

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 2307/97  
T.A.No.

199

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DATE OF DECISION 3.6.98

Constable Abdul Hakim Khan

....Petitioner

Sh.Shankar Raju

....Advocate for the  
Petitioner(s)

VERSUS

UOI & Ors

....Respondent

Sh.Vijay Pandita

....Advocate for the  
Respondents.

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member (J)

The Hon'ble Shri K.Muthukumar, Member(A)

1. To be referred to the Reporter or not?YES
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

*Lakshmi Swaminathan*  
(Smt.Lakshmi Swaminathan )  
Member(J)

Central Administrative Tribunal  
Principal Bench

O.A. 2307/97

New Delhi this the 3th day of June 1998

Hon'ble Smt. Lakshmi Swaminathan, Member(J).  
Hon'ble Shri K. Muthukumar, Member(A).

Constable Abdul Hakim Khan,  
No.10/C.R.,  
S/o Shri Abdul Latiff,  
R/o Village - Dayal Pur,  
PS- Tulsipur,  
Distt - Balram Pur (UP)

... Applicant.

By Advocate Shri Shankar Raju.

Versus

1. Union of India through  
its Secretary,  
Ministry of Home Affairs,  
North Block, N.Delhi.

2. Dy. Commissioner of Police,  
Crime and Railway,  
Police Headquarters,  
I.P. Estate, MSO Building,  
New Delhi.

.... Respondents.

By Advocate Shri Vijay Pandita.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the order dated 23.7.1997 issued by the respondents informing him that the departmental enquiry against him which was kept in abeyance by the Office Order dated 18.11.1993 is being reopened from that stage.

2. By the Tribunal's order dated 1.10.1997, the respondents were directed to maintain status quo till the next date of hearing which has been continued till date.

3. We have heard the learned counsel for the parties and perused the pleadings.

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4. The applicant while working in the Delhi Police was placed under suspension w.e.f. 11.6.1991 and thereafter the departmental enquiry was ordered against him on 27.3.1992. He was also proceeded with in the criminal case FIR No. 294/91. In the meantime, he had filed O.A. 144/93 in the Tribunal and the same was disposed of by order dated 22.7.1993 holding that the departmental proceedings initiated by the impugned order dated 27.3.1992 should be kept in abeyance till the disposal of the criminal case FIR No. 294/91. It was further held that the question of quashing the impugned order initiating the disciplinary proceedings and the summary of allegations is not merited at this stage. The criminal court by order dated 7.4.1997 held that in view of the statement of witnesses, the prosecution has failed to prove the ingredients of an offence u/s 389 IPC against the accused beyond reasonable doubt. Hence giving benefit of doubt to the accused/applicant, he was acquitted. Shri Shankar Raju, learned counsel for the applicant, has relied on the judgement of the Supreme Court in *Sulekh Chand Vs. Commissioner of Police & Ors.* (1994(28) ATC 711). He submits that since the applicant has been acquitted on merit by the criminal court, the respondents cannot proceed with the departmental proceedings on the same charge. He submits that no additional evidence has been referred to by the respondents in the impugned order dated 23.7.1997 to proceed with the departmental enquiry. He has referred to Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter referred to as 'the Rules') and he submits that in the absence of any additional evidence or other conditions as mentioned in Clause 12 (e) of the Rules, the respondents cannot proceed with the departmental proceedings. Relying on the judgement of the Tribunal in *Khazan Singh Vs. Sr. Addl.*

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Commissioner of Police and Anr. (O.A. 852/96) decided on 12.7.1996 (copy placed at Annex.A-11) he submits that the applicant having been acquitted in the criminal charge giving him the benefit of doubt should be considered to be acquitted on merit and hence the respondents cannot proceed with the departmental enquiry on the basis of the order dated 27.3.1992.

5. The respondents on the other hand have filed reply controverting the above facts. They have submitted that the criminal charge has failed on technical grounds. They have also referred to the order passed by the Tribunal in O.A. 144/93 in which it was held that the departmental inquiry may be kept in abeyance till the decision in the criminal case and the applicant has been reinstated in service by order dated 14.7.1997 without prejudice to the departmental proceedings pending against him. They have submitted that the witnesses before the criminal court have turned hostile and hence the benefit of doubt was given to the accused. They have also submitted that one witness SI Subhash Tondon, who was constituting <sup>the 1st</sup> raiding party had not been examined during the trial in the criminal case and two additional main witnesses are available in connection with the departmental proceedings. They have, therefore, submitted that under Rule 12 of the Rules, they have taken a decision to reopen the departmental proceedings. Rule 12 of the 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

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(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 before the court which justify departmental proceedings on a different charge; or

(d) additional evidence for departmental proceedings is available".

6. The main contention of the learned counsel for the applicant is that the disciplinary proceeding cannot be continued against the applicant as the criminal proceedings have ended in his acquittal on the same charges. We have seen the order passed by the criminal court dated 7.4.1997. The learned Metropolitan Magistrate has come to the conclusion that certain witnesses have turned hostile and have completely resiled from their previous statements <sup>and</sup> do not support the prosecution story. In conclusion it has been stated that in view of the statements of the above witnesses, the prosecution has failed to prove the ingredients of the offence against the accused beyond reasonable doubt. The contention of Shri Raju, learned counsel, is that the acquittal of the applicant by the Hon'ble court is on merit and he has relied on the judgement of the Tribunal in Khazan Singh's case (supra). In that case, the Tribunal has on perusal of the relevant judgement of the criminal court observed that the learned Magistrate has discussed in detail the ingredients of the offences on which the applicant and the other two co-accused were charged and the evidence adduced before him. It was also 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 came to the conclusion that the prosecution has failed to prove its case beyond reasonable doubt and he

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gave the benefit of doubt to the accused and acquitted them. That does not appear to be the position in the present case which is quite different on the facts. . In the present case, the learned Magistrate has held as follows:

"In the present case PW6 has not been produced by the prosecution for further examination-in-chief and cross-examination, hence, his statement cannot be read in evidence against the accused. PW1, PW3 and PW5 are the formal witnesses. PW-2 Subhash Sharma, the complainant who has completely resiled from his previous statement does not support the prosecution story".

7. After careful perusal of judgement of the learned Magistrate dated 4.7.1997 and the judgement of the Tribunal in Khajan Singh's case (supra), we are unable to come to the conclusion that the applicant has been acquitted on merits unlike in the case of Khazan Singh (supra) where the Tribunal based on the judgement of the criminal court, came to a contrary conclusion. In Sulekh Chandra's case (supra), the Supreme Court has held that once the acquittal was on merits the necessary consequence would be that the delinquent is entitled to reinstatement as if there is no blot on his service and the need for the departmental enquiry is obviated. It is settled law that though the delinquent official may get an acquittal on technical grounds, the authorities are entitled to conduct departmental enquiry on the self same allegations and take appropriate disciplinary action. In that case, however, since it was held that the acquittal was on merits and the departmental enquiry had been dropped by the respondents, the appellant was entitled to get his promotion with effect from the date his immediate junior was promoted.

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8. Therefore, in view of what has been stated above, the judgement of the Supreme Court in **Sulekh Chand's case (supra)** relied upon by the applicant is not applicable to the facts of the present case. Further, the Tribunal in O.A. 144/93 filed by the applicant had by order dated 22.7.1998 directed that the disciplinary proceedings be kept in abeyance till the finalisation of the criminal case. It is also relevant to note that the respondents have stated that they have two additional main witnesses who are available for the departmental enquiry. Rule 12(e) of the Rules provides that where additional evidence is available for the departmental proceedings, acquittal by the criminal court does not come in the way of holding the departmental enquiry. Therefore, taking into account the totality of the facts and circumstances of the case, we find no good ground justifying any interference in the matter. The application fails and is accordingly dismissed.

No order as to costs.

(K. Muthukumar)  
Member(A)

(Smt. Lakshmi Swaminathan)  
Member(J)

SRD