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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 852/1996

New Delhi this the 12th day of July 1996

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)
Hon'ble Shri R.K. Ahooja, Member (A)

Khazan Singh (D/1727)
Son of Shri Kishan Lal,
Resident of 296/2 Bagh Kara Khan,
Padam Nagar,
Delhi. ...Applicant

(By Advocate: Shri Shyam Babu)

Vs

1. Senior Additional Commissioner of Police, (AP&T), Police Headquarters, I.P. Estate, New Delhi.
2. Commissioner of Police, Delhi, Police Headquarters, I.P. Estate, New Delhi ... Respondents

(By Advocate: Shri Surat Singh)

O R D E R
Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

Ex-Inspector, Khazan Singh alongwith two others was prosecuted before the Metropolitan Magistrate, New Delhi for offences under Sections 332, 353 and 186 read with Section 34 of the IPC. The case was initiated with FIR No. 234/1993. The accusation against him was that he alongwith two others accused quarelled with Suresh Kumar, a flower seller and assulted HC Charan Singh caused injury to him and obstructed him in the discharge of his official duties. On the very same set of allegation the departmental proceedings were initiated against the applicant and he was served with a summary of allegations containing exactly

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the same allegations which was the basis of the criminal case. The applicant filed OA 2588/1993 seeking to quash the departmental proceedings as he was facing a prosecution for the same allegations. The O.A. was disposed of by Order dated 8.4.1994. Finding that the basis of the criminal prosecution as well as that of the departmental proceedings was similar, the application was disposed of directing that the departmental enquiry should be kept in abeyance till the culmination of the criminal trial. It was observed that if the applicant was acquitted, it would be open to the authority concerned to make up its mind as to whether it was desirable to proceed with the departmental enquiry and if the applicant was convicted that might be the end of the matter. The departmental enquiry was kept in abeyance pursuant to the above order of the Tribunal. The criminal case was decided by the Metropolitan Magistrate by judgement dated 10.10.1995. The applicant and his co-accused were acquitted. It was mentioned in the judgement that the prosecution had failed to prove its case beyond reasonable doubt and that benefit of doubt was given to all the accused. After the judgement of the Metropolitan Magistrate acquitting the applicant was announced the applicant made a detailed representation to the Senior Additional Commissioner of Police, on 15.11.1995 praying that as he had been acquitted by the Court of the offences for which he was

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charged, the departmental proceedings may be dropped and he be reinstated in the services treating the period of suspension as spent on duty. The Additional Commissioner of Police by his Order dated 6.2.1996 (Annexure A) ordered that the departmental enquiry which was kept in abeyance would be conducted from the stage it was kept in abeyance. Feeling aggrieved by the said Order, the applicant made a representation to the Commissioner of Police on 22.2.1996 praying that the departmental proceedings may be dropped with consequential benefits to him. The applicant was again served with the order dated 4.4.1996 (Annexure B) turning down his request. Therefore, the applicant has filed this application under Section 19 of the Administrate Tribunals Act, 1985 praying that the impugned order may be set aside declaring that the respondents are not competent to further hold a departmental enquiry against the applicant on the basis of the Summary of Allegations in view of his acquittal by the Criminal Court by judgement dated 10.10.1995 and to grant him the consequential benefits including seniority, monetary benefits, promotion etc. The applicant has alleged in this application that as he was acquitted by the Criminal Court since the prosecution has failed to prove his guilt and as the case doesnot come within the exceptions to Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980, the respondents have no

right to proceed further with the departmental proceedings as the Criminal Court had on the identical accusations acquitted him.

2. The respondents contest the application.

3. We have heard Shri Shyam Babu, the learned counsel for the applicant and Shri Surat Singh, the learned counsel for the respondents. The facts, which are not in dispute between the parties are that the ground on which departmental proceedings were initiated against the applicant vide order 2491-2510/HAP dated 27.4.1993 and he was prosecuted alongwith two others co-accused before the Criminal Court on the basis of FIR No. 234/1993 are identical, and that the applicant has been acquitted of the offences in the Criminal case by the Metropolitan Magistrate vide its judgement dated 10.10.1995. It is also not in dispute that in the judgement acquitting, the applicant and the co-accused, the Magistrate have given the benefit of doubt to the accused. Shri Shyam Babu, the learned counsel of the applicant took us through the entire judgement of the Metropolitan Magistrate, a copy of which is at Annexure G to the application. A perusal of the judgement shows that the learned Magistrate had discussed in detail the ingredients of the offences of which the applicant and his two co-accused were charged and the evidence adduced before him. It was noticed by the Magistrate that even some of the official witnesses were

declared hostile as they did not fully support the prosecution version. After discussion of the evidence in detail, the learned Magistrate at Paragraph 32 of his judgement observed as follows:

"After going through the statement of the witnesses in this case I am of the view that there are material contradiction in the statement of all these witnesses. Their evidence is of shaky nature and the case of prosecution is full of doubts. It is well settled law that prosecution has to prove its case beyond reasonable doubts and if there is any benefit of doubts it has to be given to the accused".

4. In the concluding paragraph of the judgement the Magistrate has stated:

"Hence in these circumstances after considering the entire evidence produced by the prosecution I am of the opinion that prosecution has failed to prove its case beyond reasonable doubts. I give benefit of doubt to all the accd. and acquit them....."

5. Shri Shyam Babu relying on these observations of the Magistrate has argued that as there is no finding in the judgement that an offence was committed and suspicion rested upon the applicant, that there is no case for the respondents that either the Court or the Deputy Commissioner of Police has expressed opinion that the witnesses have been won over, and or that any additional evidence for the departmental proceeding is available or that the evidence adduced the criminal case discloses facts unconnected to the criminal charge which would justify departmental proceedings on a different charge, there is absolutely no justification for the respondents to proceed further with the departmental proceedings with a view to punish

the applicant. The action of the respondents in ordering continuance of the disciplinary proceedings after the acquittal of the applicant by the Criminal Court is opposed to the provisions contained in Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980, argued Shri Shyam Babu. Shri Surat Singh, the learned counsel of the respondents argued that since the acquittal of the applicant and the co-accused by the Magistrate was the result of giving benefit of doubt to the accused, it cannot be said that the acquittal of the applicant would amount to a complete exoneration of his guilt and that therefore the respondents are fully justified in taking the departmental proceedings initiated against him by Summary of Allegations to its logical conclusion.

6. Whether it is permissible or not for the respondents to resume the departmental proceedings initiated against the applicant in this case in the light of the judgement of the Metropolitan Magistrate dated 10.10.1995 (Annexure G) acquitting him has to be seen on an interpretation of the findings in the judgement in the light of the provisions of Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 which reads as follows:

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Rule 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:-

- 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 judgement 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".

Clauses a), b), d) & e) of Rule 12 have no application in this case because it is not the case of the respondents that the criminal charge had failed on technical ground or that either of the Court or the Deputy Commissioner of Police had opined that the witnesses have been won over or that the evidence cited in the criminal case discloses facts unconnected with the charge before the Court which would justify departmental proceedings on a different charge or that any additional evidence for departmental proceeding is available. So the only clause within the exception to Rule 12 to be considered is clause c). According to this clause if the Court had held in its judgement that an offence was actually committed and that suspicion rested upon the Police Officer concerned then the departmental proceedings can be held.

7. An acquittal of the accused in criminal case on the ground that the prosecution had failed to prove the charge beyond doubt and giving benefit of doubt cannot be considered as an acquittal on technical grounds, as the same is not the result of a procedural error.

8. We have scrutinised the judgement of the Metropolitan Magistrate (Annexure G) with meticulous care. Nowhere in this judgement it has ~~not~~ been mentioned by the Metropolitan Magistrate, anywhere in the judgement that any of

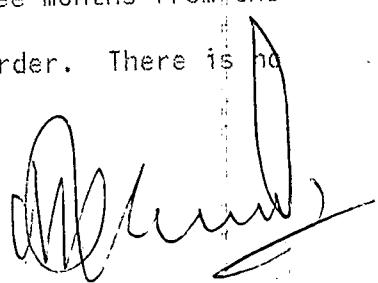
the offences was actually committed or that suspension rested upon the applicant. On the other hand in Paragraph 32 of the judgement (supra), the Metropolitan Magistrate has noted that there were material contradictions in the testimony of all the prosecution witnesses, that their evidence was shaky in nature and that the case of the prosecution was full of doubts. It was then observed by the learned Magistrate that the benefit of doubt should go to the accused and that it was in that context that the Magistrate while acquitting the applicant and his co-accused on the ground that the prosecution had failed to prove its case beyond reasonable doubt observed that the benefit of doubt was given to the accused. The above observations of the learned Magistrate does not at all according to us amount to a finding that a offence had been committed and that the suspicion rested on the applicant. The prosecution case was that the applicant and his co-accused committed the offences with which they were charged. This case of the prosecution was found to be full of doubts. The Magistrate did not find that any of the offences was committed but found the whole case of the prosecution full of doubt in view of the contradictory and shaky nature of the testimonies of the witnesses. Therefore, we have no hesitation to hold that the case of the applicant does not come within the exception contained in Clause c) of Rule 12 of the Delhi

Police (Punishment and Appeal) Rules to justify the respondents holding further departmental proceedings.

9. The arguments of the learned counsel of the respondents that in all cases where the acquittal of the Police Officer by the Court giving the benefit of doubt, it is presumable to punish the officer departmentally on the same charge or on a different charge after completing the departmental proceedings after the judgement of the Criminal Court cannot be accepted in view of the specific provisions contained in Rule 12. Even in a case where the acquittal of the officer by giving him benefit of doubt, unless there is a finding by the court that the offence has been committed and that suspicion rested on the official, after a Police Officer has been tried and acquitted by a Criminal Court, he cannot 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 case comes within any of the Clauses a) to e) of Rule 12.

10. In the result we find that the respondents are not entitled to proceed further with the departmental proceedings against the applicant on the basis of the order dated 27.4.1993 and the impugned order dated 6.2.1996 and 4.4.1996 (Annexure A & B). Hence the impugned orders dated 6.2.1996 and 4.4.1996

(Annexure A & B) are set aside holding that the respondents are not justified in holding the departmental proceedings against the applicant on the basis of the Order No. 2491-2510/HAP dated 27.4.1993 in the light of the judgement of the Metropolitan Magistrate, New Delhi in case No. 179/2 dated 10.10.1995 acquitting him of the offences with which he was charged as the departmental proceedings were initiated on the basis of the same allegations and materials. The respondents are, therefore, directed to reinstate the applicant in service forthwith with all consequential benefits of continuity in service, seniority and consideration for promotion and to pay him full back wages for the period in question within a period of three months from the date of communication of this order. There is no order as to costs.



(A.V. Haridasan)
Vice Chairman (J)


(R.K. Ahuja)
Member (A)

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