

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 1214/2000

New Delhi this the 22nd day of December, 2000

Hon'ble Mr. V.K. Majotra, Member (A)
Hon'ble Mr. Shanker Raju, Member (J)

Shri Kamal Singh,
S/o Shri Bakhtawar Singh,
R/o Block No. B-1, Pocket 7/20,
Sector 15, Rohini,
Delhi-110 085.

-Applicant

(By Advocate: Shri G.D. Gupta)

Versus

1. Government of National Capital Territory of Delhi through the Chief Secretary, 5, Sham Nath Marg, Delhi-110 054.
2. The Commissioner of Police, Police Headquarters, MSO Building, I.P. Estate, New Delhi-110 002.
3. The Additional Commissioner of Police (Operation), I.G.I. Airport, New Delhi.
4. The Deputy Commissioner of Police (Operation), I.G.I. Airport, New Delhi.
5. The Assistant Commissioner of Police (D.E. Cell), Vigilance, New Delhi.

-Respondents

(By Advocate: Shri Ajay Gupta)

ORDER (Oral)

Mr. Shanker Raju, Member (J)

In this OA the applicant challenges resumption of a departmental enquiry after his acquittal from the Criminal Trial on 10.2.2000 on the ground that the applicant has been acquitted on benefit of doubt. Brief history of the case is that the applicant while posted at IGI Airport has been proceeded against in a departmental enquiry dated

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10.7.95 on the allegations that he allegedly interrogated a detainee Pritam Singh and conducted his personal search and seized certain currency. It has been further alleged that the applicant had not shown currency items in the seizure memo.

2. Simultaneously, the criminal case was also instituted against the applicant on 1.6.95 by lodging FIR No. 306/95 under Section 409/IPC on the charges that the applicant/accused had put into certain currency items from one Pritam Singh and later misappropriated the same and thus committed a breach of trust.

3. The applicant challenged simultaneous proceedings in OA-1390/95 and the Tribunal vide an order dated 29.9.95 passed the following directions:-

"In the result, in view of the submissions made by both the counsel, the application is finally disposed of with a direction to the respondents to proceed in the Departmental proceedings only to the extent of examining the witnesses in support of the summary of allegations in chief only and allowing the applicant to defer the cross-examination till the criminal case initiated against him on the same set of facts is decided by the Criminal Court. There is no order as to costs".

4. In compliance, the departmental enquiry has been kept in abeyance by the respondents on 10.11.95 awaiting the decision of the Criminal case FIR No. 306/95 under Section 409/IPC.

5. The trial concluded on 10.2.2000, whereby the applicant has been acquitted on the criminal charge by giving benefit of doubt vide an order passed by the Dy. Commissioner of Police on 12.6.2000.

6. The applicant challenged the resumption of enquiry by resorting to Rule-12 of Delhi Police (Punishment & Appeal) Rules, 1980 and contended that his case is not covered in any of the provisions enshrined therein. The Tribunal by an order dated 5.7.2000 ordered the stay of the further proceedings in the departmental enquiry.

7. We have heard both the counsel and carefully considered the contention and perused the record. According to the counsel for the applicant, his acquittal from the criminal case is though on the benefit of doubt but the Trial Court came to the conclusion that there is no incriminating circumstances giving support to merely defective evidence as such in this background of no material produced by the prosecution to sustain the charge against the applicant, he has been acquitted from the criminal case. Learned counsel for the applicant has taken us to the judgment of the Trial Court dated 10.2.2000 at Annexure A-13 and pointed out that the complainant has not supported the prosecution case and had denied to have made any complaint against SI Kamal Singh. The other witnesses i.e. PW-2 Dalel Singh has

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also deposed that no recovery has been effected in his presence. PW-3 has further deposed that in the seizure memo the number of currency notes were not mentioned and the same was not sealed.

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8. The Trial Court has come to the conclusion that recovery from the accused has not been proved from the testimony of other PWs and as complainant turned hostile the prosecution has failed to prove the charge. Shri G.D. Gupta has also pointed out towards the finding recorded by the Trial court which is re-produced as under:-

"Mere suspicion or suspicious circumstances cannot relieve the prosecution of its primary duty of proving its case against an accused person beyond reasonable doubt. Courts of justice cannot be swayed by sentiments or prejudice against a person accused of very reprehensible crime. They cannot even act on same conviction that an accused person has committed a crime unless his offence is proved by satisfactory evidence on its record.

If pieces of evidence on which prosecution chooses to rests its case are so brittle that they crumble when subjected to close and critical examination so that the whole super structure built on such insecure foundation collapses. Proof of same incriminating circumstances which might have given support to merely defective evidence cannot avert a failure of the prosecution case.

The super structure of prosecution case based on the testimony of eye witness having crumbled in the case before me. I find it impossible not to give the accused the benefit of doubt because of in circumstances which could only raise suspicion against them".

9. In this background, the learned counsel for the applicant contended that in order to bring his

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case under provisos to Rule-12 of Delhi Police (Punishment & Appeal), Rules 1980 and having regard to the order of resumption of departmental enquiry on the ground of benefit of doubt, it is to be established that the trial court in its judgment has held that the offence was actually committed and that suspicion rests upon the police officer concerned. To substantiate his contention, the learned counsel has referred to a judgment of this Tribunal on the identical issue rendered on 12.7.96 in OA 852/96 where an Ex-Inspector who was acquitted from the criminal charge on benefit of doubt has been proceeded against in a departmental enquiry. The Tribunal has observed as under:-

"We have scrutinised the judgment of the Metropolitan Magistrate (Annexure-G) with maticulous care. Nowhere in this judgment it has been mentioned by the Metropolitan Magistrate that any of the offecnes was actually committed or that suspension rested upon the applicant. On the other hand in Paragraph-32 of the judgment (supra), the Metropolitan Magistrate has noted that there were material contradictions in the testimony of all the prosecution witnesses, that their evidence was shaky in nature and that the case of the proseuction was full of doubts. It was then observed by the learned Magistrate that the benefit of doubt should go to the accused and that it was in that context that the Magistrate while acquitting the applicant and his co-accused on the ground that the prosecution had failed to prove its case beyond reasonable doubt observed that the benefit of doubt was given to the accused. The above observations of the learned Magistrate does not at all according to us amount to a finding that an offence had been committed and that the suspecion rested on the applicant. The prosecution case was that the applicant and his accused

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committed the offences with which they were charged. This case of the prosecution was found to be full of doubts. The Magistrate did not find that any of the offences was committed but found the whole case of the prosecution full of doubt in view of the contradictory and shaky nature of the testimonies of the witnesses. Therefore, we have no hesitation to hold that the case of the applicant does not come within the exception contained in Clause (c) of Rule-12 of the Delhi Police (Punishment and Appeal) Rules to justify the respondents holding further departmental proceedings.

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The arguments of the learned counsel of the respondents that in all cases where the acquittal of the Police Officer by the Court giving the benefit of doubt, it is presuable to punish the officer departmentally on the same charge or on a different charge after completing the departmental proceedings after the judgment of the Criminal Court cannot be accepted in view of the specific provisions contained in Rule 12. Even in a case where the acquittal of the officer by giving his benefit of doubt, unless there is a finding by the court that the offence has been committed and that suspicion rested on the official, after a Police Officer has been tried and acquitted by a Criminal Court, he cannot 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 the case comes within any of the Clauses a) to e) of Rule 12".

10. From the observations made (supra), in order to deal a police officer departmentally after his acquittal from the criminal charge, it is to be shown that the Trial Court in its judgment had recorded the fact of offence actually committed and there should also be a clear finding that the suspicion rested upon the Police Officer.

11. In order to satisfy ourselves, we have

perused the judgment of the Trial Court dated 10.2.2000 and we find neither a finding by the Trial Court that the offence has been actually committed nor there is a specific finding that the suspicion rested upon the Police Officer concerned. Rather, we find from the judgment that the Trial Court has gone to record the fact that the evidence is defective and there is no incriminating circumstances against the applicant.

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12. From the foregoing discussion, we hold that the case of the applicant cannot be covered by Rule-12(c) of Delhi Police (Punishment & Appeal) Rules, 1980.

13. The learned counsel for the applicant has also drawn our attention to the judgment of Delhi High Court in Mohan Lal Vs. Union of India reported in SLR 1982 (1) 573 where the following observations would be made by the Hon'ble Justice S.B. Wad:-

"Acquittal of a Govt. servant on benefit of doubt is complete acquittal on merits and consequently the concerned Govt. servant shall be entitled to full pay and allowances".

14. The learned counsel for the applicant contends that this judgment has been consistently followed by the respondents while taking a decision after the acquittal of a Police Officer in a criminal case. The aforesaid judgment has been referred to in the opinion of legal advisor in the case of one Constable Ramesh Pal who was allegedly involved in a

rape case and subsequently acquitted on the charge on benefit of doubt. The legal advisor to the Commissioner of Police ruled on the basis of the judgment of Hon'ble High Court that in case where a Police Officer is acquitted on benefit of doubt the decision to hold a departmental enquiry could not be proper. The learned counsel for the applicant has also drawn our attention to a decision taken by the DCP West District on 11.5.99 where HC Suresh Kumar who has been acquitted by the Court in a corruption case on benefit of doubt and dealt departmentally thereafter was allowed the benefit of the judgment of the High Court and his departmental enquiry has been dropped.

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15. In this context, the learned counsel for the applicant contends that he has been discriminated in the matter of resumption of departmental enquiry on benefit of doubt. According to him if similarly circumstanced, Police Officers have been given the benefit of the Circular, it would be discriminatory if these departmental instructions and decisions are not applied to his case. We are in agreement with the contention of the applicant and hold that the applicant is also entitled for the same treatment which has been meted out to the similarly situated police officer. The applicant in view of the judgment of the High Court of Delhi would not be dealt departmentally after his acquittal on benefit of doubt and punished.

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16. The learned counsel for the respondents also taken a plea that the acquittal of the applicant in the criminal case is also on account of witnesses turning hostile. In this regard, we find that the order of resumption of departmental enquiry has not been passed on this ground rather the enquiry has been resumed on benefit of doubt. We have carefully perused Rule-12 and its provisos. Mere hostility of a witness is not an exception whereby a Police Officer can be dealt departmentally. In order to deal a police officer departmentally after his acquittal, it is to be shown that the witnesses have been won over and this finding should have been recorded either by the Court or by the DCP. In the instant case, we find that neither the finding has been recorded by the Trial Court nor the DCP has recorded this finding while passing an order resuming the departmental enquiry. In these circumstances, the contention of the respondents is liable to be rejected. We have also carefully perused the judgment of the Trial Court and also the provisions & exception clauses of Rule-12 of Delhi Police (Punishment & Appeal) Rules, 1980 and we find that the case of the applicant does not fall in any of the proviso mentioned in Rule-12. The counsel for the respondents has also not shown to us that the case of the applicant after his acquittal falls being any of the other proviso to Rule-12(ibid).

17. In view of the above discussion, we hold that the resumption of departmental enquiry against the applicant is not in accordance with

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Rule-12 of Delhi Police (Punishment and Appeal) Rules, 1980. As a result the order of resumption of departmental enquiry passed by the respondents on 12.6.2000 at Annexure A-1 is quashed and set aside. The applicant would also be entitled to all the consequential benefits in accordance with law and instructions. No order as to costs.

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S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Member (A)

cc.