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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.51/2001

New Delhi, this 25th day of October, 2001

Hon'ble Shri M.P. Singh, Member(A)  
Hon'ble Shri Shanker Raju, Member(J)

Ex. Constable Stender Kumar, No.17780/DAP  
Vill. & PO Sinoli, PS Chaprauli  
Distt. Bagpat, Uttar Pradesh .. Applicant

(By Shri Sachin Chauhan, Advocate)

versus

Union of India, through

1. Secretary  
Ministry of Home Affairs  
North Block, New Delhi
2. Addl. Commissioner of Police  
Armed Police  
New Police LInes, Kingsway Camp  
Delhi
3. Dy. Commissioner of Police  
2nd Bn Kingsway Camp  
New Police LInes, Delhi .. Respondents

(By Shri Rajan Sharma, Advocate)

ORDER(oral)

Shri Shanker Raju

Heard the learned counsel for the parties. The applicant is an ex-contable of Delhi Police and has been dismissed from service under Article 31(2)(b) of the Constitution of India, dispensing with the enquiry having found not ~~applicable~~ <sup>practicable</sup> on account of his involvement in a criminal case, which was framed against him under section 395 IPC and FIR No.42/92 u/s 25.54/59 Arms Act. The enquiry has been dispensed with on the grounds that all the main and material witnesses are natives of UP state and it will be difficult to procure their presence for expeditious DE proceedings, the applicant having been involved in criminal activity his continuance in police force is hazardous to the public and that it is not uncommon in such cases to find the witnesses turning hostile due to fear of reprisals.

2. The applicant was tried in a criminal case and by an order dated 15.9.2000 passed by the Addl. Sessions Judge, Muzaffarnagar, as there was no testimony from the prosecution witnesses to corroborate any piece of evidence of the charge alleged against the applicant, he along with others has been honourably acquitted from the charges u/s 395 IPC and u/s 25 of Arms Act. Applicant preferred an appeal to the Addl. Commissioner of Police by attaching the copy of the judgement dated 15.9.2000 and by an order dated 17.11.2000, the appeal of the applicant has been rejected as time-barred.

3. Learned counsel of the applicant has placed reliance on the judgement of this court dated 4.2.2000 in OA No.2427/1998 in the case of Ex. Constable Jagdish Chand Vs. UOI. In that case, earlier the applicant therein, having been involved in a criminal case and was dismissed from service, questioned the order of dismissal in OA 2483/93 and that OA was dismissed. Against the order of dismissal, the applicant approached the Supreme Court by way of an SLP which was also dismissed by order dated 23.8.96. Subsequently on acquittal from criminal case he approached this Court and this Court has taken a view that in view of the provisions of Rule 12 of Delhi Police Act, 1978, a police official cannot be punished if he is honourably acquitted in the criminal case and the order of dismissal has been set aside. In this view of the matter, it is stated that the decision of the respondents in rejecting the appeal is not justified and the appellate authority should ~~not~~ have taken action in

accordance with Rule 12 of Delhi Police (Punishment & Appeal) Rules, 1980. It is also stated that the decision of the disciplinary authority do dispense with the enquiry is malafide and has been done on extraneous ground. According to him if on the same evidence in the criminal case witnesses have been examined, it cannot be observed that the witnesses would turn hostile due to fear of reprisals.

4. On the other hand, ~~the learned counsel for the~~ respondents contended that action by the respondents under Article 311 (2)(b) is legal and in accordance with the Rules. As the applicant had not filed his appeal challenging the order dated 24.9.2000 within one month, as required under Delhi Police Act, 1978, his appeal was rightly rejected as time barred. It is further contended that the acquittal of the applicant in the criminal case was not an honourable one and also not on merits and all the PWs did not identify the applicant and have been declared ~~turned~~ hostile by the court of law. In this view of the matter, it is contended that the punishment order has not been passed on extraneous consideration.

5. We find that the applicant has been acquitted from the charges without giving him benefit of doubt and on <sup>that</sup> basis<sup>w</sup> there is no evidence to support the prosecution case. The Addl. Sessions Judge has acquitted the applicant from all the charges. The appellate authority has not taken into consideration this fact in the appeal filed by the applicant. As per the provisions of Rule 12 of Delhi Police (Punishment &

Appeal) Rules, no punishment can be sustained if a police official is acquitted from the charges in a criminal case on the same set of charges. Further the disciplinary authority dispensed with the enquiry on the ground that witnesses are not likely to come forward as the same witnesses appeared ~~before~~ <sup>in</sup> the criminal trial. This observation of the disciplinary authority is not well founded. Apart from this, provisions of article 311(2)(b) should not be resorted to in case where the official is involved in a criminal case. In this view of the matter we find that enquiry has been dispensed with lightly without any valid reason. In the circumstances we partly allow the OA and set aside the order dated 17.11.2000 passed by the appellate authority and remand the case back to the Addl. Commissioner of Police for passing a detailed, reasoned and speaking order without taking into consideration the limitation ~~and~~ <sup>in</sup> <sup>in</sup> having regard to the observations made bade above. This order shall be passed within two months from the of receipt of this order. If the applicant is still aggrieved by the order to be passed by the appellate authority, he is at liberty to approach this Tribunal in accordance with law. No costs.

*S. Raju*

(Shanker Raju)  
Member(J)

*M.P. Singh*

(M.P. Singh)  
Member(A)

/gtv/