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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA NO. 2330/2004

New Delhi, this the 20th day of January, 2005

**HON'BLE MR. JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE MR. S.K. NAIK, MEMBER (A)**

HC (Dvr.) Raj Kumar No. 265/DAP
S/o Sh. Dayanand
R/o Village & P.O. Tajpur Kalan,
Delhi - 36.

...Applicant

(By Advocate: Shri Sachin Chauhan proxy for Smt. Jyotsana Kaushik)

-versus-

1. Commissioner of Police,
Police Headquarters,
MSO Building, I.P. Estate,
New Delhi.
2. Deputy Commissioner of Police,
Ist. Bn. DAP,
New Police Lines,
Kingsway Camp,
New Delhi.
3. Inspr. Jaan Mohd.,
Enquiry Officer,
Office at
Ist. Bn. DAP,
New Police Lines,
Kingsway Camp,
New Delhi.
4. Govt. of NCT of Delhi,
Through Chief Secretary,
Delhi Secretariat,
I.P. Estate.
New Delhi.

...Respondents

(By Advocate: Shri Rishi Prakash)

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ORDEER (ORAL)**Justice V.S. Aggarwal, Chairman:**

The applicant is a Head Constable (Driver) in Delhi Police. The facts are not in controversy. They can be conveniently delineated.

2. The applicant faced a trial with respect to an offence punishable under Sections 452/308/34 Indian Penal Code. The Court of Additional Sessions Judge on 23.4.2003, acquitted the applicant recording:

"7. All the witnesses who are the only witnesses to the occurrence turned hostile and did not support the prosecution. All the 4 witnesses were allowed to be cross-examined by Addl. P.P. But in their cross-examination also nothing incriminating could be brought out against any of the accused.

8. Since all the material witnesses turned hostile, recording of further evidence was considered unnecessary and wastage of time, and so P.E. was closed.

9. Since nothing incriminating came on record against accused persons, their statements U/s 313 Cr. P.C. were dispensed with and they are acquitted for the offence they are charged with for the same reason."

3. When the trial was pending, departmental proceedings had been initiated against the applicant. The same had been kept in abeyance because of the pendency of the above said criminal case in the Court. After the applicant had been acquitted, the departmental proceedings have been re-started vide the order of 15.5.2003, which is being re-produced below, for the sake of facility:

"In continuation of this office order No. F.XVI/156/2000/10633-10663/HAP-Ist Bn. DAP, dated 9.11.2000 so far as it relates to the D.E. held-in-abeyance in respect of HC (Dvr.) Raj Kumar, No. 265/DAP till the finalization of

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criminal case FIR No. 322, dated 5.8.2000, u/s 452/308/34 IPC, P.S. Alipur, Delhi.

Now the Hon'ble Court of Sh. B.K. Jain, Addl. Sessions Judge, Delhi vide its judgement dated 23.4.2003 has acquitted the accused HC Raj Kumar, No. 265/DAP as all the witnesses who are the only witnesses to the occurrence turned hostile and did not support the prosecution. Hence the D.E. which was kept-in-abeyance is hereby re-opened from the stage at which it was on 9.11.2000 and entrusted to Insp. V.S. Ahluwalia day to day basis after observing all usual formalities and submit his findings expeditiously."

4. By virtue of the present application, the applicant seeks to assail the said order contending that under Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980, the disciplinary proceedings could not be initiated.

5. Needless to state that in the reply filed, the application is being contested.

6. We have heard the parties' counsel and seen the relevant records.

7. On behalf of the respondents, a preliminary objection has been raised that the pleas, which are being raised by the applicant in the present application, can easily be raised before the departmental authorities and, therefore, it is premature for the applicant to file the present application.

8. We do not dispute that ordinarily contest should be made before the departmental authorities, but there are just exceptions to this Rule, one of them being, if on the face of it, taking the assertions of the concerned party, no case is drawn, the said person can indeed, in that

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event, invoke the jurisdiction of this Tribunal. It is this exception, which is being pressed and, therefore, we proceed to decide the said controversy.

9. Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980, is an exception, which reads:

“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 department proceedings on a different charge; or

(e) additional evidence for departmental proceedings is available.”

10. The above said provisions, which we have reproduced above, clearly show that normally a person, who has been acquitted by a Court of law, is not to be punished departmentally on the same allegations. The exceptions proceed further to mention that departmental proceedings cannot be initiated on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not. However, there are five exceptions that have been drawn to the said Rule. Presently,

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we are concerned with Rule 12 (b), which is being pressed on behalf of the respondents. It permits the departmental authorities to start departmental action if in the opinion of the Court or of the Deputy Commissioner of Police the prosecution witnesses have been won over.

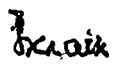
11. The settled principle in law is that the authorities/Government speaks in writing. The inference can only be drawn from the written orders. In the present case before us, the Court of Additional Sessions Judge had not opined in this regard that the witnesses have been won over. The impugned order dated 15.05.2003, which we have re-produced above, is conspicuously silent. The Deputy Commissioner of Police has not opined that the prosecution witnesses had been won over in the court and, therefore, departmental proceedings should be initiated. It simply proceeds on the premise that after acquittal, the proceedings, which were kept in abeyance, should re-start. In our opinion, this is a fatal flaw. Otherwise also, in the counter reply, though reference is specifically being made to Rule 12(b), to which we have referred to above, there is precious little on record to indicate that there was any material to show that the witnesses have been won over. In every case, where the witness resiles from his earlier recorded statements, it cannot be termed that he has been won over by the accused person in that controversy. It goes with the facts and circumstances of each case. If the plea of the respondents is to be accepted then the statement recorded by the Police authorities would take precedence over the statement made in the Court. Resultantly, it is unnecessary to dwell into the other controversies.


12. For these reasons, the Original Application must succeed and accordingly, we quash the impugned order.



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13. At this stage, learned counsel for the applicant states that consequential benefits should be granted to the applicant. Needless to state that if any such consequential benefits accrue to the applicant, they should be granted to him, in accordance with rules.


(S.K. Naik)
Member (A)


(V.S. Aggarwal)
Chairman

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