

10

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.3279/2002

this the 13th day of August, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.K. Naik, Member(A)

Constable Chander Kant,
No.50/Crime(PIS No.28780252)
S/o Late Ramesh Dutt Sharma,
R/o House No.1/7059, Gali No.5,
Vishnu Marg, Shivaji Park,
Shahdara, Delhi-110 032.Applicant.

(By Advocate: Shri Ravi Verma)

Versus

1. The Commissioner of Police,
Police Headquarters, I.T.O.,
New Delhi.
2. The Additional Commissioner of Police(Crime),
Police Headquarters, I.T.O.,
New Delhi.
3. The Deputy Commissioner of Police,
(Crime & Railways)
Police Headquarters, I.T.O.,
New Delhi.Respondents.

(By Advocate: Mrs. Renu George)

ORDER (ORAL)

The applicant seeks to assail the order passed by the respondents reducing him from the rank of Head Constable to that of a Constable and treating the period from 28.3.1992 to 16.4.2002 as not spent on duty.

2. The relevant facts are that the departmental proceedings had been initiated against the applicant alleging that one Shri Govind Singh, who was working as Clerk-cum-Cashier in Syndicate Bank had boarded a private bus Route No.403 from

MS Ag

AK

-2-

Income Tax Office so as to reach Red Fort and then to Chandni Chowk. While he was travelling in the bus, one Manoj Kumar, Constable was also travelling in the said bus. One person was standing just behind him in the bus. Before leaving the bus, Shri Govind Singh checked the front pocket of his shirt and found Rs.400/-, his identity card and Railway pass missing from his pocket. Constable Manoj Kumar had caught a person who was standing in the bus behind the complainant referred to above and was running from the back door of the bus. His identity was later verified as Head Constable Chander Kant (applicant).

3. Constable Manoj Kumar had informed the complainant that the applicant had taken away the money and some papers from the pocket of the complainant. The same were recovered from the person of the applicant. He was taken to Police Station at Red Fort where the applicant was arrested and a case with respect to offences punishable under Section 379/411 of the Indian Penal Code was registered.

4. The applicant was dismissed invoking the provisions of Article 311(2)(b) of the Constitution of India by an order of 2.4.1992. He preferred an appeal which was also dismissed. The applicant preferred OA No.746/1993 in this Tribunal. The said

18 Ag

order was quashed on 28.3.2001. The applicant was thereupon reinstated but without back-wages. This Tribunal had given an opportunity to the department to institute fresh regular enquiry against the applicant.

5. In the meanwhile, in the criminal trial which was pending against the applicant, he was acquitted by the Metropolitan Magistrate. Therein Constable Manoj Kumar as well as the complainant had not supported the case of the prosecution.

6. In terms of Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 (for short, "the Rules"), it was concluded that the complainant and Constable Manoj Kumar had been won over by the applicant. Despite acquittal, therefore, the departmental enquiry was initiated against the applicant. The inquiry officer had recorded that the charge as against the applicant stood proved. The disciplinary authority acting upon it had imposed the penalty of reducing the applicant in rank, referred to above and his appeal has since been dismissed as already pointed above.

7. The application has been contested.

8. The learned counsel for the applicant at the outset had contended that once the applicant had

18 Ag e



been acquitted by the court of competent jurisdiction, the department in terms of Rule 12 of the Rules was not competent to initiate departmental proceedings against him.

9. To appreciate the said argument, we take liberty in reproducing Rule 12 of the Rules which reads 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."

Reading of the abovesaid Rule clearly gives the indication that subject to five exceptions, once a

12

-5-

police officer has been tried and acquitted by the criminal court, he should not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case. However, one of the five exceptions referred to above is as to if in the opinion of the court or the Deputy Commissioner of Police, the prosecution witnesses have been won over. It is Rule 12(b) of the Rules which has been pressed into service by the respondent department to initiate the proceedings against the applicant.

10. In the present case before us, the Deputy Commissioner of Police, Crime and Railways had recorded the following order:-

"The case has been examined under Rule-12 of Delhi Police (Punishment & Appeal) Rules-1980. Though, the property of the case was recovered from the accused HC Chander Kant, No.1/Crime as per the version of the complainant but during trial the complainant turned hostile from his earlier version given in FIR, PW Manoj Kumar also turned hostile from his earlier statement that he saw the accused committing theft.

From the above discussion, it is concluded that the complainant and PW Manoj Kumar have been won over by the accused HC Chander Kant, No.1/Crime and hence they turned hostile.

The above act on the part of HC Chander Kant, No. 1/Crime amounts to grave misconduct & unbecoming of a Police Officer which renders him liable for departmental action under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980.

18 Aug



-6-

Therefore, I M.S. Upadhye, Dy. Commissioner of Police, Crime & Railways, Delhi hereby order that HC Chander Kant, No.1/Crime be dealt with departmentally and the departmental enquiry will be conducted by Insp. Ramesh Singh I/C B.D.S., who will conduct the DE proceedings on day to day basis and submit his findings within 3 months. He will also submit weekly progress report on each Friday."

11. The learned counsel for the applicant urged that the said opinion is without any basis and necessarily is illegal. We at the outset deem it necessary to mention that judicial review of such an opinion will not be permissible but it would only be interfered if the opinion formulated is without any basis. There is no material on the record to show that certain extraneous factors had been taken into consideration. This Tribunal like in all other matters of judicial review will not sit as a court of appeal over the opinion that has been so formulated. In the present case before us, we have gone through the judgement passed by the learned Metropolitan Magistrate. The learned Metropolitan Magistrate has recorded that the witnesses had turned hostile or in other words had resiled from their earlier statements. The matter of the fact cannot be ignored that the complainant had earlier made a statement which was the basis of the First Information Report supported by Constable Manoj Kumar. Both had resiled from their statements so recorded and one of the statements as already mentioned above of the complainant was signed by

18 Ag

(S)

-7-

him. In such an event to formulate an opinion that they had been won over by the applicant cannot be termed to be erroneous. In that view of the matter, the said argument must fail.

12. Once it is concluded that the witnesses had been won over by the applicant, Rule 12(b) of the Rules would come into play. Therefore, the very basis of the argument of the learned counsel loses its significance.

13. In that event, it was urged that there was no evidence on the record before the inquiry officer and also subsequently for consideration before the disciplinary authority to hold that the charge stood proved. Even on that count, the contention necessarily has to be rejected. Firstly the applicant cannot use the findings of the learned Metropolitan Magistrate because the acquittal in a criminal trial would be when it is not proved beyond reasonable doubt. In a departmental enquiry on propensity of probabilities, such findings can be arrived at if they are supported by some material on the record. In the present case, we have read the statements recorded by the inquiry officer particularly those of Constable Manoj Kumar and Shri Govind Singh. It clearly establishes that despite variations that were admitted from the earlier

Ag _____



-8-

recorded statements, it was clear that pocket of Shri Govind Singh had been picked. On frisking the pocket of the applicant, an amount of Rs.400/- and Railway pass were recovered which were taken out by him as evidence. The matter was reported. Taking the evidence on the record, the inquiry officer rightly came to the conclusion that the charge had been proved. We find no reason to conclude that it was a matter which was not based on any evidence.

14. Resultantly, the present application being without merit must fail and is dismissed. No costs.
Announced.

Naik

(S.K.Naik)
Member (A)

/sns/

Aggarwal

(V.S. Aggarwal)
Chairman