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

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Date of Decision: 04.02.2019

% **W.P.(C.) No. 10772/2017**

COMMISSIONER OF POLICE AND ORS. Petitioners

Through: Mr. Satyakam, Additional Standing
Counsel along with HC Rakesh
Kumar.

versus

SHRI KAPIL KUMAR MEENA Respondent

Through: Mr. Rajat Aneja & Mr. Sambit
Nanda, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A.K. CHAWLA

VIPIN SANGHI, J. (ORAL)

1. The Commissioner of Police has preferred the present writ petition to assail the order dated 13.12.2016 passed by the Central Administrative Tribunal (CAT/ Tribunal) in O.A. No.2705/2011. The Tribunal has allowed the said Original Application preferred by the respondent; quashed the orders impugned before it by the respondent; and directed grant of consequential benefits to the respondent. However, it was held that the respondent would not be entitled to any arrears of pay.

2. The respondent was appointed as a Constable (Driver) with the Delhi

Police on 01.11.2006. His services were confirmed on 01.11.2008. He was placed under suspension with effect from 18.12.2009 on the ground that he suppressed the fact that he was involved in case FIR No.506/2003 registered under Section 365 IPC at P.S. R.K. Puram. On the charge that he had suppressed his involvement in the said case as an accused, he was chargesheeted on 17.02.2010. A departmental inquiry followed and the Inquiry Officer exonerated him on the ground that though the aforesaid FIR was registered against him, he was never served with the copy of the same and, therefore, it could not be concluded that he was aware about his being named as an accused in the FIR. The Disciplinary Authority, however, did not agree with this finding of the Inquiry Officer and issued a disagreement note on 28.09.2010. The respondent was called upon to make his representation which he did on 05.10.2010. Thereafter, the Disciplinary Authority passed the order dated 25.10.2010 dismissing the respondent from service. The statutory appeal preferred by the respondent was rejected on 26.05.2011.

3. The plea taken by the respondent before the Tribunal was that, since he had not been served with the copy of the FIR; that he was never arrested, and; that no chargesheet was ever filed against him – arising out of the said FIR, he bonafidely and innocently answered the query: whether any FIR was ever registered against him, by answering the same in the negative.

4. On the other hand, it was contended on behalf of the petitioner that the petitioner was fully aware of his involvement in the said case. He was thoroughly and repeatedly interrogated in the said case and even his

polygraph test was got conducted before he had filled up the declaration on 04.05.2006. Thus, for him to claim that he was not aware of the registration of the FIR and that he was named as an accused in the FIR, was incorrect.

5. The Tribunal while passing the impugned order has taken the view that knowledge of the fact of registration of the FIR against him cannot be attributed to the respondent, since he was not served with the copy of the FIR and no chargesheet had been filed in Court till the time he made the declaration.

6. We are afraid that we cannot accept this reasoning of the Tribunal. There is ample material placed on record to show that the respondent was repeatedly called for interrogation. The notices issued to him squarely mention the particulars of the FIR registered in the case. He was interrogated and his polygraph tests were also got conducted. One would have to be too naive to accept the respondents claim that he was unaware of the fact that he was an accused named in the FIR. Thus, clearly, there was suppression and misstatement in the declaration made by the respondent when he answered the question in the negative, as to whether any FIR had been registered against him.

7. Having said that, considering the fact that the closure report was filed by the police in the said case, which is still pending consideration and no chargesheet has yet been filed, and also the fact that the petitioner is not able to point out on the basis of the interrogation conducted thus far that there is any material to point to the involvement of the respondent in the said case, as also the fact that the Tribunal has restricted the relief by ordering that the

respondent shall not be entitled to any arrears, we are not inclined to interfere with the direction issued by the Tribunal that the respondent should be reinstated in service. Considering the circumstances of the case, we direct that the period of the respondent's absence from duty, i.e. from the date of his dismissal till the date of his reinstatement should be treated as "dies non" for all intents and purposes. The respondent shall, however, be reinstated in service within the next 30 days.

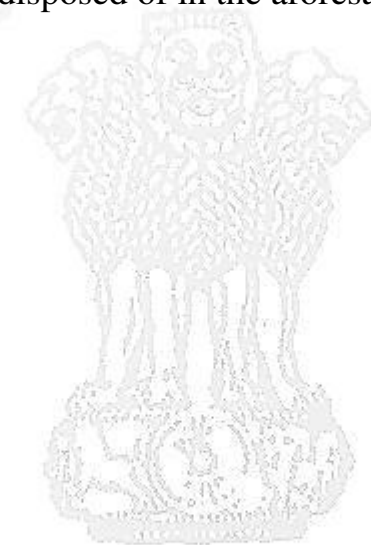
8. The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

A. K. CHAWLA, J

FEBRUARY 04, 2019

B.S. Rohella



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