

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

J

O.A.No.234 of 1996.

New Delhi, this the 9th day of February, 1996.

HON'BLE MR JUSTICE B.C.SAXENA, VICE CHAIRMAN(J)
HON'BLE MR R.K.AHOOJA, MEMBER(A)

Constable Bir Sain No.4652/DAP 5th Bn.,
New Police Lines, Kingsway Camp., New Delhi.

(through Mr N.S.Bhatnagar, Advocate).

versus.

1. Union of India through the Deputy
Commissioner of Police, Vth Bn., DAP,
Police Complex, Model Town, Delhi-110009.
2. Shri B.D.Sharma, A.C.P./HQ, V Bn.,
DAP Police Complex, Model Town, Delhi-9.

..... Respondents.

ORDER

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

The present application is directed against the order of the Deputy Commissioner Vth Bn., Delhi Armed Police, Delhi dated 27.10.1995, whereby departmental proceedings have been ordered to be initiated against the applicant.

2. Brief facts of the case are that a criminal case was registered against the applicant, his father and brother on 12.8.1983 vide FIR No.194/83, at Police Station Najafgarh, under Section 308 Indian Penal Code for causing injury to one Khazan Singh. Subsequently on the death of Khazan Singh, the case was converted under Sections 304/34 I.P.C. and the case was put up before the Sessions Court. The

✓

3

applicant was finally acquitted vide order of the learned Sessions Judge dated 31.8.1994 giving him the benefit of doubt. The applicant's case is that the subsequent impugned order of the Deputy Commissioner of Police, initiating the disciplinary proceedings against him is illegal, without jurisdiction and contrary to the provisions of Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter referred to as 'the Rules').

3. We have heard the learned counsel for the applicant Shri Shyam Babu at the admission stage. Shri Shyam Babu submitted that the allegations against him, as contained in the summary of allegations are virtually the same as were dealt with in the criminal trial, in which the applicant was acquitted. Rule 12 of the Rules provides that 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 the criminal charge has failed on technical grounds or in the opinion of the court, or on the Deputy Commissioner of Police, the prosecution witnesses have been won over. Shri Shyam Babu, learned counsel argued that what the Sessions Court had found was that various prosecution witnesses had turned hostile but that could not be taken to mean that they had been won over by the accused, which is a condition precedent under Rule 12 for ordering a departmental proceeding in this case. A decision of the Supreme Court in

Dr

Delhi Administration vs. Sanjay Gandhi, AIR 1978 SC 961, was referred to by the learned counsel, in which the Hon'ble Court held that the fact that PWs have turned hostile cannot by itself justify the inference that the accused has won them over. The learned counsel submitted that Rule 12 of the Rules and Rule 16(3)(i)(B) of the erstwhile Punjab Police Rules are similar, and cited the case of S.I. Kundan Lal vs. Delhi Administration 1976(1)SLP 133 to show that departmental inquiry on the same charges is not permissible if there is substantial acquittal on the same charges and the acquittal is not on technical grounds.

5. We have carefully considered the arguments advanced by the learned counsel and find that there is no ground whatsoever to interfere with the impugned order. The criminal Court has in its judgment observed that there is a cloud of doubt in the case of the prosecution and hence the benefit of doubt is being given to the accused. Undoubtedly, this was because most of the prosecution witnesses had turned hostile. The observations of the Hon'ble Supreme Court in Sanjay Gandhi's case relates to a conclusion in a criminal proceeding. Here, we are dealing with the decision of the disciplinary authority as regards the justification for initiating departmental proceedings and in our opinion it suffice if a possibility, as distinguished from certainty, exists regarding the prosecution witnesses being won over. When after being charged by the Sessions Court the applicant is acquitted, after the prosecution witnesses

had turned hostile, then one cannot deny the possibility that the witnesses had been worn over by the accused. Once it is seen that there is some reasonable basis for the conclusion of the disciplinary authority, the scope of judicial review is circumscribed. In any case it cannot be said that the applicant had been honourably acquitted by the trial Court.

6. We also find that out of the four counts, mentioned in the summary of allegations, the first two relate to matters which were not part of the criminal proceedings against the applicant. The learned counsel vehemently denied these first two charges. We find it unnecessary to go into the merit of the assertions made by the learned counsel since this is a matter to be looked into by the inquiry officer and the Disciplinary Authority and it is not necessary for us to adjudicate whether these allegations are justified or not. Count 3 and 4 in the allegations have, as discussed above, a basis in the findings of the Sessions Court.

7. In the light of the above discussion, we find that the present application is misconceived and is without any basis. We accordingly dismiss it at the admission stage itself.

MA No.228 of 1996

In view of the above order passed in the main matter, the application is dismissed.

R.K. Ahooja
(R.K. Ahooja)
Member(A)

B.L. Saxena
(B.L. Saxena)
Vice Chairman(J)