

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1388/96

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

New Delhi, this the 25th day of April, 2000

Sub-Inspector Bahadur Singh
No.D/845
s/o Shri Kishan Singh
aged about 46 years
presently posted in F.R.R.O.
r/o Qtr. No.402 Type.II
P.S.Tilak Nagar
New Delhi - 110 018. Applicant

(By Shri Shankar Raju, Advocate)

Vs.

1. Union of India through
its Secretary
Ministry of Home Affairs
North Block
New Delhi - 110 001.
2. Commissioner of Police
Police Head-quarters
M.S.O.Building, I.P.Estate
New Delhi.
3. Senior Additional Commissioner of Police
(New Delhi Range)
Police Headquarters
M.S.O.Building
I.P.Estate
New Delhi. Respondents

(By Shri Ajesh Luthra, Advocate)

O R D E R (Oral)

By Reddy. J.

The applicant joined as Sub-Inspector in the year 1969. At the relevant point of time, in 1984-85, while he was posted at Police Station Tilak Marg, one Constable named Ram Singh who was attached with him, was trapped by a raiding party for taking bribe in consideration of releasing one Nem Pal who had earlier been arrested in connection with the case in FIR No.273/84 under section 392/34 IPC P.S.Tilak Marg. When the concerned Constable was trapped in the Police Station on 2.9.1984, the applicant slipped away from

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the room and was seen moving out of the PS premises. The then DCP, New Delhi District, Shri B.K.Gupta directed him to accompany him back into the Police Station but SI Bahadur Singh, the applicant herein, ran out of the Police Station premises in flagrant violation of the instructions given to him by a senior officer. The applicant reported back ^{for} duty on 6.9.1994 after absenting himself for a period of four days. On the above allegations a disciplinary enquiry was conducted. After the enquiry, the enquiry officer submitted his findings holding that the applicant was guilty of the charge. On the basis of the findings of the enquiry officer, the disciplinary authority imposed the punishment, by the impugned order, for forfeiture of four years approved service permanently entailing reduction in his pay from Rs.1880 to Rs.1640.

2. It has to be noticed that the above punishment earlier awarded to the applicant, was quashed by the Tribunal in OA No.2203/89 and a direction was issued to disciplinary authority to pass the orders afresh. Accordingly, the present orders were passed confirming the punishment already imposed.

3. The appeal filed against the impugned orders was however rejected by order dated 19.6.1995. Hence, the present OA is filed challenging the above order of penalty.

4. The learned counsel for the applicant, Shri Shankar Raju, submits that the applicant was proceeded against on the same allegations, in the



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Criminal Court wherein charges were framed under section 161 IPC and under Sections 5(2) of the Prevention of Corruption Act but the applicant has been acquitted of the charges by the Judgment dated 14.3.1996 of the trial Court in Criminal Case No.51/94. The learned counsel for the applicant, therefore, submits that the applicant is entitled for exoneration from any penalty even in the disciplinary proceedings. The learned counsel also relies upon Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980.

5. In this connection, Shri Ajesh Luthra, however, submits that the charges in the criminal case are entirely different and the applicant against whom the charge of disobeyance of the superior officer's order, was not one of the charges. Hence, the acquittal in the criminal case cannot be a ground for exoneration in the departmental enquiry. The learned counsel for the respondents also submits that Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 has no application to the facts of the present case.

6. We have considered the pleadings in this case and have given careful consideration to the arguments advanced by the counsel on either side.

7. The charge in the case comprises two parts. The first part is with regard to the acceptance of illegal gratification and the second is as to violation of the orders of the superior officer. It was alleged that one Constable has taken the bribe in the room of the applicant. It was further stated



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that when the applicant was leaving the Police Station during the raid that has been conducted against the police Constable, though the applicant was directed to remain in the Police Station, the applicant slipped away and returned back only after four days. The defence of the applicant was that he had nothing to do with the accepting of illegal gratification by the Constable. As regards the second part, the applicant's case is that as his mother was taken ill and was admitted in the hospital and a telephone call has been received in the Police Station from the house, he rushed away from the Police Station in order to see his mother.

8. The enquiry officer has found that the charge has been established in toto. The disciplinary authority, however, considering the findings of the enquiry officer and other material on record, summarised his conclusions as under:

- "i) There is no evidence that SI Bahadur Singh had demanded money for the release of Nem Pal (Nem Pal was not arrested in case FIR No.273/84 u/s 392/34 IPC PS Tilak Marg).
- ii) SI Bahadur Singh was present in the room when a trap was laid and immediately on coming to know of the same, he went out of the police station.
- iii) There is contradiction in the phone call supposed to have been received regarding his mother's illness. While SI Bahadur Singh says that it was from the hospital, the Duty Officer SI Siri Ram says that it was from the house. The manner in which SI Siri Ram received the call did not show any urgency since the message was that he had not come home for a few days and that he should do so. There was no mention of his mother's alleged serious condition.
- iv) SI Bahadur Singh failed to make a DD entry regarding his departure as required under the rules.

v) He was asked by then DCP/New Delhi to accompany him. This order he disobeyed and ran out of the Police Station. Thereafter he absented himself for four days.

vi) SI Bahadur Singh was not able to produce any documents to prove that his mother was very sick that day."

9. In conclusion the disciplinary authority stated as under:

"Though there is no direct evidence to prove the involvement of SI Bahadur Singh in the matter of taking bribe, his actions do not clear him fully. It is possible that the money was demanded by Const. Ram Singh with the knowledge and consent of SI Bahadur Singh and he tried to escape from the same resulting in a behaviour not expected of a normal person. I do not think his mother was seriously sick though she had been hospitalised for some time. SI Bahadur Singh disobeyed the orders of then DCP, New Delhi Shri B.K.Gupta to stay back and thereafter absented himself for four days."

10. From a reading of the conclusions of the disciplinary authority, it appears that the disciplinary authority found the applicant guilty of both the parts of the charge.

11. In this connection, it is significant to note that the applicant who was charged in the criminal court and prosecuted under section 165-A IPC was however, acquitted after trial by the Court in CC No.51/94 by judgment dated 14.3.1996. The Court, on the basis of the evidence, has come to the conclusion that the prosecution failed to prove the case as there was absolutely no evidence against the applicant. In the criminal case the same witnesses, viz, PW-5 Mr. B.K.Gupta, DCP, New Delhi District, and PW-9 Shri A.L.Chadha, have been examined, who also deposed in the Departmental Enquiry against the applicant and whose evidence was relied upon to penalise him.



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12. Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 clearly stated as under:

"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:-

- 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.

13. It is clear from the above Rule that when a police officer was acquitted by the criminal court after trial, he was not liable to be punished in the departmental enquiry on the same charge or upon any other charge on the evidence cited in the criminal case. In the present case, the applicant has been acquitted of the charge of accepting the illegal gratification and none of the conditions stipulated in (a), (b) and (e) of Rule 12 are attracted. Hence, ex-facie, it is not permissible to penalise the applicant of the same charge in the Departmental Enquiry. The finding of the disciplinary authority, to this extent, is illegal.

14. The learned counsel for the respondents, contends that as the acquittal of the applicant was

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subsequent to the impugned orders passed, Rule 12 has no application. We do not agree. When a delinquent was already acquitted by a criminal court on a charge, the question of holding departmental enquiry in the same charge will not arise. Thus, irrespective of ^{whether} one is prior or later when once the court acquits on a charge, in the same charge, it is not open to penalise him in the departmental enquiry.

15. Apart from this, the Supreme Court in the case of Capt. M.Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr., JT 1999 (2) SC 456, in para 34 of its decision, has inter alia observed:

"34. 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 or 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 "raids 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."

(Emphasis supplied)

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16. In our view, therefore, the applicant is not liable to be penalised on the charge of illegal gratification.

17. The learned counsel for the applicant, however, contends that the applicant is also entitled for an acquittal on the charge of disobeying of the superior officer's orders. But, we find that the applicant was charged only under section 165-A IPC, i.e., the offence of the abetment of the offence of illegal gratification. The applicant was not charged with the charge of disobedience of the orders of the superior officers. Hence, we cannot interfere with the conclusion regarding the second part of the charge.

18. On perusal of the order of the disciplinary authority, it is, however, clear that the impugned order of punishment was passed on the premise that the applicant was liable on both the counts, namely, the illegal gratification as well as the disobedience of the superior officer's instructions, which we find, is clearly illegal.

19. In view of the above discussion, the impugned order is quashed. Since the applicant was rightly found guilty with regard to the disobeying the orders of the superior officer, Mr. B.K.Gupta, DCP, New Delhi Dist., the disciplinary authority is directed to impose the appropriate penalty, if it so chooses, only on the basis of the charge so established. The above direction shall be complied



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within three months from the date of receipt of a copy of this order after hearing the applicant. The matter is accordingly remitted to the disciplinary authority. Any order that may be passed will have effect only from the date of the initial order of punishment that was first passed against the applicant.

20. The OA is accordingly disposed of. No costs.

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(SMT. SHANTA SHASTRY)
MEMBER(A)

Chirayugulam
(V.RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

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