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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No.1732/2000

New Delhi: this the 10th day of August, 2001

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

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Abdul Hakeem,
S/o Sh. Abdul Latif,
R/o Vill. Dayalipur,
P.S. Tulsipur,
P.O. Gudra,
Distt. Bairampur (UP)

.....Applicant

(By Advocate: Shri Shyam Babu)

Versus

1. Govt. of NCT, Delhi through
its Chief Secretary,

5, Sham Nath Marg,
Delhi.

2. Deputy Commissioner of Police,
3rd Battalion,
Vikaspuri Line,
Delhi.

3. Addl. Commissioner of Police,
Armed Police,
Delhi.
P.S. Kingsway Camp.,
New Delhi

.....Respondents

(By Shri R.K. Singh proxy for Shri A.K. Chopra)

ORDER

S.R. Adige, VC (A):

Applicant impugns the disciplinary authority's order dated 23.7.99 (Annexure-A) and the appellate authority's order dated 22.5.2000 (Annexure-B). He seeks consequential benefits.

2. Applicant was proceeded against departmentally vide order dated 27.3.92 (Annexure-D) on the allegation that one Sushil Sharma had complained that on 2.6.91 applicant while posted in Crime Branch had taken Rs. 400/- and his driving license from him under threat that he would be sent to jail for 10 years for the possession of 'Charas' which applicant had allegedly planted in the

dicky of Shri Sharma's scooter. Applicant is also alleged to have asked Shri Sharma to bring Rs.1000/- on 3.6.91 at 7 p.m. near Appu Ghar Bus Stop. On 3.6.91 applicant was arrested by a police party on information given by Shri Sushil Sharma and FIR No.294/91 dated 3.6.91 under section 389 IPC P.S.Tilak Marg, New Delhi was registered.

3. Applicant was placed under suspension w.e.f. 11.6.91 but was subsequently reinstated vide order dated 14.7.97.

4. The DE had proceeded up to the stage of cross-examination of PWS but meanwhile upon receipt of the Tribunal's order dated 22.7.93 in OA No.144/93 filed by applicant, the DE was kept in abeyance till the decision in the aforesaid criminal case.

5. Consequent upon the decision in the aforesaid criminal case on 7.4.97 (Annexure-F) the DE was resumed.

6. The Enquiry Officer in his findings dated 15.1.99 (Annexure-L) concluded that the charge could not be proved.

7. The disciplinary authority disagreed with the Enquiry Officer's findings and reasons for disagreement along with copy of EO's findings were communicated to applicant on 12.4.99 (Annexure-M) for representation, if any.

8. Applicant submitted his representation, upon consideration of which, the disciplinary authority after giving applicant a personal hearing and considering the other materials on record, by impugned order dated 23.7.99 imposed the penalty of forfeiture of 3 years' service permanently for a period of 6 years with

immediate effect entailing proportionate reduction in pay from Rs.3350/- to 3125/- in the time scale of Rs.3050-4590 during which period applicant would not earn increment and on the expiry of which the reduction would have the effect of postponing his future increment of pay. The suspension period was ordered to be treated as 'not spent on duty' for all intents and purposes.

9. Applicant's appeal was rejected by order dated 22.5.2000, giving rise to the present OA.

10. We have heard applicants' counsel Shri Shyam Babu and respondents' counsel Shri R.K.Singh.

11. The first ground taken by Shri Shyam Babu is that pursuant to applicant's acquittal in the criminal case vide judgment dated 7.4.97, applicant could not have been punished departmentally on the same charge and relied in this connection on Rule 12 Delhi Police (P & A) Rules. However, Rule 12(b) ibid is an exception to the rule and provides that punishment can be imposed where in the opinion of the court or the Deputy Commissioner of Police the PWs have been won over. A perusal of the judgment dated 7.4.97 reveals that the Court acquitted applicant by giving him the benefit of doubt because the PWs had failed to prove the ingredients of offence under sec.389 IPC against applicant beyond reasonable doubt. While concluding thus, the court noted inter alia, that the complainant Shri Sushil Sharma who was PW2 had completely recanted from his previous statement and did not support the prosecution story, and similarly PW4 had also turned hostile. Indeed, para 9 of the judgment reveals that it was applicant's own stand that he was entitled to be acquitted as some of the PWs were hostile, PW6 was not produced for examination - in-chief and other witnesses

were formal in nature. It is therefore clear that in the opinion of the court some of the PWs had been won over, because otherwise they would not have turned hostile. Furthermore the disciplinary authority also in his impugned order dated 23.7.99 has opined that applicant was acquitted in the criminal case by giving him benefit of doubt, because 2 PWs had turned hostile during the criminal case. In our view therefore applicant's case is squarely hit by Rule 12(b) Delhi Police (P & A) Rules. Shri Shyam Babu argued that in the absence of it being explicitly ~~stated~~ in the aforesaid judgment dated 7.4.97, that applicant was being acquitted because the PWs had been won over, it could not be said that Rule 12(b) ibid would be applicable, but in our view it is sufficient if a perusal of the judgment leads to the irresistible conclusion that the acquittal is because, in the opinion of the Court, the prosecution witnesses have been won over, even if it was not explicitly stated so, in so many words. In our opinion the judgment dated 7.4.97 does lead to the irresistible conclusion that the court acquitted applicant in the criminal case because in its opinion the PWs had been won over, as a result of which the prosecution case failed, leading to applicant being entitled to benefit of doubt. Hence this argument does not avail applicant, and the ruling in Rajpal Singh Vs. Govt. of NCT of Delhi OA No. 1161/96 decided by CAT PB's order on 4.2.2000 relied upon by Shri Shyam Babu does not advance applicant's claim.

12. The next ground taken is that the complainant himself did not support the case, and our attention

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was also drawn to the evidence tendered by PW7, but as pointed out by the disciplinary authority in his order both the complainant as well as PW7 turned hostile, and their evidence by itself does not establish applicant's innocence. The disciplinary authority in his impugned order has given cogent reasons why on the basis of preponderance of probability applicant's misconduct is established, and we have no good reasons to disagree with his conclusion.

13. It was next argued that the punishment imposed by the impugned orders were in violation of Rule 8(d) Delhi Police (P & A) Rules, but now it is well settled through a CAT Full Bench ruling that the punishment as contained in the impugned order does not violate Rule 8(d) Delhi Police (P & A) Rules.

14. Lastly it was argued that respondents' action was violative of the principles of law laid down by the Hon'ble Supreme Court in Delhi Admn. Vs. Chanan Shah AIR 1969 SC 1108. That was a case under Rule 16.38 Punjab Police Rules which required immediate information to be given to the DM of any complaint received by the SP which indicated the commission by a police officer if criminal offence in connection with his official relations with the public in which case the DM was required to decide whether the investigation of the complaint was to be conducted by a police officer or made to a selected Magistrate having 1st Class powers.

15. The corresponding rule in the Delhi Police (P & A) Rules is Rule 15(2) which provides that in cases in which a preliminary enquiry discloses the commission of cognizable offence by a Police Officer of subordinate rank in his official relation with the public, departmental enquiry shall be ordered after obtaining prior approval

of the Addl. Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held. Applicant cannot invoke the ruling in Chanan Shah's case (supra), which in any event relates to the Punjab Police Rules and not to the Delhi Police (P & A) Rules with which we are concerned here, at this stage, much after the criminal case ended in his acquittal by granting benefit of doubt, and after the disciplinary proceeding has itself concluded, to contend that the prior approval of the Addl. Commissioner of Police should have been obtained whether to register and investigate a criminal case, or initiate a departmental enquiry. Such a plea might, if at all, have been available to applicant when he filed earlier OA No. 44/93, but it is not available him now.

16. No other grounds were pressed.

17. In the result the OA warrants no interference. It is dismissed. No costs.

A. Vedavalli
(DR. A. VEDAVALLI)
MEMBER (J)

Adige
(S. R. ADIGE)
VICE CHAIRMAN (A).

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