

Central Administrative Tribunal
Principal Bench

O.A. No. 2554 of 1994

New Delhi, dated this the 23rd September, 1999

Hon'ble Mr. S.R. Adige, Vice Chairman (A)
Hon'ble Mr. Kuldip Singh, Member (J)

Shri Kishan Lal No. 1818/NW,
North West Dist., Ashok Vihar,
Delhi. ... Applicant

(By Advocate: Shri Naresh Kaushik)

Versus

1. NCT of Delhi through
the Chief Secretary,
Sham Nath Marg,
Delhi.
2. P.R.S. Barar,
Additional Commissioner of Police,
Northern Range through P.H.Q., I.P. Estate,
Delhi. ... Respondents

(By Advocate: Shri Rajinder Pandita)

ORDER

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant impugns Disciplinary Authority's order dated 4.9.93 (Annexure 1) and the Appellate Authority's order dated 23/5/94 (Page 9 and 10 of the O.A.).

2. Applicant was proceeded against departmentally on the ground that on 28.5.87 while detailed for official duty with a Government Vehicle for transporting the R.T.C. force from P.S. Hauz Qazi to R.T.C. Jharoda Kalan he hit a rikshaw on Najafgarh Road, near MCD Office resulting in the death of one Sibby and injured one Shri Umesh due to

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rash and negligent driving. Subsequently a case bearing FIR No. 131 dated 28.5.87 u/s 279/337/304-IPC was registered against him.

3. The Disciplinary Authority's order states that the I.O. in his finding dated 22.7.93 (Copy not filed) held the charge against the applicant to be proved. Agreeing with the I.O.'s finding a copy of the enquiry report was furnished to applicant vide U.O. endorsement dated 29.2.93 for representation, if any. Applicant submitted his representation on 16.8.93. After considering the pleas raised by applicant in his representation, the Disciplinary Authority rejected the same, and imposed the punishment of withholding one increment for a period of three years permanently with cumulative effect, which punishment was upheld in appeal by order dated 23.5.94.

4. We have heard applicant's counsel Shri Naresh Kaushik and Respondents' counsel Shri Rajinder Pandita.

5. Shri Kaushik has invited our attention to the order of Metroplitan Magistrate, Delhi dated 8.6.94 (Annexure 4) acquitting applicant in the aforesaid criminal case.

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6. It is clear that the charge in the criminal case as well as that in the Departmental Proceedings are one and the same, and Respondents nowhere state in their reply that there is any difference between the two.

7. Under Rule 12 D.P. (P&A) Rules 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 Such action is covered by any of the Sub-rule (a) to (e) ^{of} _{have} of the aforesaid Rule 12. Respondents nowhere pleaded in their reply that this case is covered by any of the sub-Rules (a) to (e) of Rule 12.

8. Applicant's counsel Shri Kaushik has invited our attention to CAT, PB's order dated 28.1.92 in Bishamber Singh Vs. L.G., Delhi & Others 1992 (2) SLR 694 in which while referring to the aforesaid Rule 12 it has been held that when a police officer has been tried and acquitted by a Criminal Court, he shall not be punished departmentally on the same charge. In the instant case, acquittal of the applicant was on merits and not by giving him benefit of doubt or on technical grounds.

9. Another judgment much on the same lines is Ram Niwas Vs. - Commissioner of Police 1992 (2) SLR 721 decided by the CAT, P.B.

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10. In the light of the facts and circumstances of the case the impugned orders of the Disciplinary Authority as well as that of Appellate Authority cannot be sustained in law.

11. The O.A. succeeds and is allowed. The impugned orders of the Disciplinary Authority dated 14.9.93 and the Appellate Authority's order dated 23.5.94 are quashed and set aside. Applicant's pay should be restored to its original position with such consequential benefits as flow therefrom. These directions should be implemented within three months from the date of receipt of a copy of this order.

(Kuldeep Singh)
Member (J)

(S.R. Adige)
Vice Chairman (A)

/GK/