

Central Administrative Tribunal, Principal Bench, New Delhi

O.A.No.2664/2004

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

New Delhi, this the 25th day of May, 2005

HC Laxmi Chand,
(PIS No.28740721),
R/o 482/31, Ashok Vihar,
Mahlana Road,
Sonapat, Haryana

....Applicant

(By Advocate: Shri Anil Singal)

Versus

1. Govt. of NCT of Delhi,
Through Commissioner of Police,
PHQ, IP Estate, New Delhi
2. Jt. Commr. Of Police,
(Armed Police), PHQ,
IP Estate, New Delhi.
3. DCP (6th Bn. DAP),
Kingsway Camp, Old Police Lines,
Delhi

....Respondents

(By Advocate: Mrs. Sumedha Sharma)

Order(Oral)

Justice V.S. Aggarwal, Chairman

The short question which craves for an answer in the present case is as to if the applicant could be dealt with departmentally after his acquittal from the court of the Learned Additional Chief Judicial Magistrate, Jaipur.

2. The relevant facts are that the applicant faced departmental proceedings and the summary of allegation reads:

"It has been alleged against you HC Laxmi Chand No.77/N and you Ct. Sheel Bahadur No.736/N that one Lal Bahadur S/o Gorakh Bahadur R/o Nepal domestic service of Sh. Shankar Lal Shagwani S/o Sh. Perhald Rai Shagwani R/o Plot No.34 Kanwar Nagar, Jaipur committed a theft in the house of his owner and left for Delhi along with jewellery and other articles. You HC Laxmi Chand No.77/N and Ct. Sheel Bahadur No.736/N while posted on Picket Duty S.N. Marg, Delhi on 28.5.95 checked the belongings of Lal Bahadur. You both instead of producing Lal Bahadur along with jewellery, cash and other articles in his possession, before the senior officers kept all the valuable and cash and let off Lal Bahadur. This fact came into notice when Sh. Narain Singh of Police Station Subhash Chowk, Jaipur visited Police Station Lahori Gate, Delhi and arrested HC Laxmi

Ag

Chand No.77/N and Ct. Sheel Bahadur No.736/N on the disclosure statement and identification of Lal Bahadur accused of case FIR No.83/95 U/S 381 IPC PS Subhash Chowk, Jaipur. The stolen goods were recovered from the possession of the Head Constable and the Constable.

You HC Laxmi Chand No.77/N and Ct. Sheel Bahadur No.736/N have thus extorted the criminally misappropriated the stolen property and committed a breach of trust, having bad character which tarnished the image of whole of the police department in the eyes of the public. In this way both the Head Constable and the Constable failed to maintain integrity, devotion to duty and acted unbecoming of a police officer, which is also a contravention of CCS Conduct Rules 1964.

The above act on the part of you HC Laxmi Chand No.77/N (PIS No.28740121) and Ct. Sheel Bahadur No.736/N (PIS No.28823156) amounts to gross misconduct, high dishonesty, disloyalty and dereliction in performing their official duties and unbecoming of a police officer for which they are liable to be dealt with departmentally under Delhi Police (P&A) Rules, 1980."

3. Simultaneously, the applicant was being tried by the Court of the Judicial Magistrate at Jaipur. While the case was pending at Jaipur, departmental proceedings were kept in abeyance. Admittedly, the court of the Learned Additional Chief Judicial Magistrate had framed a charge against the applicant and others with respect to the offence punishable under Section 411 read with Section 414 of the Indian Penal Code. The applicant was acquitted by the court holding:

"In this case the main accused Lal Bahadur who is absconding. There is nothing in these statements of PW-1 Mahesh Kumar, PW-2 Smt. Mayawati, PW-3 Shankar Lal, PW-4 Prema Ram, PW-5 Bhori Lal, PW-6 Vijay, PW-10 Ram Krishan and PW-11 Bijender whose basis anything could be proved in the context of accused Sheel Bahadur and Laxmi Chand in this case. PW-9 Narain Singh, Research Officer has stated in his statement that the stolen goods were recovered from accused Sheel Bahadur and Laxmi Chand by him. But two most important witnesses of recovery PW-7 Ramesh Chand and PW-8 Anoop Singh have turned hostile and rebut the story of prosecution. There is no evidence available on the record which could corroborate the statement of PW-9 Narain Singh. Thus, in my view the prosecution has completely failed to prove any charge against accused Sheel Bahadur and Laxmi Chand."

4. After the applicant was acquitted, on 17.5.2001 the disciplinary proceedings were re-started by the Deputy Commissioner of Police, North District holding that the acquittal was on technical grounds. The order reads:

"A joint departmental enquiry against HC Laxmi Chand No.77/N and Const. Sheel Bahadur No.736/N ordered vide this



office order No.4213-50/HAP/North dated 21.06.95 was held in abeyance vide this office order No.7719-22/HAP/North dated 01.07.96 till the finalization of case FIR No.83/95 u/s 381/411 IPC PS Subhash Chowk, Jaipur, Rajasthan, registered against them. The case has been finalized by the court of Sh. Brijesh Purohit, RJS, Jaipur, Rajasthan. During trial two witnesses turned hostile as they were won over by the defaulters. The acquittal is based on technical grounds. The DE against HC Laxmi Chand No.77/N is hereby re-opened in terms of Rule 12(A) of Delhi Police (Punishment & Appeal) Rules 1980 and entrusted to Inspr. Ganga Singh, DIU/ North who will submit his findings to the undersigned expeditiously. Const. Sheel Bahadur No.736/N, the co-defaulter has already been dismissed from service in another DE vide this office order No.10975/HAP/North dated 8.12.98. The DE in respect of Const. Sheel Bahadur No.736/N, will be re-opened in case he comes in service on some appeal/revision/tribunal orders etc." 10

5. After the departmental proceedings, the applicant has been held to have derelicted in duty and the disciplinary authority has imposed a penalty of forfeiture of four years approved service. In appeal, the said order has been upheld.


6. The petition is being contested.

7. Learned counsel for the applicant, as already referred to above, urged that keeping in view rule 12 of Delhi Police (Punishment & Appeal) Rules, the disciplinary proceedings could not be initiated against the applicant. Rule 12 of the abovesaid Rules 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
- (e) additional evidence for departmental proceedings is available."

8. The abovesaid rule in unambiguous terms does not permit departmental proceedings in cases where a person has been acquitted. However, it draws five exceptions to the abovesaid general principle, one of them being Rule 12 (a). If the charge has failed on a technical ground, in that event the departmental proceedings indeed can be re-started.



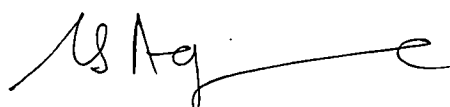
9. Broadly speaking, what is meant by a technical ground was considered by this Tribunal in the case of Vijender Singh vs. Commissioner of Police (O.A.No.2640/2002) decided on 24.7.2003. This Tribunal held:

"8. Perusal of the judgement of the learned Chief Judicial Magistrate certainly reveals that it is not on a technical ground. The court had come to the conclusion that relevant evidence has not been produced and charge is not proved. The decision was arrived at on the basis of evidence on record. Whether the charge is substantiated or insufficient is not the question. Once the evidence had been allowed to be produced and is not forthcoming, it would be an acquittal rather than an acquittal on technical ground. In normal parlance, it would be failure on technical grounds if unauthorized person files the complaint or the petition fails before a court, or it fails on a technical aspect say there is no proper sanction, the report has not been lodged by competent authority or any such procedural flaw which may prompt the court to put an end to the prosecution case. Prosecution or the State may still be in a position to come back to the court after removing the said technicality. Position herein is totally different. As already referred to above and re-mentioned at the risk of repetition, the learned court took note of the evidence on record and for want of evidence, held that the charge is not proved. This is not an acquittal on technical ground. We have thus no hesitation in rejecting this contention of the respondents."

10. Identical would be the position herein. We have already given the brief resume pertaining to the acquittal of the applicant at Jaipur. Perusal of the order passed by the Learned Court clearly reveals that the acquittal was on appreciation of evidence. The Learned Court did not deem it appropriate to convict the applicant on the statement of Narain Singh, PW-9 because there was no corroboration forthcoming to the said statement. Therefore, it cannot be taken that the criminal case failed because of any technical ground to which we have referred to above already but it failed because the Learned Court appreciated the evidence of the witnesses and held that the charge stood not proved. Resultantly, the contention of the respondents cannot be accepted.


11. Keeping in view the aforesaid, we are of the considered opinion that in the peculiar facts, the impugned orders cannot be sustained.


12. Resultantly, we quash the impugned orders for the abovesaid reasons and direct that consequential benefit should be accorded to the applicant preferably within four months of the receipt of the certified copy of the present



20

order, in accordance with law and the rules.


(M.K. Misra)
Member(A)


(V.S. Aggarwal)
Chairman

/dkm/