

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

(6)

16.3.93

Date of Decision:

OA 2916/91

NAYAR SINGH ... APPLICANT.

Vs.

DELHI ADMN. & ORS. ... RESPONDENTS.

TORAM:

HON'BLE SHRI J.P. SHARMA, MEMBER (J).
HON'BLE SHRI S.R. ADIGE, MEMBER (A).

For the Applicant ... SHRI SHYAM BABU.

For the Respondents ... SHRI M.C. GARG.

JUDGEMENT

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

The applicant Shri Nayar Singh, a dismissed Head Constable of the Delhi Armed Police, ^{has} assailed the enquiry report dt. 5.10.90 (Annexure-G), the order of dismissal dt. 22.1.91 (Annexure-I), the Appellate Order dt. 6.6.91 (Annexure-K), and revisional order dt. 10.11.91 (Annexure-M), and prayed for reinstatement into service with all consequential benefits including declaration that the period he was under suspension be treated as spent on duty with full pay and allowances.

On 9.10.85, the applicant ^{was} posted to 9th Bn. DAP and was detailed on picket duty alongwith Constable Shambhu Deyal of Police Station Moti Nagar, at Patel Road crossing. Due to rain, the applicant and the Constable

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Shambhu Dayal took shelter inside the DESU Complaint Office near Patel Road crossing. The applicant had been issued a 9mm Pistol by the local Police. At about 2.10 p.m. while sitting inside the DESU Complaint Office, the applicant allegedly was fiddling with his 9mm Pistol, as a result of which two rounds went off, one of which hit Shri Tara Chand, a labourer of DESU and the other bullet hit the wall. The injured Tara Chand was taken to RML Hospital, where he succumbed to his injuries. The applicant was placed under suspension (Annexure-B), and a departmental enquiry was ordered (Annexure-A). ~~A~~ case FIR 463/85 was also registered against the applicant by the Moti Nagar Police, in which he was arrested. The summary of allegations is at Annexure-D.

the departmental enquiry report (Annexure-6) held that the charge against the applicant of not having kept his fire arm in safe custody was proved beyond any shadow of doubt and the firing of two bullets causing death of the labourer Tara Chand, by that weapon, proved the applicant's negligence, but as the criminal case was still subjudice in the court of law, the departmental enquiry be held in abeyance till the verdict of the court. On 10.11.90, the Metropolitan Magistrate Delhi, delivered judgement in the case FIR 463/85 u/s 304A IPC, in which he held that it cannot be said that the accused was grossly negligent in dealing with the pistol or that the shots were fired due to

his gross-negligence. Giving the benefit of doubt to the applicant, the Magistrate acquitted him of the allegations u/s 304A IPC. Meanwhile, on 14.8.89, the suspension order had been withdrawn and the applicant had been reinstated without prejudice to the criminal case pending against him. On the basis of the EO's findings in the departmental enquiry, the Disciplinary Authority in his order dt. 22.1.91 (Annexure-I) held the charge against the applicant stood fully established, *an officer of Delhi Police who could not keep his weapon in safe custody, even under normal circumstances, would act in a most clumsy manner in adversity.* The retention of such officer in service would be disastrous to the force as well as to the public. Accordingly, the applicant was ordered to be removed from service. This order was upheld in appeal on 6.6.91 (Annexure-K), as also in revision on 18.11.91 (Annexure-M), and it is against those orders that this application has now been filed.

The respondents have contested the application and, in their counter affidavit, have stated that although the applicant was acquitted in the criminal case by giving him the benefit of doubt, the charge of failing to keep the fire arm and its ammunition in proper and safe custody and his mis-handling of the fire arm, which resulted in the death of labourer Tara Chand amounted to serious misconduct, which have been conclusively established in the

departmental enquiry, which have been conducted in accordance with rules, and the applicant had, therefore, rightly been dismissed from service. The application was devoid of merit and was liable to be rejected.

We have heard Shri Shyam Babu, learned counsel for the applicant, and Shri M.C. Garg, learned counsel for the respondents.

The ^{1/} first ground taken by Shri Shyam Babu is that u/s 12 Delhi Police (Punishment & Appeal) Rules, 1980, when a Criminal 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 witness have won over; or
- (c) the court has held in its judgement 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.

Secondly, it has been argued that under Rule 15(2) of the above rules, in cases in which a preliminary enquiry discloses the commission of a cognizable offence by a Police Officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Addl. Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held.

Thirdly, Shri Shyam Babu has referred to two Supreme Court's judgements, the first reported in (AIR 1969 SC 1108) and the other reported in (AIR 1988 SC 305).

The first ground taken by Shri Shyam Babu is clearly untenable because, as correctly pointed out by Shri Garg, the charge in the departmental proceedings is different from that cited in the criminal case. In the criminal case, the applicant was charged with an offence

u/s 304A IPC, i.e. causing death through a rash or negligence act, while in the departmental proceedings the charge is basically that of failure to keep the fire arm and ammunition, issued to him, in proper and safe custody and his mis-handling of the same, resulting in the death of the labourer Tara Chand. Even if the applicant's own defence in the criminal case is accepted, it is clear that the applicant took his loaded Pistol with him inside the DESU Complaint Office and drew it from its holster. According to the Metropolitan Magistrate's judgement, although it was proved that the Pistol was in the hand of the accused when the shots were fired, the possibility cannot be ruled out that the shots might have been fired when the deceased Tara Chand was trying to take the Pistol from the accused in order to have a closer look at it. Be that as it may, it is clear that the applicant did not maintain proper and safe custody of the fire arm and mis-handled it, as a result of which two shots were fired, causing the death of Shri Tara Chand. If the weapon had been kept in proper and safe custody, such an incident would not have occurred at all. Hence, the Disciplinary Authority, Appellate Authority as well as the Revisional Authority have correctly held that the applicant was unable to keep his weapon in proper and safe custody even under normal circumstances and was, therefore, unfit to be retained in service. This ground must, therefore, fail.¹¹

The second ground taken by Shri Shyam Babu is without substance. As a criminal case u/s 304A IPC had already been instituted against the applicant, no further orders of the Addl. Commissioner of Police were required under Rule 15(2) as to whether a criminal case should be registered and investigated or a departmental enquiry should be held, once the commission of ~~the~~ ^{an} cognizable offence had become known.

The two Supreme Court's decisions, relied upon by Shri Shyam Babu, do not help him either because both relate to Rule 16.38 of the ~~Delhi~~ ^{Prmt} Police ~~Commissioner's~~ ^{Rules} ~~Act~~ ~~Rules~~, requiring the prior sanction of the District Magistrate in case of investigation pertaining to departmental enquiries. The applicant is governed by the Delhi Police Act and the rules framed under, which is self contained and nowhere in the Delhi Police (Punishment & Appeal) rules, 1980, is the prior sanction of the District Magistrate require before ^{initiating} departmental enquiries.

In the result, no interference in the impugned orders is warranted and this application is accordingly dismissed. No costs.

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(S.R. ADIGE)
MEMBER (A)

J. P. Sharma
(J.P. SHARMA) 16-3-93
MEMBER (J)