

6

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 2467/89

New Delhi this the 23rd day of May, 1994.

Shri Justice V.S. Malimath, Chairman.

Shri P.T. Thiruvengadam, Member(A).

Ajmer Khan,
S/o Shri Abdul Gani,
R/o E-20/8A, Subhash Mohalla,
Gali No.8, Shahdra,
Delhi:

...Petitioner.

By Advocate Shri Shyam Babu, Counsel.

Versus

1. Delhi Administration,
Delhi through its
Chief Secretary,
5, Sham Nath Marg,
Delhi:
2. Commissioner of Police,
Delhi Police Hqrs.,
I.P. Estate,
New Delhi:
3. Dy. Commissioner of Police,
(Provisioning and Lines),
Delhi:
4. Shri Bhagwant Singh,
Enquiry Officer,
D.E. Cell, Police Hqrs.,
6th Floor, I.P. Estate,
New Delhi:

...Respondents.

By Advocate Ms Avnish Ahlawat.

ORDER (ORAL)

Shri Justice V.S. Malimath:

The petitioner, Shri Ajmer Khan, was tried for
of dacoity
an offence/u/s 392 Cr.P.C. of the Indian Penal Code
along with the other co-accused Ram Chander. Both
of them were convicted by the Trial Court but acquitted
by the appellate court. Shortly after their acquittal,
the Deputy Commissioner took a decision to initiate
the disciplinary inquiry against the petitioner on
✓ 25.8.1987 on substantially the same allegations.

The decision of the Deputy Commissioner is Annexure 'D' and the summary of allegations are contained in Annexure 'F'. The petitioner has, in this application, prayed for an order in the nature of writ of prohibition restraining the authorities for proceeding with the inquiry.

2. The principal contention of the learned counsel for the petitioner is that the Deputy Commissioner could not have formed the opinion that the prosecution witnesses had been won over in the criminal case in order to justify ~~the~~ initiation of a disciplinary inquiry against the petitioner on substantially the same allegations. Rule 12 (b) of the Delhi Police (Punishment and Appeal) Rules, 1980 provides 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, whether actually led or not unless in the opinion of the court, or of the Deputy Commissioner of Police, the prosecution witnesses have been won over. Such ^{opinion} is clearly stated in the impugned order (Annexure 'D'). The contention of Shri Shyam Babu, learned counsel for the petitioner, is that he could not have formed such an opinion by merely perusing the judgement of the criminal court which acquitted the petitioner and Shri Ram Chander. He submitted that the criminal

✓

⑧

court has not stated that the witnesses have been won over. That the prosecution witnesses were permitted to cross-examine is not disputed. Before permitting the prosecutor to cross-examine his own witnesses, the court asked certain questions to the witnesses and thereafter granted necessary permission. Prosecutor had cross-examined the witnesses. The witnesses stuck to what they stated in the criminal court and did not support what was recorded in their previous statements u/s 162 of the Code of Criminal Procedure. Relying on these materials about which there is a clear finding in the judgement of the criminal court, the Deputy Commissioner has formed the opinion that the prosecution witnesses have been won over. The inquiry initiated against the co-accused Shri Ram Chander was challenged by him in O.A. No. 2002/88 and similar relief was claimed by the petitioner in that case as well. That application has been dismissed holding that the opinion formed by the Deputy Commissioner of Police is not liable for interference. A Bench of this Tribunal has held on a very exhaustive consideration of the relevant portions of the judgement of the criminal court that there is a material to support the opinion of the Deputy

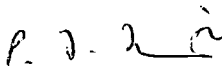
12/

Commissioner of Police that the prosecution witnesses have been won over. As a Division Bench of the Tribunal has recorded a finding that the opinion formed by the Deputy Commissioner is not in any way vitiated, there is no good reason why we should not follow the opinion of the Division Bench rendered in O.A. No. 2002/88. It is necessary to bear in mind that the petitioner as well as Shri Ram Chander, the petitioner in O.A. No. 2002/88, were tried together and acquitted by the same judgement. By the same order, the Deputy Commissioner of Police directed a disciplinary inquiry being held against both of them. A Bench of the Tribunal having held ^{that} initiation of a disciplinary inquiry against Shri Ram Chander is not in any way contrary to law, we fail to see how we can take a different view in this matter. Even otherwise, we are inclined to take the same view on an objective consideration of the materials placed before us. It is necessary to bear in mind that the Deputy Commissioner of Police had to form the opinion on his subjective satisfaction. The opinion formed by the Deputy Commissioner of Police cannot be challenged as long as there is material from which such an opinion can be formed. The relevant extracts of the judgement of the criminal court as reproduced in the judgement in O.A. 2002/88 are, in our opinion,

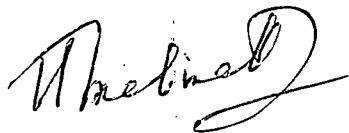
sufficient material from which a reasonable inference that the witnesses have been won over is possible.

We are not sitting in appeal over the satisfaction of the Deputy Commissioner. Limited scrutiny which is permissible in a case like this is to see whether the opinion formed is perverse or is based on no evidence. It cannot be said that either the opinion formed is perverse or is based on no evidence. Hence, it is not possible to interfere in this case.

3. For the reasons stated above, this application fails and is dismissed. No costs.



(P.T. Thiruvengadam)
Member(A)



(V.S. Malimath)
Chairman

'SRD'
240594