

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O. A. NO. 1429/90

New Delhi, 28th September, 1994

THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

THE HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Vijender Singh Constable No.1155/SD,
R/O Qr. No. 243, Type 'B',
Police Colony, Ashok Vihar,
Delhi - 110052.

... Applicant

By Advocate Shri A. S. Grewal

Versus

1. Lt. Governor through
Chief Secretary, Delhi
Administration, Delhi.
2. Commissioner of Police, Delhi,
Delhi Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi.
3. Addl. Commissioner of Police (ND)
Police Headquarters, M.S.O. Building,
I.P. Estate, New Delhi.
4. Dy. Commissioner of Police/
South Distt., Hauz Khas,
New Delhi.

... Respondents

By Advocate Shri O. N. Trisal

ORDER

Shri S. R. Adige, Member (A) -

In this application, Shri Vijender Singh has impugned the D.C.P., South District's penalty order dated 7.6.1988 (Annex. 'C') which has been reduced to that of forfeiture of seven years' approved service permanently entailing permanent reduction in pay vide appellate order dated 24.10.1988 (Annex. 'D') passed by the Addl. Commissioner of Police, and the revisionary order dated 18.7.1989 (Annex. 'E') passed by the Commissioner of Police rejecting the revision on the ground of delayed submission.

Date

Office Report

Orders

Page No.

144

25/9/94

Judgement pronounced by City

for

private
cars

2. The applicant was proceeded against departmentally on the charge (Annex. 'B') that while performing sentry duty at the lock-up of P.S. Lajpat Nagar on 8.5.1985 at about 6.35 p.m., the applicant came to the reporting room carrying loaded rifle and scolded Constable Raj Kumar (Chitha Munshi) objecting to his being detailed for sentry duty at the lock up, resulting in an exchange of hot words and grappling with Const. Raj Kumar with the loaded rifle.

3. Both the Constables were placed under suspension. The Enquiry Officer held that the charge had been fully proved against the applicant. Tentatively agreeing with the findings of the Enquiry Officer, a show cause notice was issued to the applicant provisionally dismissing him from service. In response to the notice, the applicant submitted a reply and was also heard in the Orderly Room by the Disciplinary Authority who after going through the reply and available record concluded that the charge against the applicant had been proved and confirmed the punishment of dismissal. Thereupon, the applicant filed an appeal which was considered by the appellate authority and the punishment of dismissal was reduced to that of forfeiture of seven years' approved service permanently treating the period from the date of dismissal from service upto the date of resumption of duties as a leave of kind due. Upon that the applicant filed a revision petition before the Commissioner of Police on 15.3.89, although he had received a copy of appellate authority's order on 10.11.88. The Commissioner of police held that the revision petition had been filed after

limitation period as per provisions of Rule 16.32 Punjab Police Rules. Moreover, the petitioner had not mentioned any cogent reason justifying the condonation of delay in submission. Accordingly, by Police Headquarters' Memo dated 18.7.89 (Ann.-E), the revision petition was not entertained by the Commissioner of Police being time barred. Meanwhile, from the materials on record, it appears that a Criminal case was also instituted against the applicant in connection with this incident. One of the grounds taken by the applicant before the Disciplinary Authority was that the matter was subjudice in the Criminal Court but the Disciplinary Authority rejected the applicant's contention, and held that in the Criminal Court, he was being tried for the offences under sections 307/506 IPC which had no bearing on the present D.E., where he was being dealt with for gross indiscipline and mis conduct. The same ground appears to have been taken by the applicant before the appellate authority, but at the appellate stage also this ground was not accepted.

4. The respondents have contested the applicant's claim and aver that he had rightly been punished for his mis conduct. It has been stated that the charge against the applicant in the departmental enquiry is not identical to that of the Criminal case registered against him and the decision taken by the Disciplinary Authority in the D.E. is justified and maintainable.

5. In the rejoinder, it has again been reiterated that the offences against which the Criminal case had been registered, and the facts in the departmental enquiry are the same.

6. It further appears that the criminal case against the applicant has concluded which has ended in his acquittal as per his averment in the O.A.

7. We have heard Shri A.S.Grewal for the applicant and Shri O.N.Trisal for the respondents. Shri Grewal has relied upon the ruling in 'D.C.Choudhary Vs. Senior Superintendent of Post Offices Hoshangabad' - ATR 1987 (1) CAT 101, wherein it has been held that where the charges in the departmental and Criminal trial are not similar and the criminal charges are of grave nature involving questions of fact and law which are not simple and where the departmental enquiry was started much after the lodging of the FIR, it is appropriate to keep the D.S. in abeyance, pending decision of the criminal case. He has also relied upon 'Rajpal Vs. UOI' - ATJ 1994(1) page 191, wherein it has been held that when there is a similar 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 case of Rajpal Singh's case also (Supra), that applicant had been acquitted in the Criminal case.

8. The judgments relied upon by Shri Grewal do not appear to be of much help, because in the present case, the D.E. had concluded, resulting in the penalty order, before the applicant was acquitted in the criminal case.

9. However, there is one aspect of the matter which deserves consideration and that is the applicability of Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 to the facts of this case. That Rule runs as follows:-

"12. Action following Judicial acquittal-

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:-

- (a) the criminal charge has failed on technical grounds, or
- (b) in the opinion of the court, or on the Deputy Commissioner of Police, the prosecution witnesses have been won over; or
- (c) the court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned; or
- (d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge; or
- (e) additional evidence for departmental proceedings is available

10. We note that Respondent No. 2 (Commissioner of Police) had rejected the revision petition not on merits, but merely on ground of limitation. Having regard to the fact that the applicant has been acquitted in the criminal case arising out of the same incident, which fact has not been denied by the respondents, in the interest of justice we consider it fit and proper that the

applicant's revision petition should be considered by Respondent No.2 (Commissioner of Police) on merit, in the light of Rule 12 Delhi Police (Punishment & Appeals) Rules, 1980, and the other facts and circumstances noted above.

11. In the result, we ourselves without going into the merits of the case at this stage and without interfering with the orders of the Disciplinary Authority and the Appellate Authority , direct the respondent No.2 (Commissioner of Police) to consider the applicant's revision petition in the background of the facts stated and the contents of Rule 12 Delhi Police (Punishment & Appeals) Rules, 1980 and pass a detailed and reasoned order thereon within three months from the date of receipt of a copy of this judgment. It will be open to the applicant, if any grievance survives thereafter, to agitate the matter afresh in accordance with law. No costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (J)

S.R. Adige
(S.R. ADIGE)
MEMBER (A)

/ug/