complaint dated 11.11.2013 of Shri R.H. Bansal. The MHA also directed to fix responsibility on the erring police officials and to recovery the entire amount of compensation from the erring police officials. The MHA further asked for the compliance report in this regard within two months from the date of issue of the order. The amount of Rs. 2 lakhs has been paid to Smt. Savitri, wife of deceased Udai Chand on 24.7.2017 and Rs. 50,000 to Sh. Naveen Kumar S/o deceased Udai Chand on 21.7.2017 through SHO, Neb Sarai from the Government fund.

3.10 In further compliance of directions of MHA order dated 6.7.2017, regarding fixing responsibility of the erring police officials and recovery of the entire amount of compensation from erring police officials, the pecuniary loss of Rs. 2,50,000/- incurred to the Govt. of India & to be recovered from the erring police officials, i.e., the applicants herein, an order was issued dated 20.12.2017 that the amount of Rs. 2,50,000/- be recovered from the monthly salaries of the applicants in equal quantity.

3.11 The said order dated 6.7.2017 has been duly received by both the applicants and the applicants have proceeded to file the present OA against the order of recovery of Rs. 2,50,000/- from their salaries, which was approved by the MHA and order passed by the disciplinary authority.

3.12 Being aggrieved by the same, the applicants have filed this OA seeking the reliefs as quoted above.

4. The applicants has also filed his rejoinder reiterating the contents of the OA and denied the contents of the counter reply filed by respondent no.2 and 3.

5. Heard learned counsel for the parties and perused the material placed on record.

6. Counsel for the applicants main contention is that the impugned recovery order has been issued by the respondents without affording an opportunity to the applicants as such the impugned order is issued in violation of principles of natural justice.

6. 1 Counsel further submitted that the applicants cannot be deemed to be erring police officials, as the criminal proceedings are still pending. No departmental enquiry has been initiated against the applicants to establish the guilt, if any. Furthermore, MHA, too had directed fixing responsibility. Such responsibility is required to be fixed only by a mode/manner which is known to law. However, the respondents have unilaterally concluded that the applicants are erring police officials and have ordered recovery of the compensation amount.

6. 2 Counsel also submitted that unlike CCS (CCA) rules where recoveries can be ordered as a measure of penalty upon fixing of responsibility, no such rules exists

in Delhi Police (Punishment and Appeal) Rules, 1980. Thus, the order of recovery from the applicants is unauthorized and without any statutory backing.

6.3 Counsel further submitted that the applicants enjoy protection under Section 140 of Delhi Police Act, 1978 and as such impugned recovery could not have been ordered by the respondents from their salaries.

6.4 Counsel also submitted that applicants made applications dated 11.1.2018 against the aforesaid impugned order. However, they have not given any reply to the same and the same is still pending for consideration.

6.5 Counsel lastly submitted that otherwise also a compensation amount paid by the Government to its citizen cannot be termed as a pecuniary loss to the Government. Hence, the impugned order/action is absolutely misconceived and arbitrary.

7. Counsel for the respondents submitted by referring to the contents of the reply as noted above that the Hon"ble NHRC vide its Order dated 16.12.2015 in Case No.6565/30/8/2013 observed as under:-

"The Commission received a complaint dated 11.11.2013 from Shri R.H. Bansal, a human rights activists, alleging that two Delhi Police Constables, Raj and Surendra, set ablaze Udai Singh R/o J.J. Colony, Khanpur, New Delhi at Gate No.2, Sainik Farm, New Delhi on 9.11.2013 when his son, Naveen, an auto rickshaw driver, refused their demand of a bribe of Rs. 20,000/- in the area of P.S., Neb Sarai, New Delhi. The victim Udai Singh suffered 95% burn injuries. He was admitted in the Safdarjung Hospital, New Delhi, where he subsequently succumbed to his burn injuries. The complainant has requested intervention of the Commission.

The Commissioner sent its investigation team for an enquiry into the incident.....

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..... Both the constables Raj Kumar and Surender Mohan were arrested in the said case. On the basis of dying declaration of Uday Chand, a charge sheet u/s 302/384/34 IPC was filed against both the constables. The name of Govind Kumar and Deep Chand were kept in the Col. No.12 of the charge-sheet as there was no evidence against them.

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The Commission has considered the report.

One person was burnt to death and another was injured by the act of two beat policeman. Since the act of the public servants have resulted in grave violation of human rights of the injured as well as the deceased, the state is vicariously liable. Therefore, the Govt. of NCT of Delhi is liable to pay compensation to the injured and NoK of the victim, apart from bearing the entire medical expenses.

Hence, the Chief Secretary, Govt. of NCT of Delhi is asked to pay a monetary

relief of Rs. 2,00,000/- to the NOK of the deceased Uday Singh and Rs. 50,000/- to the injured Naveen in FIR No.536/13 dated 10.11.2013 u/s 307/384/34 IPC, of PS Neb Sarai, and send a complaint report, within six weeks, alongwith proof of payment..."

Counsel further submitted that in compliance of the aforesaid directions of the Hon"ble NHRC, Vide Order dated 6.7.2017, MHA conveyed the sanction of the competent authority for Rs. 2,50,000/- as recommended by NHRC, on the complaint dated 11.11.2013 of Shri R.H. Bansal. The MHA also directed to fix responsibility on the erring police officials and to recovery the entire amount of compensation from the erring police officials. The MHA further asked for the compliance report in this regard within two months from the date of issue of the order. The amount of Rs. 2 lakhs has been paid to Smt. Savitri, wife of deceased Udai Chand on 24.7.2017 and Rs. 50,000 to Sh. Naveen Kumar S/o deceased Udai Chand on 21.7.2017 through SHO, Neb Sarai from the Government fund. In further compliance of directions of MHA order dated 6.7.2017, regarding fixing responsibility of the erring police officials and recovery of the entire amount of compensation from erring police officials, the pecuniary loss of Rs. 2,50,000/- incurred to the Govt. of India & to be recovered from the erring police officials, i.e., the applicants herein, an order was issued dated 20.12.2017 that the amount of Rs. 2,50,000/- be recovered from the monthly salaries of the applicants in equal quantity. As such there is no illegality in the order impugned in this OA and the present OA is liable to be dismissed by this Tribunal.

7.1 Counsel further submitted that no rules have been violated by the respondents by issuing the said impugned order and as per the contents of the inquiry and the case registered against both the applicants on the basis of dying declaration statement of late Shri Udai Chand and the statement of his son, namely, Naveen, the applicants have been found responsible at this stage.

7.2 Counsel for the respondents further submitted that criminal and departmental inquiry proceedings cases are pending and the applicants will be dealt with accordingly after the outcome of the said proceedings and the present order of recovery is issued on the basis of the concurrent findings recorded by the Hon"ble NHRC in the said case supra.

7.3 In support of his contentions, learned counsel for the respondents relied upon the decisions of the Hon"ble Supreme Court in the case of Karnataka State Road Transport Corporation and Anr. vs. S.G. Kotturappa and Anr., AIR 2005 SC 1933 as also of the Hon"ble High Court of Madras in the case of V. Kumaravel and ORs. vs. National Human Rights Commission, MANU/TN/3682/2010.

8. After hearing the learned counsel for the parties, this court is fully in agreement with the contentions of the learned counsel for the respondents as in this case on a complaint about the incident as noted above, the Hon"ble NHRC ordered investigation and finally order grant of compensation of Rs. 2 lakhs to the NOK of deceased Udai Singh as also Rs. 50,000/-to the son of deceased Udai

Singh as is evident from order dated 16.12.2015 and in compliance of the said Order, vide Order dated 6.7.2017, MHA conveyed the sanction of the competent authority for Rs. 2,50,000/- as recommended by NHRC, on the complaint dated 11.11.2013 of Shri R.H. Bansal. The MHA also directed to fix responsibility on the erring police officials and to recovery the entire amount of compensation from the erring police officials. The MHA further asked for the compliance report in this regard within two months from the date of issue of the order. The amount of Rs. 2 lakhs has been paid to Smt. Savitri, wife of deceased Udai Chand on 24.7.2017 and Rs. 50,000 to Sh. Naveen Kumar S/o deceased Udai Chand on 21.7.2017 through SHO, Neb Sarai from the Government fund. In further compliance of directions of MHA order dated 6.7.2017, regarding fixing responsibility of the erring police officials and recovery of the entire amount of compensation from erring police officials, the pecuniary loss of Rs. 2,50,000/- incurred to the Govt. of India & to be recovered from the erring police officials, i.e., the applicants herein, an order was issued dated 20.12.2017 that the amount of Rs. 2,50,000/- be recovered from the monthly salaries of the applicants in equal quantity.

9. So far as contentions of the learned counsel for the applicants that no show cause notice issued before issuing the order of recovery, this Court observes that in *Bhagwan Shukla Vs. Union of India & others*, AIR 1994 SC 2480 the Apex Court held:

"... fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter."

In *Karnataka State Road Transport Corporation and another Vs. S.G. Kotturappa*, AIR 2005 SC 1933, the Apex Court held:

"The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be put in any straitjacket formula. The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality. What is needed for the employer in a case of this nature is to apply the objective criteria for arriving at the subjective satisfaction. If the criterias required for arriving at an objective satisfaction stands fulfilled, the principles of natural justice may not have to be complied with..."

In *Punjab National Bank and others Vs. Manjeet Singh and another* AIR 2007 SC 262, the Apex Court said:

"The principles of natural justice were also not required to be complied with as the same would have been an empty formality. The court will not insist on compliance with the principles of natural justice in view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would

not issue only because there was a violation of the principle of natural justice."

In P.D. Agrawal Vs. State Bank of India and others (2006) 8 SCC 776, it has been observed by Apex Court:

"The Principles of natural justice cannot be put in a straight jacket formula. It must be seen in circumstantial flexibility. It has separate facets."

10. In view of the above, the contention of the learned counsel for the applicants that no show cause notice was given to the applicants before issuing the impugned recovery order is not acceptable as the applicants have not chosen to challenge the said order of the Hon"ble NHRC.

11. So far as the plea of the applicants that they cannot be deemed to be erring police officials is concerned, the same is also not sustainable in the eyes of law in view of the fact that they were arrested only on the basis of dying declaration and the order of recovery was order by the MHA as a vicarious liability was on the respondents and the respondents have every right to recover the same from the erring employees and in this case having regard to the findings of the Hon"ble NHRC in the said case, it is evident that the applicants were alleged to have been involved in this case and criminal case was registered and the same is pending as also departmental proceedings. The applicants will be finally dealt with accordingly after conclusion of criminal case as well as departmental inquiry proceedings.

12. Counsel for the applicants relied upon the provisions of Section 140 of Delhi Police Act, 1978, which reads as under:-

"140. Bar to suits and prosecutions (1) In any case of alleged offence by a police officer or other person, or of a wrong alleged to have been done by such police officer or other person, by any act done under colour of duty or authority or in excess of any such duty or authority, or wherein it shall appear to the court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained and if entertained shall be dismissed if it is instituted more than three months after the date of the act complained of;

Provided that any such prosecution against a police officer or other person may be entertained by the court, if instituted with the previous sanction of the Administrator, within one year from the date of the offence.

(2) In the case of an intended suit on account of such a wrong as aforesaid the person intending to sue shall give to the alleged wrongdoer not less than one month's notice of the intended suit with sufficient description of the wrong complained of, and if no such notice has been given before the institution of the suit, it shall be dismissed.

(3) The plaint shall set forth that a notice as aforesaid has been served on the defendant and the date of such service and shall state what tender of amends, if any, has been made by the defendant and a copy of the said notice shall be

annexed to the plaint endorsed or accompanied with a declaration by the plaintiff of the time and manner of service thereof."

From a reading of the said section, it is quite clear that what is necessary to invoke the protection there under is 'if the act is done under colour of duty or in excess of such duty or authority'. This section does not protect every act of omission or commission of a police officer in service. The extent of an act of omission or commission of a policeman in the discharge of his duties has been explained by the Supreme Court in *K. Kalimuthu v. State by D.S.P.*, while dealing with Section 197 Cr.P.C. which sought to protect acts of public servants in the discharge of their duties. The Supreme Court has held -

"Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty, if the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty (under colour of duty) and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case."

From the above, it is quite clear that not only is every act of a policeman not covered for protection under Section 140 of the Delhi Police Act, 1958, but also must justify that the colour of duty satisfies the test i.e. "if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of official duty; if the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty (under colour of duty) and there was every connection with the act complained of and the official duty of the public servant. In the facts of the present case, as has already been stated above, there is no connection between the acts done and the duty cast on the applicants.

13. It is relevant to note here the observations of the Hon"ble High Court of Madras in the case of *V. Kumaravel* (supra), the relevant portion of the same reads as under:-

"4. In the meanwhile, on a complaint received by the National Human Rights Commission, the first respondent herein and on finding of the District Magistrate that the police personnel had committed excess on Captain Ganesan and caused serious injuries, recommended action against the concerned police. A report was also called for from the District Collector, Virudhunagar. On the basis of the report, it called upon the Chief Secretary to the Government to show cause by a letter, dated 23.1.2008 as to why a recommendation under Section 18(C) of the Protection of the Human Rights Act, 1993 should not be made by granting an interim relief to the complainant. On receipt of the said show cause notice, the Government which had already issued G.O. for taking an action against the petitioners, decided to grant compensation of Rs. 50000/- and also to recover the said compensation from the petitioners since liability on the Government was brought by the action of the petitioners herein. Pursuant to the said decision, the State Government issued the first impugned order in G.O.Ms.No.232, Public (Law and Order) Department, dated 22.2.2008 and the amount of Rs. 50000/- was directed to be recovered from the petitioners herein. Consequent upon the said direction issued by the State Government, the fourth respondent Superintendent of Police by a consequential proceedings dated 26.4.2008 fixed the liability of Rs. 10000/- to each of the petitioners to be recovered at the rate of Rs. 500/- per month on installment basis. In the meanwhile, the first respondent NHRC by a letter, dated 14.3.2008 while appreciating the decision of the State Government, but found that since the petitioners had assaulted a person of the Indian Army holding the rank of the Captain, the compensation awarded was inadequate and had recommended Rs. 1 lakh as compensation. The State Government upon receipt of the letter dated 14.3.2008 decided to sanction Rs. 50000/- as an additional compensation and also to recover the amount from the petitioners. Therefore, it had issued G.O.Ms.No.610, Public (Law and Order) Department, dated 19.5.2008 ordering an additional compensation of Rs. 50000/-. On the basis of the said direction, the fourth respondent had issued a consequential order, dated 8.1.2009 and directed recovery of equal amount on installment basis from the petitioners. The petitioners had challenged all the four orders, i.e. two main G.Os. and two consequential orders by the fourth respondent.

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9. It is very well open to the petitioners to move the NHRC and get themselves impleaded if they went to contest the enquiry by the NHRC. On the other hand, by stalling the payment of interim relief, the petitioners cannot foreclose the proceedings before the NHRC as well as the disciplinary action ordered by the State Government vide G.O.Ms.No.1032, Home, dated 22.9.2006. Since proceedings against the petitioners have not been completed and the relief granted at an interim stage (which power the NHRC certainly has), this court is not inclined to interfere with the impugned orders. Any payment made by the petitioners will be ultimately subject to the disciplinary action to be taken against the petitioners. Even otherwise the petitioners can always move the NHRC for varying or modifying its own earlier order. It cannot be said that either the NHRC

lacks power to grant the interim order pending enquiry into complaint on the basis of the prima facie materials or that the State Government was wrong in agreeing with the suggestion of the NHRC to pay the relief and claim the amount from the petitioners as they have the liability to make good the loss.

10. The Supreme Court in *D.K. Basu v. State of W.B.*, reported in (1997) 1 SCC 416 had held in paragraphs 44, 45 and 54 as follows:

"44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

45. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim - civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family.

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54. Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of

compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."

11. The Supreme Court in *Central Bureau of Investigation Vs. Kishore Singh and others* in Criminal Appeal No.2047 to 2049 of 2010, dated 25.10.2010 raised a question in paragraph 2, which is as follows:

"2. What should be done to policemen who 'bobbitt' a person in a police station and think that they can get away with it? That is the question to be decided in this case."

12. In the very same judgment, in paragraph 26, it had observed as follows:

26. Also all the accused are guilty of totally flouting and throwing to the winds the directives of this Court in *D.K. Basu vs. State of West Bengal* 1997 (1) SCC 416 (vide paragraph 35). That decision outlaws third degree methods in police stations, but it is well known that third degree methods are still widely used in many of our police stations, as this case reveals...."

13. Thereafter, in paragraph 31, the Supreme Court held as follows:

31. In our opinion, policemen who commit criminal acts deserve harsher punishment than other persons who commit such acts, because it is the duty of the policemen to protect the people, and not break the law themselves. If the protector becomes the predator civilized society will cease to exist. As the Bible says "If the salt has lost its flavour, wherewith shall it be salted? (Matthew 5, Mark 9.50 and Luke 14.34-35)", or as the ancient Romans used to say "Who will guard the praetorian guards?"

14. In an identical circumstance, this court in *A.Sundaram and two others Vs. NHRC, New Delhi* and three others reported in 2010 (1) TLNJ 364 (Crl) had upheld the order of the NHRC.

15. The recoveries made from the salaries of the petitioners shall continue as per the two impugned Government OrderS. However, the findings rendered herein will not prejudice the petitioners in their departmental action. This will also not prevent the petitioners from moving the NHRC either for reopening the case before the NHRC or varying for the earlier direction given to the State Government. In view of these findings, it is unnecessary to go into the decision of this court in Rajesh Das case (cited supra). In that case, the State Government had not taken any stand and the case remained only at the stage of the Commission's recommendation.

16. In the light of the above, both the writ petitions will stand dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petitions stand closed."

14. In view of the above facts and circumstances of the case and for the reasons stated above, this OA is dismissed being devoid of merit. It is directed that the recoveries made from the salaries of the applicant shall continue as per the impugned orderS. It is made clear that the findings rendered herein will not prejudice the applicants in their departmental case as well as in the criminal case. This will also not prevent the applicants from moving the NHRC either for reopening the case before the NHRC. There shall be no order as to costs.