

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL MEMBER  
NEW DELHI

13

C.A./T.A. No. 2711 of 1991/10 Decided on: 10.2.97

Const. Bahadur Singh

..... APPLICANT(S)

(By Shri Shankar Raju

Advocate)

VERSUS

Addl. Commissioner of Police & Delhi &  
Anr.

..... RESPONDENTS

Rajinder Pandita

(By Shri

Advocate)

CURAM

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

THE HON'BLE ~~SHRI S.R. ADIGE~~ DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal? No

*S.R. Adige*  
(S.R. ADIGE)  
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL  
Principal Bench

14

O.A. No. 2711 of 1991

New Delhi, dated this the 1<sup>st</sup> February, 1997

HON'BLE MR. S.R. ADIGE, MEMBER (A)  
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Const. Bahadur Singh  
No.2955/DAP,  
S/o Shri Ram Narain,  
R/o Village Majri  
P.O. Bhoodi Bawal,  
Dist. Alwar  
Rajasthan

.... APPLICANT

(By Advocate: Shri Shankar Raju)

VERSUS

1. Addl. Commission of Police,  
(Armed Police),  
Police Headquarters,  
M.S.O. Building,  
I.P. Estate,  
New Delhi.

2. Dy. Commissioner of Police,  
3rd BN. DAP, Kingsway Camp,  
Delhi-110007.

.... RESPONDENTS

(By Advocate: Shri Rajinder Pandita)

J U D G M E N T

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

Applicant has impugned the disciplinary authority's order dated 24.7.90 (Ann. A-7) imposing a punishment of forfeiture of 5 years approved service permanently for 5 years and ordering that the treatment of the suspension period from 24.6.89 to 31.10.89 will be decided after finalisation of the criminal case against him, as well as the appellate order dated 11.12.90 rejecting the appeal (Ann. A-9).

2

15

2. Applicant was proceeded against departmentally on the allegation that while posted in III Battalion, DAP he was detailed for sentry duty for undertrial P. Rameshkumar at RBTB Hospital, Kingsway Camp, Delhi who managed to escape from his lawful custody as a result of which FIR No. 109 dated 23/24.6.89 u/s 223, 224 IPC was registered.

3. The E.O. held the charge against the applicant proved. Tentatively agreeing with the E.O's findings a show cause notice was issued to the applicant in 1.6.90 in response to which applicant submitted his reply on 18.6.90. After considering the applicant's reply and giving him a personal hearing, the Disciplinary Authority imposed the impugned punishment which was upheld in appeal.

4. Applicant's counsel has urged that there has been a violation of Rule 29(3) Delhi Police (P&A) Rules, in as much as criminal proceedings as well as departmental proceedings could not legally have been held simultaneously, and furthermore the departmental proceedings could have been ordered by an officer not less than the Addl. Commissioner of Police.

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5. Rule 29(3) Delhi Police (P&A) Rules  
reads thus

"If the enquiry establishes negligence or connivance in an escape, thereby creating a presumption that an offence under Sec. 221, 222 or 223 IPC has been committed, the police officer concerned shall be prosecuted in a criminal court, unless the Addl. Commissioner of Police on a reference by the Dy. Commissioner of Police decides, for reasons to be recorded in writing that the case shall be dealt with departmentally. If the enquiry establishes a break of discipline and misconduct not amounting to an offence under any of the sections of the IPC mentioned above, the case shall ordinarily be dealt with departmentally. The criminal prosecution under this rule of an upper subordinate shall not be undertaken without the sanction of the Addl. Commissioner of Police.

6. What this means is that where the searching inquiry creates a presumption that an offence under Sec. 221, 222 or 223 I.P.C. <sup>has</sup> ~~has~~ been made out, the delinquent shall be prosecuted in a criminal court, unless the Addl. Commissioner is satisfied for reasons which he will record in writing on a reference being made to him by the Deputy Commissioner that the delinquent should be proceeded against only departmentally. In other words where the offence u/s 221, 222 or 223 I.P.C. is presumed to have been committed, criminal prosecution is the rule,

17

and it can be dispensed with only upon the reasoned and written satisfaction of the Addl. Commissioner of Police, on a reference made to him by the Deputy Commissioner of Police. In the present case as the FIR discloses offences u/s 223, 224 I.P.C. a decision not to prosecute the applicant in a criminal court could have been taken only by the Addl. Commissioner of Police on a reference being made to him by the Commissioner of Police, and for reasons to be recorded in writing. The decision to criminally prosecute or not criminally prosecute where upon inquiry a presumption is created that an offence u/s 221, 222 or 223 I.P.C. has been committed is separate, distinct, and independent of the decision to initiate departmental proceedings, and where a decision is taken to criminally prosecute, there is no bar to initiating simultaneous departmental proceedings, and there is nothing in those rules which requires Addl. Commissioner of Police's approval before initiating those departmental proceedings either. Hence this ground fails.

6. Another ground taken is that Head Constable Shyam Singh was also proceeded against departmentally for the same incident, but he has been exonerated and it is only the applicant who has been punished. Each case has to stand <sup>or</sup> / fall on its own, and merely

1

because on the basis of the available material, the respondents exonerated Head Constable Shyam Singh does not give the applicant an enforceable legal right to claim exoneration. The Tribunal is not an appellate court to reappraise the evidence and determine whether the exoneration of H.C. Shyam Singh, was legally justified or not.

7. The O.A. therefore warrants no interference. It fails and is dismissed. No costs.

*A. Veda Valli*

(DR. A. VEDAVALLI)  
Member (J)

/GK/

*S. R. Adige*

(S.R. ADIGE)  
Member (A)