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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 744/2002

New Delhi this the 3rd day of December, 2002.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

H. Const. Paramjeet Singh,~
(PIS No.28800854)
R/o WZ-364/1, Chand Nagar,
P.S. Tilak Nagar,
New Delhi-18. -Applicant

(By Advocate Shri Anil Singhal)

-Versus-

1. Commissioner of Police,
Police Head Quarters,
I.P. Estate, New Delhi.
2. Addl. Commr. of Police,
(PCR & Commn.) Police,
I.P. Estate, New Delhi.
3. DCP (PCR),
Police Head Quarters,
I.P. Estate, NEW Delhi. -Respondents

(By Advocate Ms. Jasmine Ahmed)

O R D E R (Oral)

By Mr. Shanker Raju, Member (J):

Applicant assails punishment order dated 12.3.2001 as well as appellate order dated 7.12.2001, upholding the punishment.

2. While posted in PCR, applicant a Constable was involved in case FIR No.121/95 dated 10.5.95 under Section 384 IPC. In pursuance thereof a departmental enquiry was ordered against the applicant on the same allegations with issuance of summary of allegations alleging that the applicant had extorted 500 Riyals from one Mehboob Ali. Applicant being aggrieved with continuance of simultaneous proceedings approached this Tribunal in OA-1925/95 where by an order dated 15.5.96 directions have been issued not to proceed the enquiry

beyond the stage of examining the witnesses and to await the outcome of the criminal case.

3. Applicant was acquitted of the criminal case by the Metropolitan Magistrate by judgment dated 23.4.99, as the prosecution has miserably failed to prove the offence against applicant. Applicant through representation dated 18.5.99 requested the authorities to drop the proceedings in the light of his acquittal. Disciplinary authority by an order dated 3.6.99 resumed the proceedings on the ground that acquittal is on account of hostility of witnesses.

4. On completion of the enquiry and on receipt of the representation against the finding, disciplinary authority imposed upon applicant a punishment of forfeiture of six years' approved service, entailing reduction in pay, with cumulative effect on future increments. Suspension period was also treated as not spent on duty.

5. Appeal preferred against the order of punishment was rejected, giving rise to the present OA.

6. Shri Anil Singhal, learned counsel appearing for the applicant, at the outset, by referring to Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 stated that applicant's acquittal from the criminal charge was on merits, as the prosecution has miserably failed to prove the offence or any other offence against him. His case is not covered by any of the provisos enumerated under the rules ibid. According to him before resorting to continuance of proceedings on acquittal on the same charge

either the court or the Deputy Commissioner of Police (DCP) has to specifically record a finding that the witnesses have been won over. Mere hostility of the witnesses would not be conclusive to establish that the witnesses have been won over by applicant. As neither the order resuming the proceedings nor penalty order fulfils this criteria and as the disciplinary authority has failed to record a finding that the witnesses have been won over and the case of the applicant is not covered by other provisos, holding of enquiry on acquittal by a finding arrived at by the judicial body, the finding arrived at by a quasi judicial authority has to give way in consonance with the decision of the Apex Court in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr., JT 1999 (2) SC 456.

7. Shri Singhal places reliance on a decision of the coordinate Bench in OA-1214/2000, Shri Kamal Singh v. Government of N.C.T. of Delhi & Others, decided on 22.12.2000, where the following observations have been made:

"16. The learned counsel for the respondents also taken a plea that the acquittal of the applicant in the criminal case is also on account of witnesses turning hostile. In this regard we find that the order of resumption of departmental enquiry has not been passed on this ground rather the enquiry has been resumed on benefit of doubt. We have carefully perused Rule 12 and its provisos. Mere hostility of a witness is not an exception whereby a police officer can be dealt departmentally. In order to deal a police officer departmentally after his acquittal it is to be shown that the witnesses have been won over and this finding should have been recorded either by the court or by the DCP. In the instant case we find that neither the finding has been recorded by the trial court nor the DCP has recorded this finding by passing an order resuming the departmental enquiry. In these circumstances the contention of the respondents is liable to

be rejected. We have also carefully perused the judgment of the trial court and also the provisions and exception clauses of Rule 12 of Delhi Police (Punishment & Appeal) Rules, 1980 and we find that the case of the applicant does not fall in any of the proviso mentioned in Rule 12. The counsel for the respondents has also not shown to us that the case of the applicant after his acquittal falls being any of the other proviso to Rule 12 ibid."

8. In the light of the aforesaid decision it is contended that his case is on all four covered by the ratio of the OA and the punishment imposed is not sustainable.

9. Moreover, by placing reliance on a decision of the Delhi High Court in CWP-2368/2000, Shakti Singh v. Union of India & Ors. decided on 17.9.2002, it is contended that as the punishment of forfeiture of approved service alongwith reduction in pay and withholding of increments has not been found to be in consonance with Rule 8 (a) (2) of the Delhi Police (Punishment & Appeal), Rules, 1980 the punishment which has been imposed is not legal in the light of the decision of the High Court.

10. On the other hand, Mrs. Jasmine Ahmed, learned counsel appearing for the respondents, vehemently denied the contentions and stated that the applicant has admitted his fault and pleaded for leniency before the disciplinary authority. Applicant who has been acquitted on account of hostility of witnesses, as the witnesses have turned hostile and not supported the case of the prosecution his case is covered under the proviso to Rule 12 ibid and as such the punishment imposed is on the basis of the evidence adduced in the enquiry where the procedure has been followed in accordance with the procedural rules and there is no legal infirmity found.

11. It is further stated that the orders passed, both by the disciplinary as well as appellate authorities are reasoned, dealing with the contentions of the applicant and the punishment is commensurate with the misconduct established against applicant.

12. We have carefully considered the rival contentions of the parties and perused the material on record. At the outset, punishment imposed, i.e., forfeiture of approved service with reduction in pay and withholding of increment with future effect cannot be sustained in the light of the decision of the High Court in Shakti Singh's case (supra). The later part of the punishment of withholding of increment and having its future effect is contrary to Rule 8 (b) (2) of the Rules as held by the High court.

13. However, the impugned orders are not sustainable in view of Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980, which is reproduced as under:

"12. Action following judicial acquittal.-- When a police officer has been tried and acquitted by a criminal 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:-

- (a) the criminal charge has failed on technical grounds, or
- (b) in the opinion of the court, or on the Deputy Commissioner of Police the prosecution witnesses have been won over; or

(c) the court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned; or

(d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge; or

(e) additional evidence for departmental proceedings is available."

14. If one has regard to the aforesaid rule, on acquittal from a criminal charge a police officer cannot be punished departmentally on an evidence whether actually led or not but for certain provisos which, *inter alia*, includes and applied in the present case, i.e., clause (b) which stipulates that if the DCP or the court records a finding that the witnesses have been won over the enquiry can be proceeded and punishment can be imposed even on charges on which the police official has been acquitted by the trial court.

15. We have perused the decision of the trial court where one of the complainant was declared hostile and cross examined by the APP but there is no finding of the court that the witnesses have been won over by applicant. Moreover, we find that the trial court has found that the prosecution has not brought even an iota of evidence implicating the accused person and in absence of any evidence on record to connect applicant with the commission of offence charged with or for any other offence his examination has been dispensed with and as the prosecution has miserably failed to prove its case the accused person has been acquitted. No appeal has been preferred against this acquittal by the prosecution.

16. Mere hostility of a witness and his cross examination by the APP would not be indicative or sufficient to arrive at a finding that the witnesses have been won over by the applicant. As per Rule 12 (b) ibid an enquiry is permissible after acquittal on a pre-condition that there should be a finding by the DCP that the witnesses have been won over. Neither the trial nor the DCP has recorded this finding either in the order resuming the proceedings or in the final order passed. As the case of applicant is not covered by any of the provisos contained in Rule 12 ibid, punishment on acquittal in criminal trial cannot be legally sustained.

17. Moreover the case of applicant is on all four covered by the decision in Kamal Singh's case (supra), which, as intimated by the learned counsel Shri Singhal, has been affirmed by the High Court of Delhi and further in the light of the decision of the Apex Court in M. Paul Anthony's case (supra) if the acquittal is on merits, which is the case in the present OA, the findings arrived at by the quasi-judicial authority cannot be sustained.

18. In the result and for the foregoing reasons OA is allowed and the orders passed by the respondents are not legally sustainable. The same are accordingly quashed and set aside. Applicant shall be entitled to all the consequential benefits. These directions shall be complied with within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)
Member (J)
"San."

(b)

V.K. Majotra

(V.K. Majotra)
Member (A)