

Central Administrative Tribunal
Principal Bench

O.A.No.1346/1996
With
O.A.No.519/2002

New Delhi, this the 6th day of May, 2011

Hon'ble Mr. M.L.Chauhan, Member (J)
Hon'ble Shri Shailendra Pandey, Member (A)

O.A.No.1346/1996:

1. Ex. HC (Driver) Dharambir Singh No.162/ND
s/o Shri Umrao Singh, aged about 35 years
r/o Vilage Meghpur
Distt. Jhunjhunu (Rajasthan)

2. Ex. Const. Jaga Singh No.981/ND
s/o Shri Raj Singh
aged about 27 years
i/o Village & P.O. Gorara
Distt. Sonapat (Haryana).

... Applicants

(By Advocate. Sh. Sachin Chauhan)

Versus

1. Union of India
Through its Secretary
Ministry of Home Affairs
North Block, New Delhi.
2. Commissioner of Police
Police Headquarters
M.S.O.Building
I.P.Estate, New Delhi.
3. Additional Commissioner of Police
(New Delhi Range)

Police Headquarters
M.S.O.Building I.P.Estate. New Delhi.

...Respondents

(By Advocate: Mrs. Avnish Ahlawat)

with

O.A.No.519/2002:

Ex. Constable Unni Krishnan K.
r/o Village – Ramanattokara,
P.O.-Forke College
Ramanattukara
P.S. – Ramanttukara
Distt. Calicut, Kerala.

... Applicant

(By Advocate: Sh. Sachin Chauhan)

versus

1. Union of India
Through its Secretary
Ministry of Home Affairs
North Block, New Delhi.
2. Commissioner of Police
Police Headquarters
M.S.O.Building
I.P.Estate, New Delhi.
3. Additional Commissioner of Police
(New Delhi Range)
Police Headquarters
M.S.O.Building
I.P.Estate, New Delhi.
4. Addl. Dy. Commissioner of Police
New Delhi District
Pt. Street, New Delhi.

...Respondents

(By Advocate: Shri Dharendra Singh for
Ms. Alka Sharma)

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ORDER

By Shailendra Pandey, Member (A):

Both these OAs are before us having been remitted by the High Court of Delhi vide its order dated 01.09.2010 for fresh adjudication.

2. Since both the above OAs, as stated by both the parties, involve the same question of facts and law, they are being disposed of by this common order.

2. When the matter came up for hearing today, the learned counsel for the applicants at the outset has stated that both the above matters are covered by the decision of the Full Bench Judgment of this Tribunal, passed in OA No.2816/2008 (**Sukhdev Singh & Anr. v. Govt. of NCT of Delhi & Others, decided on 18.02.2011**). Accordingly, we proceed to adjudicate the same.

3. The brief facts, as culled from OA No.1346/1996, are that the applicants in both the above OAs were charge sheeted for the same misdemeanor under a common chargesheet and, after holding of a joint inquiry, were dismissed from service. The

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applicant HC Dharamvir Singh and Constable Jagat Singh jointly filed an OA 1346/1996 which was allowed by this Tribunal on 24.04.2000 and Constable Unikrishnan filed a OA No.519/2002 which was allowed by the Tribunal on 05.05.2003. The respondents appealed against the Judgment of this Tribunal vide WP(C) No.35/2001 and WP(C) No.13361/2004 respectively before the High Court of Delhi. The High Court of Delhi disposed of the Writ Petitions by a following common order dated 01.09.2010 as follows:

“21. The two writ petitioners stand disposed of setting aside the order dated 24.4.2000 allowing OA No.1346/1996 as also the order dated 5.5.2003 allowing OA No.519/2002.

22. OA No.1346/1996 and OA No.519/2002 are restored for fresh adjudication by the Tribunal.

23. Needless to stated the Tribunal would be guided by the law that if inadmissible evidence is removed, whether the remainder evidence is sufficient to sustain the charge or not. The Tribunal would look into the testimony of PW-1 to PW-5 and the documentary evidenced relied upon by the Inquiry Officer. Needless to state, other issues raised in the Original Application by the respondents would also be considered.

24. We note that the respondents were in re-inducted into service after the impugned orders were passed and it was made clear to the respondents that the re-

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induction in service would be subject to the orders which may be passed in the writ petitioners.

25. Since we have remanded the matters before the Tribunal, we direct that services of the respondents would not be discontinued and whether or not they have to continue in employment would depend upon the final decision which may be taken by the Tribunal at the remanded stage".

4. In these OAs, which are before us for re-adjudication, the following reliefs have been sought:

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- 1) quash order dated 8.7.1994 whereby the disciplinary authority dismissed the applicants, after completing the joint departmental proceedings initiated against them and also ordered that the period of suspension w.e.f. 27.10.1993 to 8.7.1994 be treated as 'not spent on duty', and direct the respondents to reinstate them in service with all consequential benefits including back wages, continuity of service, seniority in promotion.
 - 2) Set aside order dated 10.10.1994 by which the appeal preferred against the said order of dismissal was rejected.
 - 3) Set aside the findings of the inquiry officer at Annexure A-3 and the order dated 18.07.1995 (Annexure A-3A), rejecting the revision petition filed by the applicant.
 - 4) Set aside order dated 29.10.1993 (Annexure A-4) whereby DE was ordered simultaneously with a criminal prosecution on the same set of facts.
- CP
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The aforementioned reliefs have been sought on various grounds, which find mention at para-5 of the OA. One of the grounds raised namely, ground-G relates to an issue that had been referred to a Full Bench of this Tribunal in OA No.2816/2008, and is extracted below:-

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“G) That after the filing of the challan in the criminal case and in the event the applicants are acquitted from the charge, through arrived at by the authorities will have no significance. The respondents without keeping in mind their own Circular of the year 1985-86, in the present case, continued the proceeding despite registration of the Criminal Case on the same set off facts and thus, acted, against the Rules 11 & 12 of the Delhi Police (Punishment & Appeal) Rules, 1980, and made these rules reabundant, as these Rules apply when the Criminal case are finalized with a view to hold an enquiry.

According to Rule 15 (2) of the Delhi Police (Punishment & Appeal) Rules, 1980, of the preliminary investigation discloses commission of a cognizable offence, then D.E. should be ordered by the approval of the Addl. C.P. as to whether a criminal case is registered or the D.E. should be held.

✓ In the instant case, once it has been decided to register a criminal case against the applicants on the same facts of the case, then the D.E. cannot be ordered and completed against them. The Department is not precluded from dealing departmental after the criminal case is over as the said powers is given under Rule

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12 & 11 of the Delhi Police (Punishment & Appeal) Rules, 1980”

The Full Bench of this Tribunal in OA No.2816/2008 **(Sukhdev Singh & Anr. v. Govt. of NCT of Delhi & Others, decided on 18.02.2011)** has rendered its decision vide its order dated 18.02.2011.

5. Learned counsel for the applicants during arguments on 06.04.2011 requested that the case may be decided keeping in view the decision of the Full Bench of the Tribunal.

6. The respondents, who have filed their counter in the matter, opposed the submissions/grounds raised in the OA and have requested for the dismissal of the OA, and have also referred the Full Bench decision.

7. We have heard the counsel for both the parties and have been through the pleadings on record and have also perused the Full Bench decision of this Tribunal in OA No.2816/2008.

8. In OA No.2816/2008 the Division Bench had made a reference to the Full Bench with regard to the continuation (in the case of the Delhi Police) of departmental and criminal proceedings simultaneously on the same allegations in the

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context of the provisions of the Delhi Police (Punishment & Appeal) Rules. The relevant reference is extracted below:

“51. However, the issue pertaining to the impact of rule 11 and Rule 12 as well as Rule 15 having not been considered either by the Tribunal or by the High Court of Delhi, it is a situation where we do not want any conflict on such an important legal issue and to have an authoritative pronouncement on the subject as to not only the *vires* of Standing Order No.125/2008 but also interpretation of Rule 11, Rule 12 and Rule 15 of the Delhi Police (Punishment & Appeal) Refer this matter before the Hon'ble Chairman on administrative side to constitute a Full Bench to settle this issue as per law.”

The Full Bench re-framed the question to be answered by them as:

1. “Whether in view of the provisions contained in rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980, which specifically stipulates that a police officer shall be proceeded against in a departmental enquiry only in the circumstances mentioned in clauses (a) to (e) of the said rule, would it be permissible to have simultaneous departmental enquiry along with criminal trial; and
2. Whether in view of the provisions contained in rule 12, departmental proceedings could go on but final orders should await the decision of the criminal court.”

and vide its order dated 18.02.2011 held as under:



"9. In view of the discussion made above, we hold that there is no bar, express or implied, in the Rules of 1980 for holding simultaneous criminal and departmental proceedings. However, in case departmental proceedings may culminate into an order of punishment earlier in point of time than that of the verdict in criminal case, and the acquittal is such that departmental proceedings cannot be held for the reasons as mentioned in rule 12, the order of punishment shall be re-visited. The judicial verdict would have precedence over decision in departmental proceedings and the subordinate rank would be restored to his status with consequential reliefs.

10. In view of our findings on the first issue, there would be no need to put on hold the final orders in departmental proceedings awaiting the decision of the criminal court."

(emphasis supplied)

9. Since the applicants have been acquitted in the criminal case, in view of the afore mentioned decision of the Full Bench, it would be necessary for the respondents to first revisit their order keeping in view the decision of the Full Bench and the Rules. Accordingly, we dispose of these OAs, at this stage, by directing the respondents to look into the matter (leaving other grounds open) and pass an order keeping in view the verdict in the criminal case and the provisions of Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 and take a decision in the matter in accordance with the rules.

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10. The OA Nos.1346/1996 and OA No.519/2002 are disposed of in terms of the above directions. No order as to costs.

(Shailendra Pandey)
Member (A)

(M.L.Chauhan)
Member (J)

cc.