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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH : NEW DELHI

O.A. No.2602/92

New Delhi, this day 5th January 1994

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

HON'BLE MR. B.K. SINGH, MEMBER (A)

Shri Kula Nand,  
S/o Shri Devakar,  
H.No. 327, Ahata Kedara,  
Sadar Bazar, Sulhi

... Applicant

(By Advocate Shri Y.R. Malhotra)

Vs

Commissioner of Police,  
Delhi Police Police Headquarters,  
I.P. Estate,  
New Delhi

Dy. Commissioner of Police,  
Spl. Branch, Delhi Police,  
I.P. Estate,  
New Delhi

.. Respondents

(By Advocate Madan Ghera)

ORDER

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

The applicant was serving as Head Constable in Delhi Police and is now under suspension. He was involved in a case FIR No. No. 3 dated 2.1.1987 under Section 21/6, 1985 and DPS Act, Police Station, Sadar Bazar, Delhi. On 1.1.1987 a Police Party - One Bhup Singh ~~who~~<sup>e</sup> made a disclosure that he was getting the heroine from Kulanand (the Applicant). The applicant was allotted House No. 327 Type B, Ahata Kedara and the police party raided the quarter on 2.1.1987 and on search of the house recovered plastic bags of heroin in a bag. He was proceeded on the basis of the criminal cases but was acquitted by the Sessions' Court on 10.9.1989. The Government preferred special leave before the court against the acquittal and by the Order dated 27.3.1990 leave to appeal was declined and the appeal was dismissed.

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On receipt of the copy of the judgement under the provisions of Rule 12(A) of the Delhi (Police (Punishment and Appeal) Rules, 1980 the Deputy Commissioner of Police by the Order dated 11.7.1992 observing that the acquittal of the applicant by the Order dated 10.11.1989 has been on technical grounds ordered that the applicant be dealt with departmentally under the provisions of Section 21 of the Delhi Police Act, 1978 and appointed Shri Hari Singh, Inspector for holding an enquiry under Delhi Police (Punishment and Appeal) Rules.

2. The applicant filed O.A. on 1.10.1992. Aggrieved by this order dated 11.7.1992, he prayed for quashing of the said order. The applicant again filed an amended O.A. on 21.12.1992 for the same relief.

3. A notice was issued to the respondents who contested the application and stated that since the applicant was acquitted on technical grounds by the criminal court, there is no justification to ~~start~~<sup>may</sup> the departmental enquiry against the applicant. It is further stated that the applicant has no case and the application be dismissed.

4. The application was admitted on 19.4.1993. The applicant thereafter moved M.P. No. 3631/93 in which he has prayed that the enquiry proceedings be ordered to be stopped by the respondents pending final adjudication of the O.A. The matter came before the Bench on 3.1.1994. It was ordered that M.A. will be heard on merit alongwith the O.A. Both the counsel agreed that O.A. be disposed of on merits and as such M.A. and O.A. are taken.

5. Heard the learned counsel of the parties. The first contention of the learned counsel is that after acquittal from the criminal court by the judgement dated 10.11.1989 SLP against the same was declined by the Delhi High Court by

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Order dated 27.3.1990, the Deputy Commissioner of Police again proceeded in a departmental enquiry against the applicant. This contention of the learned counsel has no basis because Section 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 gives power to the Commissioner of Police to initiate departmental enquiry in a case where the acquittal has been on technical grounds. Section 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 quoted below:

"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 unconnected with the charge before the court which justify departmental proceedings on a different charge; or
- (e) additional evidence for departmental proceedings is available"

6. We have gone through the judgement of acquittal and in Para 21 the learned Additional Session Judge has given the following observations which are quoted below:

"For the reason that in this case the case property was not produced along with the accused before the incharge of the police station and there is an evidence that ACP or any other police officer present at the time of the raid was the incharge of the police station within the meaning of section 42 NDPS Act, it cannot be said that compliance of section 42 r/w 52 NDPC Act has been done. There is no proof that the report about the search and seizure was sent to the officer immediately superior

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to the officer present at the time of the raid or sent within the stipulated period or that serious attempts were made for joining any independent witness as required by Section 51 NDPS Act. For non-compliance of these provisions, also, the accused deserved to be acquitted. Accordingly, accused herewith is acquitted of the charge u/s 21 NDPS Act. He is in judicial custody. He be set at liberty if not required any other case. The case property be destroyed after the period of appeal, if any.

Announced in the open court.

Sd/-

(M.A. Khan)

Addl. Sessions Judge, Delhi "

7. A perusal of the above will show that for want of compliance of certain provisions in the investigation stage the applicant has been acquitted by the criminal court. The learned counsel, however, preferred to the other facts stated in the judgement in Para 16 and 17 but both these paras of the judgement of the criminal court is only an analysis of an evidence of the prosecution witnesses. The Criminal Court has also observed that under law the applicant cannot be said to be in exclusive possession of the recovered heroin as he has shared the accommodation with his family. However, the applicant is the sole allottee of the aforesaid house. In view of the above facts and circumstances we find that the judgment of the Criminal Court was only on technical grounds and the merit of the case was not touched to give the applicant a clean acquittal. In the case of Nelson Motive Vs. Union of India Hon'ble Supreme Court has considered whether after acquittal from the Criminal Court the administration can proceed with departmental enquiry or not and it was held that there is no such bar to proceed departmentally after acquittal from the Criminal Court.
8. The learned counsel for the applicant also argued that the respondents have served the summary of allegations

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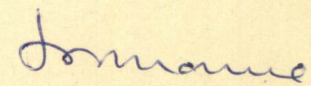
in November, 1993 while the misconduct alleged against the applicant is of January 1987. In fact the delay has not been because of administrative lack but because of the criminal proceedings pending against the applicant. Thus, there is no delay and no prejudice has been caused to the applicant on account of late serving of summary of allegations.

9. The learned counsel also argued that the promotion of the applicant was considered by the D.P.C. and by the order dated 12.11.1993 the case of the applicant was kept in sealed cover. This has nothing to do with the present enquiry and the grievance of the applicant is not for withholding his promotion. He has only prayed for quashing of the order dated 11.7.1992 initiating departmental proceedings against him.

10. The learned counsel for the applicant argued that memo served on the applicant (Annexure A-V) does not disclose any date. However, the applicant has been directed to appear before the Inspector on 7.12.1993. In any case this has not caused any prejudice to the applicant as the departmental proceedings are only in an initial stage and the applicant has filed the D.A. in October, 1992 itself.

11. We, therefore, find no merit in this application for staying the departmental proceedings or for quashing the impugned order dated 11.7.1992. The application is devoid of merit and is dismissed leaving the parties to bear their own costs.

  
(B.K. Singh)  
Member (A)

  
(J.P. Sharma)  
Member (J)