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

+ W.P.(C) 8374/2017 with CM. APPL. 2328-2329/2018

LAKHMI CHAND Petitioner
Through: Mr. N.S. Dalal, Advocate

versus

NATIONAL HUMAN RIGHTS COMMISSION
AND ORS. Respondent
Through: Mr. Ankur Chibber for R-2,
Advocate

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER
% **19.01.2018**

CM APPL.2329/2018

1) Allowed subject to all just exceptions.

W.P.(C) 8374/2017

2) Notice in this writ petition was issued on 20 September 2017 .
At which point in time this Court had stayed the direction to pay
compensation to respondent No. 4.

3) The first respondent in writ petition is the National Human
Rights Commission. The second respondent is the Commissioner of
Police. The Government of India is arrayed as respondent No. 3. The
fourth respondent is the husband of the deceased victim.

4) The two orders impugned in the writ petition are the order dated
5 April 2016, passed by the first respondent and, the order dated 11

August 2016, passed by the third respondent.

5) By virtue of Order dated 5 April 2016, the first respondent has reached a prima facie conclusion that the deceased victim was brutally manhandled by the petitioner while in custody and that a case of violation of human rights was made out. Accordingly, the first respondent directed the Chief Secretary, Govt. of NCT of Delhi to pay a sum of Rs. 5,00,000/- to the deceased victim's husband that is, the fourth respondent.

6) Mr. Chibber, on behalf of the second respondent says that even prior to the institution of the present petition a sum of Rs. 5,00,000/- was paid to the fourth respondent.

6.1) I am informed by the learned counsel that the said amount was paid on 4 September 2017.

7) It is as a result of the said order that on 11 August 2017, the third respondent while approving the payment of compensation to the fourth respondent directed that the entire amount of compensation should be recovered from erring police officials.

7.1) The record shows that while criminal proceedings initiated against the petitioner, which are subject matter of FIR No. 197/2013 [U/s 342/323 IPC] are pending adjudication, the departmental proceedings instituted against the petitioner stand concluded. A punishment order pursuant to conclusion of departmental proceedings has been issued qua the petitioner. Consequently, the petitioner has been awarded a major punishment of temporary forfeiture of two years approved service vide order dated 20 October 2015.

7.2) I am also informed by Mr. Dalal, who appears for the petitioner

that this order has been challenged by the petitioner before the Central Administrative Tribunal.

8) Having regard to the aforesaid facts and circumstances, I am of the view that in so far as the order dated 11 August 2017 is concerned, the same has been passed without affording an opportunity to the petitioner. The order is predicated as it appears on a prima facie view taken by the first respondent in its order dated 5 April 2016. A close perusal of the order would show that the matter is yet to be finally considered by the first respondent. Furthermore, as indicated in my narration above, the order passed in the departmental proceedings has already been challenged and the challenge is pending adjudication before the Central Administrative Tribunal.

8.1) Thus, having regard to the aforesaid, the order dated 11 August 2016 is set aside.

8.2) Liberty is, however, granted to the third respondent to issue a notice to the petitioner calling upon him to show cause as to why the compensation order to be paid by the first respondent to the fourth respondent ought not be recovered from the petitioner. Needless to say, the petitioner will be given an opportunity to respond to the same. The petitioner will also be given an opportunity of hearing in the matter. The entire exercise will be carried out at the earliest, though not later than 8 weeks from today.

9) Since, the order dated 5 April 2016, as indicated above, constitutes only a prima facie view of the first respondent, I am not inclined to grant any relief qua the said order. The petitioner will, however, have the liberty to approach the first respondent if he wishes

to join the proceedings pending before it. The first respondent upon being approached will pass an appropriate order, albeit, in accordance with law.

10) Accordingly, the writ petition and pending interlocutory application are disposed of in the aforementioned terms.

RAJIV SHAKDHER, J

JANUARY 19, 2018/Nk