

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.978/2001

New Delhi, this 6th February, 2002

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

Ex. Constable Hawa Singh, D No.2126/PCR
D-131, MCD Colony
New Usmanpur, Delhi

Applicant

(By Shri Sachin Chauhan, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Home Affairs
North Block, New Delhi
2. Commissioner of Police
Police Hqrs., I.P. Estate,
M.S.O. Building, New Delhi.
3. Addl. Commissioner of Police.
Police Control Room & Communication,
Police Hqrs., I.P. Estate,
M.S.O. Building, New Delhi.
4. Dy. Commissioner of Police/Estt
Police Control Room
Sarai Rohilla, Delhi

Respondents

(By Shri Ajay Gupta, Advocate)

ORDER(oral)

By Shri M.P. Singh, Member(A) :

In this OA, the applicant has challenged the order dated 5.11.1998 issued by the respondents whereby he has been dismissed from service and also the order dated 14.9.1999 issued by Respondent No.3 whereby the appeal preferred by the applicant against the order of dismissal is rejected.

2. Brief facts of the case are that the applicant was appointed as Constable in Delhi Police. While posted in Police Control Room, the applicant was implicated in a criminal case vide FIR No.273 dated 22.7.1988 under

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Section 393/34 IPC and was placed under suspension w.e.f. 23.7.1988. A departmental inquiry was ordered against him in the identical charge of criminal case. Vide order dated 6.8.1990, the departmental inquiry was kept in abeyance till the final verdict of the criminal case. On 21.9.1992, the applicant was dismissed from service without holding the inquiry under Section 311(2)(b) of the Constitution of India. The applicant preferred an appeal against the order of the disciplinary authority. Vide order dated 14.5.1997, the appellate authority quashed and set aside the aforesaid order of the disciplinary authority and the applicant was ordered to be dealt departmentally. Vide order dated 20.7.1998, the departmental inquiry was reopened. He again made a request to the disciplinary authority to keep the inquiry findings in abeyance as the applicant could have disclosed his defence which could prejudice him in the criminal trial. The inquiry officer concluded the inquiry and the charge was proved against the applicant. The applicant submitted his reply to the findings of the E.O.. The disciplinary authority after considering the findings of the E.O. and the reply of the applicant, imposed the extreme punishment of dismissal from service upon the applicant. He preferred a statutory appeal against the order of dismissal, which was rejected by the appellate authority.

3. Thereafter he preferred a revision petition on 20.10.1999. The applicant has been acquitted of the criminal charge vide order dated 21.11.1999. The applicant made a specific request to the Commissioner of

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Police regarding fact of his acquittal from the criminal charge. Since then his revision petition has not yet been disposed of. Aggrieved by this, he has filed the present OA seeking a direction to quash and set aside the aforesaid orders of the disciplinary authority as well as appellate authority and also direct the respondents to re-instate him in service w.e.f.5.11.1998 with all consequential benefits including pay and allowances, seniority and promotion and also to treat his period of suspension from 23.7.1998 to 5.11.1998 as spent of duty for all purposes.

4. Respondents in their reply have stated that the departmental proceedings were initiated against the applicant. He was served summary of allegation, list of witnesses, list of relied upon documents etc. In spite of furnishing the list of defence witnesses, the applicant submitted an application on 16.5.1990 wherein it is stated that since the criminal case against him is pending trial in the Court and the list of defence witnesses are still to be examined, disclosing the names of defence witnesses at this stage will jeopardise his criminal case and requested to withhold the departmental proceedings till the decision of the said criminal case. The request of the applicant was turned down. The inquiry officer assessed the statement of PWs and findings on file and submitted his findings and concluded therein that the charge against the applicant was proved beyond any reasonable doubt. Later on the departmental inquiry was kept in abeyance till the final verdict of the court in criminal case. The departmental inquiry was

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reopened vide order dated 20.7.1998 for a decision in view of the instructions from DCP Vigilance. Tentatively agreeing with the findings of the inquiry officer, a copy of the same was served upon the applicant on 19.8.1998. The applicant made his representation against the findings of the inquiry officer. The disciplinary authority after taking into consideration the findings of the inquiry officer, representation of the applicant and other evidence available on departmental inquiry proceedings imposed the penalty of dismissal from service upon the applicant. He preferred an appeal which was rejected by the appellate authority. He filed the revision petition to the Commissioner of Police. As per PHQ's circular dated 28.5.2001, ~~since~~ the Commissioner of Police, Delhi has no longer revisionary power and therefore, the same has not been decided. In view of this, the applicant is not entitled to any relief as claimed by him.

5. Heard learned counsel for rival contesting parties and pursed the material placed on record.

6. During the course of the argument, learned counsel for the applicant stated that the applicant has been acquitted by the court in criminal case and the criminal court has held that the prosecution against the applicant is not sustainable beyond reasonable doubt as required by AIR 1983 SC 446 and accordingly the accused persons are held not guilty and acquitted of the charged offence u/s 392/34 IPC. In view of the fact that the applicant has been acquitted from the charge by the criminal court, he

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should not be punished for the same charge departmentally and no penalty should be imposed for the same. He also drew our attention to the order dated 20.1.2000 passed by the Commissioner of Police wherein one Shri Ram Rattan, who was also prosecuted in a criminal case along with the applicant for the same offence (FIR 273/88), was exonerated from the charge by the criminal court, the departmental inquiry was dropped. Thus the applicant has been discriminated by the respondents by imposing penalty of dismissal from service by adopting a differential treatment. He further stated that Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 provides that when a police officer has been tried and acquitted by a criminal court, he shall not be punished departmentally on the same charge. In view of the legal position, the orders passed by the disciplinary authority as well as the appellate authority are liable to be quashed.

7. On the other hand, learned counsel for the respondents stated that although the Ram Rattan was also tried in a criminal case under the same FIR No.273/88 but the disciplinary authority of Ram Rattan is different. They have been proceeded departmentally separately and the orders have been passed by them separately and independently.

8. On the perusal of records, we find that the applicant has been acquitted alongwith Ram Rattan of the same criminal charge levelled against them under Section 392/34 IPC by the Metropolitan Magistrate, Delhi vide its order dated 2.11.1999. We also find that after acquittal

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of Ram Rattan from the criminal case filed against him under FIR No.273/88, the disciplinary proceedings have been dropped by the disciplinary authority in the light of the Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980, whereas in the case of the applicant the extreme penalty of dismissal from service has been imposed by the respondents. Thus the respondents have discriminated the applicant by treating him differently. Therefore, in our considered opinion, the orders passed by the disciplinary authority and the appellate authority are liable to be quashed and set aside.

9. In the result, the present OA is allowed and the orders passed by the disciplinary authority and the appellate authority are quashed and set aside. The respondents are directed to re-instate the applicant in service with all consequential benefits as per Rules and Instructions within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

M.P. Singh
(M.P. Singh)
Member (A)

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