



**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

OA No.2407/2004

New Delhi this the 13<sup>th</sup> day of April, 2005.

**HON'BLE MR. SHANKER RAJU, MEMBER (J)  
HON'BLE MR. S.A. SINGH, MEMBER (A)**

Ct. Gopal Krishan, 3119/SD,  
S/o Sh. Sudama Prasad,  
South Distt. Lines, Hauz Khas,  
New Delhi.

-Applicant

(By Advocate Shri Arun Bhardwaj)

-Versus-

1. Commissioner of Police,  
PHQ, MSO Building,  
I.P. Estate, New Delhi.

2. Jt. Commissioner of Police,  
Southern Range,  
PHQ, I.P. Estate,  
New Delhi.

3. Addl. Deputy Commissioner,  
South Distt,  
New Delhi.

-Respondents

(By Advocate Shri Mohar Singh)

**O R D E R**

**Mr. Shanker Raju, Hon'ble Member (J):**

Applicant impugns respondents' order dated 31.1.2004, imposing upon him a penalty of permanent forfeiture of four years' approved service with consequent reduction of pay and treatment of suspension period from 14.2.2000 to 25.4.2003 as not spent on duty. An order passed in appeal on 10.8.2004, affirming the punishment is also assailed.

2. Applicant while working as a Constable in the Delhi Police was implicated in a criminal case vide FIR No.29/2000 along with two others under Section 380/120B/448/341 IPC. Applicant was also placed under suspension w.e.f. 14.2.2000.

3. By a judgment dated 12.11.2002 Metropolitan Magistrate despite accord of an opportunity to the prosecution where the Inquiry Officer (IO) of the case was examined as well as two other witnesses and the complainant despite service has not turned up, finding no incriminating evidence to support the prosecution acquitted applicant from the criminal charge.

4. An inquiry was ordered in the DE Cell with summary of allegations, alleging involvement of applicant in the crime and was later on revocation of suspension was re-instated in service on 24.5.2003. The following charge was framed against applicant:

"I, Inspector, Umrao Singh Sangwan, D.E. Cell charge you Const. Gopal Krishan No.3119/SD that while posted at P.S. Defence Colony, a case FIR No.29/2000 U/s 380 IPC was registered on 10.1.2000 on the complaint of one Smt. Ratna who alleged theft of her house hold articles from her room in B-28, Defence Colony. During the investigation SI Sanjeev Kumar, I.O. got information regarding transportation of stolen goods by a tempo No.DL-I-IL-7889 driven by driver Sharvan Singh S/o Hanuman Singh R/o C-448, K.M. Pur, New Delhi. His interrogation revealed that the stolen goods were removed from the above said residence at the instance of you Const. Gopal Krishan No.3119/SD and taken them to Gali No.15, Shankar Garden in the house of Sukhbir Singh S/o Shri Bhim Singh R/o H.No.1/461, Shankar Garden Bahadurgarh and you accompanied the stolen goods at the time of transportation.

The I.O., failed to arrest you as you were absent from duty. On 16.2.2000, you surrendered in the court and pointed out the place of occurrence, the place where stolen property was kept, you also made to disclosure regarding your involvement in the crime. You were however, acquitted by the Court in this case as no public witness supported the case of prosecution and the main complainant was not traceable.

The common citizens of Delhi have certain expectations from members of Police Force, which is meant to protect their life and property. However, it is quite painful for public to know that a police officer who is supposed to protect them and to take action against the criminals/grabbers is himself associated with them. This incident has caused a great loss of public faith in the police force.

The above act on the part of you Const. Gopal Krishan NO.3119/SD amounts to gross misconduct negligence and

unbecoming of a member of disciplined force which renders him liable for departmental action punishable under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980."

5. On completion of the inquiry after examination of PWs and DWs the I.O with the following observations held applicant guilty of the charge:

"In view of the above and the light of overall facts and circumstances and evidence on record there is sufficient material on record to hold the defaulter guilty of the charge, though the defaulter Const. Gopal Krishan No.3119/SD has been acquitted in a criminal case FIR No.29/2000 u/s 380/448/120-B IPC PS Defence Colony, but at the same time, it is also true that this incident had taken place and the defaulter's involvement established in the commission of the crime."

6. The disciplinary authority (DA) on representation of applicant made the following observations to impose a penalty:

"I have carefully gone through the statements of prosecution witnesses, defence witnesses, exhibits, defence statement and representation submitted by the defaulter constable with reference to the findings of the enquiry officer in the light of facts and circumstances of the case. There is sufficient material to prove that the defaulter constable was master mind in this criminal case in connivance with land-lord and disposing the articles of the complainant. The defaulter himself had pointed out the place of occurrence the place where the articles were kept. The defaulter was posted in same police station and when he came to know that the I.O. is about to calling Sharvan Kumar, he absented himself from the midnight of 3-4.2.2000 and Shravan Kumar was interrogated on 4.2.2000. This is a case where the protectors of law have turned into criminal and have not only abused the powers that have been bestowed but converted that power into an instrument for crime. If the guardians of law themselves indulge in such nefarious activities in flagrant violation of decent behaviour it becomes all the more important to check them. Though the defaulter had been acquitted in the criminal case FIR No.29-2000 u/s 380/448/120-B IPC PS Defence colony but at the same time it is also true that this incident had taken place and the defaulter's involvement has been established in the commission of the offence. The charge against the defaulter has been proved by the E.O. The representation submitted in response to defaulter has been proved by the E.O. The representation submitted in response to findings has pointed out certain lapses in investigation and highlighted the fact that the public witnesses have not supported the prosecution story but shortcomings in the investigation and turning of public witnesses hostile do not absolve the defaulter from the charges levelled against him. His leaving the police station in the night of 3/4-2-2000 without any permission

while he was detailed for sentry duty and then getting admitted in private hospital, surrendering before the court on 16.2.2000, pointing out the place where the stolen property was kept, during police custody, all these circumstances suggest the possibility of involvement of said defaulter constable in this offence."

7. Vide appellate order dated 10.8.2004, with the following observations, punishment was affirmed:

"Prosecution witness turning hostile was the main ground of acquittal of the appellant. The circumstantial evidence show that the appellant who remained posted in the same Police Station at the relevant time was the master mind in disposing of the articles of the complainant in connivance with land-lord. The manner of deposition of PW-5 either during trial of the criminal case FIR No.29/2000 PS Defence Colony or during DE proceedings which did not support the prosecution appears to have been won over by the appellant. The presence of PW-7 along with PW-3 on 4.2.2000 during raid conducted to recover the articles of the complainant from the house of PW-5 at Bahadur Garh has not been denied by the appellant. This admission of PW-7 itself strengthens the deposition of PW-3 who claimed to be witness of recovery of the articles of the complainant lady from the house of PW-5. Besides, the appellant himself pointed out the place of occurrence from where the articles were removed. The appellant was posted in the same Police Station it was in his knowledge that PW-3 is about to call PW-6, the Tempo Driver for interrogation and he who was detailed for Sentry duty w.e.f. 12 midnight of 3.2.2000, left the police station instead of performing his assigned Sentry duty and absented himself from duty on his own. Accordingly, he was marked absent from duty vide DD No.87 dated 4.2.2000. Moreover, no information regarding his accident was received in the Police Station from him. Thereafter he managed to get medical rest and got himself admitted in the Private Hospital of Rohtak, before surrendering in the Court on 16.2.2000 pointing out the place where the stolen property was kept are the leading evidence which circumstantially prove his involvement in the crime as also proved by the Enquiry Officer vide his findings. The appellant still failed to produce any documentary evidence of local police of Rohtak which could establish that the appellant met with an accident in the evening of 3.2.2000. The claim of the appellant is illogical and inconsistent with the facts brought out during the DE proceedings. Hence the appeal is rejected."

8. Learned counsel for applicant Shri Arun Bhardwaj while taking resort to Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980, which is reproduced as under, would contend that if a police officer is tried

in a disciplinary proceeding for the same charge or even on a different charge based upon the evidence cited in the criminal case whether actually led or for want of attraction of any of the provisions cannot be punished on the same charge:

“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 departmental proceedings on a different charge; or
- (e) additional evidence for departmental proceedings is available.”

9. Learned counsel also stated that there is no finding recorded by the Deputy Commissioner of Police that prosecution witnesses have been won over and mere hostility, which has not even been recorded by the trial court, no such presumption can be made. He relied upon the decisions of the Principal Bench of the Tribunal in OA-2330/2004 – HC (Dvr.) Raj Kumar No.265/DAP v. Commissioner of Police & Ors. decided on 20.1.2005, OA No.2535/2003 – ASI Mustaq Ali v. Commissioner of Police & Anr. decided on 16.2.2004 and OA No.140/1998 Ex. Constable Kadam Singh No.561/R.B. v. Union of India & Others, decided on 3.4.2000.

10. On the other hand, respondents' counsel Shri Mohar Singh vehemently opposed the contentions and stated that applicant who was earlier dismissed was re-instated in appeal and as in the criminal case

applicant's acquittal was on account of non-appearance of complainant, the other circumstances and evidence indicate that offence was committed and applicant who has confessed, which led to recovery on wining over of the witnesses the punishment imposed is in accordance with law.

11. We have carefully considered the rival contentions of the parties and perused the material on record.

12. Rule 12 is an exception to other rules unlike CCS (CCA) Rules where on acquittal from criminal case an officer is not to be punished on the same charges or on the same evidence irrespective of whether the evidence has been actually led in the criminal case or not. It is stated that the same cannot be the basis of the departmental punishment in the event an officer is acquitted. As an exception to the rule the only eventuality which permits holding of an enquiry and punishment thereof is when either in the order passed by the competent court of criminal jurisdiction or the Deputy Commissioner of Police there is an opinion with reasons that the witnesses have been won over. It is a condition precedent for imposition of punishment.

13. As held by the High Court of Punjab and Haryana in **Shashi Kumar v. Uttari Haryana Bijli Vitaran Nigam**, 2005 (1) ATJ 154 the concept of honorable acquittal does not exist in CPC, where the following observations have been made:

"7 In any event, the terms "honourable acquittal" or "fully exonerated" are unknown in the Code of Criminal Procedure or in Criminal Jurisprudence. These terms came up for consideration before a Division Bench of the Madras High Court in the case of Union of India Vs. Jayaram, AIR 1960 Mad. 325. Rajamannar, C.J. delivering the judgment of the Division Bench observed as under:

"There is no conception like 'honourable acquittal' in Criminal P.C. The onus of establishing the guilt of accused is on the prosecution, and if it fails to establish the guilt beyond reasonable doubt, the accused is entitled to be acquitted.

Clause (b) of Article 193 of the Civil Service Regulations which says that when a Government servant who was under suspension is honourably acquitted, he may be given the full salary to which he would have been entitled if he had not been suspended applies only to the case of departmental inquiry.

Where the servant was suspended because there was a criminal prosecution against him, and he was acquitted therein, and reinstated he is entitled under the general law, to the full pay during the period of the suspension. To such a case Article 193 (b) does not apply."

8. The aforesaid judgment of the Madras High Court was considered and followed by this Court in the case of Jagmohan Lal V. State of Punjab through Secy. To Punjab Govt. Irrigation and others, AIR (54) 1967 Punjab and Haryana 422 (Punj.) In that case, on acquittal, the petitioner was reinstated in service, but his period of suspension was not treated as the period spent on duty. He had, therefore, filed writ petition under Articles 226/227 of the Constitution of India claiming that he was entitled to full pay and allowances for the period of his suspension. Considering the impact of Rules 7.3, 7.5 and 7.6 of the Punjab Civil Services Rules Vol.I Part-1, it was observed as follows:

#### (2) XXX XXXXXXXXX

The interpretation which has been put by the Government on the rule is incorrect. The blame which attached to the petitioner was that there was a criminal charge against him under which he was standing his trial. The moment he is acquitted of the charge, he is acquitted of the blame. In criminal law, the Courts are called upon to decide whether the prosecution has succeeded in bringing home the guilt to the accused. The moment the Court is not satisfied regarding the guilt of the accused, he is acquitted. Whether a person is acquitted after being given a benefit of doubt or for that reasons, the result is that his guilt is not proved. The Code of Criminal Procedure does not contemplate honourable acquittal. The only words known to the Code are 'discharged' or 'acquitted'. The effect of a person being discharged or acquitted is the same in the eyes of law. Since, according to the accepted notions of imparting criminal justice, the Court has to be satisfied regarding the guilt of the accused beyond a reasonable doubt, it is generally held that there being a doubt in the mind of the court, the accused is acquitted.

I am, therefore, quite clear in my mind that the intention underlying rule 7.5 can be no other except this: the moment the criminal charge on account of which an officer was

suspended fails in a court of law, he should be deemed to be acquitted of the blame. Any other interpretation would defeat the very purpose of the rule. It is futile to expect a finding of either honourable acquittal or complete innocence in a judgment of acquittal. The reason is obvious; the criminal courts are not concerned to find the innocence of the accused. They are only concerned to find whether the prosecution has succeeded in proving a reasonable doubt the guilt of the accused."

9. The judgment rendered in the case of Union of India v. V.S. Jayaram (supra) has also been followed by a Division Bench of the Gujarat High Court in the case of Ramsinhai Viraji Rathod, Permanand Society vs. The State of Gujarat and anr., 1971 S.L.R. 743. In the aforesaid case it has been observed as follows:

"7. .... Clause (b) of Article 193 of the Civil Service Regulations, which was under consideration before the Madras High Court was substantially similar to our Rule 152, with this difference, that instead of the words "fully exonerated" the words were "honourably acquitted". With respect we are in agreement with the reasoning of Rajamannar, C.J. and in our opinion, it is not open to the authorities concerned to bring in the concept of honourable acquittal or full exoneration so far as the judgment of the Criminal Court is concerned. In a criminal trial the accused is only called upon to meet the charge levelled against him and he may meet the charge – (a) by showing that the prosecution case against him is not true or (b) that it is not proved beyond reasonable doubt; or (c) by establishing positively that his defence version is the correct version and the prosecution version is not correct. In any case of these three cases, if the Court comes to the conclusion that the prosecution has failed to establish its case beyond reasonable doubt or that the prosecution case is not true or that the defence version is correct and is to be preferred as against the prosecution version, the Criminal Court is bound to acquit the accused. The accused is not called upon in every case to establish his complete innocence and it is sufficient for the purposes of criminal trial that he satisfies the Court that the prosecution has not established its case beyond reasonable doubt. Since he is not called upon to prove a positive case, the concept of honourable acquittal or full exoneration can have no place in a criminal trial and it is because of this reasoning that we agree with the observations of Rajamannar, C.J. in Jayaram's case, AIR 1960 Mad. 325.\*\*\*"

14. If one has regard to the above, on acquittal of applicant on the ground that prosecution has miserably failed to establish the ingredients of

an offence applicant was acquitted. In the charge framed which is deemed to be approved by the disciplinary authority the only ground to continue the proceedings which culminated into punishment is that the public witnesses have not supported the case of prosecution and the main complainant was not traceable. No reasons have been recorded or opinion formed as to winning over of witnesses. Mere non-traceability of the witnesses and their non-support to the prosecution would not ipso facto, when there is no such finding of the trial court, would not make the witnesses as hostile or having been won over by the accused.

15. Moreover, in the finding recorded by the IO while a plea has been taken which has been rejected on the ground that though applicant was acquitted yet his involvement in the crime is proved, is based on his ipsi dixit without any reasons.

16. The DA while recording findings punishing applicant has justified punishment on the ground that shortcomings in the investigation and public witnesses turning hostile cannot absolve applicant from the charges. This finding of hostility of witnesses is not a ground to punish, rather it is only the winning over of the witnesses. The witness may be hostile if he does not support the statement recorded under 161 Cr. PC but what matters is the statement recorded during the trial as under Section 162 Cr. PC the earlier statement can only be used to contradict. Accordingly, we have no hesitation to hold that none of the exceptions are attracted and requirements satisfied before applicant was punished in the departmental enquiry when he is honourably acquitted of the charges by the trial court.

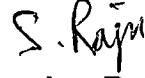
17. In the appellate order the only ground is that as the witnesses have not supported the prosecution they appear to have been won over, his finding is based on suspicion and surmises. Moreover, we findt hat in the order passed by the DA what has been held is that possibility of

involvement of applicant cannot be ruled out. Such a finding is neither conclusive nor definite and as a cardinal principle of law one cannot be punished on mere suspicion, surmises and conjectures.

18. In **Raj Kumar's** case (supra) this Bench of the Tribunal has set aside the order on the ground that there is no finding by the trial court as to winning over of the witnesses. In **Mushtaq Ali's** case (supra) same finding has been re-iterated.

19. In the light of the above, as the punishment is contrary to Rule 12 of the Rules ibid cannot be sustained in law. Accordingly the OA is allowed. Impugned orders are quashed and set aside. Applicant shall be entitled to all consequential benefits. Respondents are directed to comply with the aforesaid directions within a period of two months from the date of receipt of a copy of this order. No costs.

  
 (S.A. Singh)  
 Member(A)

  
 (Shanker Raju)  
 Member (J)

'San.'