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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1931/98
M.A.No.1861/2000

HON'BLE SHRI V.K.MAJOTRA, MEMBER(A)
HON'BLE SHRI SHANKER RAJU, MEMBER(J)

New Delhi, this the 7th day of March, 2001

Shri Inderjit (Ex. Constable) (383/L)
s/o Shri Lakhi Ram
r/o H.No.6, Village Malikpur
PS Nazafergarh, Delhi. ... Applicant

through LRs

1. Sunita Devi
2. Naveen Kumar
3. Sachin Kumar ... Legal Representatives
(By Shri Shyam Babu, Advocate)

Vs.

1. Commissioner of Police
Police Headquarters
I.P.Estate
New Delhi.
2. Deputy Commissioner of Police
Provisioning & Lines
Rajpur Road
Delhi. ... Respondents
(By Shri R.K.Singh, proxy of Shri A.K.Chopra,
Advocate with Const. Mahabir Singh, Departmental
Representative).

O R D E R (Oral)

Hon'ble Shri Shanker Raju, M(J):

Heard the learned counsel of the applicant.
The respondents' counsel is not present even on second
call but Const. Mahabir Singh, Departmental
Representative is present. Since this matter pertains
to 1998, we proceed to dispose of the same under Rule
16 of the Central Administrative Tribunal (Procedure)
Rules, 1987.

2. The applicant, who was a Constable in Delhi Police being aggrieved by an order passed by the Deputy Commissioner of Police dated 30.9.1987 dismissing the applicant from the force with immediate effect. Thereafter on his being acquitted from a criminal case which was filed vide FIR No.18/86 under Section 7 of the Essential Services Maintenance Act, 1947 (ESMA for short), the applicant preferred a representation to the Commissioner of Police, inter-alia, stating that since he had already been acquitted from the Criminal Case, under Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980, he cannot be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, wherether 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. The representation filed by the applicant was rejected by the Commissioner of Police vide order dated

24.6.1998 stating that the same is time barred. The afore stated orders have been challenged in the present OA.

3. During the pendency of the OA, the applicant died on 18.4.2000. Thereafter, the applicant's counsel filed MA 1861/2000 for bringing the Legal Representatives (LRs for short) of the deceased applicant, namely, Sunita Devi (Wife), Naveen Kumar (1st Son) and Shri Sachin Kumar (2nd Son) on record. The respondents had filed reply to the MA stating that as per the service record of the deceased Constable the names of the LRs to be brought on record does not figure therein. The respondents in their reply have not specifically denied the existence of LRs mentioned by the applicant's counsel. In view of the fact that there is no specific denial of the averment of the applicant regarding the statement given by him that the LRs are wife and two sons of the deceased applicant, we allow MA 1861/2000 and the same would be subjected to the outcome of this OA and further verification to be conducted by the respondents at the appropriate stage.

4. The applicant, a Constable, had proceeded on three days casual leave with permission to avail two holidays w.e.f. 10.9.1985, a departmental enquiry had been ordered against him on the allegation that the applicant had failed to resume the duties despite

various communications sent by the Department. A summary of allegation was issued to the applicant on 8.10.1986. Simultaneously the respondents vide FIR No.18/86 under Section 7 of the ESMA as well as under Rule 122 (B) of the Delhi Police Act, 1978 proceeded against applicant in a criminal case on the allegations of his remaining unauthorised absent from duty without permission. In the departmental enquiry the applicant produced the medical record as well as the communication sent by him for extension of leave. It was also stated in the defence that the order whereby the request for extension of leave had been denied, had never been communicated to him. On the basis of the evidence brought on the departmental enquiry the applicant had been held guilty of the charge by the enquiry officer in his findings dated 17.3.1987. In the concluding part of the finding the enquiry officer had taken note of pendency of charge against the applicant under Section 7 of the ESMA. The disciplinary authority on the basis of the finding of the enquiry officer without taking note of the pendency of the criminal case on identical charge, confirmed the punishment proposed to the applicant in the show cause notice and dismissed him from force with immediate effect. The applicant did not prefer an appeal against the order of punishment and awaited the out come of the criminal case filed against him. Vide an order dated 24.3.1996, the trial court acquitted the applicant from the charges on the ground

of absence of complete and cogent evidence, and the available evidence being full of loopholes indicating arbitrary, prejudicial and discriminatory use of power by the authorities concerned. In this judgment, it has been observed that the communication regarding refusal by the respondents to the request of the applicant for extension of leave had never been communicated to the accused therein as no Regd. A.D. card was mentioned in the testimony of witness as a proof of communication during the course of the criminal trial. It was further observed in the order passed by the trial court that in a genuine case one should have reasonable consideration and as the provisions of Section 5 of ESMA are not applicable in that situation the applicant was acquitted from the charges. The applicant thereafter preferred a representation to the Commissioner of Police on 11.11.1997 praying for his reinstatement in service with all consequential benefits taking resort to Rule 12 of Delhi Police Rules ibid and contending that as on the identical allegations he had already been acquitted from charges, the departmental punishment would not be sustainable. The representation of the applicant had not been considered on merits and rather rejected as time barred.

5. We have heard the learned counsel for the applicant, Shri Shyam Babu and perused the reply of the respondents in the absence of their counsel. The

contention of the applicant is that once he had been honourably acquitted from the charge based on the identical allegations, which had been alleged against him in the departmental enquiry, the departmental punishment cannot be legally sustainable in view of provisions of Rule 12 of the Delhi Police Rules *ibid*. It is contended that his case is not covered in any of the proviso given under these rules as the acquittal was absolutely on merits and was not on technical grounds. It is also contended that the evidence cited in both the proceedings was common and as number of witnesses had failed to turn up in the criminal trial, the trial court on the available evidence came to the conclusion that the prosecution had failed to prove the charge. In this back ground, it is stated that a police officer cannot be punished in a departmental enquiry if he has been acquitted from the criminal charge on the evidence cited therein, whether actually led or not. It is contended that the evidence cited in the criminal case if witnesses had failed to turn up the same would not be a ground to bring the case within the ambit of the proviso under Rule 12 *ibid*. To support his contention the applicant has Rhine upon the case of Apex Court in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr., JT 1999(2) SC 456 wherein the following observations had been made by the Apex Court:

"There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the

criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles therefrom.' The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex-parte departmental proceedings, to stand."

6. The learned counsel for the applicant further relies on the ratio of Constitutional Bench of Hon'ble Apex Court in State of Madhya Pradesh Vs. Syed Qamarali, 1967 SLR SC 228 wherein the Apex Court had observed that once there is an acquittal, of the petitioner in a criminal trial, his departmental punishment on the same ground would not be legally sustainable. The rule relied upon was akin to Rule 12 ibid.

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7. The respondents, on the other hand, refuted the contention of the applicant and stated that as the in this Judgement it has observed that the Regd. A.D. had not been validly proved by the prosecution, the acquittal of the applicant on the ground would be construed as acquittal on technical grounds. It is further stated that the acquittal is also on the basis that the prosecution witnesses have failed to turn up during the trial and had pose witnesses been produced the fate of the trial would have been different. In this back ground it is contended that the acquittal of the applicant was not on merits but on technical grounds provided in Rule 12 as such punishment was legal. We have carefully considered this plea of the applicant and come to the conclusion that acquittal of the applicant is not on technical ground but on merit. We have perused the order passed by the trial court on 24.8.1996. Admittedly the applicant in the criminal case had been charged for violating Section 7 of ESMA, 1947 as despite the directions of the superior authorities the applicant failed to join the duties the trial court on the basis of the available evidence produced by the prosecution, categorically observed that the applicant had submitted medical report from a Government hospital and rejection of his request which was not proved to be communicated to the applicant is malafide. It was further observed/held in this order that Section 5 of the ESMA is not applicaple to a

police officer and this applies in the eventuality of a 'strike' the same was not made applicable. Apart from, as regards Section 122 of the Delhi Police Act, 1978 for which the applicant has been tried in the criminal case, the Trial Court observed that as the absence was not proved to be either unauthorised or without any justified reasons, the same would not apply in the case of the applicant. On this basis, the trial court concluded that in the absence of complete and cogent evidence and loopholes in the evidence recorded there is an indication of arbitrariness and prejudice caused to the applicant by discriminatory use of power by the authorities concerned. In our considered view the judgment rendered by the trial court is on merits and is neither on technical ground nor covered under any provisos of Section 12 ibid. As far as the observations of the trial court regarding non production of the proof of communication of request to the applicant for extension of leave, the same was rightly held as despite opportunities and availability of the record the respondents had failed to produce the relevant record. In our considered opinion if the witnesses are cited in the criminal trial and were not produced, then the punishment cannot be sustained on the ground that these witnesses if produced they would have changed the fate of the case. Rule 12 provides that there cannot be departmental punishment if a police officer acquitted from the charge on the basis

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of the evidence cited in the criminal court, whether actually led or not. In the event a witness though mentioned in the charge sheet issued under Section 176 CrPC is not examined in the enquiry, or his evidence is not led the departmental authorities are precluded from treating the applicant's acquittal as technical on the ground of non-examination of the prosecution witnesses. In the instant case admittedly, the witnesses cited in the criminal trial as well as the departmental proceedings are common.

7. There is yet another aspect in this case is Section 12 of the Delhi Police Act, provides the penalty of a police officer in the event if he commits a misconduct of absenting from his office or withdrawing himself from duty in contravention of Section 25 and in the explanation this withdrawal from duty is clarified by incorporating that the police officer who being absented on leave fails without reasonable cause to report on duty on expiry of such leave for the purpose of reasoning or withdrawal from duty to be deemed to resigned or withdrew himself from duty within the meaning of Section 25. In our view in the instant case, once the applicant has been proceeded against in a criminal trial under Section 122 of the Delhi Police Act, 1978 the resort to departmental proceedings on the same set of facts would also contravene Rule 15(2) of Delhi Police (Punishment and Appeal) Rules, 1980. We also find

that there is no indication in any of the orders passed that after the trial proceedings, approval of the Additional Commissioner of Police was sought before proceedings the applicant departmentally. There is a specific provision for penalty under Section 122 of the Delhi Police Act, 1978, the respondents should have waited for the out come of the trial as per provisions of Rule 12 ibid. As we have already held that the acquittal of the applicant was on merits the punishment awarded to the applicant on identical allegations, cannot be sustained after his acquittal from the identical charges in the criminal trial.

8. As regards to issue of limitation, involves in the instant case, we have seen from the reply of the respondents that they had not taken any objection regarding limitation under para 3 of the reply. Apart from it, the applicant on being acquitted from the criminal charges made a representation and the same was turned down merely on the pretext that as no appeal had been filed by the applicant against the order of punishment, hence the representation is barred by limitation. It is also contended by the applicant's counsel that he had not challenged the order of dismissal but he seeking a relief in view of the ratio laid down by a Constitutional Bench in Syed Qamarali's case supra as well as Capt. M Paul Anthony's case supra to which

his case falls in para-meteria as such his order of dismissal is rendered illegal on his acquittal from the criminal case. We agree with the contention of the applicant that on being acquitted from the criminal charges, punishment imposed upon him on identical charges would not be sustainable. As such he filed this representation. The applicant could not have filed an appeal before this conclusion of criminal trial. As the applicant had not filed an appeal against the order of punishment, rejected the representation as time bared under Section 21 of the Administrative Tribunals Act, 1985, which is not legally sustainable.

9. Having regard to the reasons and discussions made above, we are of the considered opinion that the order of dismissal is not legally sustainable and the same is set aside. The order passed by the Commissioner of Police on his representation on 24.6.1998 is also quashed. As the applicant had expired during the pendency of this OA, there cannot arise a question of his being reinstated in service. As we have declared the order of dismissal illegal, as a consequence, the LRs of the applicant would be entitled for all the consequential benefits of pay and allowances w.e.f. the date of dismissal to the date of demise of the applicant, i.e., 18.4.2000 on the assumption that the applicant had continued in service as a Constable for this

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period. The respondents before granting monetary benefits to the LR's of the applicant should verify about the claim of LR's as to whether they are wife and sons of the deceased applicant. The respondents are further directed to comply the above directions within the period of three months from the date of receipt of a copy of this order. The OA is accordingly disposed of in the above terms. No costs.

S. Raju

(SHANKER RAJU)
MEMBER(J)

V.K. Majotra

(V.K. MAJOTRA)
MEMBER(A)

Later on Shri R.K.Singh, learned proxy counsel appeared on behalf of Shri A.K.Chopra, learned counsel for the respondents.

S. Raju

(SHANKER RAJU)
MEMBER(J)

V.K. Majotra

(V.K. MAJOTRA)
MEMBER(A)

/RAO/