

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 1212/2004

New Delhi this the ~~9th~~...¹⁴...day of December, 2004

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

Jai Desh,
Constable in Delhi Police
(PIS No.28863261)
R/o WZ-523,
Naraina Village,
New Delhi-28
.....Applicant

(By Advocate: Shri Anil Singhal)

Versus

1. Govt. of NCT of Delhi
through
Commissioner of Police,
PHQ, IP Estate, New Delhi.
2. Sr. Addl.Comm. of Police(Security),
Security Main Lines,
Vinay Marg, New Delhi.
3. Addl.DCP (Security),
Security Main Lines,
Vinay Marg, New Delhi.
.....Respondents

(By Advocate Shri S.Q.Kazim with Shri Mumtaj Hussain)

O R D E R

Hon'ble Mr. S.K. Malhotra, Member(A)

The main prayer made in this OA is that the impugned order imposing the penalty of forfeiture of five years' approved service permanently reducing his pay by five stages for a period of five years may be quashed and set aside.

(Signature)

2. The facts of the case, in brief, are that the applicant has been working as Constable in Delhi Police and is stated to have been falsely implicated in a case under Sections 420/468/471 of IPC for which an FIR was lodged. Thereafter a departmental enquiry was initiated against him vide order dated 5.1.94 on the same set of allegations on which the FIR was registered. The main charge against him was that he put forged signatures of the then DCP on eight application forms for grant of Arms Licences. On denial of the charge, a detailed enquiry was conducted and based on the statements of the prosecution witnesses and other relevant materials, the Enquiry Officer submitted his findings to the effect that the charges were proved. The Disciplinary Authority agreeing with the findings of the Enquiry Officer, issued a show cause notice to him to make a representation. The detailed representation submitted by the applicant was considered and the Disciplinary Authority vide order dated 22.12.95 (Annexure-A3) awarded the punishment of forfeiture of five years' approved service permanently reducing his pay by five stages. He submitted an appeal before the appellate authority. However, his appeal was rejected by the appellate authority vide order dated 25.9.97 (Annexure A-4).

3. As regards the criminal case for which an FIR was lodged against him, the applicant was acquitted of the charges levelled against him by the Criminal Court vide judgment dated 3.12.2002 (Annexure A-7). After acquittal in the criminal case, the applicant submitted a representation to the respondents for review of the order dated 22.12.95. However, instead of reviewing the order of punishment his representation had been rejected vide order dated 5.5.2003 (Annexure A-5) on the ground that there is no provision in the Delhi Police (P & A) Rules, 1980 to entertain such a request.

4. The applicant has contended that the punishment order is liable to be set aside as the same is in violation of Rule 12 of Delhi Police (P&A)

Rules, 1980 which provides that when a police officer has been tried and acquitted by a criminal court, he shall not be punished departmentally on the same charge. It was also mandatory for the Disciplinary Authority to wait for the final orders in the criminal case. Even if an officer is convicted, any punishment can be imposed only after the decision on the appeal filed by the delinquent official is available. In case of acquittal, the punishment is barred and the departmental enquiry can be initiated only on certain exceptions mentioned in Rule 12. According to him, simultaneous proceedings both in criminal case as well as departmental case cannot be allowed on the same set of allegations. On these grounds, the applicant has assailed the punishment as well as other connected orders.

5. The respondents have filed a counter reply in which they have stated that the allegation against the delinquent official is that while he was working as Office Orderly in the Office of DCP/East District between April,1992 to July,1992 he put forged signatures of the then DCP on 8 application forms of Arms Licences out of 27 forms. It was found that the applicant came with an application form for Arms Licence in favour of one Shri Mukesh Garg for handing over the same in person to HC Vipin Kumar. This application form for Arms Licence was bearing the forged signature of the then DCP. The departmental enquiry was initiated against him as per rules. The applicant was given sufficient time to give a list of DWs but he neither gave any list nor any statement in response to the charges. The Enquiry Officer submitted his findings concluding that the charges against the applicant stand proved. A copy of the enquiry report was served upon the applicant to submit his representation but he did not do so. He was also called for oral disposition on 27.10.95 during which he stated that his wife had expired and, therefore, he could not submit his reply. He was given two more opportunities to submit his representation but he failed to submit the same. During oral disposition, he did not take the stand that he could not submit his representation because of criminal case pending against him.

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6. The Disciplinary Authority after agreeing with the findings of the Enquiry Officer, imposed the punishment as stated above. The appeal filed by the applicant was rejected after taking into consideration all the points raised by him.

7. We have heard Shri Anil Singhal, learned counsel for the applicant and Shri S.Q.Kazim and Shri Mumtaj Hussain, learned counsel for the respondents and have also gone through the pleadings and other relevant materials on record.

8. One of the main points raised by the Ld. Counsel for the applicant during the course of arguments was that the criminal proceedings and departmental proceedings could not have been going on simultaneously. In this connection, he referred to the judgements in the case of Capt. M. Paul Anthony Vs Bharat Gold Mines Ltd., & Anr (JT 1999 (2) SC 456) in which it was held that in case evidence in both the cases is common **without any variance**, it is desirable to stay the departmental proceedings. He also referred to Rule 12 of the Delhi Police (P&A) Rules, 1980, according to which 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 ground, or (b) in the opinion of the court or DCP the prosecution witnesses have been won over and (c) the court has held in its judgements 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. According to him, the applicant has been acquitted on merit by the criminal court and as such, he cannot be punished in the departmental proceedings. In this connection he also referred to some of the observations made in the judgement of the criminal court to the effect that the testimony of the witnesses does not

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connect the accused persons with the commission of the offence of cheating and forgery etc. He also referred to two orders of this Bench of the Tribunal in OA No. 2076/2000 dated 3.8.2001 and dated 7.3.2001 in O.A. No. 1931/1998. In the former case, the impugned order of punishment was set aside and the matter was remanded back to the disciplinary authority to pass a fresh order, taking into consideration the acquittal of the applicant in the criminal court. (Annex. A-8). In the latter case, as the applicant had expired in the meantime, the punishment order was quashed and the LRs were directed to be paid all consequential benefits.

9. On the other hand, the Ld. Counsel for the respondent, referring to the judgement in the case of Capt. M. Paul Anthony (supra) stated that in this judgement, it has been clearly held that proceedings in a criminal case and the departmental proceeding can be held simultaneously, except when the evidence in both the proceedings is common, **without there being any variance**. In this judgement, various other judgements have been discussed. Some of the conclusions which are deducible from these judgements include that the departmental proceedings and proceedings in a criminal case can proceed simultaneously but if the charge against the delinquent employee is of such a nature which involves complicated questions of law, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. He stated that in the present case of the applicant, the evidence both in the criminal as well as departmental case was not the same. The witnesses examined were different and it cannot be said that the evidence in both the cases was common with no variance. The charge against the employee was of forgery, which does not come in the category of cases involving a complicated question of law. Thus arising out of the above judgement it follows that both the proceedings could be held simultaneously. He also stated that the applicant has not been acquitted in the criminal cases on merit, as would be evident from the detailed judgement of the criminal court.

10. From the facts and circumstances of the case and taking into consideration the law laid down in the judgement in the case of Paul Anthony (supra) and various other judgements cited therein, there is no doubt that both the departmental as well as criminal proceedings could be held simultaneously in this case, as the charge was not as such which involved complicated question of law and the witnesses in both the proceedings were also different. The only question to be decided is whether the employee could be imposed the punishment in the departmental proceedings after he was acquitted in the criminal case on the same charge. In this connection, our attention has been drawn to a judgement dated 11.4.2002 of the Hon'ble Delhi High Court in the case of **Govt. of NCT of Delhi and Ors vs. Rajpal Singh** (2003 (2) SLJ 130) in which it has been held that Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 would not be attracted when an order of punishment had already been imposed before the judgement of acquittal was rendered in favour of the respondent. In the present case, the order of punishment was passed on 22.12.1995, while the acquittal was ordered by the criminal court on 3.12.2002, after a lapse of about 7 years. The judgement in case of **Rajpal Singh** (supra) will be squarely applicable in this case and is binding on us, notwithstanding any view which might have been taken by this Tribunal on this aspect of the matter.

11. As far as departmental proceedings are concerned, it has been established during the course of enquiry that the applicant in connivance with another employee was involved in getting arms licences based on forged signatures of the DCP concerned. 8 such applications were detected. In one case of Mukesh Garg, he has been going from desk to desk to get it approved by stating that the application has been approved by the DCP and that application turned out to be bearing the forged signatures. This proves his active involvement in the forgery, otherwise there is no reason as to why he should be pursuing this application for grant of arms licence. On further verification, 8 such applications were detected which had forged signatures of the DCP. It is a very serious crime. By his misconduct, the arms were probably going in the hands of

terrorists or other criminals. This is not only a misconduct on the part of the applicant but a crime against the security of the Country. In our opinion, the applicant deserved a punishment of nothing less than dismissal from service. Retention of such a person in the disciplinary force like Police is a security risk. But the department has been very considerate towards him and he has been let off by only forfeiture of 5 years' of service.

12. In so far as conduct of the departmental enquiry is concerned, we don't find any illegality in the disciplinary proceedings. The applicant had not participated in the enquiry of his own. He was given adequate opportunity to defend himself, which he did not do. He was also given personal hearing. His appeal was considered on merit and rejected. We agree with the respondents that there is no provision in the Delhi Police (P&A) Rules, 1980 for reviewing the case after the acquittal from the criminal court. The Ld. Counsel for the applicants also did not bring any such rule or instructions to our notice during the course of arguments. It is a well settled principle of law that in the Tribunal role in the judicial review is very limited. We have only to ensure that the disciplinary proceedings have been conducted in accordance with law and the applicant has been given due opportunity to defend himself. We can intervene only if the findings are based on "no evidence" or they are totally perverse or legally unsustainable. We don't find any legal infirmity in the conduct of the proceedings in this case. As mentioned above, the respondents have been very considerate in awarding the punishment to the applicant, compared to the gravity of his guilt. Thus, this is not a case, which warrants any interference from our side.

13. As a result of the above discussions, the OA deserves to be dismissed and the same is accordingly dismissed. No costs.

Pray
 (S.K. Malhotra)
 Member(A)

V.S. Aggarwal
 (V.S. Aggarwal)
 Chairman