

Central Administrative Tribunal, Principal Bench

Original Application No.1862 of 2000

New Delhi, this the 19th day of July, 2001

Hon'ble Mr. Justice Ashok Agarwal, Chairman
Hon'ble Mr. V.K. Majotra, Member(A)

1. Ashok Kumar
S/o Shri Virender Singh
R/o Village & P.O. Khera Khurd
Delhi

2. Virender Kumar
S/o Shri Umrao Singh
R/o Village Manikpur
Thana Barot,
Distt. Meetut (U.P.)

- Applicants

(By Advocate: Shri Shyam Babu)

Versus

1. Govt. of N.C.T. Delhi
through its Chief Secretary
5, Sham Nath Marg,
Delhi

2. Commissioner of Police
Police Headquarters
I.P. Estate,
New Delhi-2

3. Deputy Commissioner of Police
South West District
P.S. Vasant Vihar
New Delhi

- Respondents

(By Advocate: Shri T.D. Yadav, proxy for Shri Vijay Pandita)

O R D E R (ORAL)

By Mr. V.K. Majotra, Member(A)

Vide Annexure 'A' dated 17.5.2000, respondents rejected the request of the applicants for reinstatement in service and dropping the departmental enquiry against them on the ground of their acquittal in a criminal case FIR No.93/91 U/s 302/120-B/201/ 34 I.P.C. Disciplinary enquiry initiated against the applicants vide respondents' order dated 30.10.91 which was held in abeyance, vide order dated 11.7.2000 (Annexure 'B') has been ordered to be re-opened with immediate effect for conducting the same on day to day

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basis from the stage where it was kept pending. The Enquiry Officer has been asked to submit his findings within a period of three months.

2. Through the present OA, the applicants seek quashing and setting aside of Annexures 'A' and 'B' with further declaration that no departmental action can be initiated/continued against them in view of the acquittal by the Criminal Court on 17.3.99. The applicants have also sought consequential benefits.

3. We have heard Shri Shyam Babu for the applicants and Shri T.D.Yadav, proxy counsel for Shri Vijay Pandita on behalf of respondents.

4. Shri Shyam Babu, learned counsel of the applicants drew our attention to judgement dated 17.3.99 in the criminal case against the applicants contending that after considering the evidence on record, the learned Additional Sessions Judge, Delhi held that there was no evidence against accused Ashok Kumar to connect him with the offence punishable under Section 302 IPC and Section 120-B IPC and also that there is no evidence against accused Virender Kumar for the offence committed under Section 109 r/w and Section 201 of IPC. Thus the applicants who were accused persons in the criminal trial, were acquitted of the above offence. Learned counsel mentioned that the charge against the applicants in the criminal case and that in the present departmental enquiry are virtually the same and since the applicants have been exonerated and let off in the criminal case, they cannot be



proceeded in the departmental enquiry herein. He argued that the applicants had not been exonerated on technical grounds in the criminal cases and had been acquitted on merits.

5. We have considered the pleadings in this case as also the arguments advanced by Shri Shyam Babu.

6. Earlier on, these applicants had approached this Tribunal in O.A.3126/92 seeking quashing of the departmental enquiry during the pendency of the criminal trial. The same OA was decided by order dated 13.2.98. After hearing learned counsel for the parties, this court had held as under:

"3. After hearing the learned counsel for the parties and perusing the record, we are of the view that the scope of trial in the criminal case was and is altogether different from that in the D.E., though certain facts appeared to be common for purposes of the trial and the D.E. and, therefore, we find no merit in this application. In criminal trial, the question to be decided is about the participation or involvement of the applicants in the offences under Section 302 and under other sections in the Indian Penal Code for which they are charged. In the D.E., the question is if the applicants or anyone of them remained on unauthorised absence for 5 or 6 hours as alleged and if they misused the official pistol and/or cartridges in the manner alleged. For this reason, the reference to Rules 11 and 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 by the learned counsel for the applicants was misplaced and misconceived.

4. In the result, this O.A. fails and it is hereby dismissed. No costs."

7. Aforestated O.A.3126/92 was rejected as the court did not find any merit in that application. It was held that in the criminal trial, the question to be decided is about the participation or involvement of the applicants in the offences under Section 302 and under other Sections

of the IPC. However, in the departmental enquiry, the question is if the applicants or either of them remained on unauthorised absence for 5/6 hours as alleged and whether they misused the official weapons and/or cartridges in the manner alleged.

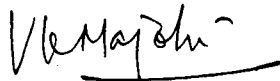
8. We have gone through the judgement in the criminal case as well as order instituting the enquiry alongwith summary of allegations etc. We find that the enquiry contains allegation, regarding issuance of weapons, absence of the applicants for 5/6 hours from the picket duty and going to village Khera Khurd, P.S. Narela with the Govt. pistol, getting arrested in the case FIR 93/91, P.S. Narela, seizure of the weapons from their possession by Narela P.S. on 21.4.91 as also arrangement of cartridges and making good of the shortage of cartridges etc. The ingredients contained in these allegations are quite different from ^{accusa -} ~~acquisition~~ made in the criminal ^{trial} ~~trial~~ _{in the criminal} case. The question in the present disciplinary enquiry to be decided is whether the applicants remained unauthorisedly absent for a specific time as alleged and ^{-ed} ~~misusing~~ the official weapon and/or cartridges in the manner alleged. Rule 12(d) of Delhi Police (Punishment and Appeal) Rules, 1980 reads 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 "the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify

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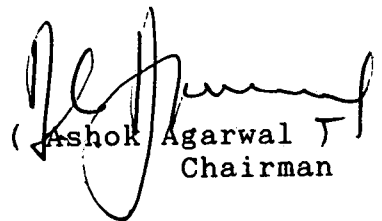
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departmental proceedings on a different charge." In our view, the present disciplinary enquiry is covered under Rule 12(d) of the aforesaid rules.

9. Having regards to the reasons discussed above, we do not find good grounds for declaring that the departmental action initiated against the applicants in view of their acquittal by the criminal court on 17.3.99, was bad in law. Consequently, the OA is dismissed. No costs.



(V.K. Majotra)
Member(A)


(Ashok Agarwal)
Chairman

/dkm/