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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1471/98

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

New Delhi, this the 26th day of May, 2000

Ex. Const. Harvir Singh
No.9748/DAP
s/o Shri Dharam Vir
r/o House No.73, C.P.O.Block
Madan Gir
New Delhi - 110 062.

... Applicant

(By Shri Ajesh Luthra, Advocate)

Vs.

1. Union of India through
Secretary
Ministry of Home Affairs
North Block
New Delhi - 110 001.

2. The Commissioner of Police
MSO Building, Police Head Quarters
I.P.Estate
New Delhi.

3. The Addl. Commisioner of Police
(Armed Police & Training)
Police Headquarters
M.S.O. Building, I.P.Estate
New Delhi.

4. The Deputy Commissioner of Police
VIII BN. DAP.
Malviya Nagar
New Delhi.

... Respondents

(By Shri Ajay Gupta, Advocate)

O R D E R (Oral)

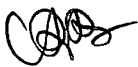
By Reddy. J.

The applicant who was Constable in Delhi Police was alleged to have been involved in committing series of thefts of cars. Several FIRs were registered against him under Section 379 and 411 IPC and it was, prima-facie, found that he was liable for the offences. Some stolen cars were also said to have been recovered from him. He was alleged to have been in intimate relationship with criminals. On the ground that he ~~had~~^{has} turned out to be a criminal and

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considering all the facts and circumstances, the Deputy Commissioner of Police, VIIIth Battalion, DAP, New Delhi dismissed the applicant from service under proviso (2) b of Article 311 of the Constitution, by the impugned order dated 16.4.1993. He filed an appeal against the order on 11.12/2.1994. Pending the appeal, he filed OA 786/94 before the Principal Bench of the Tribunal which was disposed of directing that the appeal ~~to~~ be disposed of within a time frame. The appeal was accordingly disposed of by order dated 11.7.1994 rejecting the same. He thereafter filed another OA No.1756/94 questioning the order under appeal and it was dismissed by order dated 6.1.1995.

2. Several of the cases filed against the applicant, subsequently came up for trial before the criminal court of the Metropolitan Magistrate, Delhi, who has discharged the applicant in FIR No.31/93, 58/93 and 67/93 which were registered under Section 379 IPC. In FIR 139/93 which was registered under Section 411 IPC read with 34 IPC, the applicant was acquitted by the Metropolitan Magistrate by Judgment dated 2.9.1997. Again in FIR No.26 registered under Sections 379 and 411 IPC, he was acquitted by the Judgment dated 22.5.1997. Thus, all the cases registered against him resulted either in discharge or acquittal. There upon he filed an application before the Additional Commissioner of Police on 14.10.1997 narrating the facts of his discharge and acquittal and requesting to set-aside the order of dismissal and reinstate him in service. The application was however rejected on 12.6.1998 which is under challenge in this OA.



3. The learned counsel for the applicant submits that as the allegations levelled against the applicant were not proved on his acquittal/discharge, the order of dismissal cannot still be sustained. The learned counsel relies upon the Judgment of the Tribunal in two cases on identical question.

4. The learned counsel for the respondents, however, raised a preliminary objection as to the maintainability of the OA as it was premature. It is true that the application was filed on 12.6.1998 and the OA was in October, 1998, without giving at least six months for its disposal. This objection would have been relevant and material if it had been taken at the time of admission or immediately after filing the counter affidavit and if the OA was to be taken up for consideration on that preliminary objection. Now that it is more than one and half years since the impugned order was passed, it ^{will} ~~not~~ be appropriate or in the interests of justice to reject it on the ground of not exhausting all the alternative remedies. In the circumstances, we do not find any substance in the preliminary objection.

5. We have given careful consideration to the point raised and we do see sufficient force in it. The only allegation that was made the basis for his dismissal from service was that he was habitually involved in committing thefts of the cars and hence it was not desirable to continue him in service. But these allegations cannot still remain valid and do not survive after the applicant has been

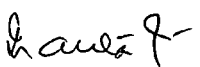


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discharged/acquitted by the criminal court. All the cases pending ^{against} him in the FIRs mentioned in the impugned order were enquired into by the criminal court and he was discharged or acquitted in all of them. The question that he was honourably acquitted or technically acquitted is not material for the purpose of deciding the question. The fact, however, remains that the charges levelled were wiped out. It is not seriously disputed that the applicant could not be proceeded afresh by the criminal court on the same allegations under Section 379 or 411 IPC. Thus, we find that the subtraction of the allegations or suspicion against the applicant disappeared. We are supported in our view in the judgments in Ex. Constable Jagdish Chand Vs. Union of India & Others, OA No.2427/98, decided on 4.2.2000 (CAT, Principal Bench) and Jai Karan & Another Vs. Additional Commissioner of Police & Others, OA No.125/96, decided on 17.7.1996 of the co-ordinate Bench. The impugned order is, therefore, liable to be set-aside.

6. The OA is accordingly allowed. The impugned order is set aside. The respondents are directed to reinstate the applicant within a period of three months from the date of receipt of a copy of this order. We do not however see any merit in granting the consequential benefits. The prayer for consequential benefits is, therefore, rejected.


(SMT. SHANTA SHASTRY)
MEMBER(A)


(V. RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

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