

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A No. 695/2000
T.A No.

Date of Decision 9-3-2001

Surender Singh

..Petitioner

Sh.Rajinder Nischal

..Advocate for the petitioner(s)

Versus

Govt.of NCT of Delhi
through Principal Secretary & Ors

..Respondent

Mrs.Meera Chhibber

..Advocate for the Respondents

Coram:-

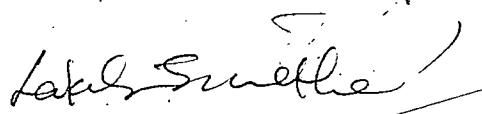
Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)

Hon'ble Shri Govindan S.Tampi, Member(A)

1. To be referred to the Reporter or not? Yes

2. Whether it needs to be circulated to
other Benches of the Tribunal ?.

No


(Smt.Lakshmi Swaminathan)
Vice Chairman (J)

Central Administrative Tribunal
Principal Bench

O.A.695/2000

New Delhi this the 9th day of March, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri Govindan S. Tampi, Member(A).

Surender Singh,
S/o Shri Tara Chand,
(Ex. Const. Delhi Police),
R/o L-7, Bal Udyan Marg,
Utiam Nagar,
New Delhi-110059.

... Applicant.

(By Advocate Shri Rajinder Nischal)

Versus

1. Government of NCT of Delhi,
through Principal Secretary (Home),
5, Sham Nath Marg,
Delhi.

2. Joint Commissioner of Police,
Southern Range,
Police Headquarters,
New Delhi.

3. Deputy Commissioner of Police,
South West District,
New Delhi.

... Respondents.

(By Advocate Mrs. Meera Chhibber)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

The applicant has impugned the punishment orders passed by the respondents removing him from service and initiation of the departmental action against him.

2. The brief relevant facts of the case are that the applicant was issued a charge-sheet along with the summary of allegations, the relevant portion of which reads as follows:

"It is alleged against Const. Surender Singh, No.734/SW (PIS No. 28891783) that while posted to P.S. Jaffarpur Kalan he proceeded on 3 days C.L. w.e.f. 27.5.96 vide DD No.36-B dated 24.5.96 and with permission to avail G. Holiday

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dated 25.25 & 28.5.96. He was due back to resume duty on 31.5.96 but he did not turn up and informed telephonically to D.O./P.S. Jaffarpur Kalan that he was ill and doctor had advised him 7 days Medical Rest w.e.f. 31.5.96. A report to this effect was lodged vide DD No.32-B.

During the period of Medical Rest Const. Surender Singh, No. 734/SW was arrested in Case FIR No. 235, dated 3.6.96 u/s 25/54/59 Arms Act at P.S. City Bahadur Garh (Haryana). This shows that he was not actually ill and had given false message to D.O./P.S. Jaffarpur Kalan regarding his Medical Rest and on the contrary being a public servant custodial and protector of law was found involved in criminal activity".

An inquiry was held on the above charges and the disciplinary authority vide his order dated 19.5.1998 imposed a penalty of removal from service. In the meantime, he had also been suspended from 3.6.1996 to 15.8.1997 which was decided as period not spent on duty for all intents and purposes. This order as well as the appellate authority's order rejecting his appeal dated 15.2.1999 have been impugned by the applicant.

3. Shri Rajinder Nischal, learned counsel has submitted that if the authorities were not satisfied with the medical certificates submitted by the applicant, ~~that~~ ^{he had} somehow ~~had~~ managed to get the medical rest, they should have disallowed the medical certificates for good reasons which they have not done. He has submitted that the extreme penalty of removal from service is illegal and arbitrary. In the meantime, before the appellate authority passed his order rejecting the appeal filed by the applicant against the disciplinary authority's order, the criminal case pending against the applicant in FIR No.235 dated 3.6.1996 was disposed of by giving benefit of doubt to him and he was acquitted of the offence charged against him by order dated 8.12.1998. In the facts and circumstances of the case on behalf of the applicant it

has been submitted that either the disciplinary proceedings should have been stayed till disposal of the case by the criminal court or in any case the appellate authority should have considered his acquittal in the criminal case while passing the impugned order dated 15.2.1999. Learned counsel has also submitted that the applicant was implicated in a false case by a liquor contractor against whom he had taken some action, which case has finally ended in his acquittal by the court of competent jurisdiction vide order dated 8.12.1998. Therefore, he has submitted that there was no reason for the respondents to impose the extreme penalty of removal from service. He has submitted that the applicant had only been advised medical rest for one week w.e.f. 31.5.1996 and during this period he had gone from Jaffarpur Kalan to Bahadurgarh, Haryana, which is only a few Kilometers away when he was falsely implicated and arrested in FIR No.235/96. Learned counsel has, therefore, submitted that the penalty orders cannot be sustained as the fact of his acquittal in the same criminal case has not been taken into account by the respondents while taking a decision to remove him from service.

4. We have seen the reply filed by the respondents and heard Mrs. Meera Chhibber, learned counsel. The respondents have submitted that the inquiry held against the applicant was in accordance with the relevant rules and instructions. Learned counsel has submitted that on 31.5.1996, the applicant had merely informed the authorities of his illness on telephone. She has submitted that the allegations in the departmental inquiry have been proved by independent witnesses, that is

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PWs 4 and 5 who have deposed regarding the arrest of the applicant in case FIR No. 235/96 dated 6.3.1996. PW-5 has submitted that the name of the applicant in the FIR is given as Surender Singh and as per the FIR, a .455 bore revolver has been recovered from the accused. She has relied on the provisions of Rule 12(e) of the Delhi Police (Punishment and Appeal) Rules, 1980 which provides, inter alia, that 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, unless additional evidence for departmental proceedings is available. In the present case, the proceedings were going on simultaneously and the disciplinary authority's order has been passed prior to the acquittal of the applicant by the competent criminal court. She has also submitted that in the appellate authority's order, the fact of his acquittal has also been fully considered by him and there is no infirmity in that order. Learned counsel has submitted that the applicant has been acquitted only on the ground of benefit of doubt as well as the fact that the material witnesses had turned hostile, which fact has been noted in the court order dated 8.12.1998. She has relied on the judgement of the Supreme Court in Nelson Motis Vs. Union of India & Anr. (1992(4) SCC 711) where it has been held that departmental inquiry can continue despite acquittal of the delinquent in the criminal case, ^{as} ~~as~~ the nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceedings. Her contention is that legally there is no objection in

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taking proceedings in departmental proceedings and the criminal case at the same time as both these proceedings are conducted under different sets of law. Learned counsel has submitted that in the present case, the departmental proceedings have been held against the applicant in accordance with the Rules and the punishment orders passed subsequently are, therefore, legally valid. She has, therefore, prayed that the O.A. may be dismissed.

5. Shri Rajinder Nischal, learned counsel for the applicant has submitted in reply ^{that is} whether the acquittal of the applicant is on merit or given ^{on is} him the benefit of doubt. the effect is the same, namely, that he has been acquitted of the criminal charge, namely, FIR No. 235/96 dated 6.3.1996. He has also submitted that the witnesses called in the departmental inquiry were only formal witnesses and he has not cross-examined the witnesses, as pointed out by the learned counsel for the respondents, because he had been requesting the authorities to postpone the departmental inquiry till conclusion of the criminal case which has, however, not done. He has, however, submitted that the applicant has not obtained any order from the Tribunal directing the respondents to keep the departmental proceedings in abeyance. He has again stressed on the fact that the quantum of punishment is excessive because the applicant has put in 11 years of service and there are no other punishments awarded to him and under Rule 8 of the Delhi Police (Punishment and Appeal) Rules, 1980, the extreme punishment of removal from service could have been awarded only in the case of grave misconduct. He has contended that this element is not there and, therefore, he has prayed that the impugned

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punishment orders may be quashed and set aside.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. The departmental proceeding held against the applicant was that during the period of medical rest, the applicant was arrested in case FIR No. 235/96 dated 3.6.1996 under Sections 25, 54 and 59 of the Arms Act at the Police Station City Bahadurgarh, Haryana. In the allegation, it has been stated that it shows that he was not actually ill and had given false message to D.O./P.S. Jaffarpur Kalan regarding his medical rest and on the contrary he being a public servant for protection of law was found involved in criminal activity. Admittedly, there was no order issued by the competent Court/Tribunal staying the continuance of the departmental proceedings during the pendency of the criminal case against the applicant, The main contention of Shri Rajinder Nischal, learned counsel is that the applicant has since been acquitted by the criminal court which was also in the knowledge of the appellate authority who has, therefore, illegally confirmed the penalty order of removal from service. However, it is relevant to note that the applicant himself does not deny the fact that on the relevant date, that is 3.6.1996, he was at Bahadurgarh, Haryana, and was arrested in case FIR No. 235/96, although he submits that it was a false and fabricated case. The appellate authority in his order has considered these submissions, including the fact that the applicant has alleged that a false case had been registered against him by a liquor contractor, against whom he had taken same action. The judgement of the SDJM, Bahadurgarh dated

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8.12.1998 has also been considered by the appellate authority wherein it has been stated that material witnesses had turned hostile and hence, the benefit of doubt had been given to the applicant. The appellate authority has stated that no evidence from records is available to verify the statement made by the applicant regarding the registration of a false case by the liquor contractor because he had taken some action against him. We are also unable to agree with the contentions of the learned counsel for the applicant that in the circumstances of the case, the appellate authority could not have taken into account the fact that the applicant had merely been acquitted in the criminal case by giving him the benefit of doubt and not on the merits of the case. The applicant has not shown from documents on record that reasonable opportunity had not been given to him to put forward his case in the departmental inquiry proceedings or that there has been any violation of the procedural rules or the principles of natural justice. The applicant had also been heard orally by the competent authorities before the aforesaid impugned orders have been passed.

8. Taking into account the relevant facts and circumstances of the case, including the fact that the applicant had been arrested, at ^{21/12} ~~the~~ place which was some kilometres from his home when he was on medical rest, for alleged offences under the Arms Act, which has also been proved in the Departmental inquiry held against him by the prosecution witnesses, we do not find that the punishment awarded to the applicant is either excessive or perverse justifying any interference in the matter. The evidence of Prosecution Witnesses 4, 5 and 6 are relevant. PW4 has

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stated in his evidence that it was learnt that the applicant along with Constable Anoop Singh were arrested by a police party near Jhajjar terminal tax check post while allegedly he was found in possession of a .455 bore revolver No.18304 on the basis of which he had submitted a detailed report. The applicant has not denied that he was present at Bahadurgarh on 3.6.1996 when he was arrested. Therefore, the conclusion of the appellate authority in the circumstances of the case after consideration of all the relevant facts and evidence cannot be held to be unjustified, arbitrary or perverse, justifying the setting aside of the impugned penalty orders. The competent authorities have also considered that such a person would not be desirable to be continued in the Delhi Police which conclusion again is neither illegal or perverse even though he might have been acquitted in the criminal case on benefit of doubt. There is sufficient evidence on record in the Departmental proceedings held against him for the disciplinary authorities to come to the conclusion to remove the applicant from the Delhi Police. We have also considered the other contentions of the learned counsel for the applicant but do not find any merit in the same.

9. In the result, for the reasons given above, we find no merit in this application. The O.A. fails and is dismissed. No order as to costs.

(Govindan S. Tampi)
Member (A)

'SRD'

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman(J)