CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(8)

O.A./T.~~A~~ No. 545 of 1994

Decided on: 4/2/95

Sampuran Singh ....Applicant(s)

(By Shri Shanker Raju Advocate)

Versus

Lt. Governor & Anr. ....Respondent(s)

(By Shri S.K. Gupta Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI J.S. DHALIWAL, MEMBER (J)

1. Whether to be referred to the Reporter or not? Yes

2. Whether to be circulated to the other Benches of the Tribunal? No

(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 545 of 1994

New Delhi this the 4th day of December, 1998

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HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE MR. J.S. DHALIWAL, MEMBER (J)

Sampuran Singh
S/o Shri Dharam Singh
R/o Village Pelpa P.O. Badli P.S. Jhajjar,
District Rohtak (Haryana). ...Applicant

By Advocate Shri Shanker Raju.

Versus

1. The Lt. Governor of Govt. of NCT Delhi
(through its Commissioner of Police),
Police Headquarters,
M.S.O. Building,
I.P. Estate,
New Delhi.

2. The Deputy Commissioner of Police,
8th Bn. DAP, P.T.S. Malviya Nagar,
New Delhi. ...Respondents

By Advocate Shri S.K. Gupta.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Applicant challenges the order of his dismissal from service, passed by the disciplinary authority following a departmental enquiry. The charge against the applicant was that while he was detailed for gas duty on 18.10.1989, he temporarily got involved in a criminal case in which a FIR No.728/89 dated 18.10.1989 was filed and he was alleged to have fired on a Toyota Car No.DDV 9347 occupied by S/Shri Narender Singh, Tejvir Singh and driver Arvind Kumar near ESI Hospital on Ring Road.

2. It is stated in the order that the defaulter Constable along with his associates tried to slip away with his Maruti Car from the spot when a tempo driver named Surat Singh, an eye witness of the above incident, chased the

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Maruti Car and stopped after over-taking the same and in the meantime another person came out from the Maruti Car and took the revolver from the Ex. Constable and threatened the tempo driver of dire consequences. It is also stated that when the tempo driver took out an iron rod and challenged the said person, he slipped away from the spot and the defaulter Constable alongwith one Surender Singh was apprehended by the people and handed over to the local police. As stated earlier, charge was limited only to the alleged involvement of the applicant in the criminal case that he was alleged to have fired on a Toyota Car, as stated above.

3. Counter reply has been filed by the respondents but the applicant has not filed any rejoinder.

4. The applicant challenges the impugned order of punishment on various grounds. The reply of the respondents against the grounds taken are also discussed in the following paragraphs:-

(i) The applicant alleges that the enquiry was not ordered by the disciplinary authority under whom he was working but by some other authority.

The respondents contend that the applicant was under the disciplinary control of the concerned Deputy Commissioner of Police 8th Bn. Delhi Armed Police, who had ordered the disciplinary enquiry. In view of this, this contention of the applicant is not accepted.

(ii) Because cognizable offence has been discussed in the allegation against the applicant, the respondents should have taken a prior approval of the Additional Commissioner of Police.

The respondents assert that the approval of the Additional Commissioner of Police to initiate the disciplinary enquiry against the applicant was very much on record. In view of this, this contention also fails.

(iii) That the disciplinary enquiry and the criminal proceedings were on the same set of facts and, therefore, departmental enquiry is not legally permissible in such cases under the relevant provisions of the Delhi Police (Punishment and Appeal) Rules, 1980.

The respondents submit that there was no legal bar for simultaneous proceedings for offence both in the court of criminal jurisdiction and also in the departmental proceedings in accordance with the service rules. They also contend that no preliminary enquiry was conducted in this case and, therefore, the question of taking permission under Rule 15(2) also does not arise. Respondents further contend that the Tribunal as well as the Supreme Court had allowed departmental proceedings in several cases where criminal cases were also pending. We are of the considered view that it was open to the applicant to approach this Tribunal at the relevant point of time to have the departmental proceedings stayed if he was so advised. In terms of the various decisions of the Supreme Court in Kusheshwar Dubey Vs. M/s BCC Ltd. & Others, AIR 1988 SC 2118 and State of Rajasthan

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Vs. B.K. Meena, 1997 ATJ (1) SC page 137, there is no legal bar for holding simultaneous proceedings and if the departmental proceedings are to be stayed, the courts and tribunals will have to look into the facts and circumstances of each case. In any case, the applicant cannot take this ground at this stage as he had participated in the departmental enquiry which had been concluded and, therefore, this contention is also not accepted.

(iv) The next ground taken by the applicant is that the enquiry has been vitiated as the Inquiry Officer has assumed the role of prosecutor and has cross-examined the prosecution witnesses.

The respondents, however, assert that the Inquiry Officer was empowered to ask questions from the prosecution witnesses.

In our opinion, this contention also has no basis.

(v) It is contended that the enquiry is also vitiated on the ground that the Enquiry Officer had not recorded the findings on the Article of Charge. He had also not recorded reasons how he came to the conclusion that the involvement of the applicant in the criminal case was proved as he had not gone through the evidence of the complainant and the public witnesses who had clearly refuted the charges against the applicant. None of the witnesses had deposed that he was apprehended. The disciplinary authority simply relied on the observation that when the applicant tried to slip away from

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the car, the Tempo Driver who was an eye-witness stopped the car and apprehend the applicant. The Tempo-Driver was not examined in the enquiry nor was he given an opportunity to cross-examine.

The respondents, however, submit that it was not necessary to produce all the prosecution witnesses and it was open to the applicant to produce any such witness as a defence witness, if so desired.

From the impugned order of the disciplinary authority, we do not find any conclusion on the alleged eye-witness account of the tempo driver or his apprehending the applicant. We, therefore, reject this contention also.

(vi) Applicant further contends that the punishment of dismissal is an extreme punishment only awarded in the case of grave misconduct proving incorrigibility of the applicant.

The respondents submit that the punishment in question was awarded after taking into account consideration the gravity of misconduct particularly taking into consideration the fact that a policeman who turns to be criminal has to be dealt with only by a punishment of dismissal. We shall deal with this matter separately after taking into account the pleadings and arguments of the learned counsel for the parties.

5. We have heard the learned counsel for the parties and have also perused the documents placed on record and the

pleadings of both the parties.

6. The learned counsel for the applicant referred to the opinion of Legal Advisor to the Commissioner of Police dated 27.6.82 at Annexure 12, wherein the departmental authorities were instructed that it would be advisable for the employer to await the decision of the Trial Court so that the defence in the criminal case might not be prejudiced and it was, therefore, in these circumstances general instructions were issued that the Enquiry Officer should keep in mind that he should not insist the defaulter to produce the defence evidence till the criminal case was decided by the Court concerned. He also relied on the decision of the Tribunal in **Constable Ramesh Chand and Others Vs. U.O.I. & Others, AISLJ 1997 (3) CAT page 119** to stress that in the face of a criminal offence of a grave nature, departmental enquiry may continue only upto the stage of examining departmental witnesses and not their cross-examination or further. We have already dealt with this matter earlier. It was open to the applicant to got the departmental proceedings stayed till the outcome of the criminal proceedings and, therefore, this contention of the learned counsel and the reliance is of no avail at this stage. The learned counsel, however, submitted that the Trial Court had subsequently acquitted the applicant. The Judgment in the aforesaid case has been filed by the applicant along with an application for early hearing of this matter. However, the case came up in its turn and was heard.

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7. From the order of the Trial Court it is seen that the accused persons in that case were acquitted as none of the material witnesses could prove the case for the prosecution. The learned counsel argued that acquittal of the applicant in the criminal case would obviate the need for a departmental enquiry and he relies on the judgment in of the Apex Court in **Sulekh Chand and Salek Chand Vs. Commissioner of Police, 1994 (28) ATC 711.** The aforesaid judgment of the Trial Court was pronounced on 19.8.94 whereas the impugned order of dismissal in this case was passed on 13.10.1992 itself. Therefore, reliance on this particular case is not of any help here. The learned counsel, however, strenuously argued that even the enquiry in the present case did not conclusively establish the charge. The witnesses are gone on record that no arms were recovered from the applicant from the incident and, therefore, the entire charge is based on no evidence. While citing the aforesaid case, the learned counsel, however, submits that apart from the judgment in the aforesaid case, he relies on the substantive Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 under which a Police Officer shall not be punished departmentally on the same charge on which he was tried and acquitted by the criminal court. He relies on the judgment of the Tribunal in **O.A. No. 1706/1988 - Raj Pal Singh Vs. U.O.I. & Others, O.A. Nos. 971 and 110 of 1991 - Shri Rohtash Singh and Shri Preet Singh Vs. U.O.I. Others.**

8. We have given our careful consideration to this matter..

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9. The charge against the applicant is that he was temporarily involved in a criminal case and was alleged to have fired on a Toyota Car. The learned counsel pointed out that in the deposition of the witnesses particularly PW-3 during the cross-examination, the complainant stated that the applicant was not the person apprehended at the spot. Secondly, he also pointed out that PW-2 who was investigating officer himself, had deposed in the cross-examination that no arms were recovered from the defaulter. All that he said was that it was the applicant who was arrested by him. We have seen the findings of the Enquiry Officer as well as the deposition of the aforesaid witnesses. Although in the Enquiry Officer's report, the above deposition witnesses is recorded there is no appraisal of this part of the evidence by the Enquiry Officer and he has only concluded that the involvement of the defaulter is fully proved in the criminal case. The learned counsel for the respondents argued that the mere involvement by way of his arrest at the spot would be sufficient to prove the charge. We are unable to accept this contention of the counsel for the respondents. When there is a specific charge that he was alleged to have fired at the Toyota Car and the other witnesses PWD-3, PWD-4 and even PWD-5, the driver of the car have not specifically apprehended or indentified the applicant on the spot. Except for the deposition of the Investigating Officer himself who had also said that he had arrested the applicant, it cannot be conclusively stated that the charge against the applicant has been proved beyond doubt. The findings of the Enquiry Officer, in our considered, view is based on no evidence at all and even the disciplinary and appellate authorities have

simply stated that there was sufficient material evidence to prove his misconduct. Further, we cannot overlook the fact that in the criminal case it cannot be said that the charge had failed merely on technical grounds or there had been any allegation that the prosecution witnesses had been won over. The Criminal Court has also not held in its judgment that the alleged offence was actually committed and there was any suspicion on the applicant and it is also not shown that the Criminal Court discloses the facts unconnected with the charge before that court, which would justify separate departmental proceedings on definite charge. Thus, we are of the considered view that since the applicant had been acquitted by the court of criminal jurisdiction, in terms of Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980, the applicant cannot be punished on the same charge. However, the fact remains that the impugned order was passed earlier than the order passed in the Criminal case. But even then the findings of the Enquiry Officer is not found to be based on any evidence which would substantiate the charge and the findings of the Enquiry Officer is not based on any evidence and is perverse. The disciplinary and appellate authorities have simply concluded that there was sufficient material on evidence and the fact that the prosecution witnesses other than the Investigating Officer have neither apprehended the applicant nor has there been any recovery of arms nor has there been any averment in the deposition that the applicant had, in fact, fired at the Toyota Car.

10. In the facts and circumstances of the case, we are of the considered view that the impugned order cannot be

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sustained. Accordingly, we allow the application quashing the impugned orders and directing the respondents to reinstate the applicant forthwith. The applicant is also entitled to all the consequential benefits. There shall be no order as to cost.

(J.S. DHALIWAL)
MEMBER (J)

(K. MUTHUKUMAR)
MEMBER (A)

Rakesh