

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1955/90
T.A. No.

199

DATE OF DECISION 28.1.1992

<u>Ex. Head Constable Ram Niwas</u>	Petitioner Applicant
<u>Shri Shanker Raju</u>	Advocate for the Petitioner(s) Applicant
Versus	
<u>Commissioner of Police & Ors.</u>	Respondent
<u>Ms. Kum Kum Jain</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member.

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

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The question whether a Police Officer, 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 inquiry on the same facts and be punished, is involved in this case.

2. The applicant was enrolled in the Delhi Police as a Constable in 1975 and was promoted as Head Constable in 1981. It was alleged that while posted at P.S. Lawrence Road on 13.5.1988, he allegedly molested one, Smt. Shanti

Devi. A criminal case was registered against him. He was placed under suspension w.e.f. 13.5.1988. A departmental inquiry was initiated against him on 9.9.1988. After completion of the inquiry, the Inquiry Officer in his findings, held the charge proved but he stated that before taking decision on the findings, the pendency of the criminal case may be kept in view.

3. Provisionally and tentatively agreeing with the findings of the Inquiry Officer, the disciplinary authority issued a show-cause notice proposing the imposition of penalty of removal from service on the applicant. Thereafter, the disciplinary authority imposed the punishment of removal from service on him by order dated 22.5.1989. The appeal and revision petition filed by him were rejected by the authorities concerned on 29.11.1989 and 15.3.1990, respectively.

4. The criminal court acquitted him by judgement dated 29.1.1990 by giving him the benefit of doubt.

5. In the above factual background, the applicant has prayed for the following reliefs:-

- (i) to quash the impugned departmental proceedings;
- (ii) to quash the impugned orders passed by the disciplinary authority, appellate authority, and the revisional authority;
- (iii) to direct the respondents to treat his

suspension period w.e.f. 13.5.1988 to

15.5.1989 as duty for all purposes;

- (iv) to award all consequential benefits, including pay, allowances, seniority and promotion pursuant to his reinstatement in service; and
- (v) to restrain the respondents from proceeding with the departmental inquiry on the charges/ allegations similar and identical to the charges in criminal court of which he had been exonerated.

6. The respondents have stated in their counter-affidavit that the applicant had committed a grave misconduct in molesting an innocent lady. According to them, there was no infirmity in the departmental inquiry initiated against the applicant. They have contended that the applicant was acquitted by the criminal court by giving him the benefit of doubt, which does not amount to full exoneration.

7. The charge brought against the applicant was as follows:-

"I, Inspector J.L. Sawhney, S.H.O./Lahori Gate, Delhi charge you H.C. Ram Niwas No.1/N that on 13.5.1988 while posted to Police Station, Lawrence Road, you entered the house of Shri Sohan Lal R/o F-5/38, Sultanpuri, Delhi and molested his wife Smt. Shanti Devi by pressing her breasts, while she was sleeping on a cot in her house at about 3 P.M. That subsequently, on the statement of Smt. Shanti Devi Case FIR No.92 dated 13.5.88 u/s 354 I.P.C. P.S. Sultanpuri, Delhi was registered and you were arrested in the said case.

The above act on your part amounts to grave misconduct, is unbecoming of a Police Officer and renders you liable for departmental action u/s 21 of the Delhi Police Act, 1978."

8. The offence for which the criminal proceedings were initiated against the applicant, as summarised in para.1 of the judgement of the Metropolitan Magistrate, Delhi, is as under:-

"Prosecution case in brief is that on 13.5.88 at about 3 PM in house No.F-5/38, Sultan Puri accused Ram Niwas outraged the modesty of Smt. Shanti Devi by pressing her breast and touching her face. Accused was apprehended by her and her relative. Police was informed. After investigation of the case, police filed present challan against accused for his trial for the offence punishable u/s 354 IPC."

9. The Metropolitan Magistrate, in his judgement dated 29.1.1990, has observed in para.7 of his judgement that "There are some major contradictions in the prosecution case which create doubt and strengthen the defence of the accused that he was falsely implicated in the present case." He referred to the statement of DW1 and DW2 and the admission of PW4 regarding the character of Smt. Shanti Devi which led to the probability that the accused might be innocent in the present case. PW4 had stated that there were complaints about the character of Smt. Shanti Devi, and that he had seen her in P.S. three to four times earlier in some dispute and quarrels. It is in these circumstances that the Metropolitan Magistrate came to the conclusion that the prosecution had failed to

prove its case against the accused beyond the shadow of reasonable doubt.

10. It is pertinent to mention that the judgement of the criminal court dated 29.1.1990 was available before the revisional authority who had passed its order on 15.3.1990. But there is no mention of the same in his order and how he has come to a different conclusion as regards the involvement of the applicant in the alleged molestation of a lady.

11. It is clear that the charge levelled against the applicant in the criminal case as well as the departmental inquiry, was substantially the same. The question arises 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.

12. The learned counsel for the applicant has relied upon the numerous ^{*}rulings in support of his contention and we have duly considered them.

*Rulings relied upon by the learned counsel for the applicant:
 1989(2) ATLT 758; 1982 (1) SLR 573; 1990(1) SLJ, CAT 215;
 1991 (1) ATJ, CAT 502; 1990 (3) SLR, CAT 254; 1988 (2) ATLT,
 CAT Shortnote 88; 1991 (1) ATJ, CAT 351; 1990 (2) SLJ, CAT 242;
 1988 (2) ATLT, CAT Shortnote 12; 1991 (1) ATJ, CAT 182.

13. In *Corporation of Nagpur Vs. Ram Chandra G. Madak*, A.I.R. 1984 S.C. 636; the Supreme Court observed that 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. 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 discretion in any way fettered.

14. The discretion of the department must be exercised judicially and some valid reasons must be given for differing with the conclusions of the criminal court. While such reasons may not necessarily be communicated to the employee, the relevant departmental file must disclose that the department/disciplinary authority had properly exercised the discretion and give plausible reasons for ignoring the criminal court's findings. The revisional authority in the instant case had before it the judgement of the Metropolitan Magistrate acquitting the applicant. He has not referred to the judgement of the criminal court or given any plausible reasons why the impugned order of punishment of removal from service in revision should be upheld by him in his order dated 15.3.1990 on the revision petition filed by the applicant. The counter-affidavit

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is silent on this aspect. The learned counsel for the respondents also did not place before us the relevant file in which the decision of the criminal court was considered by the authorities concerned and it was decided to disagree with the same before passing the final order in the instant case.

15. In the facts and circumstances of the case, we are of the opinion 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.

16. The learned counsel for the applicant has raised several other contentions. However, we do not consider it necessary to deal with them as the applicant is entitled to succeed on the short ground mentioned above. We, therefore, allow the application. We set aside and quash the impugned orders dated 22.5.1989, 29.11.1989 and 15.3.1990. The applicant shall be reinstated in service within a period of three months from the date of communication of this order. His period of suspension w.e.f. 13.5.1988 to 15.5.1989 shall be treated as duty for all purposes and he would be entitled to full pay and allowances during the said period.

17. The applicant would also be entitled to his due seniority and consideration for promotion as if the impugned orders had not been passed. The respondents shall comply with the above directions within a period of four months from the date of communication of this order.

18. There will be no order as to costs.

B. N. Dhoundiyal, 1 -
(B.N. Dhoundiyal) 28/1/92
Administrative Member

[Signature]
28/1/92
(P.K. Kartha)
Vice-Chairman(Judl.)