

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.340/2007**

% **Date of Decision: 05.07.2011**

Govt. of NCT of Delhi & Ors. Petitioners

Through Nemo

Versus

Constable (DVR) Ashok Kumar Respondent

Through Mr.Kumar Rajesh Singh

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

- | | | |
|----|--|-----|
| 1. | Whether reporters of Local papers
may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be
reported in the Digest? | NO |

ANIL KUMAR, J.

*

1. The petitioners have challenged the order dated 10th October, 2006, passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.258/2005 titled as 'Constable (DVR) Ashok Kumar v. Government of NCT of Delhi & Ors.', directing the petitioners to grant the relief of 50% of the salary to the respondent for the period of 14th May, 1991 to 2nd October, 2002 and also in

granting the full salary for the period of 3rd October , 2002 to 9th June, 2003, if not already paid, after deducting the subsistence allowance, if any paid. The original application had been filed by the respondent seeking the quashing and setting aside of the appellate authority order dated 25th February, 2004 whereby one year of approved service of the respondent was forfeited with consequential benefits in terms of seniority, promotion etc.

2. The punishment was imposed on the respondent pursuant to a departmental enquiry on the charge that while being posted in 1st Bn DAP he was detailed for duty with Govt. vehicle No. DEG 4996 at PTS Jharoda Kalan, New Delhi for transportation of force for Ram Lila and VVIP duty at Rashtrapati Bhawan, etc on 22.09.1990 with the direction to remain there till further orders. However, the respondent came back along with his vehicle on 23.09.1990 from PTS, Jharoda Kalan, New Delhi at his own sweet will. When the matter was reported that the respondent has returned from duty, Inspector Balbir Singh asked the respondent as to why he had come back pursuant to which the respondent replied "MAINE KYA THEKA LE RAKHA HAI AUR BHI DRIVER HAIN". The respondent thereafter had refused to go back to PTS for duty and a report to this effect was lodged vide DD No 38-B dated 23th September, 1990 DAP, Control

Room. Allegations were made against the respondent for having remained absent willfully and unauthorizedly on previous two occasions. The respondent had also absented himself previously on six occasions and had been awarded PDs/WP etc.

3. The pleas and contentions of the respondent were considered by the Tribunal in detail and after due consideration the Tribunal held that there were no grounds to interfere with the decision of the petitioners with regard to the punishment imposed on the respondent.

4. However, regarding the issue relating to the treatment of the period of the respondent's absence, which had been treated as not spent on duty, the Tribunal had noted that although the appellate authority had modified the substantive punishment of forfeiture of approved service permanently from three years to one year, it did not however record any specific decision relating to the period of dismissal, suspension etc. In the circumstances, the Tribunal had held that the decision of the petitioners to award the reduced punishment of forfeiture of one year approved service permanently is not interfered with in the interest of maintenance of discipline in the police force. However, the Tribunal took note of the fact that the

respondent should not be denied the relief in terms of the treatment of his period of absence, since it was largely due to prolonged legal proceedings, for which he could not be held responsible. Therefore, the Tribunal had directed the petitioners to pay 50% of the salary to the respondent for the period 14.05.1991 to 2.10.2002. Since for the period of suspension the respondent had been subsequently reinstated, it was held that he would be entitled to full salary for the period from 3.10.2002 to 9.6.2003 if the amount was not already paid, after deducting the subsistence allowance, if any paid to the respondent. It is this relief that has been challenged by the petitioners in the present writ petition.

5. The matter had been taken up for hearing on 4th July, 2011, however, no one had appeared on behalf of the petitioners, but no adverse order was passed against the petitioners in the interest of justice and the matter was allowed to remain on board in the category of 'Regular Matters'.

6. Today, again no one is present on behalf of the petitioners. In the circumstances, we are constrained to dismiss the writ petition in default for non appearance of the petitioners and their counsel. The

writ petition is, therefore, dismissed in default. The interim orders dated 16th January, 2007 and 18th February, 2009 are also vacated.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

July 05, 2011.

vk