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Central Administrative Tribunal, Principal Bench, New Delhi

O.A.No.2438/2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member(A)

New Delhi, this the 15th day of December, 2004

Maha Singh,
Constable in Delhi Police,
(PIS No.29660146),
R/o VPO : Dahar,
Distt. Panipat, Haryana

.....Applicant

(By Advocate: Shri Anil Singal)

Versus

1. Govt. of NCT of Delhi,
Through Commissioner of Police,
PHQ, IP Estate, New Delhi.
2. DCP (5th Bn. DAP)
Kingsway Camp,
New Police Lines, Delhi

.Respondents

(By Advocate: Shri S.Q. Kazim)

Order(Oral)

Justice V.S. Aggarwal, Chairman

The applicant is a Constable in Delhi Police. The admitted facts are that the applicant had been arrested and he faced trial before the learned Special Judge, Delhi with respect to offences punishable under Section 7 read with Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act. The learned Special Judge on 29.10.2002 acquitted the applicant of the charges framed against him. Thereafter, the respondents have initiated departmental action against him and the order so

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passed reads:

"On 15.9.94, Shri Raj Pal S/o Kundan Singh R/o Jhuggi No. A-370, Dr. Ambedkar Nagar Basti, West Block, Sector-1, R.K. Puram, New Delhi reported in Anti Corruption Branch that he is working as sweeper in Govt. School, Sector-II R.K. Puram, New Delhi. His neighbour Kanta Devi, Sweeperess had quarreled and abused him and his mother for the recovery of the Rs.50/-. Kanta Devi complained against him in police station R.K. Puram. On 12.9.94 Ct. Maha Singh from PS R.K. Puram came to his Jhuggi on the same night and took him to the Police Station and threatened to arrest him. The Constable released him at 11.30 PM only when the complainant agreed to pay Rs.500/- as bribe money for not arresting him. Next day under fear of arrest he paid Rs.300/- as illegal gratification to the Constable in the Police Station R.K. Puram but on 14.9.94 Constable again came to his Jhuggi and abused and asked him to pay the balance of Rs.200/- on 15.9.94 after 8 PM in the PS R.K. Puram, otherwise he will be booked. Helplessly he agreed to pay Rs.200/- as illegal gratification to Const. Maha Singh on 15.9.94 after 8 PM in the Police Station R.K. Puram.

On the information of Sh. Raj Pal, a trap was laid by Inspr. Rohtash Singh, A.C. Branch comprising of Inspr. Shoban Singh, Panch Witness Dinesh Kumar Sharma, complainant and other staff. After observing all legal formalities a trap was laid at P.S. R.K. Puram. At about 8.30 PM, Const. Maha Singh come out of P.S. R.K. Puram main gate towards Ganda Nalah in uniform alongwith complainant and Panch Witness. He accepted and obtained Rs.200/- as illegal gratification from the complainant in the presence and hearing of Panch Witness, in his right hand and kept the bribe amount in his right pant pocket. Two currency notes of Rs.100/- each were recovered from the right side pant pocket of Const. Maha Singh S/o Late Sh. Jai Narayan R/o Village-Dahar, PS Israna, Distt. Panipat, Haryana posted as Const. No.1366/SW PS R.K. Puram, South-West Distt. Delhi. The wash of right hand and right side pant pocket of Const. Maha Singh gave a positive test for the presence of Phenolphthalein powder in the colourless solution of Sodium Carbonate. Const. Maha Singh was arrested and a case FIR No.28/94 dated 15.9.94 U/s 7/13 P.O.C. Act was registered against Const. Maha Singh, No.1366/SW, 4449/DAP, P.S. R.K. Puram, South-West Distt. Delhi.

The above conduct of Constable Maha Singh, No. 1366/SW, (Now 4449/DAP) is an act of gross misconduct and dereliction in the discharge of his duty, which makes him liable to be dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980.

I, L.S. Sandhu, Deputy Commissioner of Police, V Bn. DAP, Delhi hereby order that a regular departmental enquiry be initiated against Constable Maha Singh, No.4449/DAP to be conducted by Sh. Mahender Jit Singh Mattoo, ACP/PHQ Sec. Guard, V Bn. DAP, who will conduct the same on day to day basis and submit his findings to the undersigned expeditiously. The E.O. will also submit the fortnightly progress report on 1st and 16th of every month."

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By virtue of the present application, the applicant seeks to assail the said order.

2. Learned counsel for the applicant has drawn our attention to rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980 and on the strength of the same urged that unless the case falls within the five exceptions contemplated under rule 12 of the Rules referred to above, departmental proceedings cannot be initiated. In answer to that, the learned counsel for the respondents wanted to read certain portions of the judgment of the learned Special Judge and on the strength of the same wanted to urge that corruption as such should be nipped in the bud and keeping in view the seriousness of the nature of allegations, the departmental action should continue.

3. At this stage, we are not expressing anything nor it is called for pertaining to the seriousness of the offence. The fact of the matter is that the applicant has been acquitted by the Special Judge, Delhi.

4. Rule 12 of Delhi Police (Punishment & Appeal) Rules, 1980 reads as under:

"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

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


5. Perusal of the same would show that when a person has been acquitted by a Court of Law pertaining to the alleged offence purported to have been committed by him, he shall not be punished departmentally on the same charge. The five exceptions which we have reproduced above are the only ones on the basis of which departmental proceedings can be initiated.

6. In the present case before us, the impugned order does not indicate that the disciplinary authority has applied itself to those five exceptions before initiating the disciplinary proceedings. In the absence of the same, indeed the impugned order cannot be sustained.

7. No further argument therefore, need to be considered.

8. For these reasons, we quash the impugned order and direct that if deemed appropriate, the proceedings can only be initiated within the framework of Rule 12 of Delhi Police (Punishment and Appeal) Rules. Consequential benefits, if any, should be paid preferably within four months of the receipt of the certified copy of the present order.


(S.A. Singh)
Member(A)


(V.S. Aggarwal)
Chairman

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