

Central Administrative Tribunal, Principal Bench

Original Application No.19 of 1996

New Delhi, this the 8/11 day of November, 1999

Hon'ble Mr.R.K.Ahooja, Member (Admnv)
Hon'ble Mr.Rafiq Uddin Member (J)

Constable Pooran Singh No. 8373/DAP,
Son of Shri Attar Singh, aged about 32
years, present posted in 7th BN. DAP,
R/o Barrack No.3,Teen Murti Police
Lines, New Delhi. - Applicant

(By Advocate - Shri Shankar Raju)

Versus

1. Union of India/ Hon'ble Lt. Governor
of N.C.T.D. Through Commissioner of
Police, Police Headquarters, M.S.O.
Building, I.P.Estate, New Delhi.
2. Additional Commissioner of Police
(Crime) Police Headquarters,
M.S.O.Building, I.P.Estate, New
Delhi. - Respondents

(By Advocate Shri Rajinder Pandita)

O R D E R

By Mr.R.K.Ahooja, Member(Admnv) -

The applicant, a Constable in Delhi Police, was arrested in a case under Section 25/27/54/59 of the Arms Act and Section 5 of TADA Act on the ground that in a dispute between one Mahesh Chand, landlord and Babu Ram, tenant he had helped in a conspiracy hatched by the landlord to implicate his tenant in a case under Arms Act. On the same ground a departmental enquiry was also initiated against the applicant. The applicant was, however, acquitted in the criminal case by a decision of the learned Additional Sessions Judge dated 23.10.1993. Thereafter, the departmental proceedings against the applicant were continued and completed and by the impugned order dated 24.1.1995 (Annexure-A) the

a

disciplinary authority ordered forfeiture of four years approved service permanently for a period of four years entailing reduction in his pay from Rs.1030/- per month to Rs.950/- per month for a period of four years. It was also ordered that the applicant will not earn increment of pay during the period of reduction and on the expiry of this period the reduction will have the effect of postponing his future increments of pay. The period between the suspension of the applicant with effect from 15.1.1991 to the date of reinstatement was also ordered to be treated as period not spent on duty. Appeal filed by the applicant having been rejected by the Additional Commissioner of Police, the applicant has now come before the Tribunal.

2. According to the respondents the acquittal of the applicant in the criminal case was on the basis of benefit of doubt. Further more, the criminal court had not gone into the aspect that it had been agreed upon by the landlord to pay Rs.12,000/- for planting the arms and ammunitions on the tenant and that an advance payment of Rs.4,000/- had been given to one of the four conspirators.

3. We have heard the counsel. Shri Shankar Raju, learned counsel for the applicant, mainly stressed upon the point that the applicant could not be punished departmentally after his acquittal in the criminal case as his case did not fall within the exceptions provided in Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980. According to

An

Rule 12 a Police Officer who has been tried and acquitted by a criminal court shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case unless the criminal charge has failed on technical grounds; or the prosecution evidences have been worse; or the court has held in its judgment that the offence was actually committed and that the suspicion rested upon the police officer concerned; or that additional evidence for departmental proceedings is available. None of these ingredients, according to the learned counsel, are available in the present case. Relying on the ratio of the order of this Tribunal in O.A. No.852 of 1996 decided on 12.7.1996, Khazan Singh Vs. Senior Additional Commissioner of Police and another, the learned counsel pressed that the impugned orders of disciplinary authority and appellate authority be quashed.

4. We have carefully gone through the order of the learned Additional Sessions Judge dated 23.10.1993. We find that the charges against the applicant both in the criminal as well as departmental proceeding were identical, even though in the decision of the criminal court there is no mention about the allegation that a sum of Rs.12,000/- was agreed upon for payment by the landlord. However, as this allegation also related to the main accusation, namely, hatching of a conspiracy against the tenant by planting illicit arms and ammunitions on him, it can not be construed as a basis for a different charge to

Dr

come within the purview of Rule 12(d) of the Delhi Police (Punishment and Appeal) Rules, 1980, which reads as follows :-

"the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge"

5. A perusal of the judgment of the learned Additional Sessions Judge also shows that the acquittal of the applicant is not based on technical grounds but is on the merits of the case. In para 29 of the judgment, the learned Additional Sessions Judge observed as follows :-

"Thus, the prosecution has not been able to prove that accused Mahesh had any conspiracy or had any plan to plant country made pistol or bomb in the shop of Babu Lal. The prosecution has miserably failed to prove that country made pistol Ex.P1, cartridge Ex.P2, thela Ex.P3 and crude bombs Ex.P4 to P7 were left by accused Puran Singh and Dev Karan in the shop of Babu Lal and the prosecution has also been failed to prove that Mahesh Chand had any conspiracy to plant the aforesaid articles."

Thus, the conclusion of the learned Additional Sessions Judge is based on a failure on the part of the prosecution to establish its case and not because of any technical ground. There is also no indication that there was actually such a conspiracy as alleged and that the applicant had helped to shape it or helped to hatch it.

6. In the light of the above discussions, we are of the view that the respondents were not entitled to proceed further with the departmental proceedings

an

(A)

against the applicant after his acquittal in the criminal case. In view of this finding, we do not consider it necessary to examine any further points raised by the applicant regarding 'no evidence' or 'irregularities in the conduct of the disciplinary proceedings'.

7. In the result, the O.A. is allowed. The disciplinary proceedings against the applicant including the impugned orders of the disciplinary authority and the appellate authority are quashed. No order as to costs.

Rafiquddin
(Rafiq Uddin)
Member(J)

R.K.Ahooja
(R.K.Ahooja)
Member(Admnv)

rkv.