

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.NO. 2512/1998

New Delhi this the 4th September, 2000

HON'BLE MR. KULDIP SINGH, MEMBER (J)  
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

Sh. Krishna Kumar,  
S/o Sh. Sahib Singh,  
Post Dichan Kalan,  
PS Constable No. 1290,  
Village Najafgarh,  
West District, Delhi

.....Applicant

(By Advocate: Ms. Yamunah Nachiar, proxy for Sh.E.M.S.  
Natchiappa)

Versus

1. Delhi Administration, through  
Chief Secretary,  
Old Secretariate,  
Delhi

2. The Commissioner of Police,  
Police Hqrs,  
I.P. Estate,  
New Delhi

.....Respondents

(By Advocate: Mr. Ram Kanwar)

ORDER (Oral)

HON'BLE MR. KULDIP SINGH, MEMBER (J)

The applicant in this OA has assailed an order passed by the appellate authority vide Annexure-I whereby the punishment of reduction in pay for a period of 5 years with cumulative effect was awarded to him by the Additional DCP/North District which was confirmed by the Additional Commissioner of Police, Northern Range, Delhi.

2. The facts in brief are that the applicant along with another Constable was proceeded departmentally on the allegation that on 17.12.1991 at about 5.30 P.M. one Shri Surinder Kumar Sharma made a complaint that while he was going to Meerut after taking three silver slabs from Kucha Mehajani, Ch. Chowk, Delhi and when he

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reached at ISBT Platform No. 54, two constables met him there and asked him to get his belongings checked. On this both the constables had taken 2 slabs weighing about 1 Kg. 275 Gms. and asked him to run away. On this complaint, a case FIR No.479/91 under Section 384/34 IPC P.S. Kashmere Gate was registered. Subsequently the complainant identified the applicant and the other Constable Suraj Prakash. They were arrested and during the course of interrogation, the appellant and his co-accused confessed that they had taken two silver slabs one weighing 500 gms. and the other weighing 775 gms. and both the silver slabs were recovered from the applicant and his co-accused. The applicant was then dismissed from service under Article 311(2)(b) of the Constitution of India. However, the applicant approached the Tribunal. The order of dismissal was set aside by the Tribunal with a direction to the respondents that the matter is remitted to the disciplinary authority to take proper action in the disciplinary proceedings in accordance with law against the applicant. So in pursuance of that, an enquiry was conducted in accordance with the rules. The Enquiry Officer found the applicant guilty and submitted the case to the disciplinary authority. The disciplinary authority thereupon punished the applicant and against that punishment, the applicant has filed an appeal before the appellate authority, which has been impugned in this case.

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3. In the meanwhile, the applicant had been acquitted by the criminal court on certain technical grounds, i.e., for lack of obtaining sanction to prosecute a police officer.

4. The OA was contested by the respondents, who stated that the enquiry was held in a proper manner and the applicant has been rightly punished.

5. We have heard the learned counsel for the parties and have gone through the records of the case.

6. The learned counsel appearing for the applicant submitted that the enquiry should not have been continued as it had started at a very belated stage without any fault of the applicant so the applicant could not have been punished under Section 21 of the Delhi Police Act, 1978. We find that this contention of the applicant has no merit since delay is not attributable on the part of the disciplinary authority because disciplinary authority had removed the applicant from service by invoking Article 311(2)(b) and had dismissed him from service in a summarily manner. Thereafter the applicant had approached the Tribunal and he was reinstated and the directions were given by the Tribunal to conduct the enquiry. But this delay cannot be said to be fatal to the enquiry. The applicant has challenged the punishment order on the ground that since he had been acquitted by the criminal court so he could not have been punished by the disciplinary authority and his acquittal warrants that he should have been straightaway reinstated and no punishment should have been awarded to him.

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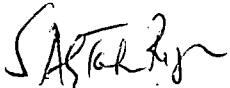
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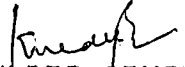
7. In reply to this the counsel for the respondents submitted that the acquittal of the applicant from the criminal court is merely on technical grounds since the prosecution had not placed on record the sanction to prosecute the applicant and in such like cases, the department can conduct an independent enquiry and if the allegations are proved, then the charged official can always be punished. We have also gone through the Delhi Police (Punishment & Appeal) Rules, 1980. Rule 12 provides for the eventuality when there is a judicial acquittal in the case of the charged official. Rule 12 states that when a police officer has been tried and acquitted by the police, he shall not be punished departmentally on the same charge or on a different charge upon evidence cited in a criminal case whether actually led or not unless the criminal charge has failed on technical grounds. Clauses (a) to (e) of Rule 12 provides the circumstances in which despite the acquittal from the criminal court the charged official can be proceeded with and punished and clause (a) particularly says that if a criminal charge has failed on technical grounds then also the applicant can be punished departmentally in accordance with the rules. As in this there is a categorical finding of the Learned Magistrate that because of lack of sanction to prosecute the accused (the applicant), he was acquitted by the criminal court on technical grounds, we are of the considered opinion that the plea that the applicant had been acquitted on technical grounds has no merits.

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8. As regards the other grounds taken by the applicant in the OA, in all these grounds the applicant has merely insisted for appreciation of the evidence and for which there is a settled law that the Tribunal while exercising the power of judicial review cannot reappreciate the evidence. Besides that, we may also mention that in paragraph 1 of the OA, the applicant has only challenged the appellate authority's order and not the disciplinary authority's order or the findings of the Enquiry Officer, so we find that on this score also we need not go into detail discussion on the order of the disciplinary authority and the findings of the Enquiry Officer and since no other ground has been taken up by the applicant to assail the impugned order, so the OA does not call for any interference.

9. In view of the above, we find that the OA has no merits and the same is dismissed. No costs.

  
(S.A.T. RIZVI )  
MEMBER (A)

  
(KULDIP SINGH )  
MEMBER (J)