

Central Administrative Tribunal, Principal Bench, New Delhi

O.A.No.90/2004

New Delhi, this the 8th day of January, 2005

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

1. Ashok Kumar,
S/o Shri Virender Singh,
R/o Village & P.O. Khera Khurd,
Delhi
2. Virender Kumar,
S/o Shri Umrao Singh,
R/o Village Manikpur,
Thana Barot,
Distt. Meerut,
U.P.

.....Applicants

(By Advocate: Shri Shyam Babu)

Versus

1. Govt. of NCT of Delhi,
Through its Chief Secretary,
Players Building,
New Delhi
2. Jt. Commissioner of Police,
(Southern Range)
Police Headquarters,
I.P. Estate, New Delhi.
3. Dy. Commissioner of Police,
South West District,
Police Station Vasant Vihar,
New Delhi

.....Respondents

(By Advocate: Shri Ajesh Luthra)

Order

Justice V.S. Aggarwal, Chairman

Applicants by virtue of the present application seek to assail the order passed by the disciplinary authority dated 13.12.2002 and of the appellate authority dismissing the appeal on 17.6.2003. The disciplinary authority had passed an order removing the applicant Constable Ashok Kumar from service and so far as Constable Virender Singh is concerned who has admitted his guilt, a penalty of withholding his next increment for five years without cumulative effect was imposed. The relevant part of the impugned order reads:

“As regards defaulter Constable Virender Singh, No.1882/SW, in view of his admission of the guilt before the undersigned (disciplinary authority) during O.R. and the gravity of his misconduct, I here order to impose the penalty of withholding of his next increment, for a period of five years without cumulative effect on him.

Their suspension period from 21.4.1991 to 4.10.2001 is decided as period not spent on duty.”

2. Some of the relevant facts which are not in dispute can conveniently be delineated.

3. On 20.4.91, F.I.R.93/91 with respect to an offence punishable under Section 302 Indian Penal Code read with Section 120-B of the said Code was registered against the applicants. On 30.10.91, the Deputy Commissioner of Police initiated departmental action against the applicants and the ~~enquiry~~ officer had issued summary of allegations



alongwith list of documents and the witnesses. The summary of allegations read:

"Ct.Ashok Kumar while posted to PS Najafgarh on 20.04.91 was detailed for picket duty from 8 am to 8 pm at Roshan Mandi Nazafgarh. He was issued with 9 mm pistol. Instead of going for picket duty, the Const. absented himself for 5/6 hours and shot dead his niece Poonam with the Govt. Pistol at village Khera Khurd, PS Narela. He has been arrested in case FIR 93/91 PS Narela and the weapon has been seized by Narela PS on 21.01.91. He remained absent from 5-6 hours from duty unauthorisedly.

Const. Virender Kumar arranged 2 cartridges and 9 mm pistol to make the shortage good for const. Ashok Kumar and concealed this fact."

4.Meanwhile the criminal case against the applicants had proceeded and charges had been framed.

5.Applicant feeling aggrieved by the initiation of departmental action had filed O.A.3126/92 contending that the charges in the criminal case as well as in the departmental enquiry were the same. He wanted that departmental proceedings may be kept in abeyance during the pendency of the criminal case referred to above. The said O.A. was disposed of on 13.2.98 holding:

"After hearing the learned counsel for the parties and perusing the record, we are of the view that the scope of trial in the criminal case was and is altogether different from that in the D.E., though certain facts appeared to be common for purposes of the trial and the D.E. and therefore, we find no merit in this application. In criminal trial, the question to be decided is about the participation or involvement of the applicants in the offences under Section 302 and under other Sections of the Indian Penal Code for which they are charged. In the D.E. the question is if the applicants or anyone of them remained on unauthorized absence for 5-6 hours as alleged and if they misused the official pistol and/or cartridges in the



manner alleged. For this reason, the reference to Rules 11 and 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 by the learned counsel for the applicants was misplaced and misconceived."

6. Keeping in view the said directions of this Tribunal holding that the departmental enquiry is pertaining to the question if applicant remained unauthorisedly absent for 5-6 hours and misused his pistol, the departmental proceedings were re-opened. The applicants even had filed a Writ Petition No.2294/98 in the Delhi High Court. On 28.4.2000, keeping in view that criminal trial had since come to an end, the writ petition had been dismissed to have become infructuous.

7. The applicants submitted representation stating that during the pendency of the proceedings, they have been acquitted by the Court of Sessions and thus, the departmental proceedings cannot be initiated or continued. On 17.5.2000, the representation made by the applicants was rejected and an enquiry officer was again appointed. The applicants thereupon filed O.A.1862/2000 for setting aside of the order appointing the enquiry officer. On 19.7.2001, the said O.A. was disposed of holding:

"We have gone through the judgment in the criminal case as well as order instituting the enquiry alongwith summary of allegations etc. we find that the enquiry contains allegations regarding issuance of weapons, absence of the applicants for 5-6 hours from the picket duty and going to village Khera Khurd, P.S. Narela with the Govt. Pistol, getting arrested in the case FIR 93/91, P.S. Narela, seizure of the weapons from their possession by Narela P.S. on 21.04.91 as also arrangement of cartridges and making good of the shortage of cartridges etc. The ingredients contained in these allegations are quite different from accusation made in the criminal case. The question in the present disciplinary enquiry to be decided is



whether the applicants remained unauthorisedly absent for a specific time as alleged and misused the official weapon and/or cartridges in the manner alleged. Rule 12 (d) of Delhi Police (Punishment & Appeal) Rules, 1980 reads 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 "the evidence cited in the criminal case discloses facts unconnected with the charge before the Court which justify departmental proceedings on a different charge. In our view, the present disciplinary enquiry is covered under Rule 12 (d) of the aforesaid rules.

Having regards to the reasons discussed above, we do not find good grounds for declaring that the departmental action initiated against the applicants in view of their acquittal by the criminal Court on 17.03.1999, was bad in law. Consequently, the OA is dismissed. No costs."

8. On 16.8.2001, keeping in view the said order passed by this Tribunal, the enquiry was re-opened and charges had been framed against the applicants. The enquiry officer gave the report that charge of unauthorized absence from duty is proved against Constable Ashok Kumar and that there is no evidence on the record that he used Govt. pistol to murder Poonam and that part of the charge is not proved. He also recorded that charge against Constable Virender Singh that he gave 2 cartridges to Constable Ashok Kumar to make the shortage good is not substantiated.

9. The disciplinary authority disagreed with the findings of the enquiry officer and after the explanation of the applicants was called, it passed an order removing applicant no.1 from service and applicant no.2 was punished by withholding the increments for five years. The appeal was dismissed.



10. By virtue of the present application, the applicants seek quashing of the abovesaid orders and for reinstatement of applicant no. 1 with consequential benefits to both of them.

11. The application is being opposed.

12. Learned counsel for the applicants, at the outset, had urged that it has been held repeatedly by this Tribunal that charge in the departmental proceedings against the applicants is not pertaining to murder of Ms. Poonam and, therefore, the disciplinary authority was patently in error in coming to a finding to the contrary. Therefore, the order to that extent cannot be sustained. He also contended that even the enquiry officer had recorded otherwise. The argument proceeded further urging that the applicants had been acquitted by the Court of Sessions and resultantly, the departmental proceedings could not have been so initiated. The said arguments were opposed with equal vehemence.

13. We have already reproduced above the details of the order that have been passed by this Tribunal. In the order passed by this Tribunal dated 13.2.98, it had specifically been held that in the disciplinary enquiry, the question was if the applicants or anyone of them remained on unauthorized absence for 5-6 hours. Subsequently on 19.7.2001, once again the same findings were arrived at because it was recorded specifically that question in the disciplinary proceedings was whether the applicants remained unauthorizedly absent or not.

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14. The disciplinary authority, therefore, fell into a grave error in coming to a conclusion to the contrary.

15. 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
- (e) additional evidence for departmental proceedings is available."

16. Perusal of the same clearly shows that when a police officer is tried and acquitted, he cannot be dealt with departmentally for the same charge subject to five exceptions. One such exception is clause (d) that if evidence cited in the criminal discloses facts unconnected with the charge before the court, it can justify the departmental proceedings. Before the criminal court, the charge pertained to murder of Ms. Poonam with respect to offence punishable under Section 302 qua applicant no. 1. The charge to which this Tribunal on two occasions dealt with, it specifically was pertaining to absence from duty etc. to which we need not refer afresh. Therefore, with respect to those charges, departmental action could be initiated and not any other charge particularly when the



applicants have already been acquitted. Therefore, we quash the penalty order qua applicant no.1 pertaining to alleged murder of Ms.Poonam.

17.However, as already pointed above, the enquiry officer had exonerated applicant no.2 and held applicant no.1 guilty of part of the charge only. The disciplinary authority disagreed.

18.The argument advanced is that the note of disagreement was a final finding rather than a tentative note and, therefore, to that extent the order necessarily has to be quashed.

19.The Supreme Court in the case of **Punjab National Bank and others v. Kunj Behari Misra**, (1998) 7 SCC 84 in this regard held:-

“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

The case of **Yoginath D. Bagde v. State of Maharashtra and Another**, 1999 (7) SCC 62 provides clear guide-lines in this regard. There too the same controversy had come up for consideration and the Supreme Court

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reiterated that it is only the tentative reasons which have to be conveyed.


The Supreme Court held:-

"The Disciplinary Authority, at the same time, has to communicate to the delinquent officer the "TENTATIVE" reasons for disagreeing with the findings of the Inquiring Authority so that the delinquent officer may further indicate that the reasons on the basis of which the Disciplinary Authority proposes to disagree with the findings recorded by the Inquiring Authority are not germane and the finding of "not guilty" already recorded by the Inquiring Authority was not liable to be interfered with."

20. In the present case before us, as we glance through the note of disagreement, it is clear that it was a final finding that has been recorded rather than a tentative note of disagreement. Therefore, on that count also, the petition requires to be allowed.

21. For the reasons given above, we quash the impugned orders and direct that in the light of the findings given above, if deemed appropriate, fresh action may be taken in accordance with law from the stage the note of disagreement was recorded.


(S.K. Malhotra)
Member (A)


(V.S. Aggarwal)
Chairman

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