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Central Administrative Tribunal, Principal Bench

Original Application No.2717 of 2003

New Delhi, this the 13th day of May, 2004

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

Inspr. Tej Pal Singh
No.D-I/576,
S/o Shri Lekhi Ram
R/o Quarter No.C-7, IIIrd Type,
New Police Lane, Kingsway Camp,
Delhi-9

.....Applicant

(By Advocate: Shri Ashwani Bhardwaj)

Versus

1. Commissioner of Police,
Police Head Quarter,
Indraprastha Estate,
New Delhi
2. Joint Commissioner of Police
Armed Police,
Police Head Quarter,
Indraprastha Estate,
New Delhi

.....Respondents

(By Advocate: Mrs.P.K. Gupta)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The applicant is an Inspector in Delhi Police. Some of the facts which are not in dispute can conveniently be delineated. The applicant, at the relevant time, was officer incharge at Police Station, Shakar Pur. He was served with a notice of dereliction of duty pertaining to investigation of F.I.R. No.225 of 1999 with respect to an offence punishable under Section 302/34 of the Indian Penal Code. It had been found that one Suresh Pal Singh was shot dead by some persons and the applicant derelicted in his duty. It is not in dispute that penalty of censure was imposed upon the applicant on 12.11.99 pertaining to the said dereliction of duty. The applicant did not prefer an

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appeal against the said order. After some time, the department started fresh departmental proceedings and the order passed in this regard reads:

" It is alleged that SHO/Shakar Pur Inspector Tej Pal Singh who was the IO of the case FIR No. 225/99 U/S 302 IPC PS Shakar Pur did not investigate the case properly intentionally and with ulterior motive. Chowkidar Dal Bahadur who was one eye-witness of the incident was not examined till 25.6.1999 deliberately as Virender @ Pappu who was present at the time of incident and is one of the accused had continued to remain present till the post mortem of the dead body was over and he could have easily been arrested from the spot. After the interrogation and identification by the Chowkidar, the scene of crime was also not got examined by crime team although SHO/Shakar Pur was present at spot.

Inspector Tej Pal Singh SHO/Shakar Pur was in constant touch with Madan Bhaiya. There were incoming and outgoing calls from the cellphone of Madan Bhaiya to SHO/Shakar Pur. It is suspected that the assailants had taken the local SHO into confidence who had permitted that the deceased be taken away by them but there should not be murder and after the murder, SHO/Shakar Pur tried to save them and did not perform the investigation properly which is against the norms of duties of police officer.

The above act on the part of Inspector Tej Pal Singh No.D-I/576 amounts to grave misconduct, negligence, carelessness and dereliction in the discharge of his duties which renders him liable for departmental action under Delhi Police (Punishment & Appeal) Rules, 1980.

I, Dr. Chandra Prakash, Jt. C.P./A.P., Delhi hereby order that a regular departmental enquiry be conducted against Inspector Tej Pal Singh No.D-I/576 by Shri Mukesh Meena DCP/Vth Bn. DAP on day to day basis and findings be submitted to the undersigned expeditiously".

2. The enquiry officer had exonerated the applicant. There was a note of disagreement recorded and after considering the explanation of the applicant, the disciplinary authority recorded that the charge stood proved. The applicant did not investigate the case

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properly. He had not recorded the statement of Chowkidar Dal Bahadur and, therefore, a penalty of forfeiture of one year approved service temporarily entailing reduction in his pay from Rs.9300/- to Rs.9100/- for a period of one year was imposed. He preferred an appeal which has since been dismissed.

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

4. Learned counsel for the applicant argued that the applicant has already been censured for his conduct pertaining to the investigation of the matter and, therefore, fresh departmental proceedings could not be initiated.

5. Learned counsel for the respondents defended the said orders contending that this fact has already been taken note of and she relied upon the following passage of the order of the disciplinary authority:

"After going through the DE file and the relevant documents on the record, Addl.CP/AP disagreed with the findings of the E.O. making the following observations:-

"The punishment of censure has been awarded to the defaulter Inspector for the following allegations:-

"A case vide FIR No.225/99 u/s 302/34 IPC Shakar Pur. Delhi was registered and investigation of the case was entrusted to the delinquent. The delinquent had been relieved from all other duties as SHO with a view to avoid the hindrance in the investigation of such a sensational case. Nevertheless no progress report has been made in the case after a lapse of considerable period. The delinquent has not made sincere and concrete efforts to work out the case".

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Whereas the charge made against the defaulter Inspector in the instant DE is as under:-

"While posted as SHO/Shakarpur, Delhi did not investigate the case FIR No.225/99 u/s 302/34 IPC, P.S. Shakar Pur, Delhi properly, intentionally and ulterior motive. Chowkidar Dal Bahadur, who was the Eye Witness of the incident was not examined till 25.6.99 deliberately as Virender @ Pappu who was present at the time of incident and one of the accused had continued to remain present till the post mortem of the dead body was over. He could have easily been arrested from the spot, after the interrogation and identification by Chowkidar Dal Bahadur. The scene of crime was also not got examined from Crime Team".

From the above it is clear that not making sincere and concrete efforts to work out the case is one thing and not making investigation properly, intentionally with ulterior motive is another thing. Hence both the allegations are different as mentioned in the punishment order of censure and in the charge levelled against the defaulter Inspector in the instant DE".


6. Proposition of law which cannot be disputed is that once a person has been punished for an act/misconduct, necessarily he cannot again be harassed or punished for the same dereliction of duty.

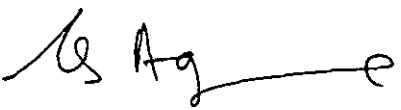
7. However the disciplinary authority has made a feeble attempt to show that the present disciplinary proceedings are different from the earlier act for which the applicant was censured, but in the facts and circumstances of the present case, the said plea cannot be accepted. As already referred to above and re-mentioned at the risk of repetition, pertaining to his failure to investigate a serious offence, the applicant's conduct was censured. This was because he did not make any progress in the said serious offence punishable under Section 302/34 of the Indian Penal Code. Thereafter to state that applicant did not record the statement of a particular witness, is re-stating the same fact all over again with some minor

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alterations. One cannot run away from the fact that it pertains to the same dereliction of duty. Once it is so, the applicant could not be proceeded departmentally for an act for which he has already been penalised. Therefore, the present disciplinary proceedings and the penalty awarded cannot be sustained.

8. Resultantly, we allow the present application and quash the impugned orders. Applicant would be entitled to the consequential benefits.


(S.A. Singh)
Member(A)


(V.S. Aggarwal)
Chairman

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