

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 1974/83

New Delhi this the 10th Day of December, 1993

THE HON'BLE MR. J.P. SHARMA, MEMBER (J)
THE HON'BLE MR. P.T. THIRUVENGADAM, MEMBER (A)

Uttam Dass,
Constable,
No.1970/SD
son of Kirat Singh
Resident of A-100 Gomens Extn.
Shahdara, Delhi. ... Petitioner

(None for the applicant)

Vs

Delhi Administration,
through its Chief Secretary,
Old Secretariat,
Delhi.

Commissioner of Police,
Delhi Police,
Police Headquarters,
I.P. Estate,
New Delhi.

Shri PRS Brar,
Dy. Commissioner of Police,
South District,
New Delhi. ... Respondents

(By Advocate Ms.Ashok Jain)

O R D E R (Oral)

Hon'ble Mr. J.P. Sharma, Member (J)

The applicant is constable in Delhi Police and filed this application under Section 19 of the Administrative Tribunals Act 1985, aggrieved by the order dated 28.6.1988 (Annexure III) of the order dated 29.9.1988. The impugned order dated 28.6.1988 is the charge against the applicant in a departmental enquiry alleging a misconduct that he was involved in a rape case with a girl aged between 13/14 years while he was in PS, Mehrauli. The order dated 29.9.1988 is a showcause

Jc

-2-

notice issued to the applicant by the disciplinary authority Deputy Commissioner of Police agreeing with the findings of the enquiry officer asking him to show cause why the proposed punishment of dismissal from service be not inflicted upon him.

A notice was issued to the respondent who contested the application and stated that though a criminal case was registered in FIR No. 238 dated 10.10.1984 under Section 376, 341, I.P.C. but the acquittal has been on account of non appearance of the Key witness for prosecution in the criminal case. The applicant therefore was reinstated with effect from 12.2.1987 and a departmental enquiry was held under Section 21 of the Delhi Police Act, 1978 read with Rule 12(1) of the Delhi Police (Punishment and Appeal) Rules 1980 which lays down that even after acquittal by the criminal court a departmental enquiry can be initiated if the criminal charge has failed on technical grounds. In the opinion of the court the prosecution have been won over or in the opinion of the Deputy Commissioner of Police the prosecution witnesses have been won over. Thus according to the respondents the departmental enquiry against the applicant has been rightly initiated and because of the interim stay granted by the Tribunal by the order dated 7.11.1988 restraining the respondents not to pass a final order the departmental enquiry is still pending.

None is present on behalf of the applicant. Ms. Ashoka Jain is however present on behalf of the respondent. This is an old case. We propose to decide it on merit with the assistance of the learned counsel of the respondent on the basis of the pleadings on record.

le

9

le

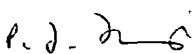
The ground taken by the ^{applicant} respondents is that since the applicant has been acquitted ⁱⁿ with the criminal case and the charges were the same he cannot be proceeded with departmentally after acquittal from the criminal court. This is not so. Rule 12 (1) Supra gives power to the respondents to initiate departmental enquiry when the acquittal has been on technical grounds or when the prosecution witnesses have been won over. We have gone through the judgement of the Additional Session Judge, Delhi, dated 27.10.1986. The judgement shows that the prosecutrix Manbhari and her mother Shrimati Ram Pyari and father Laxmi Chand could not be served by the Session Court for giving evidence in the trial before the criminal court and thereafter the evidence of the prosecution was closed. Thus the findings given by the Session Court in the judgement is based solely on the non examination of the victim of rape alleged to have been committed by the applicant. This cannot be said to be a clean acquittal. The departmental enquiry in such a case is not barred. We are fortified in our view by the decision of the Hon'ble Supreme Court in the case of Nelson Motis v. Union of India & Anr reported in Judgement Today 1992 Vol. V SC P 511 at page 514. The relevant para is quoted below:

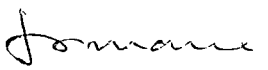
"So far the first point is concerned, namely, whether the disciplinary proceeding could have been continued in the face of the acquittal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and scope of a criminal case are very different from those of a departmental

le

disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding. Besides, the Tribunal has pointed out that the acts which led to the initiation of the departmental disciplinary proceeding were not exactly the same which were the subject matter of the criminal case".

In view of the above facts and circumstances we have considered the various grounds taken by the applicant in the application and also perused the rejoinder in reply to the counter filed by the applicant. We find no merit in this application and the same is dismissed. The stay granted by the Tribunal by this order dated 7.12.1988 is vacated. Costs on parties.


(P.T. Thiruvengadam)
Member (A)


(J.P. Sharma)
Member (J)

Mittal