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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2443/97

New Delhi this the 29th day of June, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman
Hon'ble Mrs. Shnata Shastry, Member (Admnv)

Asstt. Sub Inspector - Brahm Singh No.5235/PCR,
S/o Shri Mange Ram,
R/o Village & Post Office Bajana,
P.S. Kalanaur,
Distt. Rohtak, Haryana. ...Applicant

(By Advocate Shri Shankar Raju)

-Versus-

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

2. Commissioner of Police,
Police Headquarters,
I.P. Estate,
M.S.O. Building, New Delhi.

3. Addl. Commissioner of Police,
Northern Range,
Police Headquarters,
I.P. Estate, New Delhi.

4. Dy. Commissioner of Police,
Central Distt. Darya Ganj,
New Delhi. ...Respondents

(By Advocate Shri Devesh Singh)

O R D E R

By Reddy, J.-

The order of punishment passed in the disciplinary proceedings, withholding two increments for a period of two years permanently, as confirmed by the appellate authority, is under challenge in this OA. The facts in brief are stated hereinbelow.

2. While the applicant was working as Assistant Sub Inspector (ASI) in the Delhi Police and while he was posted in the Central District he was involved in a criminal

case in respect of FIR No.601/85 dated 9.10.85 under Section 420 IPC on the charge of cheating S/Shri Ishwar Singh, Raj Singh, Jagbir Singh and Randhir Singh. On the allegation that he did not inform as to his involvement in a criminal case to the department and suppressed the material information, a regular departmental enquiry was ordered against him vide proceedings dated 12.1.93 under the provisions of Delhi Police (Punishment and Appeal) Rules, 1980. The enquiry officer examined several witnesses and found that the applicant was guilty of the charge and on the basis of which the disciplinary authority inflicted the punishment as stated supra by his order dated 24.4.95.

3. The learned counsel for the applicant Shri Shankar Raju contends:

i) that there was an inordinate and unexplained delay of about 8 years in initiating the enquiry, as the criminal case was registered in 1985 whereas the departmental enquiry was initiated in 1993;

ii) that the mere failure to inform about his involvement in a criminal case to the department would not constitute a misconduct under the CCS (Conduct) Rules;

iii) that under Rule 14 of the Delhi Police (Punishment & Appeal) Rules, 1980 readwith the clarification issued by the Delhi Administration in the year 1988 the disciplinary authority who passed the impugned order was incompetent to pass the impugned order of penalty, as the applicant was not under the disciplinary control of R-4. He was under the disciplinary control of DCP (Special Branch);

iv) that the applicant having been promoted, it should be construed that the department had exonerated him of the alleged lapses committed by him;

v) that since the Enquiry Officer had given a categorical finding that the applicant had in fact informed the superiors regarding his involvement in a criminal case he should not have been found guilty of the charge; and

vi) that as he was acquitted by the criminal court, Rule 12 of the Delhi Police (Punishment & Appeal) Rules, is attracted he could not have been again proceeded, departmentally.

4. The learned counsel for the respondents, however, refutes the above contentions. He submits that none of the rules are violated in the enquiry and the enquiry was held consistent with the relevant rules. It was further contended that in view of the availability of the evidence of several witnesses the Enquiry Officer relying upon the same arrived at the conclusions which were accepted by the disciplinary authority. Hence, this court will not interfere with the findings of the disciplinary authority.

5. We have given our anxious consideration to the several contentions raised by the applicant.

6. We have perused carefully the Enquiry Officer's report and the orders of the disciplinary authority, appellate authority as well as the revisional authority. The Enquiry Officer has examined as many as 8 prosecution witnesses and 4 defence witnesees. Considering the oral as well as documentary evidence in this case and

assigning cogent and valid reasons, he held the applicant guilty of the charge. The plea of the applicant was also duly considered but was rejected. This order has been confirmed in appeal and in revision. The law is well settled that it is not open to the Tribunal in the exercise of judicial review to interfere with the findings of the disciplinary authority which were rendered on the basis of the evidence on record. It is not the grievance of the applicant that the principles of natural justice were violated or that the rules were not followed. Thus the enquiry having been held consistent with the rules and the procedure was properly followed, it is simply not possible for this Tribunal to interfere with the findings of the disciplinary authority.

7. It is, however, necessary to examine the validity of the contentions of the learned counsel for the applicant.

8. The contention that the charge would not constitute a misconduct under the CCS (Conduct) Rules (for short, rules), is not sustainable. The allegations against the applicant are two fold. One is, that he failed to intimate the authorities about his involvement in a criminal case and the second, that he was guilty of cheating several persons. Both the above acts were alleged to constitute the misconduct. Under Rule 3 of CCS (Conduct) Rules every Government servant is expected to maintain absolute integrity, devotion to duty and should do nothing which is unbecoming of a Government servant. It is not in dispute that the applicant was involved in a criminal case and that apprehending arrest, he obtained the anticipatory bail for

his release in the event of his arrest. He suppressed this fact and continued in service, as if nothing has happened to him. In our view, this conduct of the applicant was unbecoming of a Government servant and amounts to not maintaining absolute integrity as a Government servant. The learned counsel relies upon the judgement of the Principal Bench in Shri Sri Niwas v. Union of India & Others, OA No.459/88 dated 15.7.93 wherein it was held that "non-supply of the information about the involvement of the cases does not amount to misconduct unless an arrest has been made therefor, which may be said to be unbecoming of a Government servant." In the instant case it has to be noted that the applicant was not detained on his arrest, as he had obtained anticipatory bail, he was entitled to be released immediately after arrest. Hence this is a case where he was arrested but released no sooner than he was arrested. Hence, even accepting the view taken in the above case, the conduct of the applicant should be held as a misconduct under the Rules.

9. We do not find any unexplained delay in initiation of the disciplinary proceedings in this case. The department came to know about the involvement of the applicant only after the applicant produced the judgement of the criminal court dated 11.7.91. Thereafter the case was processed against him and the charges were served in January, 1993.

10. The next contention is also without substance. The applicant was promoted to the rank of SI on 9.10.91 and by then the case of the applicant was under process, on the basis of the judgement of the criminal court

which was produced at that time and it cannot, therefore, be said that in view of his promotion no disciplinary action would be initiated. It is not the case of the applicant that after the charges were served upon the applicant in 1993 a conscious decision was taken to promote the applicant.

11. It was next contended that the impugned order is contrary to Rule 14 of the Delhi Police (Punishment & Appeal) Rules 1980. We do not agree. It is true that at the time of passing the impugned order the applicant was under the disciplinary control of DCP (Special Branch) whereas the impugned order was passed by the DCP (Central District). Rule 14 clearly provides that all DCPs are entitled to act as disciplinary authority over all officers of the subordinate police rank and whether or not he was actually working under him. Hence, the contention is wholly devoid of any substance.

12. We do not find any violation of Rule 12, either. The relevant portion of the Rule is extracted below:

> "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:....."

13. Placing reliance upon this rule a contention was advanced to say that once the applicant was acquitted by the criminal court he was not liable to be proceeded with departmentally on the same charge. Since the applicant was acquitted by the criminal court in respect of charge under Section 420, it is contended that the departmental enquiry

on the same allegations could not have been initiated. To attract Rule 12, firstly the charges must be the same in the criminal case as well as in the departmental proceedings. In the instant case, they are not the same. The only charge in the criminal case is under Section 420 IPC, for cheating several persons whereas in the DE the main allegation apart from the allegation of cheating, was that he failed to inform about his involvement to the department, in the criminal case. It is no doubt true that Rule 12 applies even in a case of different charge but it should be based upon the same evidence in the criminal case. But it is no part of the evidence in a criminal case that he failed to intimate the department about the criminal case. Secondly, Rule 12 has applicability only when the police officer has been tried and acquitted by the criminal court. Only in such a case the officer should not be proceeded with in DE. In the case on hand, a perusal of the judgement of Sh. N.K. Kaushik, M.M. Delhi dated 11.7.91 reveals that the applicant was acquitted on the ground of 'composition' ~~composition~~ 'compounding' of the offence under the provisions of the Cr.P.C, no trial has been held. Hence, it cannot, therefore, be said that the applicant was tried and acquitted by the criminal court. Thus, for the above two reasons, we are of the view that Rule 12 has no application.

14. The contention that in spite of the finding that the applicant had informed the authorities he was still found guilty of the charge, is wholly incorrect. The intimation by the applicant was only after the criminal case ended in acquittal during 1991. But he was charged in 1985

as the case was registered in FIR No.601/85, hence he should have intimated immediately thereafter and not after his acquittal in 1991.

15. All the contentions raised by the learned counsel are found devoid of substance.

16. The O.A., therefore, fails and is accordingly dismissed. No costs.

(Smt. Shanta Shastry)
Member (Admnv)

(V.Rajagopala Reddy)
Vice-Chairman (J)

'San.'