

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 929/94

199

T.A. No.

(5)

DATE OF DECISION 20-7-99

Sh. Ram Dutt

....Petitioner

Sh. M. K. Gupta

....Advocate for the
Petitioner(s)

VERSUS

Commissioner of Police and
Ors.

....Respondent

Sh. Jog Singh, 1d. counsel through ... Advocate for
proxy counsel Shri S.K. Gupta) Respondents.

CORAM

The Hon'ble Shri V. Ramakrishnan, Vice Chairman (A)

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not? YES
2. Whether it needs to be circulated to other
Benches of the Tribunal? NO.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA 929/94

6

New Delhi this the 20th day of July, 1999

Hon'ble Shri V.Ramakrishnan, Vice Chairman(A)
Hon'ble Smt.Lakshmi Swaminathan, Member (J)

Shri Ram Dutt,
S/O Shri Khacheru Mal,
R/O E-289, Gali No.13,
Khazoori, Delhi-92
working as Head Constable
VIIIth Battalion,
Delhi Armed Police, Delhi.

..Applicant

(By Advocate Shri M.K.Gupta)

Versus

1.Commissioner of Police,
Indraprastha Estate, N/Delhi-2

2.Addl.Commissioner of Police (AP&T)
Police Headquarter,
Indraprastha Estate,
New Delhi-110002

3.Deputy Commissioner of Police,
IIIrd Battalion, Delhi Armed Police,
Kingsway Camp, Delhi.

..Respondents

(By Advocate Shri Jog Singh, learned
counsel through proxy counsel Shri
S.K.Gupta)

O R D E R (ORAL)

(Hon'ble Smt.Lakshmi Swaminathan, Member (J)

The applicant who was working as Head Constable with
the respondents has been imposed punishment by order dated
27.1.93. On appeal this penalty has been confirmed by the
appellate authority by order dated 6.12.1993.

2. The aforesaid impugned orders have been passed by
the respondents after holding a departmental enquiry ordered
against him on 1.8.91 on the allegation that while he was posted
in III Bn. DAP on 25.7.91 he was detained at O.D. lock up
for production of ^{an} undertrial. It was stated that at about
11.35 AM an undertrial, Shanti Dum dum, involved in case FIR
No.299/96 u/s 379/411 IPC P.S. Patel Nagar, Delhi was handed
over to the lawful custody of the Head Constable for production

Y.S.

in the Court of M.M.Delhi. The undertrial escaped from his lawful custody at about 1.30P.M. but he did not report the matter to I/C Lock up or any other senior officer. On this ground the applicant had been charged that ^{he} has concealed the facts about the escape of the lady undertrial upto 6.05PM with ulterior motive, thereby contravening Standing Order (SO) 52.

3. As mentioned above, the disciplinary authority, after perusal of the relevant documents, including the Enquiry Officer's report and the representation made by the applicant, imposed punishment of forfeiture of one year approved service permanently for a period of one year entailing reduction in pay of the applicant during which time he would not earn increment, by one stage in the scale. This punishment order has been confirmed on appeal by the appellate authority by its order dated 6.12.1993.

4. Before conclusion of the aforesaid disciplinary proceedings against the applicant, a criminal case had also been filed against the applicant and the undertrial Shanti, by the State in the Court of Metropolitan Magistrate (MM) Delhi for the same incident, namely, the escape of ^{the} undertrial Shanti from the custody of the applicant on 25.7.91. This O.A. has been filed on 6.5.94 praying that the impugned punishment orders passed on the conclusion of the disciplinary proceedings should be quashed and set aside with consequential benefits. Apart from the grounds taken in the OA, Shri M.K.Gupta, learned counsel for the applicant has submitted that during the pendency of this OA, the aforesaid criminal case filed against the applicant (FIR 135/91) by the State has also been concluded by the learned M.M.Delhi by order dated 2.2.96 (Copy placed on record). He has contended that since the criminal case has been concluded wherein it has been held that the prosecution has completely failed to prove its case against the two accused persons beyond — shadows of all reasonable doubts, under the provisions of Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 (herein after referred to as the 'Rules'), the punishment orders passed against the applicant

(8)

in the disciplinary proceedings will also have to be quashed and set aside. Learned counsel has also relied on the judgement of the Hon'ble Supreme Court in Capt.M.Paul Anthony Vs. Bharat Gold Mines Ltd. and Anr. (JT 1999(2)SC 456 para 34). He has submitted that the witnesses relied upon by the State in the criminal case as well as ^{those} _{relied} upon by the respondents in the disciplinary proceedings are the same, except one Shri Yogesh Sharma(PW-2). Learned counsel has contended that in para 5 of the judgement of the learned M.H.Delhi, it has been stated that prosecution has even not proved the basic ingredients of the offence alleged against the two accused persons so as to connect them with the offence in question, which has also been referred to again in para 7, that the prosecution has completely failed to prove its case against the two accused persons beyond shadow of all reasonable doubts. He has submitted that although the departmental proceedings in this case had concluded before the conclusion of the criminal case against the applicant, nevertheless since the criminal case against the applicant has ~~been~~ ^a filed not merely on technical grounds but on the merit itself under Rule 12 of the Rules ^(supra), the punishment orders passed as a result of the disciplinary proceedings have to be quashed and set aside. According to him, none of the exceptions provided in clauses (a) to (e) of the Rule 12 is applicable in this case.

5. The next ground taken by the applicant is that under Rule 29(3) of the Rules, it is provided that dismissal or removal from service shall normally follow a judicial conviction for finding of guilt in a departmental enquiry for negligence resulting in the escape of a prisoner. He has emphasized that when in the disciplinary enquiry the competent authority has come to the conclusion that there is negligence resulting in the escape of the undertrial, they were required to impose penalty of dismissal or removal from service when the criminal case ended in conviction of accused. Learned counsel for the applicant has also submitted

(8)

(9)

that under Rule 12 of the Rules¹⁸ (supra) even if the disciplinary proceedings are concluded prior to the conclusion of the criminal case, on acquittal by the criminal court the applicant would be entitled to have the disciplinary proceedings and punishment orders quashed and set aside. He has also submitted that the specific violation under S.O. 52 has ~~also~~ ¹⁸ not been stated and hence the charge is not clear.

6. We have seen the reply filed by the respondents and also heard Sh.S.K.Gupta, proxy counsel for the respondents. Proxy counsel for the respondents has submitted that in the present case the disciplinary proceedings had started and concluded much before the acquittal of the applicant in the criminal case (FIR 135/91). He has submitted that since there was no bar for holding ^a disciplinary enquiry, merely because the applicant has been acquitted does not necessarily mean that the punishment order in the disciplinary enquiry should be quashed and set aside. He has submitted that the Criminal Court in its order dated 2.2.96, besides holding that the prosecution has failed to prove the offence beyond reasonable doubt has also referred to the fact that the sanction for prosecution under Section 197 Cr.P.C. had obtained not been in the present case. He has, therefore, submitted that this is also a factor which has been taken into account by the criminal court in ¹⁸ acquitting the applicant. With regard to the judgement of the Supreme Court in Capt.M.Paul Anthony case (Supra) he has submitted that in the disciplinary proceedings, apart from the evidence on record ^{of those witnesses} who have been called, the E.O. had also referred to certain Daily Diary Entries (DDs) which were not part of the evidence in the criminal court, and therefore, this case is not applicable to the facts of the present case. He has also submitted that Rule 12 as well as Rule 29(3) of the Rules are not applicable to the present facts and circumstances of the case. In the circumstances he has submitted that the OA is without any merit and the same may be dismissed.

18

10

7. We have carefully considered the submissions made by the learned counsel for the parties and perused the records.

8. Rule 12 of the Rules provide as follows:-

" 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 was failed on 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) 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."

(emphasis added)

From the above it is seen that Rule 12 deals with the situation where there is a departmental action following judicial acquittal. Here admittedly the impugned action and orders relate to action taken in the departmental proceedings prior to the conclusion of the criminal case. We are unable to agree with applicant's counsel contentions that under Rule 12 of the Rules, once the criminal court has acquitted an accused police official, then it precludes only action being taken against him unless any of the exceptions under clauses (a) to (e) are applicable. In the present case, the fact is that the disciplinary proceedings were initiated against the applicant on 8.8.91 and had been completed in 1993 i.e. well before the conclusion of the criminal case by the M.M's order dated 2.2.96.

18-

9. On careful perusal of the judgement of the learned M.M. Delhi dated 2.2.96 it is seen that in para 5 it has been stated that in spite of a number of opportunities, prosecution failed to bring on record any incriminating evidence against the two accused persons which could have linked them with the present offence in question. At the end of the paragraph it has also been stated that all these lacuna completely shake away the very ground beneath the prosecution case, so as to connect the two accused persons with the offence in question. In this para, the learned judge has also stated that in the absence of any such testimony, it cannot be presumed that accused Shanti had run away from the custody of Constable Ram Dutt and was subsequently apprehended by the police of PS Nabi Karim. Apart from the aforesaid lacuna, in para 6 of the judgement, the Criminal Court has also stated that the prosecution has also not procured any sanction U/S 197 Cr.P.C. for the prosecution of accused HC Ram Dutt, which was a pre-requisite condition for his prosecution. In the concluding paragraph it is stated that in view of the above discussion the accused are acquitted. We are not impressed by the arguments advanced by the learned counsel for the applicant that in this case the lacuna noticed by the Court that the prosecution has not procured any sanction under Section 197 Cr.P.C. for the prosecution of accused is not at all material, as the Court held that the prosecution had failed to prove the case against the two accused persons. We cannot ignore the fact that the lacuna of sanction under section 197 Cr.P.C. has, in fact, been noted by the criminal court which is one of the reasons which led to the acquittal of the applicant..

10. The reliance of the learned counsel for the applicant on the provisions of Rule 29(3) is also not tenable. In the sub-rule it has been provided that dismissal or removal from service shall normally follow a judicial conviction, for finding of guilt in a departmental enquiry for negligence resulting in the escape of a prisoner. This rule imposes no bar on the respondents to hold a

13.

12

disciplinary enquiry in such circumstances and impose any other punishment other than dismissal or removal in accordance with the relevant law and rules. In a number of judgements of the Supreme Court (For example see State of Rajasthan Vs. B.K. Meena and Ors. (JT 1996(6)SC 684, Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Ors (JT 1988(3)SC 576)) the Supreme Court has held that there is no bar to hold disciplinary enquiry simultaneously or as parallel proceedings when a criminal case is pending in the Criminal Court. The Court/Tribunal cannot also exercise their power to restrain the disciplinary proceedings in all cases automatically in the context of good administration. Having regard to the provision of Rule 12 of the Rules, we do not therefore, see any bar on the department having initiated disciplinary proceedings or completed them when the criminal case was pending. Admittedly, the applicant had not obtained any stay order from any competent forum to restrain the respondents from holding the departmental proceedings.

11. The Hon'ble Supreme Court in Capt. P. Anthony's case (supra) has held as follows:

" Since the facts and the evidence in both the proceedings namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case."

12. In the present case the above observations of the Supreme Court/Capt. P. Anthony's case (supra) that the criminal case as also the departmental proceedings were based on identical set of facts are also not applicable. As pointed out by Sh. S. K. Gupta, learned proxy counsel, in the disciplinary enquiry which was held against the applicant, certain other documents, namely, DD entries had also been relied upon which were not part of the documents/ evidence in the criminal case. Therefore, the ratio of the judgement

13

Capt.P.
in Anthony's case (Supra) is not applicable to the facts of the
present case.

(13)

12. For the reasons given above, we see no merit in this case
and the same is accordingly dismissed. No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)

Member (J)

Dra. R. Sankar

(V. ^R Sankar)

Vice Chairman (A)

S.K.