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HON BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN  
HON BLE SHRI S.A.SINGH, MEMBER (A)

Asstt. Sub-Inspector Yashvir Singh No.537/N  
s/o Shri Bhim Singh  
r/o House No.31, Ganga Enclave  
Loni Border, Gaziabad  
Uttar Pradesh. .. Applicant

(By Advocate: Sh. Sachin Chauhan)

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1. Union of India through  
its Secretary  
Ministry of Home Affairs  
North Block  
New Delhi.
2. Joint Commissioner of Police  
Northern Range  
Police Headquarters. I.P.Estate  
M.S.O. Building  
New Delhi.
3. Dy. Commissioner of Police  
North West  
P.S. Ashok Vihar  
Delhi.

(By Advocate: Sh. Harvir Singh)

ORDER

Justice V.S. Aggarwal:-

Applicant. Yashvir Singh. is an Assistant Sub-Inspector in Delhi Police. He joined in the year 1979 as Constable and was promoted as Head Constable. In September. 1998. he earned out of turn promotion to the rank of Assistant Sub-Inspector on account of his exemplary courage and devotion to duty. By virtue of the present application. he seeks setting aside of the order passed by the disciplinary as well as the appellate authority. The disciplinary authority had imposed the penalty of forfeiture of one year approved service temporarily entailing reduction in his pay from Rs.4600/- to Rs.4500/- for a period of one year

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and he will not earn the increments of pay during the period of reduction and after the expiry of penalty period. the reduction will not have the effect of postponing his future increments of pay.

2. The applicant's appeal had been dismissed.

3. Some more facts on the subject would precipitate the question in controversy. The departmental proceedings had been initiated on the allegations that the applicant carried the official Pistol out of Delhi without permission of the competent authority, and also involved in a case with respect to an offence punishable under Section 304-A of the Indian Penal Code while posted at Special Staff/North West Distt. The charge was proved with respect to carrying the Government Weapon to the Uttar Pradesh without authorisation.

4. Applicant's plea is that there was a persistent threat to his life from the hands of Chota Nawab Gang. He had even made an application for arms licence which was recommended by the concerned Officer In-charge of the Police Station.

5. Keeping in view the persistent threat to his life and the abovesaid fact, he had been advised to keep the Weapon in his possession round the clock. Thus the allegation that he has derelicted in his duty, is misconceived.



6. The respondents have contested the application. It was asserted that while the applicant was posted in Special Staff, North West District, Delhi, he had proceeded on five days casual leave. On his departure on leave, he failed to deposit the Government Pistol along with 10 cartridges that had been issued to him. On 9.6.1999, he was arrested in Police Station Laxman Jhula, Pauri, UP with respect to an offence punishable under Section 304-A of the Indian Penal Code.

7. Respondents further stated that the applicant did not follow the laid down norms of the Department being a public servant. It is denied that there was any mistake committed by the inquiry officer.

8. We have heard the parties' counsel.

9. During the course of the submissions, it was not disputed that the applicant had faced a criminal trial with respect to the offence punishable under Section 304-A of the Indian Penal Code. It is admitted that the competent Court has acquitted the applicant. On the strength of this fact, the learned counsel for the applicant urged that once the applicant had been acquitted, he could not be dealt with departmentally. He relied upon Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 in this regard. It reads:



"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."

Perusal of the same clearly shows that subject to the above five exceptions, once the Police Officer has been tried and acquitted by a criminal court, he shall not be punished departmentally on the same charge.

10. In the present case before us, he is not being dealt with departmentally pertaining to the fact with respect to the offence punishable under Section 304-A of the Indian Penal Code.

11. The charge proved against the applicant was that he did not deposit the Government Weapon while going on leave to the Uttar Pradesh. This is totally different from the charge he faced in criminal

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trial. Therefore, Rule 12 of the Rules referred to above has no application in the facts of the present case.

12. The only other argument raised vehemently was that the applicant was under a constant threat to his life and, therefore, he had been advised to keep the Government revolver with him. In this regard, he had even applied for the arms licence. He relied upon the Statement of Inspector, S.P.Tyagi which is reproduced in the inquiry report. In his cross-examination, the Officer In-charge of the said Police Station had admitted these facts in the following terms:

"In his cross-examination, this PW further admitted that the ASI had received threat from Chhota Nawab Gang and also admitted that keeping in view of the threat, he had given the advise to the ASI to apply for an Arms licence. He had also told SHO/Saraswati Vihar on phone that keeping in view of the threat, the ASI was required to keep the Arms with him round the clock. He had also advised the ASI to remain alert all the time and to keep the weapon with him. He also admitted that when the ASI was proceeding on leave, he had also asked the ASI to collect information about Manoj and Jagmal, the BCs. The Chhota Nawab Gang's field of operation is in Delhi and U.P. for collecting such intelligence the Police Staff go in Civil Dress. The risk is higher in civil cloths rather than in uniform."

13. The learned counsel for the applicant further argued that in any event, under the provisions, the applicant was entitled to keep the revolver with him.

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14. The Delhi Police Act, 1978 repealed The Police Act, 1861. However, under Sub Section (1) to Section 149, the rules unless they are inconsistent with the provisions of the Act, i.e. Delhi Police Act, are saved.

15. Under the Punjab Police Rules, Vol.I, Chapter VI [6.11.(3)] when an officer to whom a revolver has been issued ceases to be a police officer, or ceases to belong to a rank to which revolvers are issued, or proceeds on leave other than casual leave, he shall return the revolver issued to him, together with all equipment, ammunition and accessories issued to him with such revolver.

16. Under the Punjab Police Rules, Vol.I, Chapter-VIII [8.12], every police officer before proceeding on leave shall deposit all Government property in his possession or custody with the officer responsible under these rules for the custody of such property when in store.

17. These rules have to be read along with Section 24 of the Delhi Police Act, 1978. Section 24 in unambiguous terms provide that every police officer not on leave or under suspension shall for all purposes of this Act be deemed to be always on duty.


18. A conjoint reading of the same clearly shows that when a person is on leave, he is not on duty. It includes casual leave because Section 24 of the Delhi Police Act makes no distinction between the casual or earned leave. To that extent, Rule 6.11(3)


referred to above of the Punjab Police Rules, necessarily has to be read down because even when a person is on casual leave, he cannot be taken to be on duty. When not on duty, he must return the weapon, as it is a Government property as referred to above. The applicant without permission, in this process, had taken the weapon out of Delhi and therefore, strictly speaking, he violated the said Rules.

19. In that event, it had been argued that the penalty awarded is excessive. It is true that we will not interfere in the penalty unless it is disproportionate to the alleged dereliction of duty or shocks conscience of this Tribunal. Here, we have already referred to above that applicant was under threat. He had even applied for getting the arms licence in this regard. He had been advised even by his Officer-Incharge of the Police Station to be careful and alert and to keep the Government weapon with him. Unfortunately, he did not take the requisite permission, therefore, it became technical dereliction of duty. In this backdrop, indeed the penalty order necessarily has to be passed.

20. We are therefore, of the opinion that the penalty awarded appears to be patently excessive in the peculiar facts of the present case to which we have referred to above.

21. Accordingly, we allow the present application and direct that the disciplinary authority may pass an appropriate order of penalty in the light of our findings recorded above.

  
(S.A. Singh)  
Member (A)

  
(V.S. Aggarwal)  
Chairman