

2

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 2431/92

DECIDED ON : October 23, 1992

Bishamber Singh & Another

... Applicants

-Vs.-

Union of India & Others

... Respondents

CORAM

THE HON'BLE MR. P. C. JAIN, MEMBER (A)

THE HON'BLE MR. J. P. SHARMA, MEMBER (J)

Shri D. P. Avinashi, Counsel for Applicants

J U D G M E N T

Hon'ble Shri P. C. Jain, Member (A) —

In this application under Section 19 of the Administrative Tribunals Act, 1985, applicant No.1 who is a Sub Inspector, IInd Bn. DAP, Delhi and applicant No.2 who is a Constable in the same Battalion, have assailed order dated 4.9.1992 passed by the Deputy Commissioner of Police, IInd Bn. DAP, Delhi directing for initiation of departmental action against both the applicants along with another Constable under section 21 of the Delhi Police Act, 1978 read with Rule 5 and 6 of the Delhi Police (Punishment & Appeal) Rules, 1980 on the alleged charge of bringing one Smt. Nirmala Gupta to Police Station, R. K. Puram on 1.11.1989 at 2.00 p.m. and releasing her at 4.00 p.m. on the same day, but the applicant No.1 not having mentioned anything in his arrival report lodged vide DD No. 13-A as to why she was brought to the Police Station and when she was released. The applicants have prayed for (1) quashing and setting aside the aforesaid order dated 4.9.1992, and (2) directing the respondents immediately to stop the departmental proceedings against them. As an interim measure, it is sought that the respondents be directed not to hold the departmental inquiry against them and drop the same, if any, initiated against them.

C.

2. We have heard the learned counsel for the applicants on admission and interim relief. The main contention of the applicants is that the departmental action ordered to be initiated against them by the impugned order dated 4.9.1992 relates to the same charge which was the subject matter of FIR No. 379 dated 2.11.1989 under section 376-B/506/34 IPC, Police Station R. K. Puram, New Delhi for committing rape with one Smt. Nirmala Gupta which was the subject matter of trial in Sessions Case No. 33/90 and in which both the applicants had been acquitted of the charges framed against them as the prosecution had totally failed to prove the case against the accused persons. It is also contended in this connection that thereafter both the applicants were dismissed from service w.e.f. 3.12.1990 by the order of the same date after dispensing with the inquiry and under the proviso (b) to Article 311 (2) of the Constitution, and that this order was also passed on the same charge as in the criminal case. Applicant No. 1 moved the Central Administrative Tribunal in O.A. No. 2725/92 and the aforesaid order of dismissal from service was quashed by the Tribunal vide judgment dated 10.1.1992 in respect of applicant No.1. Thus, the contention of the applicants is that having been acquitted in the criminal case and their dismissal under Article 311 of the Constitution having been quashed, the action of the respondents in initiating departmental action vide impugned order is arbitrary, against the rules, in disregard of the judicial process, and also against the principles of natural justice.

3. We have given our careful consideration to the averments in the O.A. as also the oral submissions made by the learned counsel for the applicants. Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 which is on the action following judicial acquittal is extracted as below :-

C.

"12. Action following judicial acquittal --
(1) 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 judgement 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 ^{un}connected with the charge before the court which justify departmental proceedings on a different charge; or

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

The action ordered to be initiated in pursuance of the impugned order dated 4.9.1992 does not at all relate to the same charge which was the subject matter of the criminal case as also of the order earlier passed dismissing the applicants by dispensing with the inquiry. As already stated above, the departmental action now ordered to be initiated is only in regard to bringing one Smt. Nirmala Gupta to P.S. R. K. Puram on a particular date and a particular time but not making a mention of the same in the arrival report in the daily diary as also the purpose as to why she was brought to the Police Station and when she was released. This charge prima facie relates to a departmental lapse rather than the offence to which the criminal trial related. Rule 12 of the Rules *ibid* does not debar departmental action on such a departmental lapse. Though the applicants have averred in the O.A. that the new impugned order relies upon same witnesses and materials which have been decided by the Sessions Court, yet this averment is not at all substantiated. Before the summary of allegations was served on the applicants and with which the list of witnesses and documents etc. were supplied, the applicants have ^{as stated} ~~urged~~ to the Tribunal and they have not placed

C.

either the summary of allegations or the list of witnesses or materials or documents supplied therewith. In these circumstances, the basis of the averment that the impugned order relies upon the same witnesses and materials, is not known. We, therefore, see no ground for interfering with the impugned order dated 4.9.1992 and the respondents will be free to proceed with the departmental action in pursuance of the impugned order. However, if the applicants are aggrieved by the final order passed in the departmental action in pursuance of the impugned order, they shall be free to approach the Tribunal in accordance with law, if so advised.

4. In the light of the foregoing discussion, the O.A. is rejected as devoid of merit at the admission stage itself.

J. P. Sharma
(J. P. Sharma)
Member (J)

Clear 23/10/92
(P. C. Jain)
Member (A)