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Central Administrative Tribunal, Principal Bench

Original Application No.2745 of 2001

New Delhi, this the 23rd day of September, 2002

Hon'ble Mr.Justice V.S.Aggarwal,Chairman
Hon'ble Mr.M.P. Singh,Member(A)

Constable Naresh Singh No.621/N
presently posted at P.S. Timar Pur
S/o Shri Jalla Ram, aged 37 years
R/o Q.No.220, Police Colony,Shalimar Bagh
Delhi Applicant

(By Advocate: Shri Rajiv Kumar)

Versus

- 1.Union of India
through its Secretary
Ministry of Home Affairs,
North Block,New Delhi
- 2.Commissioner of Police
Delhi
Police Headquarters, I.P.Estate,
M.S.O.Building,New Delhi.
- 3.Addl.Commissioner of Police
S&T
Police Headquarters, I.P.Estate,
M.S.O.Building,New Delhi.
- 4.Dy.Commissioner of Police,
Security,
Security Line,Chanakya Puri,
New Delhi Respondents

(By Advocate : Shri Ajay Gupta)

O R D E R (ORAL)

By Justice V.S.Aggarwal,Chairman

Applicant, by virtue of the present application, seeks setting aside of the punishment order by virtue of which he has been held guilty of misconduct and awarded punishment of forfeiture of two years approved service permanently. The pay of the applicant has been reduced by two stages from Rs.1030/- to Rs.990/- p.m. in his pay scale and he was not to earn any increment of pay during the period of the above said order. On the expiry of this period, the reduction will have the effect of postponing



his future increments of pay.

2. The applicant is a Constable in Delhi Police. He is alleged to have fired one bullet with the result that Constable Bansi Lal of J&K Police was injured. He had been sent for trial for the offence punishable under Section 338 of Indian Penal Code. The learned Metropolitan Magistrate vide the judgement pronounced on 4.5.99, has acquitted the applicant.

3. However in the departmental proceedings that had been initiated against the applicant, he has been found responsible for mishandling the rifle and as a result of which, the above said punishment has been awarded. The appeal of the applicant has also been dismissed.

4. Learned counsel for the applicant has urged that under Rule 12 of Delhi Police (Punishment & Appeal) Rules, 1980, once the applicant has been acquitted by the learned Metropolitan Magistrate, he could not have been dealt with departmentally. The said rule is being reproduced below for the sake of facility:

"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

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- (c) the court has held in its judgement 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."

5. Perusal of Rule 12 of Delhi Police (Punishment & Appeal) Rules, 1980 clearly reveals that though as a general rule it has been provided that when a person is acquitted by a criminal court, he should not be dealt with departmentally on the same charge or on a different charge upon the evidence cited in the criminal case but certain exceptions have been drawn which have been referred to above.

6. In the present case, it is obvious as is patent from the perusal of the judgement pronounced by the learned Metropolitan Magistrate that the witnesses of the prosecution were not supporting the prosecution version. This led to the acquittal of the applicant.

7. It goes without saying that in a departmental proceeding, it is the preponderance of probabilities which would prevail while in a criminal trial, the prosecution has to prove its case beyond all reasonable doubts. Once the witnesses had been patently won over and the charge against the applicant was not of rash and negligent manner in which the bullet was fired but for mishandling the same, it is clear that even the charges as against the applicant in the departmental proceedings and in the criminal trial,

18 Ag

were different. Clause 'B' of Rule 12 of Delhi Police (Punishment & Appeal) Rules, 1980 would clearly come into play and we have no hesitation, therefore, in coming to the conclusion in the facts of the present case that departmental proceedings against the applicant were not barred.

8. For these reasons, the application being without merit must fail and resultantly is dismissed.

(M.P. Singh)
Member(A)

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(V.S. Aggarwal)
Chairman