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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2076/2000

New Delhi this the 3rd day of August, 2001.

HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMN)  
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Narender Kumar (Head Constable),  
(PIS No.28820217),  
R/o Vill & P.O. Kurmali,  
Distt. Muzffar Nagar (UP).

...Applicant

(By Advocate Shri Anil Singhal)

-Versus-

1. Govt. of NCT of Delhi,  
through Commissioner of Police,  
Police Headquarters,  
I.P. Estate, New Delhi.

2. Joint Commissioner of Police,  
Northern Range, New Delhi  
through Commissioner of Police,  
Police Headquarters,  
I.P. Estate, New Delhi.

3. Addl. D.C.P.,  
Central Distt. New Delhi.

...Respondents

(By Advocate Shri Devesh Singh)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

The applicant, a Head Constable in Delhi Police, has challenged an order whereby he has been awarded a major punishment which was confirmed in the appellate order. Briefly stated, on account of involvement in a criminal case FIR No.319/96 under Section 385 IPC he has been proceeded against in a criminal charge and simultaneously dealt with in a departmental enquiry. The enquiry officer after prosecution evidence and defence held him guilty of the charge, mainly placing reliance on the facts of FIR No.319/96 and the proceedings taken therein. The disciplinary authority while coming to the conclusion of guilt and imposing punishment has placed reliance on the only evidence, i.e., of Bani Singh, complainant and taking

a lenient view awarded him a major penalty of permanent forfeiture of one year approved service. The appellate authority too on the basis that a criminal charge is pending against him and he was involved therein, maintained the punishment.

2. The learned counsel of the applicant has taken several contentions to assail the impugned order. His first contention is that the case is of 'no evidence'. According to him Constable Namdev who has allegedly taken him to the police station, has not supported the prosecution in the cross examination and complainant Bani Singh while being examined as PW-4 totally denied the allegations against the applicant and has failed to identify him. Apart from it, it is contended that there is absolutely no evidence to sustain the charge against the applicant. Another contention of the applicant is that the enquiry officer has assumed the role of a prosecutor and instead of asking clarificatory question put leading question to the witnesses to bring evidence against the applicant, which has not been otherwise brought from the testimony of PWs. Lastly, it is contended that as he has been honourably acquitted from the criminal charge by the judgment dated 4.1.2000, punishment imposed would not be legally sustainable in view of the decision of the Apex Court in Captain M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr., JT 1999 (2) SC 456.

3. Strongly rebutting the contentions of the applicant the learned counsel of the respondents stated that the present case is not of 'no evidence'. There is sufficient evidence in the form of testimony of the

investigating officers as well as the Inspector before whom the applicant was produced at police station. It is also stated that the enquiry has been proceeded against in accordance with the procedure and rules and there is no violation of any principles of natural justice. Lastly, it is stated that as the complainant has been won over he has not supported the prosecution but from other evidence the allegations have been proved against the applicant, including the arrest report in the criminal case as well as his involvement in the criminal case.

4. We have carefully considered the rival contentions of the parties and perused the material on record. We find that the applicant on his being acquitted from the criminal charges the respondents have decided the suspension period as spent on duty for all purposes. Though the punishment order and the appellate order have been passed during the pendency of the criminal trial on the identical set of facts and similar charge but yet while holding the applicant guilty of the charge the enquiry officer has mainly relied on the case FIR No.319/96 and the proceedings taken thereon, i.e., arrest report of the applicant and his alleged recovery of the amount. The appellate authority too while maintaining the punishment has strongly observed that in case the applicant is not guilty in the enquiry he would not have been involved in a criminal case. The disciplinary authority too though admitting that there is only an evidence of Bani Singh who is the main witness but has given the statement in favour of the petitioner, taken a lenient view. In our considered view and supported by the ratio of the Apex Court in Captain M. Paul Anthony's case (supra) once the trial court

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delivers a finding acquitting a Government servant from the criminal charge the finding arrived at by the departmental authorities would not stand. There is a logic behind it, in the departmental enquiry the rule of pre-ponderance of probabilities applies and there is no application of the strict rules of evidence and the Cr.P.C. The witnesses are not scrutinised as thoroughly it is done before the trial court. As such once the trial court gives a finding not holding the accused guilty and acquitting him the same has some credence over the findings of quasi judicial authority. In this view of the matter and the fact that after the enquiry officer and the appellate authority have placed reliance to hold the applicant guilty and maintain the punishment on the criminal charge and the fact of pendency of criminal charge against the applicant his subsequent acquittal legally warrants a review of the order, as provided under Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980.

5. Having regard to the discussion made above and the reasons recorded, we set aside the order of punishment as well as the appellate order. The matter is remanded back to the disciplinary authority to pass fresh order, taking into consideration the acquittal of the applicant in the criminal court in view of Rule 12 ibid and pass a reasoned and speaking order within a period of two months from the date of receipt of a copy of this order. In the event the applicant is exonerated and not found guilty, he shall also be entitled to all the consequential benefits.

6. The O.A. stands disposed of accordingly. No costs.

S. Raju  
(SHANKER RAJU)  
MEMBER(J)

(GOVINDAN S. TAMPI)  
MEMBER(A)

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