

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 2001/98

New Delhi, this the 16th day of December, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

Tahir Ali Khan Tyagi
s/o Shri Zahoor Ahmed Tyagi,
r/o H.No. 279, Gali No. 19,
Vijay Park, Mauz Pur,
Delhi.applicant

(By Advocate: Shri Shankar Raju)

Vs.

Union of India through

1. The Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
2. Deputy Commissioner of Police,
Police Control Room,
MSO Building,
New Delhi.respondents

(By Advocate: Shri Rajinder Pandita)

O R D E R

delivered by Hon'ble Shri T.N. Bhat, Member (J)

We have heard the learned counsel for the parties on the merits of the O.A. and, with their consent, we are disposing of this O.A. at the admission stage itself. We have also perused the material on record as also the departmental file furnished by the learned counsel for the respondents.

2. This O.A. is directed against the order dated 27.08.1998 issued by the Deputy Commissioner of Police, Police Control Room, MSO Building, New Delhi, respondent no. 2 herein, by which it has been decided to hold a regular departmental enquiry against the

16.12.98.

applicant on the same set of facts on which a criminal case had been filed against the applicant in which the criminal court acquitted him.

(11)

3. While on the one hand the contention of the applicant is that after his acquittal in the criminal case no departmental enquiry on the same charge or on identical charge could be initiated against him, the contention of the respondents is that under law nothing debarred the respondents from holding the departmental enquiry even after the acquittal of the applicant in the criminal case.

4. On comparative reading of the charge in the criminal case and the allegations levelled against the applicant in the departmental enquiry we find that the departmental enquiry is sought to be initiated on the same set of facts as alleged in the criminal case. The allegation is that the applicant while working as Sub-Inspector in Delhi Police demanded and accepted an amount of Rs. 500/- as bribe in consideration of accepting the bail bond of one Shri Jugal Kishore. It is alleged that Shri Jugal Kishore had been granted anticipatory bail by the Additional District & Sessions Judge, Shahdara. It is further alleged that the applicant was caught red handed while accepting the amount of Rs. 500/- as illegal gratification from the said Shri Jugal Kishore.

5. Learned counsel for the respondents has been at great pains to emphasise the point that even if an employee is acquitted in the criminal case departmental enquiry can be initiated against him on the same set of

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facts. In support of his contention Shri Rajinder Pandita has cited before us the judgements of co-ordinate Benches of the Tribunal in OA No. 150/98 and 2825/97 delivered on 16.9.98 and 23.4.1998, respectively. We have carefully gone through the said judgements and find that the point in controversy before the aforesaid two Benches was as to whether a parallel departmental enquiry can be initiated and allowed to proceed during the pendency of the criminal case on the same set of facts. Relying upon the judgements of the Apex Court in State of Rajasthan vs. B.K. Meena & Ors., reported in 1996 (7) Scale 363 and Kushleshwar Dubey vs. M/s. Bharat Cocking Coal Limited & Ors., reported in AIR 1988 (SC) 2118, it was held that depending upon the facts and circumstances of the case parallel enquiry proceedings could be held even during the pendency of the trial in the criminal court on the same set of facts. In the instant case holding parallel proceedings during the pendency of the criminal case is not the question that falls for determination. The instant case relates to the acquittal of an official and the subsequent initiation of departmental enquiry on the same set of facts, particularly so when the official concerned is an employee of the Delhi Police.

6. On this question the learned counsel for the applicant frankly concedes that the general principle relating to departmental enquiries is that even in cases where the criminal case ended in acquittal on technical grounds a departmental enquiry on the same allegations can be held. But he relies upon the provisions contained in Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 and states that in view of the specific provision

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(b)

contained in the aforesaid Rule an official of the Delhi Police cannot be chargesheeted for initiation of departmental enquiry if he has already faced criminal trial and has been acquitted of the charge. According to the provision contained in Rule 12 ibid when a police officer has been tried and acquitted by a criminal court, he cannot be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case unless, firstly, the criminal charge has failed on technical grounds or, secondly, in the opinion of the court, or the Deputy Commissioner of Police, the prosecution witnesses have been won over or, thirdly, the court has held in its judgement that an offence was actually committed and that suspicion rests upon the police officer concerned or, fourthly, 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, lastly, additional evidence for departmental proceedings is available.

7. We have gone through the departmental records furnished by the learned counsel for the respondents and find that no reasons have been given by the Deputy Commissioner of Police (respondent no. 2) for initiating the departmental enquiry despite the acquittal of the applicant. There is nothing to indicate that the Deputy Commissioner had applied his mind to the facts of the case and had come to the conclusion that any of the conditions mentioned in Rule 12 was fulfilled so as to warrant the initiation of departmental enquiry on the same charge which failed in the criminal court.

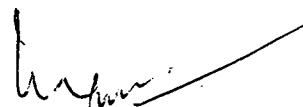
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8. We further notice that the evidence sought to be led in the departmental enquiry is also substantially the same as was led before the criminal court. As a matter of fact during the pendency of the instant O.A. as many as five witnesses have already been examined in the departmental enquiry and only one witness remains to be examined.

9. In our considered view, there are no justifiable grounds in the instant case for initiating departmental enquiry against the applicant, as envisaged in Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980. The impugned order dated 27.8.1998, as at Annexure A-I to the O.A., also does not give any reason as to why the departmental enquiry against the applicant is being initiated. All that the order states is that the applicant is alleged to have demanded and accepted a sum of Rs. 500/- as bribe from Shri Jugal Kishore and that on this charge a case FIR No. 31/92 under Section 7/13 of the Prevention of Corruption Act was registered against him. It is further stated that the above act on the part of the applicant amounts to grave misconduct, corrupt activities and unbecoming of a police officer which renders him liable to be dealt with departmentally under the provisions of the Delhi Police (Punishment & Appeal) Rules, 1980. The order further states that Shri Tej Ram, ACP/Central Zone would be the Enquiry Officer for conducting the enquiry on day to day basis.

10. We further notice that after the acquittal of the applicant in the criminal case he was re-instated with immediate effect on 6.6.1996. Not only that, but



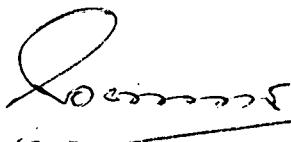
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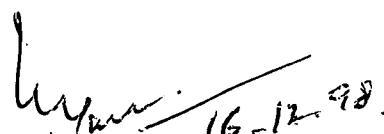
also his name was removed from the secret list of persons of doubtful integrity w.e.f. 27.2.1996. Thus for all practical purposes the chapter was deemed to be closed even by the respondents. On comparable facts a Bench of this Tribunal in the judgement dated 12.7.1996 in OA No. 852/96 (Khazan Singh vs. Sr. Additional Commissioner of Police & Anr) held that acquittal of an accused on the ground that the prosecution had failed to prove the charge beyond doubt and giving benefit of doubt, as in the instant case, cannot be considered as an acquittal on technical ground so as to attract the application of clause (a) of Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980. This is also not a case where the criminal court has held that the offence was actually committed or that the suspicion rested upon the applicant. Also, none of the other conditions laid down in Rule 12 is fulfilled in the instant case.

11. In view of the above, we hereby allow the O.A. and quash the order of respondent no. 2 by which departmental enquiry has been initiated against the applicant. We further quash the departmental proceedings held in pursuance of the impugned order dated 27.08.1998.

No costs.

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 (S. Pratap Singh)
 Member (A)


 (T.N. Bhat)
 Member (J)
 (16-12-98)