

Central Administrative Tribunal, Principal Bench

OA No. 2089 of 1995

✓ New Delhi this the 11th day of November, 1999

(15)

Hon'ble Mr. R.K. Ahooja, Member (A)

Hon'ble Mr. Kuldip Singh, Member (J)

Dinesh Kumar
S/o Shri Ram Krishan
H.No. 332, Village & P.O. Bawana
P.S. Narela,
Delhi.

.. Applicant

By Advocate Shri Sarvesh Bisaria.

Versus

1. Lt. Governor through
Chief Secretary,
Government of NCT,
Sham Nath Marg,
Delhi.

2. Commissioner of Police,
M.S.O. Building,
I.P. Estate,
New Delhi.

3 Dy. Commissioner of Police,
IIIrd Battalion DAP,
MSO Building,
I.P. Estate,
New Delhi.

.. Respondents

By Advocate Shri Surat Singh.

ORDER

By Hon'ble Shri Kuldip Singh, Member (J)

In this OA the applicant has prayed for quashing the orders of dismissal from service dated 22.3.90 and also to set aside the order of the appellate authority dated 9.1.1991 and an order rejecting his revision petition dated 26.7.91 and the order dated 26.10.1994.

2. The facts in brief are that the applicant was working as a Constable with Delhi Armed Police IIIrd Bn. and on the night intervening 17/18-6-86, he along with certain other police officials were entrusted with custody of prisoners and one

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prisoner namely Sharif was entrusted to the custody of the applicant. The said prisoner escaped from the custody of the applicant. So immediately action under Rule 29 of the Delhi Police (Punishment & Appeal) Rules, 1980 was taken and the applicant was suspended. An FIR was also registered.

3. Thereafter, the applicant was proceeded against by the departmental enquiry and a criminal challan was also filed before the Metropolitan Magistrate, Delhi.

4. In the Departmental Enquiry, the applicant/charged official was held guilty and he was dismissed from service.

5. However, in the criminal trial, the applicant was acquitted. So the short question before us now is whether on acquittal by the criminal court, the applicant is entitled to be reinstated in service or not.

6. We have heard the learned counsel for the parties and have gone through the records.

7. Shri Bisaria appearing for the applicant submitted that since the charge against the applicant/charge official in the departmental enquiry as well as in the criminal trial before the Learned Magistrate were identical and since the applicant has been acquitted by the Learned Magistrate in the criminal trial, so the applicant is entitled to be reinstated. In this regard, he referred to Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980. The said Rule is reproduced hereinbelow:-

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12. Action following judicial acquittal - When a police officer has been tried and acquitted by a criminal court, he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not unless:-

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(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.

8. The learned counsel for the applicant has also submitted that Rule 29 of the Delhi Police (Punishment & Appeal) Rules, 1980 provides the procedure in the case of escape of prisoners from the police custody are concerned. It is stated in the last part of Rule 29 that dismissal or removal of service shall normally follow a judicial conviction, for finding of guilt in a departmental enquiry for negligence resulting in the escape of a prisoner.

9. The learned counsel or the applicant then submitted that since in this case, the applicant has been acquitted by the criminal court, so he cannot be held guilty in departmental enquiry for any negligence for the escape of any prisoner and similarly Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 requires that when a police official has been tried and acquitted by the criminal court, he shall not be punished departmentally on the same charge upon the evidence cited in the

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criminal case whether led or not. Since the applicant has been acquitted in the criminal court and the charges were identical and it is immaterial whether the evidence has been led before the criminal court or not, but the applicant cannot be punished departmentally.

10. In our view the contention of the learned counsel for the applicant has no merits because Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 has also got 5 situations where even if the charged officer has been acquitted by a criminal court, he may be punished departmentally if the criminal charge has failed on technical grounds or prosecution witnesses before the criminal court have been won over or even if the benefit of doubt have been given in those cases also, whether additional evidence for departmental proceedings is available. In this case, the judgment of the criminal court shows that only one witness was examined before the criminal court which too was a formal witness and had nothing to state on the charge against the accused before the criminal court or before the departmental proceedings, which means that to the criminal court evidence of only one formal witness was available whereas before the departmental proceedings, the evidence of other witnesses were also available and it is on the basis of the evidence available to the departmental proceedings, the disciplinary authority had held that the charge against the delinquent official stands proved and the applicant was punished with the penalty of dismissal from service. His appeal was also rejected by the appellate authority and the punishment was maintained and the appellate authority was also of the view that the evidence before the departmental enquiry was available and the charge against the delinquent official stood proved. Revision against the appellate order was also dismissed. Thus, it is a case where the evidence

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cited in the criminal trial was not available to be examined by the criminal court and whatever evidence has been examined in the criminal court in addition to that evidence, was available with the departmental authorities. So the case in hand is covered under Rule 12(e) of the Delhi Police (Punishment and Appeal) Rules, 1980, which enables the department to punish the delinquent official even after the acquittal of the delinquent official by the criminal court.

11. As such, we are of the considered opinion that the sole ground taken by the applicant that since he has been acquitted by the criminal court so the order of punishment of dismissal of service should be quashed, is not available to the applicant. No other arguments were raised.

12. In view of the above, the O.A. has no merits and the same is dismissed. No costs.


(Kuldip Singh)

Member (J)


(R.K. Anoeja)
Member (A)

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