

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

DA No. 1533/97

New Delhi: this the 20th day of September, 2000.

HON'BLE MR.S.R.ADIGE, VICE CHAIRMAN(A).

HON'BLE MR.KULDIP SINGH, MEMBER (A).

Shri Dilawar Singh No.83/PTS,
S/o Shri Hazari Lal,R/o village & PO Bahu Akbarpur,
Rohtak (Haryana)

Applicant

(By Advocate: Mrs. A. Ahlawat)

VersusCommissioner of Police,
Delhi Police Headquarters,
MSO Building, I.P.Estate,
New Delhi.2. Shri N.S.Rana,
Addl. Commissioner of Police (Training),
PTS Jharoda Kalan,
New Delhi

Respondents

(By Advocate: Shri Vijay Pandita)

ORDERMr. S.R.Adige, VC(A):

Applicant impugns respondents' order dated 13.11.96 (Annexure-A) rejecting his representation for reinstatement in service. He claims reinstatement with full back wages and consequential benefits.

2. Shortly stated applicant was proceeded against departmentally vide respondents' order dated 1.4.86 on the allegation that on the morning of 22.3.86 he trespassed into the house of Smt. Meera Bai w/o HC Sultan Singh residing in Qr. No. 15, Type II PTS Complex, Jharokalan, New Delhi in an intoxicated state in the absence of her husband and tried to molest her.

3. Applicant was placed under suspension for the alleged misconduct and meanwhile a criminal case bearing FIR No. 124/86 under secs. 452/354 IPC was also

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got registered against him at PS Nazafgarh, Delhi.

4. Applicant filed a civil suit in the Court of Sr. Sub-Judge, Tis Hazari, Delhi against the conduct of simultaneous departmental proceedings against him, which was dismissed.

5. The Enquiry Officer in his findings dated 20.8.86 (Annexure-R I) held the applicant guilty of the charge. Tentatively agreeing with the findings of E.O., the Disciplinary Authority issued a show cause notice to applicant provisionally proposing the award of punishment of dismissal from service. A copy of the said notice along with the copy of findings was sent to applicant which was received by him on 16.9.86. He submitted his reply to the same.

6. Agreeing with the E.O's findings and after going through the materials on record, the Disciplinary Authority dismissed the applicant from service vide order dated 14.1.87 (Annexure-RII) and the period of suspension was ordered to be treated as period not spent on duty. Applicant's appeal was rejected vide order dated 25.5.87 (Annexure-R-III) and his revision petition was also considered and rejected vide order dated 6.5.88 (Annexure-R IV).

7. Meanwhile in the criminal case instituted against applicant, vide FIR No.124/86 he was convicted by the lower court under sections 354/452 IPC by judgment dated 14.12.94 and by order dated 24.12.94 he was sentenced to RI for 1 year and also to pay a fine of Rs.500/- failing which he was to further undergo SI for 15 days. Applicant filed an appeal against

that judgment in the Court of Sessions Judge, who by judgment dated 30.11.95, acquitted applicant by giving him the benefit of the doubt.

8. Thereupon applicant filed OA No.2004/96 contending that his request for reinstatement in service, pursuant to the judgment dated 30.11.95 had fallen on deaf ears. It was his case that even a notice sent by an Advocate on 12.3.96 on his behalf had not even been recognised by Respondents.

9. That OA was disposed of by order dated 20.9.96 (copy on record) with a direction to respondents to consider applicant's representation and dispose of the same within 6 weeks under intimation to applicant.

10. Pursuant to the above directions, respondents have issued impugned order dated 13.11.96 rejecting applicant's representation seeking reinstatement, which is now challenged in the present OA.

11. We have heard applicant's counsel Mrs. Ahlawat and respondents' counsel Shri Vijay Pandita. Mrs. Ahlawat has also filed written submissions which are taken on record.

12. Mrs. Ahlawat has contended that applicant had requested the authorities not to proceed with the DE till the decision in the criminal case was received, but the authorities did not accede to this request and applicant's dismissal was thus violative of Rule 15 Delhi Police (P & A)Rules. Further upon applicant's acquittal in the criminal case by judgment dated 30.11.95, on the same charges which formed the subject matter of the DE in which he was dismissed from

service, respondents' failure to reinstate him was violative of Rule 12 Delhi Police (P & A) Rules. Various rulings have been cited in support of these contentions, which include 1976 (1) SLR Kundan Lal Vs. Delhi Administration; CW 270/97 Shri Ram Singh Vs. Barkat Ram; CW-64/96 Darshan Singh Vs. Avinash Chander & Ors; CW-127/68 Anand Swarup Vs. Supdt. of Police; CW 271-D/65 Prem Nath Vs. I.G. Police & Ors; CW-1369/79 Prakash Singh Vs. UOI & Ors; CW-1783/63 Amrik Lal Vs. State of Punjab & Ors; CW-568/70 Mohinder Pal Singh Vs. I.G. & Ors; and Capt. M. Paul Anthony Vs. Bharat Gold Mines & another (1999) 3 SCC 679.

13. On the other hand Shri Vijay Pandita has urged that the impugned order dated 13.11.96 warrants no interference in the light of several rulings including Sr. Supdt. Post Offices Pathan Mitha & Ors. Vs. A. Gopalan 1997 (xi) SCC 239; UOI & Another Vs. Bihari Lal (1997) 4 SCC 385; K.R. Bhibhavkar Vs. State of Maharashtra & Ors. (1997) 3 SCC 636; and K.L. Sabharwal Vs. G.M., Northern Railway, New Delhi & Ors. 1986 (1) ATC 390.

14. We have considered the rival contentions carefully.

15. Rule 15(2) Delhi Police (P & A) Rules states that in cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, a DE shall be ordered after obtaining prior approval of the Addl. Commissioner of Police concerned, as to whether a criminal case should be registered and investigated, ~~or~~ a departmental

enquiry should be held. The offence with which applicant was charged has no connection with his official relations with the public. Nothing in Rule 15 prohibits a departmental enquiry and criminal proceedings being conducted simultaneously. Hence Rule 15 does not help applicant.

16. Moreover applicant's civil suit against the conduct of disciplinary proceedings against him, simultaneously with the criminal case having been dismissed, and that order having become final, he cannot raise that issue now at this stage.

17. Coming to Rule 12, it reads thus:

"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 judgment that an offence was actually committed and the 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."

18. In this connection, in the written submissions filed by applicant's counsel, she has herself stated that the reasons why applicant was acquitted in the criminal appeal with benefit of doubt by the Sessions Judge in his judgment dated 30.11.95 was

i) because of delay in filing the FIR;

ii) because Head Constable Dhanbir Singh who was cited as a PW had denied any knowledge of the incident.

19. Here we would refer to the revisional authority's order, where he has correctly pointed out that a disciplinary proceeding held against a Govt. servant for his misconduct unbecoming of a Govt. servant, is not identical to a criminal prosecution in Court of Law for delinquency. In a criminal case the proof required for conviction has to be beyond reasonable doubt, and it is for reasons (i) and (ii) in para 18 above, that applicant was acquitted with benefit of doubt in the criminal case. However, in a departmental proceeding proof based on preponderance of probability is sufficient for holding the charge of having been proved. Hence if on the basis of the evidence of PW 1 Smt. Meera Bai in the DE, taken with applicant's own written defence statement dated 21.7.86 that Smt. Meera Bai on coming into confrontation with him threw stones at him as a result of which he went running down stairs, respondents concluded that applicant went to her quarter and did something which was objected to her and she started abusing and throwing stones at him, and on that basis held the charge in the DE against applicant as proved on the basis of preponderance of probability, it cannot be said that respondents acted illegally or arbitrarily so as to warrant judicial interference in this OA.

20. Coming to M. Paul Anthony's case (supra) on which much emphasis has been laid by applicant's counsel, it is clear that the aforesaid case is

distinguishable on facts from the one before us. In M. Paul Anthony's case (supra) keeping in view that both the criminal as well as departmental proceedings were based on the same set of facts which were sought to be proved by the same set of witnesses and the court had already acquitted the appellant by rejecting the prosecution story, the Hon'ble Supreme Court held that the findings recorded against appellant in an *ex parte* enquiry could not be sustained. The present case is however quite different on facts. The charge against applicant in the DE of trespassing into the house of Smt. Meera Bai on the morning of 22.3.86 in an intoxicated state in the absence of her husband, and attempting to molest her, has been held as proved by the E.O. in his findings in a DE in which applicant participated and was given full opportunity to defend himself. Accepting those findings, applicant was dismissed from service by the Disciplinary Authority and his orders were upheld in appeal as well as in revision. Meanwhile in the criminal case instituted against applicant on the same charge, applicant was convicted ~~by~~ the lower court, but was acquitted in appeal by grant of benefit of doubt because of (i) delay in institution of FIR (ii) denial by PW H.C. Dhanbir Singh of knowledge of the incident. Nothing has been shown to us to establish that applicant's W.S. in the DE dated 21.7.86 referred to above was exhibited in the criminal proceeding and this clearly constitutes addl. evidence within the meaning of Rule 12(e) Delhi Police (P & A) Rules to bring home the charge of misconduct.

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21. We may conclude, Rule 12(e) Delhi Police (P & A) Rules specifically permits a police officer to be punished departmentally on the same charge in respect of which he has been tried and acquitted in a criminal case, when additional evidence is available. Applicant's own written statement dated 21.7.86 constitutes addl. evidence which has not been discussed in the Sessions Judge's judgment dated 30.11.1995. Under the circumstance, if on the basis of the statement of PW 1, Smt. Meera Bai taken with applicant's own W.S. dated 21.7.86, respondents held applicant guilty as charged on the basis of preponderance of probability it cannot be said that their decision to dismiss applicant from service was illegal, infirm or irregular, and the rulings relied upon by applicant's counsel, each of which are clearly distinguishable on facts from the present case, do not advance applicant's case.

22. In the result the impugned order dated 13.11.96 rejecting applicant's representation for reinstatement warrants no interference. The OA is dismissed. No costs.

Kuldeep
(KULDIP SINGH)
MEMBER (J)

Antolik
(S.R. ADIGE)
VICE CHAIRMAN (A)

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