Central Administrative Tribunal, Principal Bench

O.A. No. 2343 of 2003

New Delhi this the 16th day of August, 2004

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

S.I. Nag Bhusanm
D-3287, E Block (Group-III)
Security Line, Delhi. .....Applicant

By Advocate: Shri Yogesh Sharma.

Versus

1. NCT of Delhi through The Chief Secretary,
New Secretariat, Delhi.

2. The Additional Commissioner of Police,
Security, New Delhi
Delhi Police, Police Head Quarters,
I.P. Estate, New Delhi.

3. The Dy. Commissioner of Police,
Security, New Delhi,
Delhi Police, Police Head Quarters,
I.P. Estate, New Delhi. .....Respondents

By Advocate: Shri Om Prakash.

ORDER(ORAL)

Hon'ble Mr.Justice V.S. Aggarwal, Chairman

The applicant is a Sub Inspector in Delhi Police. He was served with the following charge:-

> "I, S.K. Malik, Enquiry Officer charge your SI Nag Bhushan, No.D/3287 as under:-
>
> That on 29.11.1995 a case FIR No.523 u/s 306 IPC, P.S. Nazafgarh was registered against you on the statement of Miss Veena S. Kumblakar, sister of deceased Miss Vibha.
>
> That you were having marital relations with Miss Vibha, the deceased for the last 2/3 years and used to visit her quarter frequently, but did not marry her.
>
> That you were responsible for termination of pregnancy of Miss. Vibha twice which she conceived from you.
>
> That you did not marry Miss Vibha and engaged yourself with some other girl resulting suicide by her. She also left a suicide note holding you responsible for the suicide.
>
> The above conduct on the part of you SI Nag Bhushan, No.D/3287 amounts to grave misconduct and unbecoming of a Police Officer and also failure of your part to maintain integrity in service. This renders you liable for department action under the provision of Delhi Police (Punishment & Appeal) Rules, 1980 read with Section 21 of the Delhi Police Act, 1978".

2. Inquiry Officer had been appointed who held that the charge has been proved. After serving the report of the Inquiry Officer, the disciplinary authority held that it was a case of dismissal but keeping in view that the applicant had to put in more than 25 years of service, imposed the following penalty on him:-

> "This is a fit case for dismissal from service. However, taking in views the fact that he has 25 years more service left and can improve in future, the extreme step is avoided. Therefore, I, Satyendra Garg, DCP/Security, New Delhi, hereby award SI Nag Bhushan No.D-3287 the penalty of forfeiture of 5 years approved service permanently entailing reduction in his pay from Rs.6375/- P.M. to Rs.5500/- P.M.".

3. The applicant preferred an appeal which was heard by the Additional Commissioner of Police. On 25.11.2002, the same was dismissed.

4. By virtue of the present application, the applicant seeks to assail the orders passed by the disciplinary as well as the appellate authority.

5. Needless to state, that in the reply filed the petition has been contested.

6. To keep the sequence of events complete, we refer to some of the other facts. The applicant had been tried for the offence punishable under Section 306 of the Indian Penal Code. The learned Additional Sessions Judge, New Delhi had acquitted the applicant holding that the recovery of the suicide note had not been proved satisfactorily. However, the learned Additional Sessions Judge further observed :-

> "19. Such like neglect in obtaining timely opinion of forensic experts is seen occurring too frequently for comfort. The top brass of Delhi Police are heard time and again proclaiming their endeavor to ensure investigation of crimes, especially those of serious and grave nature, through scientific methods. These claims are seemingly made to indicate that Delhi Police does not believe in primitive methods in detecting crimes or tracking down criminals. But if this case is any illustration, scientific investigation seems to be the last priority. I cannot rule out the possibility that some undue influence may; have worked as part of the cover-up, and with a design to create holes in the case against the accused, given the fact that he himself has been a member of Delhi Police. This rather renders the above lapses all the more serious and should call for not only some introspection but also an exercise to fix responsibility so that such lapses do not recur" (emphasis added)..

7. We have heard the parties counsel and seen the relevant record.

8. The first and foremost question that comes up for consideration is as to whether once the applicant has been acquitted, disciplinary proceedings can be initiated against him or not. A basic fact which was clearly not disputed at either end was that in normal circumstances, disciplinary proceedings can be initiated because purpose of having a person tried by the Court of Law is that he should be punished for having violated the law of the land. The purpose of disciplinary proceedings is to maintain discipline in the department. However, the learned counsel for the applicant has drawn our attention to Rule 12 of Delhi Police (Punishment & Appeal) Rules, 1980 and on the strength of the same contends that once the applicant has been acquitted and since his case did not fall under the exceptions mentioned therein, disciplinary proceedings could not be started.

9. Rule 12 of the Rules referred to above unfolds itself in the following words:-

> "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 charges before the court which justify departmental proceedings on a different charge; or
> (e) Additional evidence for departmental proceedings is available".

10. One of the important exceptions when despite acquittal, disciplinary proceedings can be initiated is that if the court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned. It is this exception which comes into play in the facts of the present case. It is positively held that offence had been committed and resultantly the deceased committed suicide. We have already reproduced above the extracts of the order passed by the learned Additional Sessions Judge. He clearly points out that there is a suspicion that can be attributed and further that undue influence had

been exerted to cover up the matter and that applicant himself was a member of the police force. The learned Additional Sessions Judge wanted that responsibility should be fixed pertaining to the lapses in the investigation and expressed his anguish in this regard. Therefore, the decision of the learned Additional Sessions Judge has to be read in the perspective when it is observed that those loopholes have been provided as part of the cover-up and with a design to create holes in the case against the accused. This is a clear indication of there being suspicion on that count. In that view of the matter, disciplinary proceedings could indeed be initiated.

11. It has further been urged that while the criminal case was pending, disciplinary proceedings could not be reopened. It was not disputed that earlier the proceedings had been kept in abeyance. Even on this count, the plea has to be stated to be rejected. This is for the reason that as held in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd., JT 1999 (2) SC 456, if there is inordinate delay in completion of criminal proceedings, the disciplinary authority can restart the same. Same is the position herein. Keeping in view the same, the said argument has also to be stated to be rejected.

12. The main argument in this regard was that the suicide note which is so much relied upon by the respondents was not one of the relied upon documents. It was supplied to the applicant subsequently and, therefore, cannot be read as evidence against the applicant.

13. The principle that relied upon documents have to be supplied is based on fair play. The delinquent must be made aware of the nature of the offence that is to be proved against him. However, where parties contest the matter fully aware of the nature of the dispute, in that event reverting back to the above said principle certainly would be travesty of justice.

14. What are the facts herein? In the present case, suicide note was supplied to the applicant subsequently. He was permitted to file supplementary reply and thereupon evidence had been examined. In other words once such an opportunity had been given, it must be held that fair opportunity had been

granted to the applicant. The argument though at the first blush looked to prevail, in the peculiar facts fails.

15. The last submission was that there was no evidence against the applicant. In a departmental proceedings, the evidence need not be proved beyond all reasonable doubts like in a criminal trial. On preponderance of probabilities, findings can be arrived at.

16. In the present case, the applicant himself had admitted during the disciplinary proceedings that he had been visiting the deceased. The deceased had left the suicide note. It is true that because of the defective investigation pertaining to the nature of recovery, the criminal court had refused to act upon it but in the disciplinary proceedings, the sister of the deceased has not only proved it to be in the hands of the deceased but even has proved the other assertions mentioned in the charge about the applicant visiting her sister and about her relations with the deceased and that the deceased had to undergo an abortion in this regard. All these facts clearly show that the disciplinary authority cannot be stated to have acted in a manner where there was no evidence or that no reasonable person would come to such a finding to prompt us to interfere.

17. No other argument was raised.

18. For these reasons, the OA being without merit must fail and is dismissed.

(S.K. NAIK)
MEMBER (A)

(V.S. AGGARWAL)
CHAIRMAN

/Dinesh/