

(2020) 02 CAT CK 0001

In the Central Administrative Tribunal

Case No : Original Application No. 111 Of 2020

Surender Singh

APPELLANT

Vs

Commissioner Of Police And Ors

RESPONDENT

Date of Decision : 06-02-2020

Acts Referred:

Citation : (2020) 02 CAT CK 0001

Hon'ble Judges : Aradhana Johri, Member (A)

Bench : Single Bench

Advocate : Harpreet Singh, Esha Mazumdar

Final Decision : Dismissed

Judgement

1. The applicant Sh. Surender Singh was posted as ASI with Delhi Police. He has filed this O.A against order dated 30.12.2019 issued on behalf of

Deputy Commissioner of Police (DCP), Outer District, Delhi by which Rs.1,00,000/- is to be recovered from him for making payment to the next

of kin (NOK) of the deceased victim Madhuri Devi as monetary compensation as recommended by the National Human Rights Commission (NHRC),

New Delhi in case No. 777/30/0/2019/WC dated 22.08.2019. The NHRC matter pertains to the case of one Smt. Madhuri Devi who was murdered

on 06.02.2019 in the area of Police Station Nangloi. The NHRC took suo moto cognizance of media reports and sent a team of three inquiry officers

to conduct an on the spot inquiry regarding inaction of the police on the complaint of Smt. Madhuri Devi, leading to her murder. NHRC issued a show

cause notice to Chief Secretary GNCTD vide letter No. 777/30/0/2019-WC/M-5 dated 23.05.2019 on the basis of an on the spot inquiry which was

conducted by NHRC team. Vide this notice, the Chief Secretary, Govt. of NCTD

was to show cause as to why the Commission should not recommend Rs. 3 Lacs to the NOK of the deceased lady Madhuri Devi within six weeks. In the said notice alleged wrong doings of Head Constable Amit Kumar and SHO Vishvanand Jha were pointed out.

2. As mentioned above, the inquiry into the matter was conducted by additional DCP (I) Outer District. In the course of inquiry, among others, the applicant ASI Surender Singh was also questioned and his version taken. In the said report it was also found that there was a lapse on the part of the applicant with regard to the said hoax PCR call wherein it was held that he failed to take appropriate legal action in the matter and also showed negligence by not intimating his supervisory officer about the interrogation proceedings of the complaint. The detailed report was filed with NHRC through DCP (Vigilance).

3. Thereafter, NHRC vide its letter No. 777/30/0/2019-wc. dated 22.08.2019 addressed to the Commissioner of Police confirmed the recommended compensation of Rs.3 lacs to the NoK of deceased victim Madhuri Devi and directed the Commissioner of Police, Delhi to send a compliance report along with proof of payment within four weeks. They further directed C.P. to send the outcome of departmental action taken against the delinquent police personnel in the meantime. In this report NHRC took note of the additional Commissioner of police (vigilance) report dated 03.07.2019 as follows :-

â??In response Addl. Commissioner of Police Vigilance Delhi vide report dated 03.07.2019 has informed the Commission that as per enquiry in the matter it is found that the police personnelâ??s have not performed their duties in proper manner and regarding which an appropriate departmental action has also been initiated against them i.e., ASI Surender and HC Amit Kumar, further notice of censure has also been issued to Insp.

Vishvanand Jha SHO/Nangloi. In case 68/19 u/s 302 IPC already the accused person is arrested for the murder of victim Madhuri Devi and charge sheet against him is also filed in the court, which is now pending trial. The fault of police personnel ASI Surender and HC Amit Kumar is that though

they have initiated immediate action after receipt of Hoax call and complaint of threat of victim and have also enquired both Shyam Yadav & Madhuri

Devi but have not reported the matter to their seniors, took the matter very

casually and allowed both of them to go without taking appropriate action, for which an departmental enquiry has also been initiated therefore the recommended compensation to the NoK of the victim is not justified. Further both the victim and accused have amicably settled the matter in police station on 29.01.2019 in the presence of victim Madhuri's family and Dilbag Singh (Employer) where the accused Shyam agreed to give back money to the victim. Hence the apprehension of victim that accused person may harm her ends here only.

4. Thereafter, the NHRC gave the following directions:-

The Commission has considered the material placed on record. It is pertinent to mention here that as per facts finding of Investigation Division, it is apparent on record that the accused Shyam Yadav founds to be involved in two grave incidents, one a Hoax call during the Independence Day celebration another for sexual harassment of victim lady, who later on murdered by him. But the police have taken both the incident very casually and have not taken any preventive action against the accused person Shyam Yadav, due to which finally he able to murder the victim Madhuri Devi without any fear. This all has occurred because of non action of police against the accused person and giving boost to him for performing the daring act of murder of victim Madhuri Devi. Even the police have also acknowledged the non action of its personnel's and have initiated departmental action against them. Therefore in the light of above facts and finding, the Commission confirms the recommended compensation of Rs.3 lakh to the NoK of the deceased victim Madhuri Devi and directs the Commissioner of Police Delhi to send the compliance report along with proof of payment within four weeks. He is further directed to send the outcome of departmental action taken against the delinquent police personnel in the meantime.

5. In compliance with NHRC directives, approval for making payment of Rs.3 lacs to NoK of the victim from Government funds was moved to LG Delhi, the competent authority, who ordered recovery of the compensation of Rs.3 lacs from the defaulting police personnel after following due process. As per these directions orders for recovery from the salary of the Police personnel were issued.

6. It is the contention of the applicant that as per the show cause notice issued by NHRC to Chief Secretary, GNCTD, only the names of Head

Constable Amit Kumar and Inspector Vishvanad Jha were mentioned and that of the applicant was not indicated in this notice at all. No show cause

notice was issued to the applicant even though the action of the respondents entails civil consequences on the applicant. He has cited several rulings in

support of his contention and prayed that the order dated 19.12.2019 be set aside in so far as it directs payment of Rs.1,00,000/-from the applicant.

7. The respondents have denied the claims of the applicant. They have stated that the NHRC took suo moto cognizance of the matter of Madhuri

Devi and after some internal inquiry issued a show cause notice to the Chief Secretary, GNCTD for payment of Rs. 3 lacs as compensation to NoK

of the deceased. A detailed inquiry was done by the Delhi Police during which, among others, the applicant was also heard and his version taken.

Thereafter, the inquiry report was sent to the NHRC. In this inquiry report the name of the applicant was also included along with two other police

personnel and lapses were found on his part. This report was sent to the NHRC after which the NHRC vide its letter dated 22.08.2019 passed orders

directing the C.P to pay compensation of Rs.3 lakhs to the NoK of deceased Madhuri Devi and to send the outcome of departmental action taken

against the delinquent police personnel. As per the respondents, NHRC's aforementioned letter referred to the report of the Additional

Commissioner Police (Vigilance) which mentioned, the names of police personnel who had not performed their duty in a proper manner, and ASI

Surender Singh, H.C Amit Kumar and Inspector, Vishvanad Jha, SHO were mentioned.

8. The respondents have further stated that in compliance of NHRC's directives, a proposal was moved for making payment of Rs.3 lacs to NoK

from Govt. funds but as per LG Delhi's directions, compensation was to be recovered from the defaulting police personnel. As per the respondents,

since this recovery is affected as per directions of NHRC which is an independent statutory authority, there is no need to give notice.

9. Respondents have also cited several rulings in support of their contention that there was no need to give a show cause notice to the applicant before

effecting recovery.

10. Heard Mr. Harpreet Singh, learned counsel for applicant and Ms. Esha Mazumdar, learned counsel for respondents.

11. This case centres around the issue of whether it was necessary to issue a show cause notice to the applicant before making recovery of Rs.1 lac

from his salary in order to make payment of compensation to NoK of the deceased as had been directed by the NHRC.

12. Learned counsel for the applicant has cited the case AIR 1981 SC 136 in CA No. 1516/1980-S. L. Kapoor Vs. Jagmohan & Ors. which is related

to the super-cession of a Municipal Committee. The Honâ?ble Apex Court held that the requirement of natural justice is met only if an opportunity to

represent is given before the proposed action is taken. He has also cited a ruling in Civil Appeal No. 5447/1994 - Bhagwan Shukla Vs. Union of India

& Ors. wherein the basic pay of the applicant was reduced without giving him notice, which was held to be a flagrant violation of the principles of

natural justice. They have further cited O.A No. 645/2014 â?" Rakesh Chander Chaudhary and Ors. Vs. Union of India & Ors. which related to

deduction of pay of the applicants and recovery being processed without giving show cause notice. All these cases can be distinguished from the

present O.A, since they do not pertain to compliance of orders of a statutory authority but relate to either pay reduction/recovery or super-cession of a

body.

13. It is the case of the respondents that no notice is necessary since the said order is passed in compliance with the directives of a Statutory

Authority, i.e., NHRC. The respondents have cited the ruling in Civil Appeal No. 4868 and 4869 of 1999 â?" Karnataka State Road Transport

Corporation and Anr., Vs. S. G. Kotturappa and Anr. In this case Honâ?ble Apex Court held that principles of natural justice are not required to be

complied with when it will lead to an empty formality. Para 21 of the said order reads as under :-

â?"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. It cannot be put in any straight jacket 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 criteriaâ?s required for arriving at an objective satisfaction stands fulfilled,

the principles of natural justice may not have to be complied with, in view of the fact that the same stood complied with before imposing punishments

upon the Respondents on each occasion and, thus, the Respondents, therefore, could not have improved their stand even if a further opportunity was

given.â??

14. They have also cited a judgment of Honâ?ble Madras High Court in Kumar V. Kumaravel & Ors. Vs. National Human Rights Commission and

Ors. in W.P. (MD) Nos. 1645 and 10479 of 2009 and M.P. (MD) Nos. 2 and 3 of 2009. In the said case the Honâ?ble Madras High Court upheld

recovery done from defaulting police personnel after the Government received show cause notice from NHRC for payment of compensation but

without any separate notice to the defaulting police personnel. The petitioners in the said case had impugned the recovery order stating that it was

contrary to the provisions of Protection of Human Rights Act and no opportunity was given to them. The Honâ?ble High Court held the following :

â??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.â??

15. O.A No. 210/2018 â?" Raj Kumar and Ors. Vs. Union of India in which order of this Tribunal was pronounced on 11.12.2018, also pertains to an

identical issue. In this O.A the applicants were Constables in Delhi Police against whom recovery of Rs. 2,50,000/- had been ordered after the NHRC

directed the Government to pay compensation to the family of the deceased. The matter was pending trial in the Criminal Court as well as disciplinary

proceedings were ongoing. The NHRC asked the Chief Secretary to pay the monetary relief of Rs.2,50,000/- whereupon a proposal was moved for

sanction of the expenditure from the Government account. Ministry of Home Affairs (MHA) conveyed the sanction. MHA also directed to fix the

responsibility of the area police official and to recover the amount from the area

police officials. The case made out by the applicants was that they were not afforded an opportunity and therefore, the recovery order was in violation of the principles of natural justice. In the said O.A all the rulings and case laws were discussed extensively. These included the rulings of Karnataka State Road Transport Corporation and Anr., Vs. S. G. Kotturappa and Anr. (Supra), Punjab National Bank and Ors. Vs. Manjeet Singh and Anr. â?" AIR 2007 SC 262, P.D. Agrawal Vs. State Bank of India and Ors. (2006) 8 SCC 776 and K. Kalimuthu Vs. State by D.S.P. in Appeal (crl.) No. 469 of 2005 decided on 30/03/2005.

16. This Tribunal after discussing all these judgments upheld the recovery from the police personnel and dismissed the O.A as being devoid of merit.

This Tribunal also took note of the following identical circumstances in A. Sundaram and two others Vs. NHRC, New Delhi and three Ors. reported in 2010 (1) TLNJ 364 (Crl) as follows :-

â??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.â??

17. The circumstances of the present O.A are similar to the O.A 210/2018 wherein various directions of Honâ?ble Apex Court and Honâ?ble High Court of Madras have been discussed at length. In view of the facts and circumstances of the case, and for the reasons stated above, this O.A is dismissed being devoid of merit. It is however made clear that findings reflected herein will not prejudice the applicant in departmental cases. This will also not prevent the applicant from moving the NHRC for re-opening the case before NHRC. There shall be no order as to costs.