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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No . 1706/1988

Date of decision : 10.12.93

THE HON'BLE SHRI B.S. HEGDE, MEMBER(J)

THE HON'BLE SHRI P.T. THIRUVENGADAM, MEMBER (A)

Raj Pal Singh
s/o Sh. Suraj Bhan
Vill. & P.O. Kakraula,
Delhi-110043

..... Applicant

(By Advocate Sh. A.S. Grewal)

Versus

1. Union of India, through Secretary,
Ministry of Home Affairs, Govt. of
India, New Delhi.
2. Lt. Governor, through Chief Secretary,
Delhi Administration, Delhi
3. Commissioner of Police, Delhi,
Delhi Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi.
4. Additional Commissioner of Police
(New Delhi Range),
New Delhi
5. Dy. Commissioner of Police,
(West District) P.S. Rajouri Garden,
Near Vishal Cinema,
New Delhi

..... Respondents

(By Advocate Sh. B. R. Prasher)

J U D G E M E N T

(Hon'ble Sh. B.S. Hegde, Member(Judicial)

The applicant, Shri Rajpal Singh, has filed this application under Section 19 of the Administrative Tribunal Act, 1985 challenging the impugned orders dated 10.9.1987, 13.1.1988 and 21.5.1988 respectively.

2. The applicant was appointed as a constable on 1.7.1978 in the Delhi Police. During the course of his employment, he was posted at West District Lines with Sub-Inspector S.I. Jagdish Kumar at Police Station Tilak Nagar, Delhi. The charge against him is that he is alleged to have visited the house of Smt. Goma, resident of house No. C-753, J.J. Colony, Hastal Road, Uttam Nagar and demanded illegal gratification. On her refusal, he threatened her with dire consequences under the influence of liquor. The applicant also misbehaved and continued making nuisance at Police Station Vikaspuri, New Delhi. During the course of his employment, the applicant was posted at West District Lines where S.I. Jagdish Kumar was also posted at the same place who had threatened him that he would arrest and implicate him in some case. Eventually, S.I. Jagdish Kumar arrested him on false charges under Section 92/93/97 of Delhi Police Act on 9.9.1986, P.S. Vikaspuri, New Delhi.

3. Though he was arrested under Delhi Police Act yet he was also simultaneously departmentally

proceeded - against him vide order dated 11.3.1987.

4. The applicant has sought for quashing of the various orders passed by the Disciplinary Authority/ Appellate Authority/Revision Authority.

5. The main contention of the applicant is that it is clearly mentioned in Annexure 'A' that the evidence and material available for prosecuting him may not be sufficient to prove his guilt beyond all reasonable doubts; nevertheless, the Respondents initiated criminal charges as well as departmental proceedings. This shows the biased and vindictive attitude of the Respondents. Secondly, the charges made against the applicant in departmental enquiry as well as in the criminal court are on the same facts and same witnesses. Therefore, having initiated the criminal proceedings, parallel departmental enquiry on the same charges was not maintainable. Thirdly, the departmental enquiry as such was not conducted in a fair manner, since the main witnesses i.e. Smt. Goma and Lillu Ram did not depose against the applicant in the departmental enquiry.

6. The applicant further contends that in spite of the request that departmental enquiry need not be

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proceeded with in view of the fact that the criminal proceedings have already been initiated against him, *this was conducted*. Nevertheless, the Respondents conducted a preliminary enquiry as per rule 15(1) of Delhi Police (Punishment and Appeal) Rules, 1980 by Shri K.S. Thakur, then ASP, Tilak Nagar which was followed by regular departmental enquiry. It is contended from the evidence recorded by the Enquiry Officer that no charge was made out but the charge was framed and handed over to the applicant which is at Annexure 'C'. The defence of the applicant was not considered. Lastly, both the appeal and the revision application were made subsequent to the acquittal of the criminal case which was delivered on 1.12.1987.

My 7. In the light of the above, the question to be seen here is whether the applicant, who has been acquitted by the criminal court of the charge brought against him by giving him the benefit of doubt can be proceeded against in departmental enquiry on the same set of facts and he be punished.

8. The reply filed by the Respondents does not meet any of the point referred to above and ^{is} not germane to the issue at hand.

9. The criminal case filed against the applicant on

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12.9.86 under Section 92/93/97 of Delhi Police Act is on the same set of charges as are alleged in the departmental enquiry and the same set of witnesses, who were examined in the criminal court as well as in the departmental enquiry. In the criminal case accused/applicant was arrested on the statement of Smt. Goma that accused came under the influence of liquor to her and demanded monthly payment. On her refusal, he tried to beat her and the neighbours collected there and the accused was taken to the police station. The learned Metropolitan Magistrate, after considering various evidences, observed that the police could not arrest the accused without warrant from the Metropolitan Magistrate. The police cannot arrest the accused without warrant unless offence is committed in the very sight of police officer. Therefore, the arrest itself is not confirmative with law. Further, the statement of PW3, constable Harkishan, stating that the accused was behaving decently when he was taken to the hospital and as per medical report alcohol breath was declared doubtful which also demolished the very basis of the prosecution story. Therefore, the court had come to the conclusion that

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prosecution has failed to bring the guilt of the accused beyond all reasonable doubts rather it appears to be a false implication at the instance of the Investigation officer. Hence, the accused is acquitted of the offence under section 92/93/97 of the Delhi Police Act. etc.

10. On perusal of the departmental enquiry records, we find that both PW2, PW3 and PW4 i.e. Smt. Goma, Mr. Lillu Ram and constable Harkishan did not depose against the applicant in the enquiry. On the contrary, PW2, Smt. Goma specifically deposed during the enquiry that public people were taking constable Raj Pal towards police station. She was also called by the Sub-Inspector Jagdish Kumar and he wrote something on a paper and took her signature and sent her back to home. During the cross examination of the defaulter, she confirmed that her present statements are true instead of statements submitted before ACP, Tilak Nagar etc. Similarly, Lillu Ram also deposed in the same manner stating that in the police station signatures were taken on some papers. He did not know what was written on those papers. He also denied that the date of incident is known to him.

He further stated that the Sub-Inspector called him from his house for the signatures on the papers and also stated that the signatures were taken under pressure and he was made to sign at desired places. Even PW4, constable Harkishan, who had taken the applicant to Ram Manohar Lohia Hospital for medical examination, deposed that after medical he put the constable Raj Pal in the lock-up at police station Janakpuri and the concerned papers of medical were handed over to S.I. Jagdish Kumar. During the cross examination, he stated that he was not present in the police station when the public people brought the constable at police station. He further told that the constable was neither abusing nor making noise in the police station, when he came there. He further stated that the constable did not make any noise or misbehave.

11. It is further contended that the S.H.O. Shri M.R. Mehmi was not cross-examined by the enquiry officer. Except the departmental witnesses i.e. SHO and SI Jagdish Kumar all other witnesses did not depose against the applicant. Accordingly, the criminal court had acquitted the applicant on the alleged charges levelled against him under section 92/93/97 of the Delhi Police Act, and also stated that he was falsely implicated by the department.

12. It is seen that in spite of initiating of criminal

proceedings as well as departmental enquiry, the applicant was suspended from 18.9.86 to 12.3.87.

Therefore, the applicant contends that the findings of the enquiry officer is perverse and based on no evidence. Despite the same, the disciplinary authority vide its order dated 10.9.87 dismissed him from service with effect from the date of issue of this order i.e. 10.9.87. Though the applicant preferred an appeal to the revision and competent authorities which was rejected by the authorities concerned on 13.7.88 and 21.5.88 respectively.

13. In the conspectus of facts and circumstances of the case, we find that though the applicant was medically examined the medical report of the Ram Manohar Lohia Hospital has not been annexed. The content of the medical report is brought out in the judgement of the criminal court stating that the alcohol breath was declared doubtful.

14. The learned counsel for the applicant, in support of his contention, stated that the disciplinary enquiry has not been conducted in accordance with law and punishment imposed pursuant to the departmental enquiry was contrary to the provisions of law and the same requires to be quashed. He further contended that the ASP, who conducted

the preliminary enquiry was called as court witness and deposed before the enquiry officer in order to clear some doubts. The Respondents draw our attention that this is permissible in view of Rule 16(viii) of Delhi Police (Punishment & Appeal) Rules, 1980 which reads as follows :-

" After the defence evidence has been recorded and after the accused officer has submitted his final statement the Enquiry Officer may examine any other witness to be called "court witness" whose testimony he considers, necessary for clarifying certain facts not already covered by the evidence brought on record in the presence of the accused officer who shall be permitted to cross examine all such witnesses and then to make supplementary final defence statement, if any, in case he so desires."

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The applicant contends that he was not allowed to cross examine the court witness, Shri K.S. Thakur, which allegation is found to be, prima facie, correct.

There is nothing contrary on record to show that he has been allowed to cross examine the court witnesses.

15. The learned counsel for the applicant, in support of his contention, contended that both criminal prosecution as well as departmental enquiry on the same set of facts is not permissible. He relied upon the decision of the Tribunal in Ram Niwas v. Commissioner of Police [1992 (2) SLR 721] where the Tribunal held that the charge levelled against the applicant in the criminal case as well as the departmental enquiry was substantially the same, whether in such a case it will be open to the departmental authority to come to a different conclusion and impose the penalty of removal from service while the criminal court has acquitted him though it was by giving him the benefit of doubt. The discretion of the department must be exercised judicially and some valid reasons must be given for differing with the conclusions of the criminal. Accordingly, the Tribunal held that there was no proper application of mind on the part of the authorities concerned as required by the decision of the Supreme Court in the above mentioned case.

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16. The facts of this case is similar to the case referred to ~~50~~ and in the instant case it is an undisputed fact that subsequent to the decision of the criminal court, the applicant has filed the appeal to the competent authority and brought to the notice of the appellate authority that he has been acquitted by the criminal court. But the appellate authority has not mentioned the findings of the criminal court by merely stating the allegation made against the applicant that he was under influence of liquor created public nuisance on 9.9.1986 and thus the constable Raj Pal Singh is an indisciplined constable and his continuance in the force will not be conducive to proper discipline of the force and confirmed the dismissal order passed by the disciplinary authority. The Revision Authority vide its order dated 21.5.88 has mentioned that the acquittal of the petitioner by the court does not help him in any way but only stated that during departmental proceedings, the ^{petitioner} had consumed alcohol, misbehaved with senior officers at police station Vikaspuri and thus lowered the credibility image and prestige of Delhi Police which is a grave misconduct. Since he has not brought out any fresh evidence in the revision petition, the same is not sustainable.

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17. From the above, we find that the main charges levelled against the applicant is that he has consumed alcohol and misbehaved with the S.H.O. and S.I. Jagdish Kumar. The said charge has been negated by the independent witnesses Smt. Goma and Shri Lillu Ram and constable Harkishan which fact has been brought out in the findings of the criminal court. It is not the case of the Respondents that the charge against the criminal case as well as in the departmental enquiry is not one and the same. On the other hand both the witnesses as well as the charges are similar and, therefore, there is no justification on the part of the Respondents to initiate departmental enquiry especially having initiated the criminal proceedings against him and imposed punishment prior to the findings of the criminal court. There is no iota of evidence against the applicant that he had consumed alcohol and as a matter of fact the enquiry officer had not taken into account the statement of the defence witnesses of the applicant while finalising the enquiry report. The concerned medical officer who had examined him has also not been examined by the Respondents. During the course of hearing the learned counsel for the applicant furnished a copy of the departmental instructions

(Annexure 'J') vide dated 1.5.80 wherein it is envisaged " The officer who had conducted the preliminary enquiry was cited and examined as P.W. but copy of his preliminary enquiry report was not furnished by the enquiry officer to the defaulter giving him an opportunity to cross-examine the witness. This has affected proper cross-examination and goes against the principles of natural justice vitiating the departmental enquiry ab initio. Copy of the departmental enquiry report in such cases should have been supplied suo moto at the initial stage along-with the summary of allegations even if no specific report has been made by the defaulter." In the instant case the said report was not given nor the applicant was allowed to cross examine the ASP, Shri K.S. Thakur who conducted the preliminary enquiry.

18. In the facts and circumstances of the case, we are of the opinion that the departmental enquiry has not been conducted in accordance with law and despite the denial by the main witnesses that the applicant had consumed alcohol and misbehaved with the senior officer, the authorities had based their findings with no evidence and imposed the penalty of dismissal before the findings of the criminal court. Normally, when there is a similar

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charge levelled against the individual both in criminal court as well as in departmental enquiry, the departmental enquiry should be stayed till the completion of the criminal case. In the instant case, it is the reverse. Therefore, it is clear that the respondents are bent upon in punishing the applicant whether material available on record is sufficient to warrant dismissal or not.

19. In view of the above, we allow the application, set aside and quash the impugned orders dated 10.9.87, 13.1.88 and 21.5.88 respectively. The applicant shall be reinstated in service within a period of 2 months from the date of communication of this order. His period of suspension w.e.f. 18.9.86 to 12.3.87 as referred to in disciplinary authority's order dated 10.9.87 shall be treated as duty for all purposes and he will be entitled to full pay and allowances during the said period and from 13.3.87 to 10.9.87 the said period may be decided in accordance with law.

20. The applicant will also be entitled to his due seniority and consideration for promotion as if the impugned order has not been passed. The Respondents shall comply

with the above direction within a period of three months from the date of communication of this order.

There will be no order as to costs.

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

B.S. Hegde
(B.S. Hegde) 10/12/93
Member (J)