

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2373/2000

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

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

H.C. Sukhbir Singh,
No.184/DAP,
1st Battalion, Near Police Line,
Kingsway Camp,
Delhi.

...Applicant

(By Advocate Mrs. Avnish Ahlawat)

-Versus-

1. Govt. of NCT Delhi through
the Commissioner of Police,
Delhi Police Headquarters,
M.S.O. Building,
I.P. Estate,
New Delhi.
2. Dy. Commissioner of Police,
1st Bn. DAP, Kingsway Camp,
Delhi.
3. Shri R.L. Meena,
Inspector, D/1/504,
Enquiry Officer,
through the DCP, 1st Bn., DAP,
Kingsway Camp,
Delhi.

...Respondents

(By Advocate Shri Ashwani Bhardwaj, proxy for
Mr. Rajan Sharma, Counsel)

O R D E R

By Mr. Shanker Raju, Member (J):

The applicant while working as a Head Constable has been involved in a criminal case under Section 409 IPC vide FIR No.123/93 on the allegation that while posting at Head, i.e., at P.S. Alipur committed criminal breach of trust in respect of the cash amount of Rs.3250/-, i.e., the amount of jama talashi of injured Swaroop Singh in case FIR No.114 dated 10.12.90 Under Sections 279/337/304-A IPC. The trial proceeded with the examination of our witnesses and thereafter finding no evidence in the record the applicant was acquitted from the criminal charge. Thereafter the applicant has been ordered to be proceeded

against in a departmental enquiry on an identical charge after a period of about three years from his acquittal by the Deputy Commissioner of Police (for short, DCP) vide an order dated 25.9.2000 (Annexure B).

2. The applicant has approached this Tribunal against the departmental enquiry on the same charges on which he had already stood acquitted in the criminal case. The Tribunal vide order dated 14.11.2000 stayed the further proceedings.

3. The applicant has assailed the initiation of enquiry by resorting to Rule 12 of the Delhi Police (Punishment & Appeal) Rules. It is contended that the acquittal of the applicant from criminal charge was on merits and his case is not covered in any of the provisions mentioned in the rules *ibid*. According to the applicant the DCP had proceeded the applicant departmentally on the identical charges on the ground that he has been acquitted for want of sufficient evidence and PWs have been won over. It is contended that there is no material before the authority to have decided that the witnesses have been won over by the applicant wherein in the order passed by the Metropolitan Magistrate have been shown to turned hostile and had not even supported the prosecution on being cross examined by the prosecutor. It is further contended that as the prosecution has not been able to prove its case at all, the applicant was acquitted from the criminal charges. It has been further stated that the acquittal of the applicant in the criminal case is neither on technical grounds nor any benefit of doubt was given to him as well as there was no additional evidence available to proceed

(3)

10

against him departmentally and further the charge is not unconnected which has been alleged against him in the departmental enquiry. Placing reliance upon a Delhi Police case decided by the Apex Court in Salek Chand v. Commissioner of Police, 1994 (28) ATC 711 and on a Constitution Bench judgement of the Apex Court in Qamar Ali v. Union of India, 1967 SLR 228 as well as the latest decision of the Supreme Court in Capt. M. Paul Anthony v. Bharat Gold Mines, JT 1999 (2) SC 456 it is contended that after acquittal on merits the departmental enquiry and punishment are barred. It is also contended that Rule 12 of the Police Rules ibid bars punishment on being acquitted on the same charge. The applicant has further relied upon the ratio laid down by the High Court of Delhi in CWP No.271-D/1976 dated 10.9.89 and also the order passed by the High Court in CW-1639/79 as well as High Court's decision in CWP-127/68 decided on 26.5.70 and also in CWP-568/70 and lastly CWP-270/77 to contend that the disciplinary proceedings and punishment there of on the same charge on which the applicant stood acquitted is not as per the rules and is also against the law.

4. On the other hand, the learned counsel of the respondents refuted the contentions of the applicant and stated that the case of the applicant is covered in all the provisos of Rule 12 ibid. According to him the applicant has been proceeded against on a charge which is absolutely unconnected with the criminal charge alleged against the applicant in the trial. According to the applicant the charge of adding a sum of Rs.3,250/- in cash at No.VIII in cash in the list of articles and getting wrongful signature of Radhey Shyam in the deed of Jama Talashi of Swaroop

(4)

Singh in Reg. No.19 at Mud No.675 are not the charges alleged against him in the criminal case. The learned counsel of the respondents Shri Ashwani Bhardwaj contended that in the criminal case only four witnesses were examined whereas in the departmental enquiry additional evidence is available to proceed against him departmentally. It is further contended that witnesses in the criminal case had turned hostile and had not supported the prosecution and to this regard the DCP had already recorded his finding that the witnesses have been won over as such the case of the applicant falls in proviso 'B' of the Rules *ibid*. It is next contended that the applicant had not been acquitted honourably but as there was insufficient evidence against him he was let off in the criminal trial, meaning thereby that though there was some evidence against him but was not sufficient enough to punish the applicant. The respondents have also relied upon the judgement of this Tribunal dated 9.3.2001 in OA-695/2000 in Surender Singh v. Union of India, wherein on the basis of the ratio of the Hon'ble Apex Court in Nelson Motis v. Union of India & Anr., 1992 (4) SCC 711 it has been held that despite acquittal the Government servant can be proceeded departmentally as scope in the criminal case and departmental proceedings is different. It is further contended relying upon this ratio that the enquiry proceeded against the applicant is very much in accordance with law. The learned counsel of the respondents has also contended that the applicant has approached this Tribunal pre-maturely as according to rules is only when a punishment is imposed on similar charges Rule 12 can be resorted to. In this background it is

(5)

12

stated that as the applicant has challenged only the summary of allegation and the enquiry is yet to be proceeded the OA is pre-mature.

5. We have carefully considered the rival contentions of the parties and perused the material on record.

6. As regards the preliminary objection of the respondents that it is only when the punishment is imposed upon the applicant then he can approach the Tribunal and take resort to Rule 12 is not correct. What Rule 12 provides is that a police officer cannot be punished for a charge on which he already stood acquitted by the trial court by holding a departmental enquiry the ultimate result would be the imposition of the punishment against the Government servant. We find from the ratio laid down by the High Court in CW-1639/79 (supra) that on the basis of a similar rule existing under the then Punjab Police Rules the applicant who was serving in the Delhi Police, when the Delhi Police (Punishment and Appeal) Rules, 1980 were not brought into existence the High Court was pleased to set aside the order of the departmental enquiry on the basis of Rule 12-B. In our considered view once a police officer has been acquitted from the criminal charge he can resort to for immediate intervention and quashing of the order of the departmental enquiry by resorting to Rule 12 of the Rules *ibid*. In essence the rules stipulates that a police officer cannot be punished departmentally on the identical charges if his case is not covered in any of the provisos given therein. Once the enquiry is proceeded against shows the intention of the respondents to punish the applicant on

the basis of their disagreement to the judgement rendered by the Trial Court. We are also fortified in our view by the ratio laid down by the Apex Court in a police case in Salek Chand's case (supra) wherein it has been held that "once the acquittal of a police officer from the criminal charge is final and is on merits the necessary consequences would be that the delinquent is entitled to be re-instated as need for holding departmental enquiry is obviated. As regards the contention of the respondents counsel that the case of the applicant is covered under the provisos to 12 (d) of the rules as the evidence cited in the criminal case disclosed the fact unconnected with the charge concerned, we have carefully perused the order of the Trial Court as well the order passed in the DE we find that by quoting the incident of adding Rs.3250/- wrongful entry in the Jama Talasi as well as adding the name in the deed have been mentioned to substantiate the charge of grabbing Rs.3250/- as Jama Talasi of Swaroop Singh by the applicant. In our considered view the grabbing is nothing but ingredient of Section 409 of IPC, i.e., breach of trust where one of the essential ingredients is misappropriation. The applicant had been charged for the breach of trust including misappropriation in the criminal charge. As such we are of the view that mere reference to these three instances is not with respect to a different charge unconnected with the charge before the Court but was part of the charge in the trial court and cannot be said to be a different charge. Although the learned counsel of the respondents has tried to make an attempt to show that the witnesses were cited and examined in criminal trial are different as are listed in the summary of allegation. In this regard we have taken the departmental record from the respondents and perused

the chargesheet filed under Section 176 of the Cr.PC in the criminal case. We find that six witnesses cited in the list of witnesses along with the summary of allegation are common to the witnesses cited in the chargesheet. As provided under Rule 12 even on a different charge based upon the evidence cited in the criminal case a punishment cannot be inflicted upon a Police Officer irrespective of the fact whether evidence cited has been actually led or not. We find from the order of the Trial Court that PW-5 Sita Ram and PW-1 Inspector R.P. Singh had not been examined in the criminal trial whereas they were witnesses in the criminal case. As such those will come in the category of evidence cited but not actually led. As such the contention of the respondents that these witnesses are additional available to the department for maintaining a departmental enquiry even after acquittal is not legally sustainable.

7. As regards the objection of the respondents that the applicant had been given benefit of doubt and his case is covered under proviso 12 (c) of the Rules *ibid* is not correct. What has been provided under this rule is that the Court should record in its judgement that the offence was actually committed and the suspicion rests upon the police officer concerned. On our pointed query to the respondents counsel it has been admitted that there has been no such finding in the order passed by the trial court. As such the applicant's case cannot be covered under this proviso. Moreover an attempt has been made to show that as the trial court has acquitted the applicant for want of sufficient incriminating evidence as such it is implied that there was some evidence against the applicant.

but not sufficient to hold him guilty of the charge. This observation of the trial court would not take place of the finding that the offence has been actually committed and the suspicion rests upon the applicant. Rather in the trial court order it is observed that the prosecution is not able to prove its case against the accused at all. We have perused the testimony recorded during the course of trial and find that witnesses have refused to identify the applicant and shown their inability to show that who had obtained the Jama Talasi. No incriminating evidence had been tendered by these witnesses against the applicant. Rather it has been stated that the Jama Talasi was duly returned to him in the Police Station. The witnesses have no complaint against the accused. Moreover on their cross-examination by the prosecutor the witnesses have not stated any thing against the applicant and this goes to show that the ingredients of the offence for breach of trust had not been brought forth by the prosecution. In this view of the matter the acquittal of the applicant cannot be termed as one on the basis of the benefit of doubt.

8. The learned counsel of the respondents has also supported his order on the ground that while issuing the order of departmental enquiry the respondents contended that the DCP in his order had clearly observed that the PWs have been won over and as such in view of his finding the case of the applicant is covered under Rule 12 (B) ibid as the DCP had formed an opinion. We have carefully gone through this contention of the respondents and find that in the order passed by the trial court there is no finding to the effect that the witnesses have been won over by the

□ applicant. We find that the witnesses had not supported the prosecution and on cross-examination by the APP Prosecution had miserably failed to take out any thing incriminating against the applicant. In the absence of any finding by the court or any material produced by the DCP it is very difficult to reconcile that as the witnesses have been declared hostile the same have been won over by the applicant. No justification have been put forth pertaining to witnesses being won over by the applicant. Our attention has been drawn to a judgment of the High Court in Prakash Singh's case (supra) where on similar allegation of wining over the witnesses a departmental enquiry has been ordered in the Punjab Police Rules which are akin to Delhi Police Rules the High Court was pleased to observe that the Metropolitan Magistrate having failed to record the opinion that the prosecution witnesses have been won over and ignoring the vital conclusion of the Magistrate wherein the acquittal of the petitioner was not on account of wining over the witnesses but on the merits of the evidence would be deemed to be a clean acquittal.

9. The High Court of Delhi in another Writ Petition No.270/77 Ram Singh v. DIG and Others, in similarly circumstanced case under the then Punjab Police Rules where the similar provisions existed had observed that there is nothing on record to show that the reasonable person could have formed the opinion that the petitioner had won over the witnesses in that case. The Metropolitan Magistrate had not formed such opinion. It was further observed that even after taking the evidence of other witnesses there was no evidence to collect. Applying the above ratio to the present case we find that firstly the

Metropolitan Magistrate has not recorded any finding regarding wining over of the witnesses by the applicant and secondly as the prosecution has failed to prove its case and there was no incriminating evidence against him in the trial the applicant has been acquitted. Our view is also fortified by the ratio (supra) that there is no concept of any honourable acquittal in Cr. P.C. We are constrained to hold that in absence of any material to the contrary in the trial court order there is nothing to indicate that the witnesses have been won over by the applicant. The finding of the disciplinary authority regarding wining over of the witnesses is not based on any credible material and rather based on surmises. As such the case of the applicant is also not covered under the proviso of Rule 12 (B) of the Rules *ibid*.

10. As admittedly the applicant had been proceeded against in a departmental enquiry on an identical charge of which he had already been acquitted and his case is not covered under any of the provisos to Rule 12 *ibid* and the fact that his acquittal was on merit, the action of the respondents to proceed him departmentally is not legally sustainable as per the provisions of Rule 12 and the Rules laid down by the Apex Court in Qamer Ali's case (supra).

11. Having regard to the discussion made and the reasons recorded above, we allow this OA and set aside the order dated 25.9.2000 as well as the summary of allegations issued to the applicant at Annexure 'B'. The applicant shall also be entitled for all consequential benefits arising out of the quashing of the order of departmental

(11)

18

enquiry. These directions shall be complied with by the respondents within a period of two months from the date of receipt of this order. No costs.

S Raju

(Shanker Raju)
Member (J)

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V.K. Majotra

(V.K. Majotra)
Member (A)