

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.NO.1410/94

New Delhi, the 17th February, 1995

Hon'ble Shri J.P. Sharma, Member(J)

Hon'ble Shri B.K. Singh, Member(A)

Const. Bijender Kumar, No. 1960/SW
s/o Shri Birbal Singh,
presently posted at South-West Distt. Lines,
R/o Village & P.O. Khatuali,
Distt. Muzaffarnagar, U.P.

... Applicant

Shri Shankar Raju, Advocate

Vs.

1. The Lt. Governor of NCT,
through Commissioner of Police,
Police Headquarters, MSO Building,
I.P. Estate, New Delhi.

2. The Dy. Commissioner of Police,
South-West Distt: Vasant Vihar,
New Delhi.

... Respondents

By Advocate: Shri Anoop Bagai

JUDGEMENT

Hon'ble Shri J.P. Sharma, Member(J)

In case FIR 300/92 u/s 354 IPC the applicant as an accused was placed under suspension and thereafter was dismissed without following the procedure of holding departmental enquiry under Article 311(2), proviso 2 of the Constitution of India by the order dated 14.7.92. That order was set aside in original application No. 1033/93 by the judgement dated 22.9.93 giving liberty to the respondents to initiate the disciplinary proceedings in accordance with law. The applicant was reinstated in service on 13.11.93 but the period from 24.8.92 to 10.11.93 was not decided and was stated to be decided subsequently. On the basis of the aforesaid FIR, the applicant was tried in a criminal court and by the

dated judgement/4.4.94 the applicant was acquitted from the charge. After disposal of that case, the disciplinary proceedings was commenced by the order dated 22.2.94 and the summary of allegations dated 23.3.94 was served on the applicant with the list of witnesses.

2. On 11.7.94 the applicant filed this application and by the order dated 1.9.94, the further proceedings of the departmental enquiry was stayed and that order continues.

3. The relief claimed by the applicant is that the order of initiating departmental enquiry and summary of allegations served on the applicant be declared quashed and the departmental enquiry against the applicant be dropped deciding the period from 24.8.92 to 10.11.93 as a period spent on duty.

4. On notice, the respondents contested the application and opposed the grant of the relief on the ground that the applicant was involved in an offence molestating Miss Katrina Edward, a British National who was going along with her friend to IGI Airport in Aurore. The conduct of the applicant was immoral in the sense that he kissed the said Miss Katrina Edward and put his hand around her thigh and also committed certain obscene act with her. The said Miss Katrina Edward on reaching IGI Airport lodged a report at Police Station, IGI Airport regarding the above incidence and the report as said above was registered at Delhi Cantt. The applicant and another Constable Ram Saran were arrested. However, after dispensing with enquiry, the applicant was dismissed from service but because of the direction issued in O.A.1033/93 order was quashed with the direction that the respondents can continue with the disciplinary enquiry and proceed according to procedure prescribed under Delhi Police (Punishment

10

8 Appeal) Rules, 1980. The applicant has caused damage to the reputation of Delhi Police force and does not deserve and the enquiry proceedings against him cannot be dropped. As regards the acquittal by the Criminal Court, it was said that it was not acquittal on merits as the eye-witness and the complainant, two foreign nationals after filing the complaint left the country and could not be produced by the prosecution in the court resulting in acquittal of the applicant. The applicant has no case.

5. The applicant has ^{not} filed any rejoinder. We heard the learned counsel for the parties and perused the records. The acquittal by the Criminal court does not bar the departmental enquiry. The applicant belongs to disciplined Police force and only employed to protect the citizens from being subjected to any crime. The applicant as alleged himself committed crime that too when he was on police duty on the Check Post near Bharat Petrol Pump on the domestic Airport. The British nationals, one of whom as alleged molested is Miss Katrina Edward. It was the duty of the applicant to help them rather than himself indulging in certain acts which complainant disclosed in the written report lodged immediately after at the Police Station, IGI Airport. In the case of Nelson Melice V. UOI reported in JT 1992(5) P.511 the Hon'ble Supreme Court considered the case of the petitioner who was acquitted by the Criminal Court, after his acquittal the employee was proceeded in the departmental enquiry in accordance with rules. The Hon'ble Supreme Court considered this matter and held that departmental enquiry in such cases is not barred. The respondents, therefore, even after the acquittal of the criminal case can commence the departmental enquiry against the applicant.

6. Even Rule 12 of Delhi Police (Punishment & Appeal) Rules, 1980 gives power to Deputy Commissioner of Police to proceed with the acquitted employee in a departmental enquiry. Rule 12 is quoted 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:-

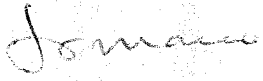
- a) the criminal charge has failed on technical grounds, or
- b) in the opinion of the court, or on the Deputy Commissioner of Police, the prosecution witnesses have been won over;
- c) the court has held in its judgement that an offence was actually committed and that suspicion rests upon the Police 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.

7. The contention of the learned counsel that the applicant has got clean acquittal from the criminal court is not basically correct. The criminal court vide its order dated 4.4.94 observed that PW complainant and the eye-witnesses Miss Katrina Edward and Mr. Nicholas L. Edell have left the country on the day of FIR was registered and did not appear inspite of summons. In view of this, the prosecution evidence was closed and statement of accused was also dispensed with. Thus it is a case of no evidence. The department can proceed against the applicant on the basis of relevant circumstantial and other evidence which have been disclosed alongwith summary of allegations. Thus it cannot be said that the departmental enquiry is barred because of the acquittal by the criminal court.

8. The learned counsel has also argued that the case of the applicant is not covered under Rule 12 but it is not so. Even the direction in the earlier O.A. has to be complied with by the respondents as it was directed that the disciplinary enquiry can be held and the order of dismissal was quashed which was passed under Article 311(2) proviso.

9. In view of the above facts and circumstances, we find no merit in this case. The interim order is vacated. The respondents to proceed with the enquiry according to law. Cost on parties.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

'rk'