IN THE CENTRAI ADMINISTRATIVE TRIBUNAL
PRINCIPAI BENCH, NEW DELHI.

Regn.No.(1) OA 971/91 Date of decision: 11.12.1992
(2) OA 1110/91

(1) OA 971/1991

Shri Rohtash Singh ...Applicant

Vs.

Delhi Administration & Others ...Respondents

(2) OA 1110/1991

Shri Preet Singh ...Applicant

Vs.

Delhi Administration & Others ...Respondents

For the Applicant ..Shri Shyam Babu, Counsel
For the Respondents ..Shri B.R.Parashar, Counsel

CORAM:

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

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

1. To be referred to the Reporters or not? Yes

JUDGMENT
(of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

As common questions of fact and law have been raised in the applications, it is proposed to dispose them of in a common judgment.

2. The applicants who were posted as Constables at Police Station, Vikas Puri were placed under suspension w.e.f. 4.7.1989 pending enquiry against certain allegations of misconduct against them. They were detailed for patrolling duty in beat Nos. 6 and 1 on 4.7.1989. It was alleged that they made departure for patrolling duty but

an information was received later on the same day that a Maruti Van No.DDV 6851 was caught by S.I. Om Parkash of PCR as the said vehicle was involved in some incident at Haryana. Head Constable Raj Singh No.56 of Gurgaon (Haryana) had intimated on enquiries by S.I. Madan Lal of P.S. Vikas Puri that the applicants along with Rajinder Kumar alias Raju and Joginder Singh alias Tarbu had quarrelled with Naveen Kumar, a Pan Shop Owner at Parkash Nagar, Bus Stand, Gurgaon (Haryana). As such, the applicants had absented themselves wilfully and unauthorisedly from active duty and even gone out of station without obtaining prior permission/information of the competent authority.

3. After holding an enquiry, the disciplinary authority passed the impugned order dated 26.2.1990 whereby the penalty of dismissal from service was imposed on the applicants. The period spent under suspension from 4.7.1989 to 17.8.1989 was ordered to be treated as not spent on duty and that they were to draw nothing more except what they had already drawn in the shape of subsistence allowance. The appeals preferred by them were rejected by the appellate authority by order dated 23.7.1990 and the revision petitions filed were rejected by the revisional authority by order dated 26.2.1991.

4. We have gone through the records of the case and have heard the learned counsel of both parties. The applicants have stated that a criminal case was registered on 20.07.1989 against them as FIR No.81 dated 4.7.1989 under Section 379 IPC at Police Station, Farak Nagar, Gurgaon (Haryana). By judgment dated 19.7.1990, the Judicial Magistrate Ist Class, Gurgaon held that in view of the evidence produced by the prosecution, the complainant and another two eye witnesses to the occurrence have not supported the prosecution case in any way and no incriminating evidence came forward in their service. Accordingly, the accused were acquitted of the charge against them. In view of this, the applicants have contended that on the same facts, no departmental enquiry against them would be legally tenable. The respondents have contended that the charge against the applicants in the departmental enquiry and the charge in the criminal case are not the same.

5. In our opinion, the facts in the criminal case as well as the departmental enquiry related to the presence of the applicants in Gurgaon on 4.7.1989 and their involvement in a criminal offence. Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 provides that 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.

6. In the instant case, the acquittal of the applicants in the criminal case was on the merits and not on technical grounds. There is nothing on record to indicate that the prosecution witnesses were won over. In view of this, the impugned order of dismissal from service as a result of departmental enquiry on the same facts, is not legally sustainable.

7. We, therefore, set aside and quash the impugned orders dated 26.2.1990, 23.7.1990 and 26.2.1991. The respondents shall reinstate the applicants as Constables. The applicants would be entitled to consequential benefits by way of salary and allowances from the date of dismissal to the date of reinstatement. They would also

be entitled to full pay and allowances for the period during which they had been placed under suspension. The respondents shall comply with these directions expeditously and preferably within 3 months from the date of receipt of this order. There will be no order as to costs.

Let a copy of this order be placed in both the case files.

(B.N. DHOUNDIYAL)
MEMBER (A)
11.12.1992

(P.K. KARTHA)
VICE CHAIRMAN(J)
11.12.1992

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Attested True Copy
11/12/92

(आर० एस० कर्दम)
(R. S. KARDAM)
S.O/C.A.T. P.B.
नई दिल्ली/New Delhi-110001