

(2008) 12 DEL CK 0003

In the Delhi High Court

Case No : Writ Petition (Civil) No. 1042 of 2007

Ram Dev Singh (EX. S.I.)

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 19-12-2008

Acts Referred:

Citation : (2009) 121 FLR 13

Hon'ble Judges : Suresh Kait, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : Shyam Babu, for the Appellant; Jitender Choudhary and Ms. Anju Bhattacharya, for the Respondent

Final Decision : Allowed

Judgement

Suresh Kait, J.—The present writ petition is directed against the order dated 9th July, 2004 passed in OA No. 44/2004 by the Central Administrative Tribunal, Principal Bench, New Delhi.

2. The brief facts of the case are that on 5th October, 2000, a raid was conducted by the PRG Team. A charge-sheet was issued against the Petitioner and other persons on allegations of collecting money from commercial vehicles. A Departmental Inquiry was conducted and the Inquiry Officer found guilty all the persons, including the Petitioner, and submitted the report to the Disciplinary Authority. The Petitioner and other persons submitted their representations against the findings of Inquiry Officer. After considering the representations, vide order dated 4th August, 2003, the joint Commissioner of Police dismissed the Petitioner and other police officers. The Petitioner made an appeal before the Commissioner of Police on 25th August, 2003 which was rejected by order dated 15th December, 2003.

3. The Petitioner, aggrieved by the aforesaid order, filed the present OA No. 44/2005, which was dismissed by order dated 9th July, 2004. Challenging the aforesaid order of the Tribunal, WP(C) No. 11825/2005 was filed by the

Petitioner, before this Court, in which a liberty was granted to the Petitioner, vide order dated 17th August, 2005 to file a Review Application before the Tribunal and the writ petition was disposed of.

4. In pursuance of the directions dated 17th August, 2005 of this Court, the Petitioner tiled a Review Application No 206/2005 which was dismissed by order dated 21st December, 2006 which is under challenge in the present writ petition.

5. The ground of challenge is that OA No. 1613/2004 and OA No. 81/2004 filed by Raj Karan and Jai Kishan respectively, who were similarly situated persons, were allowed, but the OA of the Petitioner was dismissed without distinguishing the charges against the other persons and charges of the Petitioner. Whereas, the charges were same in toto and were charge-sheeted for the same incident and for the same cause of action.

6. We have repeatedly asked learned Counsel for the Respondents that how the cases of Raj Karan and Jai Kishan were different from the case of the Petitioner. He could not distinguish the case of the Petitioner and the case of other similarly situated persons, mentioned above.

7. We have observed that the case of Raj Karan which was under challenge in OA No. 1613/2004 and the case of Jai Kishan in OA No. 81/2004 are factually and legally same but the learned Tribunal was in error by deciding the case of the Petitioner in negative and the case of other persons in their favour.

8. The Petitioner filed a Review Application No. 206/2005 and MA No. 1914/2005 in OA No. 44/2004 to review the order of the CAT dated 9th July, 2004, on the ground that the case of similarly situated persons in OA No. 1613/ 2004 and OA No. 81/2004, were same and were allowed, whereas, the case of the Petitioner was dismissed by the Tribunal.

9. We have gone through the order dated 21st December, 2006 in RA No. 206/2005. Paragraph 5 of the Review Order, is reproduced as under:

We notice that the applicant has himself admitted the guilt and in no circumstances, subsequently he could state that such admission was erroneous. Mr. Arun Bhardwaj, learned Counsel has emphasized upon a judgment passed by a Co-ordinate Bench of this Tribunal in OA No. 1613/2004 and argued that in similar circumstances when the Tribunal recording a finding that the applicant therein was not guilty of having demanded and accepted the entry money as a bribe, the applicant herein also cannot be held guilty of accepting illegal gratification in the absence of any eye-witness. It is further argued that mere recovery in a trap case uncorroborated with any evidence directly on the issue of either demand or acceptance would not be sufficient to hold the guilty. We find that there are distinguishable features. The applicant herein has admitted his guilt during the course of inquiry and there is no subsequent statement that the admission of his guilt was erroneous. Therefore, an admission is a best piece of evidence against the maker, which has not been explained in any manner.

10. We have specifically asked from learned Counsel for the Respondents that is there any proof of the admission of the guilt since learned Counsel for the Petitioner has denied any admission of the guilt at any point of time. He has further submitted that if there is any proof with the Respondents even today, it can be shown before Court. Learned Counsel for the Respondents failed to show any proof, regarding the admission of the guilt by the Petitioner.

11. We have further asked from learned Counsel for the Respondents that how the case of the Petitioner is distinguishable from the cases of other similarly situated persons, who were part of the same raid. Whereas, the Tribunal has opined in their cases that they were not guilty of having demanded and accepted bribe as entry money."

12. We have gone through, both the orders passed by the Central Administrative Tribunal in OA No. 44/2004 as well as in RA No. 206/2005; we find that there is no distinguishable factor available in the case of the Petitioner and the cases of other similarly situated persons. Learned Tribunal has also not properly adjudicated the Review Application filed by the Petitioner and failed to distinguish the case of the Petitioner with the cases of other similarly situated persons.

13. We, therefore, have no other option but to say that the case of the Petitioner and the cases of other similarly situated persons are of the same occurrence, same charge, same set of witnesses and same punishment awarded by the Disciplinary Authority. The Tribunal has wrongly passed the order against the Petitioner, which was a clear-cut discrimination, not permitted in law. Therefore, both the orders dated 9th July, 2004 in OA No. 44/2004 and order dated 21st December, 2006 in RA No. 206/2005 passed by the Tribunal, are hereby set aside.

14. We, therefore, direct the Respondents to reinstate the Petitioner in service and to grant all the consequential benefits as per F.R. 53, within a period of one month from the date of receipt of the copy of this order.

15. The writ petition is allowed accordingly. No costs.