

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 2129 of 1989
T.A. No.

199

DATE OF DECISION 28.1.83

Harcharan Singh	Petitioner
Shri Sant Singh	Advocate for the Petitioner(s)
Versus	
Union of India & Others	Respondent
Shri D.S. Oberoi	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J).

The Hon'ble Mr. D.K. Chakravorty, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? ☒
2. To be referred to the Reporter or not? ☒
3. Whether their Lordships wish to see the fair copy of the Judgement? ☒
4. Whether it needs to be circulated to other Benches of the Tribunal? ☒

(Judgment of the Bench delivered by Hon'ble Shri
Justice Ram Pal Singh, Vice-Chairman (J).)

J U D G M E N T

The applicant entered into the service of the Delhi Police as a constable on 1.12.64. He is said to have received commendations and rewards on different occasions. The applicant was promoted to the post of Head Constable on ad hoc basis with effect from 23.1.83. This order of promotion on ad hoc basis was passed by the Commissioner of Police, Delhi. The Deputy Commissioner of Police vide orders dated 17.12.84 placed the applicant under suspension because the applicant is said to have been arrested in case FIR No. 1482 dated 7.12.84 under Sections 458, 380, 511, 342 and 120-B of the Indian Penal Code by Police Station, Kalkaji. The chargesheet was filed by the Police in the court of Shri S.N. Kapoor. While the criminal court was considering the framing of the charge against the applicant and co-accused, the court observed:

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".....As regards Harcharan Singh, the case of the prosecution is based on simple disclosure statement made by him, which is not admissible in evidence. In such circumstance, I feel that the charge should be framed against all the accused except Harcharan Singh for offence u/s 397, 398, 347, 458 and 380 IPC....."

This order of discharge of the applicant from the criminal trial was passed on 19.8.88. Thereafter, respondent No. 2 initiated a departmental disciplinary proceeding against the applicant by order dated 2.11.88. The Enquiry Officer framed a formal charge against the applicant on 30.1.89 and the enquiry proceeded. After the enquiry, the report was sent to the disciplinary authority. The disciplinary authority, respondent No. 3, passed the orders dismissing the applicant from the Police service on 4.5.89 (Annex. A-2). The applicant under Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter referred as 'Rules') filed an appeal under Rule 23(2) to the appellate authority, i.e., the Additional Commissioner of Police on 2.6.89 which was subsequently dismissed. The applicant is, therefore, aggrieved and prays for the reliefs for quashing the order passed by the disciplinary authority; for setting aside ^{the order of} his dismissal from service and also the order passed by the appellate authority and prays for his reinstatement with consequential reliefs, in this O.A., filed under Section 19 of the Administrative Tribunals Act of 1985.

2. The respondents on notice appeared and submitted their counter. They maintain that the enquiry was conducted in accordance with the rules and the provisions of the ^{Delhi} Police Act. They further ^{allegations of misconduct against the} maintain that the applicant can be got inquired into departmentally in spite of his discharge order by the criminal court. They further contend that full opportunity was provided to the applicant in the enquiry and the disciplinary authority after complete satisfaction has passed the impugned order for the misconduct committed by the applicant during the discharge of his duties.

3. The learned counsel for the applicant made the following contentions at the Bar:

Learned

(i) That under Rule 12 of the Rules when a Police official has been tried and acquitted by the criminal court, then he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case.

(ii) That under Section 28 (b) of the Rules, the applicant can be placed under suspension only by the order of the appointing authority and the appointing authority is the Commissioner of Police who had passed the orders of his promotion on ad hoc basis.

(iii) That the disciplinary authority cannot take a different view than that of the judicial court.

(iv) That his dismissal by the order of the Deputy Commissioner of Police is in contravention of Article 311(2) of the Constitution of India.

4. Shri D.S. Oberoi, learned counsel for the respondents, controverted these arguments and maintained that the applicant can be inquired into departmentally in a departmental enquiry though he has been discharged by the trial court.

5. Section 12 (b) of the Delhi Police Act, 1978 provides that "Sub Inspectors of Police and other officers of subordinate rank may be appointed by the Deputy Commissioners of Police..." Thus, the appointing authority of the Sub Inspectors of Police and other officers of subordinate rank is the Deputy Commissioner of Police. The applicant is definitely of subordinate rank to the Sub Inspector of Police. Thus, his appointing authority is the Deputy Commissioner of Police. Rule 28 of the Rules provides that a Police officer of subordinate rank may be placed under suspension by an order of the appointing authority. Thus, it is the Deputy Commissioner of Police who has placed the applicant under suspension. Rule 19 of the Delhi Police (Promotion and Confirmation) Rules, 1980, provides that when vacancies exist and in the absence of any approved names on promotion lists, the Commissioner of Police may promote suitable officers in order of seniority to next higher rank temporarily. This

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Rule deals with the power of the Commissioner to make ad hoc promotions. In the case of the applicant, it was the Commissioner who has passed the order of his promotion as Head Constable on ad hoc basis. Hence, the counsel for the applicant's argument that it is the Commissioner of Police who is the appointing authority and not the Deputy Commissioner of Police is completely misplaced. Promotion is different from appointment. According to Section 12 of the Delhi Police Act, it is the Deputy Commissioner of Police who is the appointing authority and not the Commissioner of Police. Thus, no illegality was committed when the orders were passed by the Deputy Commissioner of Police.

6. The next contention of the applicant ^{is} that the applicant was acquitted by the trial court and Rule 12 of the Rules prohibits departmental action following judicial acquittal. On perusal of the order of the criminal court, it becomes clear that the applicant was not acquitted, but he was only discharged. There is a difference between discharge and acquittal. After 1976, when the Criminal Amendment Act came into force, the procedure laid down is that Police after investigation files a chargesheet before the criminal court for trial. Before proceeding further, the trial court applies its mind and peruses the evidence and documents ^{contained in the challan filed u/s 173 Cr.P.C.} If a prima facie case is made out, then a charge is framed against whom prima facie evidence is available, but those accused against whom no admissible prima facie evidence is available on perusal of the chargesheet, the Magistrate may discharge the accused. The order of acquittal is passed only after the conclusion of the trial. Thus, in the case of discharge, no trial takes place, while in the case of acquittal, complete trial takes place and the Magistrate after apprising and evaluating the evidence of the prosecution passes the sentence if offence is proved against him. But if the offence is not proved or there is some doubt with regard to the culpability of the accused,

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then the trial court records an order of acquittal. Discharge and acquittal thus differ. Rule 12 of the Rules prohibits a departmental enquiry in case the delinquent has been acquitted. This also shows that those who are discharged, departmental enquiry against them is not prohibited according to these Rules.

7. In the case of acquittal, the accused cannot be tried again for the same charge from which he has been acquitted, but in the case of discharge, the prosecution has every right to reinvestigate, to recollect the evidence and then file a fresh chargesheet. Acquittal is the end of the road, while discharge is recorded when there is no ^{prima facie} evidence against the accused. The order of discharge passed by the criminal court is based upon the principles of law. The applicant was chargesheeted before the criminal court on the confessional statement of the co-accused recorded under Section 27 of the Indian Evidence Act. It is the cardinal principle of criminal jurisprudence that an accused's confessional statement cannot be used against another accused. Furthermore, confession of one accused cannot be used against another accused. Hence, following this principle of law, the applicant was discharged. As the applicant was not acquitted, there is no prohibition in the Delhi Police Act or in the Rules that he cannot be enquired into in a departmental enquiry.

8. The learned counsel for the applicant has placed reliance upon the Single Bench judgment of the Delhi High Court ^{in the case of Sahib Lal (1984 (1) SLJ 506)} in which it has been held that the departmental enquiry on the same allegation, which was the subject matter of the criminal proceedings wherein the practitioner had been discharged, cannot be enquired into departmentally. We are in respectful disagreement with the Single Judge's judgment for the obvious reason that this matter relates to an incident of year 1962 when the provisions of the old Criminal Procedure Code were applicable. According to the old procedure for criminal trial, the prosecution used to file the chargesheet before a criminal court and when the accused were called, or summoned, the prosecution witnesses were examined. The accused had the right of

cross-examining the prosecution witnesses. After recording of the prosecution evidence, the court was required to consider with regard to the framing of the charge against the accused. If there was prima facie case, then the charge was framed, but if there was no prima facie case, then the accused was discharged. Thus, according to the old procedure, more than half of the trial took place before the order of discharge could be recorded. It is, therefore, due to this reason that the learned Single Judge of the Delhi High Court was of this view. But after coming into force of the Criminal Law Amendment Act of 1976, the question of framing the charge has to be considered only on the basis of the documents and the Police Case Diary statements recorded under Section 161 of the Code of Criminal Procedure. So, the framing of the charge or the order of discharge has to be passed before the commencement of the trial. The trial commences only after the charge is framed, but there is no trial when the charge has not been framed. Hence, in our view, the view held by the learned Single Judge of the Delhi Court is not relevant to the facts of law involved in this case.

9. In the case of B.P. Mamdelu vs. Chief Executive Nuclear Fuel Complex, Govt. of India & Others (1990 (3) SLR p. 254) in which one of us (Hon'ble Shri-D.K. Chakravorty, Member (A)) was the Member, the Hyderabad Bench of the Tribunal followed the following principles laid down by the apex court in AIR 1984 SC 626 (reported in SLR 1990 (3) p. 256:

"The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the finding given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction (discretion) in any way fettered. However as quite some time has elapsed since the departmental inquiry had started the authority concerned will take into consideration this factor in coming to the conclusion if it is really worthwhile to continue the departmental inquiry in the event of the acquittal


of the respondents. If, however, the authority feels that there is sufficient evidence and good grounds to proceed with the inquiry, it can certainly do so."

After considering the Supreme Court's judgment, the Bench observed:


"Thus the law laid down by the Supreme Court is that despite honourable acquittal by the criminal court discretion remains with the disciplinary authority to continue with the departmental enquiry. But the Supreme Court has nowhere held that the discretion can be exercised arbitrarily. The court has stressed that the department must consider the nature of the finding given by the criminal court. Thus the discretion must be exercised judicially and some valid reasons must be given for differing with the conclusions of the criminal court."

8. The learned counsel for the applicant contended that there was not even an iota of evidence before the disciplinary authority to hold the applicant guilty of the charges. We have perused the enquiry report upon which the disciplinary authority has based its opinion. Though domestic enquiries are subject to judicial review, yet on facts, the court should refrain from interfering with the findings of the domestic enquiry unless and until perverse finding has been given or the findings are based upon no evidence or principles of natural justice and fair play have been flouted. However, in the interest of justice, we have gone into the facts of the case and examined carefully all the material on record and we are of the view that the enquiry report or the appellate order do not suffer from any infirmity. In the lengthy order, the appellate authority has also discussed the relevant facts of the case and arrived at the conclusion that there is no merit in the appeal of the applicant. Numerous judgments were also cited by the learned counsel for the applicant, but none of them are relevant for adjudicating the matter on hand.

Except the above, no other point was raised at the Bar. The conclusion of the above discussion is that this O.A. has no merit. Hence, it is dismissed. The parties shall bear their own costs.


(D.K. CHAKRAVORTY)

MEMBER (A)


(RAM PAL SINGH)

VICE-CHAIRMAN (J)