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

+ W.P.(C) 8897/2018 and CM APPL. 34226/2018

LAKHMI CHAND

..... Petitioner

Through: Mr J.B. Mudgil, Advocate.

versus

MINISTRY OF HOME AFFAIRS THROUGH ITS
SECRETARY

..... Respondent

Through: Mr Manish Mohan, CGSC with Ms
Manisha Saroha and Mr Abhishek
Khanna, Advocates for R-1.

Mr S. Nandakumar and Ms Deepika
Nandakumar, Advocates for R-4/
NHRC.

Mr Naushad Ahmed Khan, ASC
(Civil) GNCTD with Mr Zahid
Hanief and Ms Manisha Chauhan,
Advocate.

ASI Narender, CP, Delhi.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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09.05.2019

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 04.07.2018 passed by respondent no.3 (Deputy Commissioner of Police) whereby a sum of ₹5,00,000/- has been directed to be paid.
2. The petitioner's grievance is that the said order has been passed on the basis of an order dated 05.04.2016 passed by respondent no.4 (National Human Rights Commission – NHRC). The petitioner claims that no recovery can be made against the petitioner, as the petitioner was not

afforded any opportunity of hearing before NHRC and, therefore, cannot be held liable to pay the amount as directed by NHRC.

3. The controversy in the present case relates to a complaint dated 24.06.2013 filed by one Mr Tarkeshwar Sharma, husband of Late Smt. Maya Sharma, with NHRC. He had alleged that he and his wife (since deceased) were taken into custody by Dwarka (North) Police Station and they had been brutally beaten. Thereafter, the petitioner who was at the material time posted as a Head Constable with the concerned police station, decided to drop Smt. Maya Sharma to her home on his motorcycle. While he was on his way, he was hit by an Autorickshaw. The accident proved fatal for Smt. Maya Sharma. It is further alleged that Smt. Maya Sharma was not wearing a helmet. It is further alleged that instead of assisting Smt. Maya Sharma and taking her to the hospital, the petitioner had left her in an unconscious state. The aforesaid complaint was examined by NHRC and it had recommended payment of a sum of ₹5,00,000/- by the respondent authorities to the victim Sh. Tarkeshwar Sharma. The said amount was paid and by the impugned order is sought to be recovered from the petitioner.

4. At the outset, it is necessary to observe that the petitioner was not a party to the proceedings before NHRC. It is also apparent from a plain reading of the order dated 05.04.2016 passed by NHRC, that it had come to a conclusion that *“a Prima-facie case of violation of human rights of the victim has been made out during enquiry against HC Lakshmi Chand”* and recommended that the concerned authorities pay a compensation of ₹5,00,000/-. The said recommendation was directed against the concerned authorities and not against the petitioner.

5. Plainly, the petitioner cannot be mulcted with any liability on a *prima facie* finding without putting the petitioner to notice and without affording him an opportunity to be heard.

6. There is no dispute that a departmental inquiry was conducted in respect of the incident against the petitioner and the petitioner was found guilty of the offence as charged. The petitioner has been awarded a major penalty of temporary forfeiture of two years approved service, in terms of the order dated 20.10.2015. The petitioner has moved the Central Administrative Tribunal (CAT) against the said order.

7. The findings of the departmental inquiry, *inter alia*, include the finding that the petitioner had brutally beaten up Sh. Tarkeshwar Sharma. The petitioner was issued a show-cause notice dated 17.05.2018 and he had also replied to the said notice. The impugned order passed thereafter is premised on the basis that the concerned authorities had already paid a sum of ₹5,00,000/- to Tarkeshwar Sharma, and therefore the same was liable to be recovered from the petitioner. However, it is relevant to note that the concerned authorities had filed a review petition before NHRC seeking that the recommendation for payment of compensation be withheld till the finalisation of the criminal case filed against the petitioner (FIR 197/13), but the same was not accepted. Although the concerned authorities have accepted the recommendation of NHRC, the petitioner has had no opportunity to contest the same. Moreover, as stated above, the respondents were also of the view that the payment of compensation should await the determination of the criminal case pending against the petitioner.

8. Plainly, if the petitioner succeeds in his challenge to the order dated

20.10.2015 and the findings of the departmental inquiry are set aside, there would be no justification for recovering the amount of ₹5,00,000/- from the petitioner, notwithstanding that the same had been paid by the concerned authorities to the victim pursuant to the orders passed by the NHRC.

9. In view of the above, the present petition is disposed of with the direction that the impugned order would be implemented only if the petitioner fails in the challenge, pursuant to the disciplinary proceedings, before CAT or is convicted in the criminal case filed against him.

10. The petition is disposed of in the aforesaid terms. The pending application also stands disposed of.

VIBHU BAKHRU, J

MAY 09, 2019
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