

Central Administrative Tribunal

Principal Bench: New Delhi

OA No.102/96

New Delhi this the 24th day of April 1996.

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

1. Constable Mahabir Singh No.9540/DAP
S/o Shri Zile Singh
presently posted in 8th Bn, DAP
R/o Village & P.O. Sanpera Distt. Sonapat (Haryana) ..Applicant
No.1
2. Constable Naresh Kumar No.9729/DAP
S/o Shri Tej Ram
presently posted in 8th Bn.,DAP
R/o Village & P.O.Tharuoldepur
Dist. Sonapat (Haryana) ...Applicant No.2

(By Advcoate: Sh. Shankar Raju)

Versus

1. Union of India through
Chief Secretary
Ministry of Home Affairs
North Block, New Delhi.
2. Dy.Commissioner of Police
8th Bn.DAP, Malvia Nagar
New Delhi ...Respondents.

(By Advcoate: Sh.Amresh Mathur)

O R D E R (Oral)

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

The applicants who are constables in the Delhi Police were initially dismissed from service without holding any enquiry invoking provisions of Article 311(2)(b) of the Constitution of India. This order was challenged by them in OA 2856/91 and 2864/91. These OAs were allowed and orders of the dismissal were set aside. Thereafter, departmental proceedings were initiated against them by a summary of allegations dated 4.9.92. In the meanwhile, the applicants were also being prosecuted for offences under sections 341, 506 and 387 read with section 34 of the Indian Penal Code. The applicants filed OA 2323/92 impugning the action of the respondents in proceeding against them departmentally simultaneously while they were facing a prosecution on the self imposed actions. The OA was disposed of with a direction that the respondents could proceed against the

6

applicants departmentally only after disposal of the criminal case in accordance with the law. An SLP was filed against this order by the respondents. With a direction that the criminal case shall be disposed of as expeditiously as possible and that the respondents could proceed with the departmental proceedings only after disposal of the criminal case in accordance with the law, the SLP was disposed of. The criminal prosecution against the applicant ended in their acquittal vide order dated 5.6.95 of the Metropolitan Magistrate, Delhi. After the order of acquittal, the respondents had served on the applicants an order dated 8.1.96 which reads as follows:

" A D.E. ordered against Consts. Mahabir Singh No.324/Cr. 317/Cr (now 9540/DAP) and Naresh Kumar no.323/Cr. 145/Cr.(now CR-C&R (DA-I)(DA-I, dated 2.7.92 was kept held in abeyance till the decision of criminal case registered against them vide FIR No.352/91/U/S 341/506/387/34 IPC P.S.Ashok Vihar, Delhi. Consequent upon the decision of the criminal case, the above said departmental enquiry is hereby re-opened. The D.E. will be conducted by Inspr.Ashok Kumar, Jun Bn.DAP on day to day basis and submit his findings to the undersigned expeditiously. He will also submit a weekly progress report of the D.E. every Monday.

(Yamin Hazarika)
Dy. Commissioner of Police"

This order is impugned by the applicants on the ground that as the applicants have been honourably acquitted by the Criminal court in accordance with the provisions of Rule 12 of the Delhi Police (Punishment & Appeal) Rules, the respondents shall be restrained from proceeding against them departmentally. They, therefore, pray that the impugned order dated 8.1.96 may be quashed and the respondents may be restrained from proceeding against the applicants departmentally on the basis of the similar charge-sheet at Annexure A-1 as also the order dated 2.7.92, and Annexure A-2 summary of allegations may be quashed, and the decision of the respondents to keep in abeyance a decision on the period of suspension order dated 9.10.91 to 4.8.95 may be set aside and the above period may be directed to be treated as duty for all purposes.

9

2. The respondents in their reply contend that as the acquittal of the applicants is not clear and as the respondents have been permitted to proceeding against the applicants in accordance with the law after the decision of the criminal court, the respondents are perfectly justified in proceeding with departmental proceedings.

3. Having heard learned counsel of the parties and having perused the material available on records, we are of the considered view that the impugned order dated 8.1.96 cannot be sustained. Rule 12 of the Delhi Police (Punishment & Appeal) Rules reads as follows:

"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."

3. It is not disputed that the applicants have been acquitted in the criminal case and that the basis of the summary of allegations was the same as the allegations contained in the charge-sheet before the criminal court. A copy of the order of the Metropolitan Magistrate, Delhi dated 5.6.95 has been annexed to the OA. It is seen that the Magistrate considered the evidence placed before the court and held that the prosecution has failed to prove the case and have, therefore, acquitted the applicants of ^{the offences} their criminal case before the court. This order of the criminal court cannot be considered as one on technical grounds, but it is really an order of acquittal on merits. In a case where criminal court acquits or discharges a police officer of the Delhi Police, who is an accused before the court on merits, if in the opinion of the court or of the DCP, the

prosecution witnesses were won over or if additional evidence is available for departmental proceedings, it ^{would} ^{open} ^{for} ~~should~~ be done by the Deputy Commissioner of Police ^{either} ~~whether~~ to order the departmental enquiry or to proceed with the departmental enquiry already initiated. But there should be an application of mind to the fact that for any valid reasons even after acquittal, the applicants have to be proceeded with departmentally. Such an application of mind is not seen in the impugned order. The order does not disclose that it has been considered and that either for the reason that the witnesses have been won over or that additional evidence will be available for holding departmental enquiry or for any other exception to rule 12, it was found necessary to proceed with the departmental enquiry against the applicants. Even in the reply filed, it has been stated that after considering the judgement and taking into account the provisions of Rule 12 of the competent authority has decided to proceed with the departmental enquiry for some valid reasons.

5. Under the circumstances, we are of the considered view that the impugned order and the further proceedings pursuant to that cannot be sustained. The application, therefore, is allowed. The impugned order at Annexure A-1 is set aside and the respondents are restrained from holding departmental proceedings on the basis of that order. However, we make it clear that this order shall not preclude the competent authority from considering the judgement and circumstances of the case and to take any decision which may be warranted by the circumstances of the case and in consonance with the provisions of Rule 12 of the Delhi Police (Punishment & Appeal) Rules.

No costs.

The respondents are also directed to decide as to how the period of suspension is to be regularised in accordance with the law. *within a period of two months from the date of receipt of this order*
No costs.

R.K. Ahuja
(R.K. Ahuja)

Member (A)

aa.

A.V. Haridasan
(A.V. Haridasan)

Vice Chairman(J)