

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.2329/97

(22)

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

New Delhi, this the 30th day of May, 2000

Anurag
(3908/PCR)
Head Constable (Driver)
s/o Sh. R.S.Rana
r/o D-15, Ashok Mohalla
Gali No.3, Maujpur
Delhi - 110 053. ... Applicant

(By Shri Shyam Babu, Advocate)

Vs.

1. Govt. of NCT Delhi
through its
Chief Secretary
5, Sham Nath Marg
Delhi.
2. Sr. Addl. Commissioner of Police
(Operations)
Police Head Quarters
I.P.Estate
New Delhi.
3. Addl. Dy. Commissioner of Police (PCR)
Police Headquarters
I.P.Estate
Neew Delhi. ... Respondents

(By Shri Aswani Bhardwaj, proxy of Shri Rajan
Sharma, Advocate)

O R D E R (Oral)

By Reddy. J.

The applicant, while working as Head Constable in Delhi Police, was alleged to have created disorderly situation, on 4.12.1992 in drunken condition. Kalandara DD 28A (charge initiated in a petty case), was prepared against the applicant under Sections 92, 93 and 97 of the Delhi Police Act, 1978. An FIR was also registered on 5.12.1992 numbered as FIR 711/92 under Section 452/506 read with Section 34 IPC. The Metropolitan Magistrate, Delhi acquitted the applicant in Kalandara under the above Sections of

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Delhi Police Act by order dated 28.5.1994. The case registered in respect of FIR 711/92 was also taken cognizance by the Magistrate and the same was tried before the Metropolitan Magistrate, Delhi and the applicant was convicted by an order dated 30.11.1995. Aggrieved by the said order he filed an appeal before the Additional Session Judge, Delhi who acquitted him in respect to the charges under Section 452 and 506 read with 34 IPC. In spite of the applicant stood acquitted in both the cases, a departmental enquiry was initiated against him and the summary of allegations dated 26.12.1996, Annexure-E, was served upon him containing the same allegations which were enquired into by the criminal court. After the enquiry was completed the applicant was found guilty of charges and he was inflicted ~~that~~ the punishment of forfeiture of one year's approved service temporarily by order dated 9.4.1997 which has been confirmed by the appellate authority in its order dated 2.8.1997. Aggrieved by the above orders the applicant filed the present OA.

2. The learned counsel for the applicant Shri Shyam Babu contends that the applicant having been acquitted by the criminal court on the same charges, it is not open to the respondents to initiate the disciplinary proceedings on the same evidence in view of Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980. The learned counsel further contends that the order dated 11.2.1998 passed by the



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disciplinary authority stating the period of suspension as period not spent on duty is illegal for want of notice.

3. The learned counsel for the respondents further submits that as the applicant was acquitted only on technical grounds, Rule 12 is not attracted. Hence, it was still open to the respondents to initiate the disciplinary proceedings by leading evidence in the enquiry which was not forthcoming before the criminal court. The learned counsel further contends that no notice is required in passing the order dated 11.2.1998.

4. We have given anxious considerations to the points raised by the learned counsel on either side.

5. In order to appreciate the first contention it is necessary to notice the Judgments/Orders passed by the criminal court in respect to Kalandara DD 28A and in FIR 711/92. By its order dated 28.5.1994 the learned Magistrate, holding that in spite of repeated opportunities the prosecution failed to bring even a single witness on record; and in the absence of prosecution evidence, the case of the prosecution was not proved, acquitted the applicant. Again in respect to the offence registered in FIR 711/92, though the applicant was convicted by the learned Magistrate, he was acquitted by the appellate court by its order dated 25.4.1996 in view of the compounding of offences before the





appellate court. Thus in both the cases the applicant stood acquitted. It is necessary to notice Rule 12 which reads as under (the relevant portion of the Rule is extracted):

"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 the 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)
- (d)
- (e)"

6. On perusal of the Rule, it makes manifest that when a police officer has been acquitted by the criminal court, he should not be punished in the departmental proceedings on the same charge upon the evidence cited in the criminal case whether actually led or not. Certain exceptions are incorporated to the Rule which, among others, are (a) if the criminal charge failed on account of technical grounds and (b) the prosecution witnesses have been won over. Thus, in the above two cases, a delinquent could be proceeded departmentally, even after he was acquitted by the criminal court.

7. The learned counsel for the respondents contends that the above Rule is not applicable because the applicant was acquitted on technical grounds as well as on the ground that no evidence was available

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in the criminal cases. According to him, the conditions (a) and (b) are applicable and hence Rule 12 has no application. We do not agree. As seen from the judgments of the criminal court, the charges against the applicant failed not on technical grounds but on the ground that no evidence was led by the prosecution. The inability of the prosecution to adduce evidence cannot be treated as a technical ground. Technical ground is a ground where the prosecution failed on account of non-obtaining proper sanction, etc. It is also not correct to say that in this case the witnesses were won over by the charged officer. No such finding was given by the criminal court. It is true that the appeal filed by the applicant before the Additional Session Judge was allowed on the ground that the offences have been compounded. The composition of the offences under the provisions of the Criminal Procedure Code amounts to acquittal for all purposes and certainly not on technical grounds. In fact, the charge in the case in respect to the FIR was under Sections 452 and 506 IPC and not for creating disorderly situations in a drunken condition which are the allegations in the DE. Thus the above case is wholly unrelated to the facts of the present case. Only Kalandra is the concerned cases in which he was acquitted. It is not disputed in the present case that the charge was identical in the Kalandra as well as before the departmental enquiry. We are therefore of the view that it is not competent in view of the Rule 12 to initiate disciplinary proceedings when once he was acquitted by the criminal court.



8. The Supreme Court in Capt. M.Paul Anthony Vs. Bharat Gold Mines, JT 1999(2) SC 456 clearly held that it was wholly unjust to proceed against the charged officer on the same charges in which he was acquitted before the criminal court. In the circumstances, we have no hesitation to accept the contention raised by the learned counsel for the applicant in this regard.

9. Since we have taken the view that the OA has to succeed on the first point it is not necessary to discuss about the second point.

10. The OA is accordingly allowed and the impugned orders of disciplinary authority dated 4.4.1997, appellate authority order dated 2.8.1997 and the order dated 11.2.1998 and 10.9.1998 rejecting the appeal of the applicant against the order dated 11.2.1998 are set aside with all consequential benefits. No costs.

Shanta S
(SMT. SHANTA SHAstry)

MEMBER(A)

V.Rajagopala Reddy
(V.RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

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