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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2562/2004

New Delhi, this the 15th day of July, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K.Naik, Member (A)**

Ct. (Dvr) Chander Bhan
S/o Late Sh. Dalmor Singh
R/o 186 Shyam Park Main
Sahibabad
Gaziabad
Now posted as
Ct. (Dr) Chander Bhan
925 L
P&L, Old Police Line
Delhi. **Applicant**

(By Advocate: Sh. R.K.Jain, proxy of Sh. Arun Bhardwaj)

Versus

1. Commissioner of Police
PHQ, MSO Building
I.P.Estate, New Delhi
2. Jt. Commissioner of Police
Prof & Logistics
Old Police Line
Rajpur Road
New Delhi.
3. Deputy Commissioner of Police
Prov. & Logistics
Old Police Line
Rajpur Road
New Delhi. **Respondents**

(By Advocate: Sh. Ram Kanwar)

O R D E R

By Mr. Justice V.S.Aggarwal:

Applicant [Constable (Driver) Chander Bhan] seeks quashing
of the order of punishment dated 11.11.2003 and the appellate

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order of 19.4.2004. He also seeks setting aside of the report of the inquiry officer.

2. The relevant facts are that on 11.4.2002, departmental proceedings were initiated asserting that while the applicant was posted in the Delhi Police, he was intercepted by the officers of Central Bureau of Investigation and others at Budha Jayanti Park on 26.5.1981. He was driving Car No.USY 7096 and 70 Kilogram of Opium and Hashish in 2 big attache cases were recovered. The occupants of Car, namely, S/Shri Shyam Singh and Sudhir Batra were arrested at the spot. The applicant managed to escape. A case was registered with respect to offences punishable under Section 9 of Opium Act, Punjab Excise Act. Later, the applicant surrendered before the Court on 29.8.1981. He was tried and the learned Additional Metropolitan Magistrate acquitted the applicant.

3. On the same facts, departmental proceedings were initiated. The inquiry officer returned the findings against the applicant. Resultantly, the disciplinary authority imposed the following penalty:

“Therefore, I, U.K.Choudhary, Deputy Commissioner of Police, Prov. & logistics, Delhi forfeit three year of approved service permanently entailing proportionate reduction in pay of Const. (Dvr.) Chander Bhan No.925/L. His absence period from 17.06.1981 to 06.07.1981 is also decided as period not spent on duty and not regularized in any manner.”

4. The applicant preferred an appeal. The order of punishment was modified which reads:

“I have carefully gone through the appeal submitted by Ct. (Dvr.) Chander Bhan,


U.K. Choudhary

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No.925/L, brief facts and parawise comments prepared by DCP/P&L. I have also heard the appellant on 19.03.2004. the plea taken in appeal that he was not identified by the members of the raiding party and PWs, is not convincing. However, he has appealed for mercy. Therefore, having considered all aspects of the case and taking a lenient view I modify the punishment of forfeiture of three years approved service permanently to that of forfeiture of three years approved service, temporarily for a period of 3 years entailing proportionate reduction in his pay. His absence period and suspension period will be treated same as decided by the disciplinary authority vide order No.4037-55/HAP/P&L, dated 11.11.2003."

5. Hence the present application has been filed.

6. At this stage, it is unnecessary for this Tribunal to go into all the facts because it was urged that the applicant had been acquitted by the Court and, therefore, after 21 years, departmental action could not have been taken and in any case under Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980, the departmental proceedings could not be initiated.

7. Rule 12 of the Rules referred to above 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

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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."

8. The above said Rule has been enacted so as to avoid unnecessary harassment to police officer who has been tried by the Court and has since been acquitted.

9. The normal rule is that he should not be punished departmentally on the same charge or on a different charge upon the evidence cited in a criminal case. However, there are five exceptions to the same, which we have reproduced above.

10. In the present case, it is not known as to which of the exceptions have been pressed into service to prompt this Tribunal to go into judicial review, if necessary.

11. In that view of the matter, unless a specific order is passed or brought to our notice, the impugned orders initiating departmental proceedings cannot be sustained.

12. Resultantly, no opinion need be expressed on any other controversies.

13. For these reasons, we allow the present application and quash the impugned orders. It is directed that the disciplinary

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authority may pass an appropriate order, if deemed appropriate, as to if an action can be initiated under Rule 12 of the Delhi Police (Punishment & Appeal) Rules or not.

S.K.Naik
(S.K.Naik)
Member (A)

V.S.Agarwal
(V.S.Agarwal)
Chairman

/NSN/