

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

CA 2909/2002

New Delhi this the 13th day of March, 2003

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri V.K.Majotra, Member (A)

Dinesh Kumar
(PIS No.29910056)
R/O A-480, Pandav Nagar
Shadipur Depot, New Delhi-8

..Petitioner

(By Advocate Shri Anil Singal)

VERSUS

1. Addl.Commissioner of Police
(Security),
Security Main Lines,
Vinay Marg, New Delhi.

2. Addl.DCP (Security),
Security Main Lines,
Vinay Marg, New Delhi.

.. Respondents

(By Advocate Shri Rishi Prakash)

O R D E R (ORAL)

(Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)

This application has been filed by the applicant, in which he has impugned the action and orders passed by the respondents dated 12.8.2002 and 11.10.2002.

2. According to the applicant while he was posted in the office of respondent No.2, he was falsely implicated in a case FIR No.718/1997 under the provisions of the NDPS Act and by order dated 7.7.1997 he was dismissed from service under Article 311 (2) (b) of the Constitution of India. He has submitted that in the criminal case on the same charge, he was acquitted by the Learned Additional Sessions Judge, New Delhi by order dated 15.2.2002 (Annexure A-3). After his acquittal in the criminal case, the applicant had submitted an appeal

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to the appellate authority for setting aside the order of dismissal and praying for reinstatement in service with all consequential benefits. The appellate authority, by the impugned order dated 12.8.2002 accepted the appeal of the applicant, to the extent of ordering his reinstatement in service from the date of dismissal. However, further directions have been given which have been impugned by the applicant in the present application. In pursuance of the aforesaid order passed by the appellate authority dated 12.8.2002, the disciplinary authority by his order dated 11.10.2002 has taken a decision to deal with the applicant Departmentally under the provisions of Rule 16 of the Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter referred to as the 'Rules') which is to be conducted on day to day basis and the findings submitted within three months.

3. The above orders have been dealt with in the interim order dated 17.12.2002. In the facts and circumstances of the case, the Tribunal had directed that "while the Departmental proceedings may continue, no final order shall be passed without obtaining the orders of the Tribunal or till the final disposal of the OA".

4. The respondents have filed reply and we have also heard Shri Rishi Prakash, learned counsel. Learned counsel has prayed for an adjournment in the

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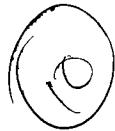
case, so that he can get more briefing from the Departmental officials on the facts of the case. We are not impressed by this argument because the learned counsel for the respondents ought to have got the necessary clarifications, if he needed them from the Department well in time. This case has been listed today for final hearing on the last date when both the learned counsel were present. In the circumstances, the prayer for an adjournment of the case is neither reasonable nor justifiable especially as there is also an interim order in the case. We, therefore, consider it appropriate, in the interest of justice, to dispose of this OA, after hearing the learned counsel for the parties and perusing the relevant documents on record.

5. In the impugned order dated 12.8.2002, what has been impugned by the applicant is a part of Para 4 of that order which reads as follows:-

" However, in the circumstances of the case it will be open to the disciplinary authority to proceed in the matter in accordance with provision contained under rule 12 of DP(P&A) Rules, 1980, if attracted in this case. The period from the date of dismissal order when the appellant was not on duty be treated as 'period not spent on duty'. However, it may be counted towards his qualifying service. The period from the date of issued of this order to the date of joining of duty may be treated as leave of the kind due".

6. It is relevant to note that the appellate authority had clearly stated that it was open to the disciplinary authority to proceed in the matter, in

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accordance with the provisions contained in the Rules, if attracted in this case. We find merit in the submissions made by the learned counsel for the applicant that in the circumstances of the case, part of the appellate authority's order to treat the period from the date of dismissal till the date of his reinstatement as not spent on duty should have been passed after a decision had been taken by the competent authority i.e. the disciplinary authority, whether or not to proceed in the matter further by way of Departmental proceedings under the Rules. On the one hand, the appellate authority has left the discretion to the disciplinary authority to proceed or not under Rule 12 of the Rules. Thereafter, that authority should have passed the appropriate orders regarding the period when applicant was not on duty. He has further stated that the period from 12.8.2002 to the date when the applicant joined duty should be treated as leave of the kind due, which can be decided in accordance with the Rules after a decision as above, is taken by the disciplinary authority.

7. The applicant has impugned the decision of the disciplinary authority in his order dated 11.10.2002, the relevant portion of which reads as follows:-

"In the instant case, Const. Dinesh Kumar No.132/Sec. (Now 1375/Sec.) was acquitted on benefit of doubt by the Hon'ble Court merely on the grounds that (i) there was difference in the quantity of sample sent to CFSL (ii) offer of search as required by section 50 of NDPS Act was not given to the accused. Now the matter has been examined under Rule 12 of Delhi Police (Punishment and Appeal) Rules,

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1980 and found that the criminal charge has failed on technical grounds as mentioned above.

Therefore, I, Paldan, Addl.DCP/Security, New Delhi, hereby order that Const. Dinesh Kumar No.1375/Sec.be dealt with departmentally by adopting the provisions of Rule 16 of Delhi Police (Punishment and Appeal) Rules, 1980. The D.E.proceedings is entrusted to Insp. Prem Chand Jha D-1 1390, who will conduct the D.E. on day to day basis and submit his finding within 3 months positively. He will also submit progress report of the D.E. every week".

8. We have carefully read the order passed by the learned Additional Sessions Judge, New Delhi. In the order dated 15.2.2002, he has come to the conclusion that as a result of the discussion in the foregoing paragraphs, the prosecution has failed to prove its case beyond reasonable doubt. The benefit of doubt was given to the accused and he was acquitted. In Paragraphs 30 and 31 of the order, the learned Additional Sessions Judge has referred specifically to the question of the weight of the charas which was recovered and the quantity which was sent as a representative sample to CFSL, Chandigarh, in which an increase in weight was noted. At the end of Paragraph 31 of the order, the learned Judge had come to the conclusion that " there is nothing on record to show as to how the weight of the same sent to and received by CFSL Chandigarh had increased. The same creates doubt as to the genuineness of sample sent for chemical analysis to CFSL, Chandigarh". It has also been mentioned that it is settled principle of law that the provisions of the NDPS Act are so stringent that it casts a duty on the prosecution to rule out any possibility of tampering of

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the seal and false implications of the accused. After considering certain relevant judgements on the subject, including another point raised in the case regarding the offer of search as required under Section 50 of the NDPS Act, the learned Judge came to the conclusion that the accused has to be acquitted on the grounds, mentioned above.

9. In the background of the judgement of the learned Additional Sessions Judge in his order dated 15.2.2002, the reasoning given by the disciplinary authority in his order dated 11.12.2002, namely, (i) regarding the difference in the quantity of sample sent to CFSL, Chandigarh and (ii) offer of search, as required by section 50 of NDPS Act as merely on technical grounds on which the criminal charge had failed cannot be accepted. In this regard, the judgements relied upon by the learned counsel for the applicant, namely, **Kundal Lal Vs. The Delhi Administration, Delhi and Ors.** (1997(1)SLR 133), **Kamal Singh Vs. Govt.of NCT of Delhi through the Chief Secretary and Ors.** (OA 1214/2000 (PB)) decided on 22.12.2000. 22.12.2000) and **Ramesh Chander Vs. R.S.Gahlewat** (1992 (1)AISLJ 484), copies placed on record, are relevant and support his contentions.

10. Rule 12 of the Rules provide, inter-alia, action following judicial acquittal when a police officer has been tried and acquitted by a criminal

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court. He shall not be punished Departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not, unless when the criminal charge has failed on technical grounds. We do not refer to the other clauses under this Rule as those have not been relied on by the respondents themselves, as seen from the impugned order dated 11.10.2002, which refers only to the fact that according to them the criminal charge levelled against the applicant in case No.82/1997 has failed on "technical grounds". This shows that only the provision of Rule 12(a) of the Rules have been referred to by the respondents in the impugned order passed by the disciplinary authority and not the other grounds.

11. In the above facts and circumstances of the case, we find that the acquittal of the applicant/accused in case No.82/1997 by order dated 15.2.2002 cannot be held to be on "technical grounds", which is substantially on the merits of the case. In the circumstances, it will not be proper for the disciplinary authority to proceed on identical facts and on the same charge, so as to come to a different finding in the Departmental proceedings as stated in the impugned order dated 11.10.2002.

12. In the result, for the reasons given above, the OA is allowed to the extent that the impugned order dated 11.10.2002 is quashed and set aside. Similarly,

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that part of the appellate authority's order dated 12.8.2002 impugned by the applicant with regard to the treatment of the intervening period, from the date of dismissal to the date of his reinstatement, is also quashed and set aside.

13. In the circumstances of the case, the case is remitted to the competent authority to pass appropriate orders with regard to the intervening period in accordance with rules. This shall be done within a period of two months from the date of receipt of a copy of this order, with intimation to the applicant.

No order as to costs.

V.K.Majotra
(V.K.Majotra)
Member (A)

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Vice Chairman (J)

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