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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1796/2000

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

New Delhi, this the 9th day of July, 2001

Anil Kumar
s/o Late Shri Bhagwan Singh
C-7/49, Paschimi Dayalpur
Near Tukmerpur
Delhi - 110 094. ... Applicant

(By Advocate: Shri M.K.Bhardwaj)

Vs.

1. Govt. of NCT of Delhi, through
Chief Secretary
5, Sham Nath Marg
Delhi.
2. Commissioner of Police (DP)
Police Headquarters
I.P.Estate
New Delhi.
3. Additional Commissioner of Police (DP)
PCR and Commn., Delhi.
4. Deputy Commissioner of Police
Police Control Room, Delhi
5. Enquiry Officer, Inspector/
North - Central Zone, PCR
Delhi. Respondents

(By Advocate: Mrs. Neelam Singh)

O R D E R (Oral)

By Mr. Shanker Raju, Member (J):

The applicant, a Head Constable (Driver) in Delhi Police has assailed an order passed by the disciplinary authority on 5.11.1998 dismissing him from service which was maintained by the appellate authority vide his order dated 6.9.1999. The applicant having been involved in FIR No.162/96 dated 18.3.1996 under Section 379 Section 411 IPC being posted in East Zone, Delhi was arrested on the allegation that on 18.3.1996 one Tara Singh accompanied by one Shri Shanker (a servant of his

brother-in-law) were travelling in a bus from Timarpur to Old Railway Station when the said bus reached near Kashmere Gate Bust Stop, Shri Tara Singh, Complainant felt movements/commotions in the rear pocket of his pant and as soon as he sought to check his pocket, he immediately caught hold of the hand of the applicant who was allegedly removing money from his pocket. Simultaneously, with the criminal investigation a departmental enquiry was ordered against the applicant on the same allegation on 11.4.1996. The trial court after consideration of the evidence of the complainant and other witnesses vide order dated 17.4.1998 by extending the benefit of doubt, acquitted the applicant from the criminal charge by holding that the prosecution has not been able to bring home guilt of the accused. The applicant was also proceeded with in a departmental enquiry where all the witnesses who were ~~the prosecution~~ⁱⁿ witnesses in the criminal trial were examined. The applicant has not submitted his defence statement and the enquiry officer in his finding dated 22.8.1996 held the applicant guilty of the charge. Before the disciplinary authority the applicant has not submitted any representation but during the personal hearing apprised him about his acquittal from the criminal charge. The disciplinary authority on the basis of the finding of the enquiry officer dismissed the applicant from service and treated the period of suspension as not spent on duty. On filing an appeal against the order of dismissal the appellate authority after taking into consideration the acquittal of the applicant on benefit of doubt maintained the order of dismissal.

2. The applicant though taken several pleas in his OA, at the outset, by resorting Rule 12(1) of the Delhi Police (Punishment and Appeal) Rules, 1980 contended that the disciplinary authority while passing an order of dismissal has not at all taken into consideration the acquittal of the applicant though on benefit of doubt but on the ground that the prosecution has failed to bring home the charge against him. It is also contended that appellate authority has not at all taken into consideration the acquittal in the criminal charge strictly in accordance with Rule 12 and its provisos. In this conspectus the applicant by drawing our attention to Clause 'c' of the proviso of Rule 12 ibid states that a police officer can be punished departmentally on the same charge on which he has been ~~tried~~^{tried} and acquitted if the court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned. He has also drawn our attention to the orders passed by the trial court on 17.4.1998, and stated that the trial court in its Judgement has nowhere held that the offence was actually committed or the suspicion rested upon the applicant. In fact, it is stated that the trial court has observed that no independent witnesses was joined and the complainant, Shanker was not examined in the witness box and on this taken an adverse inference against the prosecution. The trial court has further observed that the prosecution has not been able to bring home the guilt of accused beyond reasonable doubt. As regards the fact of travel by the complainant along with a servant of his brother-in-law, in the same bus where the same was

denied by the complainant itself and was confronted with his previous statement. Recovery of case property was also found to be ex-facie tainted and highly doubtful against the applicant. In this back-ground, the acquittal of the applicant though observed to be on the basis of the benefit of doubt does not fulfil the criteria laid down under Rule 12 and it is a clean acquittal on the ground that the prosecution has failed to prove its case. Placing reliance on the decision of this Court in OA 852/96 wherein the same issue was dealt with by the Co-ordinate Bench and their decision held that in the event the inception to Rule 12(c) is to be applied. There has been no finding that the offence has been committed and suspicion rested upon official.

3. The learned counsel for the respondents rebutted the contentions of the applicant. He has stated that the applicant has been rightly punished in the departmental enquiry as despite acquittal his case was well within the proviso 'c' to Rule 12 as he has been acquitted by giving benefit of doubt on number of technicalities. It is also stated that during the course of the departmental enquiry the witnesses who have earlier appeared in the trial have supported the case of prosecution and as the applicant has not produced any defence he was rightly held guilty of the charge by the enquiry officer to which the disciplinary authority has agreed too and further maintained by the appellate authority. As regards the consideration of the trial court's decision by the disciplinary authority as well as appellate authority it is stated that the same has been considered keeping

in view of the provisions of Rule 12 and there is no illegality or irregularity in conduct of the disciplinary proceedings and as such the Tribunal has no jurisdiction to interfere in the matter of punishment assuming the role of an appellate authority and taking a contrary view to what has been taken by the administrative authorities.

4. The applicant has also filed rejoinder reiterating the pleas taken by him in the OA.

5. We have given careful thought to the rival contentions of the parties and perused the material on record. It is an admitted fact that the applicant has been dealt with departmentally and simultaneously investigation of a criminal case which ended in his acquittal by the trial court. In this order passed by the trial court the prosecution has not been able to bring home guilt of the accused against him and also it has been observed that the recovery of case property from the possession of the applicant is tainted and doubtful. On our reading and re-reading of the trial court's orders we find that nowhere the court has given a finding that the offence was actually committed and a suspicion rested upon the applicant. The benefit of doubt which has been given to the applicant was, in the conspectus, that the prosecution has failed to bring home any evidence to prove the charge and by observing that the recovery is ex-facie tainted and highly doubtful, the benefit of doubt has been extended to the applicant. In order to bring the case within the proviso given under Rule 12 ibid and more particularly Rule 12 (c) it has to be

established that the Judgement contained a finding of the Court that offence was actually committed and suspicion is rested upon the Police Officer concerned. The respondents have failed to show to us any such finding of the trial court in its order, we are of the confirmed view that the case of the applicant cannot be taken resort to under Rule 12 (c) for the purposes of punishing him for the same charge on which he stood acquitted him by the trial court. It is also uncontroverted that the charge levelled against the applicant is identical in both the proceedings and the witnesses who appeared in the trial court are common in the departmental enquiry too. In this view of the matter and having regard to the ratio laid down in Khazan Singh Vs. Senior Additional Commissioner of Police & Others, O.A.No.852/1996 decided on 12.7.1996, we find that the decision of the respondents to punish the applicant without considering the judgment of the trial court and taking resort to Rule 12(c) is not legally tenable. Apart from it Hon'ble Apex Court in Capt. M. Paul Anthony v. Bharat Gold Mines, JT 1999 (2) SC 456 has held that an acquittal on merits, the finding of the disciplinary proceeding would not stand.

6. Another illegality which has crept in the orders of the respondents that while the applicant stood acquitted from the criminal charges, much before the disciplinary authority had taken a final decision and imposed punishment of dismissal and the fact of which has already been brought into his knowledge during the personal hearing by the applicant but yet the disciplinary authority has not at all taken into

consideration the Judgement delivered by the trial court and acquittal of the applicant. The appellate authority too was apprised of the acquittal of the applicant but in its order dated 6.9.1999 except to state that the acquittal was on benefit of doubt on certain irregularities their appears to be non-application of mind to the provision of Rule 12 of Police Rules ibid. We are of the confirmed view that there has been a non-application of mind by the respondents while issuing order of penalty as well as appellate order to the acquittal of the applicant and also to the provisions of Rule 12(c) ibid.

7. Having regard to the discussion made above and reasons recorded, we set aside the order of dismissal dated 5.11.1998 as well as the order of appellate authority dated 6.9.1999. The applicant is ordered to be reinstated and is to be under deemed suspension w.e.f. 18.3.1996 with all the consequential benefits. We also remand back the case to the disciplinary authority to apply its mind afresh to the provisions of Rule 12 and 12(c) and the observations made above, if so advised, and pass a final order within a period of two months from the date of receipt of a copy of this order. The OA is accordingly allowed on the above terms but without any order as to costs.

S. Raju
(SHANKER RAJU)
MEMBER(J)

V.K. Majotra
(V.K. MAJOTRA)
MEMBER(A)