

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.568/1997

New Delhi, this 21st day of September, 2000

Hon'ble Shri Justice Ashok Agarwal, Chairman

Hon'ble Shri M.P. Singh, Member(A)

1. Dayanand
Vill. Reehmana, PO Sitawali
PS Ganocour, Dt. Sonpet, Haryana
2. Surender Kumar
Vill. Badkhalsa
PO&PS: Rai
Dt. Sonpet, Haryana .. Applicants

(By Shri Shyam Babu, Advocate)

versus

1. Commisioner of Police
Police Hqrs., IP Estate
New Delhi
2. Addl. Dy. Commissioner of Police
(North-West Dt)
PS: Ashok Vihar, New Delhi .. Respondents

(By Shri Ram Kavar, Advocate)

ORDER(oral)

By Shri Justice Ashok Agarwal

An order was passed against the applicants, who were Constables in Delhi Police, dated 19.7.93 by the Addl. Deputy Commissioner of Police, who is the disciplinary authority of the applicants. The charges levelled against them in disciplinary proceedings conducted against them having been held proved, penalty of dismissal from service has been imposed on them. The same has been impugned in the present OA.

2. The present OA has been instituted without applicants' availing remedies of appeal and revision which are provided under the rules. The present OA, in the circumstances, will not be maintainable under the provisions of Section 20 of Administrative Tribunals Act, 1985, which inter alia provide as under:

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"Application not to be admitted unless other remedies exhausted. Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances".

3. The present OA, in the circumstances we find, is liable to be dismissed on this ground alone.
4. Even on merits we find that the present OA is wholly devoid of merits and the same deserves to be dismissed on this ground also.
5. The aforesaid ~~impugned~~ ^{impugned} order of penalty is ~~opposed~~ by Shri Shyam Babu, learned counsel appearing in support of the OA on the ground that applicants have been exonerated of the very same charge levelled against them in the criminal court, namely Addl. Sessions Judge, Delhi. Placing reliance on Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980, it is contended that no penalty could have been imposed on the applicants on the ^{very} same charge which was the subject matter of the proceedings before the criminal court. Rule 12 deals with action following judicial acquittal, which reads as under:

"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 Dy. 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.

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6. In our judgement the aforesaid provisions cannot be said to be ~~accepted~~ ^{attracted} in the present case as what the aforesaid provisions contemplate is ~~a~~ ^a case of ~~the~~ ^a delinquent who has been tried ~~but~~ ^{and} acquitted in ~~the~~ ^a criminal court. ~~This~~ ^{discharge} is not the case of the present applicants. What has happened in the criminal court is that the learned Addl. Sessions Judge by order dated 4.10.96 has proceeded to pass an order of ~~charge~~ ^{discharge} ~~against~~ ^{in favour of} the applicants. We have perused the order of ~~charge~~ ^{discharge} and we find that ~~this~~ ^{the same} is not wholly unjustified. Applicants who are police constables were being prosecuted for serious offences of abduction and rape. The order reveals that the investigating agency had asked the accused to appear ~~in~~ ^{for a} test identification parade wherein the applicants have refused to participate on the ground that they were already known to the victim. Though the statement of the victim had been recorded also under Section 164 of the Code of Criminal Procedure, no reliance thereon was placed and no opportunity was given to the victim to identify the applicants as the perpetrators of the crime. It is apparent that the victim had implicated the applicants in her first information report. ~~Without victims being examined in Court, applicants, without a trial have been discharged~~ ^{Without victims being examined in Court, applicants, without a trial have been discharged}

7. In the circumstances, the contention of Shri Shyam Babu based on the order of the ~~charge~~ ^{discharge passed by} the Addl. Sessions Judge in the criminal case is rejected. No other grounds have been ~~alleged~~ ^{urged} in support of the OA. The present OA in the circumstances, we find, is devoid of merit. The same is accordingly dismissed. No costs.

(M.P. Singh)
Member (A)

/gtv/

(Ashok Agarwal)
Chairman