

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.1296 OF 2003

New Delhi, this the 14th day of January, 2004.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

HC Jag Saran
R/o B-2/34, Sector-6,
Rohini, Delhi-85.

.....Applicant

(By Advocate : Shri Anil Singal)

Versus

1. GNCT through
Commissioner of Police,
PHQ, IP Estate,
New Delhi.

2. Addl. Comm. of Police,
(Security), PHQ,
IP Estate,
New Delhi.

3. Sh. P. Dass,
DCP (9th Bn. DAP),
Police Head Quarters,
IP Estate, New Delhi.

.....Respondents

(By Advocate : Mrs. Rashmi Chopra)

ORDER (ORAL)

SHRI JUSTICE V.S. AGGARWAL:-

The applicant is a Head Constable in Delhi Police. Disciplinary proceedings had been initiated against him pertaining to the following charges:-

"I Inspr. V.S. Joon, charge you HC Jagsaran, No. 10170/DAP that on 15.12.97 you alongwith your associates had robbed of Rs.2450/- from one Sh. Subhodh Khandelwal S/o Sh. O.P. Khandelwal C/o Unique Housing, 2571, Ajmal Khan Road, Karol Bagh, New Delhi by stopping his car at Satya Niketan Red Light when he was coming from Airport and going to his office in Karol Bagh. You further demanded Rs.1,00,000/- from Sh. Subodh Khandelwal by putting him under the fear of implicating falsely under immoral traffic(P) Act.

On the same day i.e. 15.12.97, you HC Jagsaran and your associate robbed of



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Rs.14000/- from one Sh.Rakesh Kumar R/o 3063, Mohinder Park, Rani Bagh, New Delhi in the jurisdiction of Police Post Nanak Pura, New Delhi.

For the above misconduct, you HC Jagsaran was placed under suspension w.e.f. 03.01.98 vide this office order No. 10170/DAP amounted to gravest misconduct, reprehensible, undesirable, unbecoming of a member of Police Force and why should not be punished under Delhi Police (Punishment & Appeal) Rules-1980".

2. The inquiry officer returned the findings that the charges had been proved. Resultantly, keeping them in view, the disciplinary authority had imposed a penalty of forfeiture of five years approved service permanently entailing reduction in his pay from Rs.3880/- to Rs.3455/- and his suspension period from 3.1.1998 to 12.10.2001 was decided as not spent on duty for all practical purposes. The applicant preferred an appeal, which has since been dismissed.

3. Keeping the records straight, it would be appropriate to mention that with respect to the said incidence, a criminal case FIR No.1082/97 pertaining to offence punishable under Section 392/365/34 Indian Penal Code had also been registered, besides FIR No.1083/1997 with respect to the same offence. The applicant had been acquitted by the Court of the learned Additional Session Judge, Delhi and learned Metropolitan Magistrate, Delhi from the aforesaid criminal cases. During the pendency of the above said criminal cases, the disciplinary proceedings had been kept in abeyance. After the decision rendered by the two Courts referred to above, the disciplinary

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proceedings had been restarted vide the order of the Deputy Commissioner of Police dated 31.12.2001 which reads:-

"Now, the above said criminal cases have been decided by the Hon'ble Court's Sh. HS Sharma, ASJ, New Delhi and Ms. Kamini Lau MM New Delhi vide their judgments dt.26.4.2001 and 23.7.2001 respectively in which the accused (HC Jag Saran No.10170/DAP) has been acquitted in both cases due to PWs became hostile.

In view of above, I, P. Dass, DCP/9th Bn. DAP, Delhi to hereby order that the departmental enquiry against HC Jag Saran No.10170/DAP which was held in abeyance is hereby reopened. The departmental enquiry is entrusted to Insp. Virender Singh who will conduct the same on day-to-day basis from prosecution stage and findings should be submitted to the undersigned at the earliest. The weekly progress report of the DE may also be sent to this office."

4. It is in pursuance of the above facts that the present controversy arises, namely, whether in face of Rule 12 of the Delhi Police (Punishment & Appeal) Rules 1980, the disciplinary proceedings in the facts of the present case could be initiated against the applicant or not.

5. Learned counsel for the applicant contends that in the facts of the present case, the disciplinary proceedings could not be so initiated, while on behalf of the respondents, it has been urged that the present case falls within the ambit of Rule 12 (b) of the above said Rules.

6. To appreciate the said controversy, we reproduce the Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980:-



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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 ground; 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."

7. The above said rules clearly show that ordinarily when a police officer was tried and acquitted by a Court of law, he is not to be punished departmentally on the same charges. However, there are five exceptions that have been drawn to this general rule, namely, the criminal charge has failed on technical grounds; in the opinion of the Deputy Commissioner of Police, the prosecution witnesses have been won over; the Court has recorded that the offence was actually committed and the suspicion rests upon the police officer concerned; the evidence cited in the criminal case discloses that there should be a departmental action; or there being additional evidence available.

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8. As already pointed above, the stress is on Rule 12 (b) of the rules, as if in the opinion of the learned Deputy Commissioner of Police, who has already recorded that witnesses have been won over and, therefore, the departmental action could be initiated. We do not dispute that it is a subjective satisfaction of the Deputy Commissioner of Police concerned in this regard. But in the present case before us, the Deputy Commissioner of Police recorded that the applicant has been acquitted in the criminal cases because the witnesses turned hostile.

9. The expression that the witnesses 'turning hostile' as used in common parlance, ^{ls} where they re-sile from their earlier recorded statements whether under Section 161 of the Code of Criminal Procedure or whatever statements that are so recorded. In every case, where the witness re-siles from his earlier recorded statements, it cannot be termed that he has been won over by the accused person in that controversy. Facts of each case have to be examined to come to such a conclusion. In one matter in which the applicant was the accused, i.e., FIR No.1082/1997 Police Station : R.K. Puram, New Delhi decided by the learned Additional Session Judge, New Delhi the learned Additional Session Judge observed during the course of the decision that it was the investigating officer, SI, Sanjay Dutt who left no stone unturned to leave/provide some technical flaws in the prosecution case. In fact, the learned Additional Session Judge

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had recommended departmental action against the said investigating officer. In the subject matter FIR No.1083/1997, learned Metropolitan Magistrate, Delhi acquitted the accused for lack of evidence. There is no finding recorded that the witnesses have been won over by the accused. Therefore, merely because they did not support the prosecution case, it cannot be termed that in criminal cases the witnesses turning hostile would be a ground for this Tribunal to uphold the order of the Deputy Commissioner of Police that the witnesses were won over.

10. The language used by the learned Deputy Commissioner of Police is unambiguous. Therefore, the conclusion cannot be arrived at that the witnesses had been won over by the applicant.

11. In that event, learned counsel for the respondents had drawn our attention to the decision of the Apex Court in the case of Secretary, Ministry of Home Affairs & Anr. Vs. Tahir Ali Khan Tyagi in Civil Appeal No.3865 of 2002 decided on 22.4.2002. Though at the first blush it appears that the findings are supporting the respondents' version but a perusal of the decision reveals that it will not apply in the facts of the present case. The findings of the Supreme Court in the aforesaid case are:


"7. The apart, the second part of rule 12 of the rules, unequivocally indicates that a departmental proceeding could be initiated if in the opinion of the court, the prosecution witnesses are found to be won over. In the cases in hand, the prosecution witnesses did not support the prosecution in the criminal


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proceedings on a account of which the public prosecutor cross-examined them and therefore, in such a case, in terms of rule 12, a departmental proceeding could be initiated. In this view of the matter we are of the considered opinion that the tribunal committed error in interfering with initiation of a departmental proceeding and High Court committed error in dismissing the writ petition field. We, therefore, set aside the impugned judgment of the High Court as well as that of the tribunal and direct that the departmental proceeding be concluded as expeditiously as possible."

12. These facts clearly show that the decision of the Supreme Court, as held, will not help the respondents. It was held that the Court should record such a finding. Such a finding has not been recorded in the present case. Therefore, the ratio deci dendi of the Supreme Court in the aforesaid case does not apply in the peculiar facts of the present case.

13. Resultantly, without dwelling into other submissions, we allow the present Original Application and quash the impugned order. However, we make it clear that if the Deputy Commissioner of Police deems fit to pass an order, he may pass a fresh order in accordance with law. Consequential benefits, if any, accruing to the applicant, be granted by the respondents.


(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER


(V.S. AGGARWAL)
CHAIRMAN

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