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**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**O.A. NO.483/2002**

New Delhi this the 13<sup>th</sup> day of December, 2002.

**HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN  
HON'BLE SHRI M.P.SINGH, MEMBER (A)**

Constable Thakur Lal  
S/o Shri Ram Hare  
No.2194/P.C.R. PCR Office  
Sarai Rohilla  
Delhi.

....Applicant

( By Sh.J.P.S.Sirohi Advocate)

-versus-

- (1) Union of India  
Through its Secretary  
Ministry of Home Affairs  
North Block  
New Delhi.
- (2) Commissioner of Police  
Police Headquarters, I.P.Estate  
M.S.O.Building  
New Delhi.
- (3) Additional Commissioner of Police  
Armed Police  
New Police Lines  
Kingsway Camp, Delhi.
- (4) Deputy Commissioner of Police  
Vth Battalion  
D.A.P. Kingsway Camp  
Delhi. .... Respondents

( By Ms.Renu George, Advocate)

**O R D E R**

**Justice V.S.Agarwal:-**

Constable Thakur Lal, the applicant, seeks quashing of the order passed by the Additional Commissioner of Police dated 13.8.1999 and that of

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the Deputy Commissioner of Police dated 19.2.1999. The applicant had been inflicted the punishment of forfeiture of two years approved service temporarily for a period of two years. The pay of the applicant was reduced by two stages with immediate effect for a period of two years. He was not to earn increments during the period of reduction and on the expiry of this period, the reduction was not to have the effect of postponing his future increments. The period of suspension was treated as period not spent on duty for all intent and purposes.

2. The assertions of the department were that the applicant was posted at Police Station Mandir Marg. On 7.8.1995 at about 8.45 PM, one Suraj, an accused in First Information Report No.287 dated 7.8.1995 was arrested. He was found to be stealing a speaker from a Maruti Van. He was beaten by the public personnel resulting in injuries on his person. The said Suraj was sent to Ram Manohar Lohia Hospital. The applicant along with Constable Hari Prakash was detailed at Ram Manohar Lohia Hospital to keep a watch over the said accused Suraj who was in custody. At 6.15 AM on 8.8.1995, Suraj had escaped from the Hospital from the custody of the applicant because the applicant is alleged not to have taken due care and was negligent. He was not alert.

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3. On these broad facts, a departmental enquiry had been initiated. The inquiry officer found the abovesaid assertions made against the applicant to have been so proved. The disciplinary authority agreed with the findings of the inquiry officer and imposed the punishment referred to above. The appeal filed by the applicant was dismissed. Applicant thus, by virtue of the present application prays for setting aside of the abovesaid orders and to treat his suspension period as spent on duty.

4. The application was contested. The averments of the applicant in this regard had been controverted.

5. The learned counsel for the applicant at the outset urged that so far as the First Information Report that had been lodged is concerned, an untraced report had been filed under Section 173 of the Code of Criminal Procedure. Once an untraced report had been filed, no departmental proceedings could have been initiated against the applicant. In support of his claim, the learned counsel relied on Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980, (for short, "the Rules"). On the strength of the same, it was contended that keeping in view that the

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applicant had not been tried, no departmental action could be sustained.

6. We take liberty in reproducing Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980:-

**"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 witnessess 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 proceedings is available."

7. The perusal of the abovequoted rule clearly reveals that the key to the controversy, if any, under Rule 12 of the abovesaid Rules would be if the police officer had been tried and acquitted by a criminal court. In the present case, there has been no trial nor any acquittal. Therefore,

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the applicant by no stretch of imagination in the peculiar facts can take advantage of the same.

8. In that event, our attention was being drawn to sub-rule 3 to Rule 29 of the Rules to contend that the Additional Commissioner of Police had not given the permission that the applicant should be dealt with departmentally and in the absence of the same, the departmental action against the applicant could not have been so initiated. The said rule had been incorporated specifically in cases where a prisoner escapes from police custody. Sub rule (1) to Rule 29 provides that when a prisoner escapes from the police custody, the police officer shall be put under suspension. A searching departmental enquiry shall be held to determine the circumstances connected with the escape of the prisoner and in case it is found that there is no misconduct attached to the police officer, he should be reinstated. Sub-rule (3) to Rule 29 reads as under:-

"(3) If the enquiry establishes negligence or connivance in an escape, thereby creating a presumption that an offence under Section 221, 222 or 223 I.P.C has been committed, the police officer concerned shall be prosecuted in a criminal court, unless the Additional Commissioner of Police on a reference by the Deputy Commissioner of Police decides, for reasons to be recorded in writing that the case shall be dealt with departmentally. If the enquiry establishes a breach of discipline or misconduct not amounting to an offence under any of the sections of the I.P.C.

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mentioned above, the case shall ordinarily be dealt with departmentally. The criminal prosecution under this rule of an upper subordinate shall not be undertaken without the sanction of the Additional Commissioner of Police.

Dismissal or removal from service shall normally follow a judicial conviction, for finding of guilt in a departmental enquiry for negligence resulting in the escape of a prisoner."

It in unambiguous terms recites that if the enquiry establishes negligence or connivance creating a presumption that an offence punishable under Sections 221, 222 and 223 of the Indian Penal Code, the police officer shall be prosecuted in a criminal court unless the Additional Commissioner of Police decides on a reference by the Deputy Commissioner of Police that the delinquent should be dealt with departmentally. But if the enquiry establishes a breach of discipline not amounting to an offence under any of the sections of the Indian Penal Code, the case shall ordinarily be dealt with departmentally. The rule clearly makes a distinction between the 'negligence' and 'discipline' of the police officer concerned. 'Negligence' would be an act in normal circumstances which could be prevented with due care and caution. Breach of discipline would be something which would be unbecoming of a police officer because police force by itself has to be taken to a disciplined force. The summary of allegations against the applicant clearly indicates that it refers to negligence as well as dereliction

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of duty unbecoming of a police officer. Once it mentions about an act of the applicant which is unbecoming of a police officer, it would be a breach of discipline.

9. However, before the second part of sub-rule (3) to Rule 29 of the Rules can come into play, namely, if it is breach of discipline or misconduct, the other part of the same cannot be lost sight of. If there is misconduct or breach of discipline in that event, it must be an act not amounting to an offence punishable under any of the sections of the Indian Penal Code referred to above. It would include Section 223 of the Indian Penal Code also. Section 223 of the Indian Penal Code reads as under:-

"223. Whoever, being a public servant legally bound as such public servant to keep in confinement any person charged with or convicted of any offence or lawfully committed to custody, negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."

10. The necessary ingredients of Section 223 of the Indian Penal Code are that the delinquent should be a public servant which in the present case is not denied. He is legally bound to keep in confinement a person charged with an offence and he must negligently suffer such person to escape.

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Once the charge was of negligently suffering a prisoner to escape, necessarily a offence under Section 223 of the Indian Penal Code on basis of the allegation could well have been drawn. The applicant, therefore, could not have been dealt with departmentally except on a reference by the Deputy Commissioner of Police, the Additional Commissioner of Police records in writing that the applicant should be dealt with departmentally.

11. Our attention has not been drawn to any order of the Additional Commissioner of Police in this regard. This shows that the mandate of sub-rule (3) to Rule 29 had been violated. The applicant, therefore, could not have been dealt with departmentally unless the abovesaid requisite condition was satisfied.

12. Keeping in view the above findings, we are not dwelling into the other aspects of the argument that there was no material on the record in this regard. This is for the reason that in case the department decides to initiate fresh departmental action after due sanction, the above finding recorded by this Tribunal should not be any hindrance for or against any of the parties.

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13. For these reasons, we accept the present application and quash the impugned orders. It is directed that if the department so feels, it may after the appropriate orders as referred to above, initiate the departmental proceedings. No costs.

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(M.P. SINGH)  
MEMBE (A)

*VSA*  
(V. S. AGGARWAL)  
CHAIRMAN

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