

10

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1808/97

New Delhi this the 22nd day of December, 1997.

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Sh. S.P. Biswas, Member(A)

1. Sh. Jai Karan
S/o Sh. Chinta Ram,
R/o C-12/457,
Yamuna Vihar,
Delhi-53.
2. Sh. Faudha Singh,
S/o Sh. Deoman,
R/o B-2/129, Nand Nagri,
Delhi-93.

..... Applicants

(through Sh. Shyam Babu, advocate)

versus

1. Commissioner of Police,
Delhi, Police Headquarters,
I.P. Estate,
New Delhi.
2. Addl. Dy. Commissioner of Police,
North East District,
P.S. Seelampur,
Delhi.

..... Respondents.

(through Sh. Ajesh Luthra for Ms. Jyotsna Kaushik)

ORDER(ORAL)

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)

The two applicants in this case were proceeded against by FIR No. 409 dated 11.12.91 alleging certain charges pertaining to theft. They were also earlier dismissed from service invoking Article 311(2)(b) of the Constitution of India and the said order was said aside by this Tribunal in OA-125/96 dated 17.7.96. According to the respondents, the only question to be decided is whether in the circumstances of the case after looking through the final order of the criminal court as well as the provision of Rule 12 contained in Delhi Police

(Punishment & Appeal) Rules, 1980, the disciplinary proceedings are to be initiated or not. That apart of the final order granting liberty to the applicant is reproduced here below:-

"However, we make it clear that this order shall not stand in the way of the respondents deciding to hold disciplinary proceedings against the applicants in accordance with law, if on a perusal of the judgement of the Criminal Court acquitting the applicants and other relevant factors in the light of provisions contained in Rule of the Delhi Police (Punishment & Appeal) Rules, the competent authority decides that it is lawful and necessary to hold such an enquiry."

Thereafter the respondents passed an order on 14.5.97 and decided to hold disciplinary proceedings against the applicants and the applicants in this O.A. are challenging the said order stating that the decision of the respondents purportedly in pursuance to liberty granted by our previous order is arbitrary and without application of mind.

It was stated by the respondents that on the face of the impugned order has been shown that the judgement of the criminal court acquitting the applicant was the one with benefit of doubt granted in favour of the applicant and in view of the said finding, it was stated that Rule 12 of the above said rules, permits the respondents to hold enquiry in such circumstances. The relevant portion of the impugned

13

order is reproduced here below:-

"The benefit of doubt was granted by involving directly into the crime by the above two Constables instead of granting protection to the victim party, they lowered down the prestige of the police department and violated section 3 CCS (Conduct Rule). As suchy they are liable for departmental action in accordance with rule 12 of Delhi Police (Punishment & Appeal) Rules, 1980 because there is sufficient materials on record to initiate D.E. against them."

It was argued on behalf of the applicant that the respondents have wrongly re-read the acquittal order and no where in the order it is stated that the said acquittal is with benefit of doubt granted to the applicant and that being so, they have committed an error while passing the impugned order and the said order will have to be set aside on the ground of, one being passed without application of mind.

After notice the respondents have filed their reply and it was stated by the learned counsel for the applicants that the reason for acquittal available on the face of the acquittal order is that the stolen property could not be produced and as such it is for this reason that the accused persons have been acquitted and that being an acquittal in the nature of a charge falling on technical ground.

Rule 12 of the Delhi Police (Punishment &

Appeal) Rules, 1980 is also reproduced here below:-

"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:-

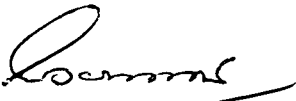
- (a) the criminal charge has failed on technical grounds, or
- (b) in the opinion of the court, or on the Deputy Commissioner of Police, the prosecution witnesses have been won over; or
- (c) the court has held in its judgement that an offence was actually committed and that suspicion rests upon the 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.

We have perused the acquittal order and we find that the non-production of the stolen property was only a factor that was considered by the acquitting court. The final order passed by the acquitting court does not refer at all that the such acquittal is based on the fact that the stolen property was not available. It was stated that the prosecution has not been able to prove the case beyond reasonable doubt. Such a categorical finding, cannot in the circumstances of the case be understood as an

15

acquittal with the benefit of doubt nor as an
acquittal resulting in the charge falling on technical
grounds.

In the circumstances, the order is set
aside. The applicant is allowed to all consequential
benefits. With this, this O.A. is allowed. No
costs.


(S.P. Biswas)
Member (A)


(Dr. Jose P. Verghese)
Vice-Chairman (J)

04 vv/
4

00