

(1)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 2862/2003

New Delhi, this the 8th day of March, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K.NAIK, MEMBER (A)

Anuj Agarwal
s/o Shri Ramniwas Agarwal
r/o 323, Jai Maa Apartments
Plot No.16, Sector-5
Dwarka, New Delhi. Applicant

(By Advocate: Sh. S.K.Gupta)

Versus

1. Govt. of NCT of Delhi
Through Chief Secretary
Delhi Secretariat
Players Bhawan, I.P.Estate
New Delhi - 110 002.
2. Commissioner of Police
Delhi Police Headquarters
MSO Building, I.P.Estate
New Delhi - 110 002.
3. Joint Commissioner of Police
(Southern Range)
Delhi Police Headquarters
MSO Building, I.P.Estate
New Delhi - 110 002.
4. Deputy Commissioner of Police
South District
Hauz Khas
New Delhi.
5. Shri R.C.Thakur
Assistant Commissioner of Police
Through: Deputy Commissioner of Police
South District
Hauz Khas
New Delhi. Respondents

(By Advocate: Sh. Ajesh Luthra)

O R D E R (Oral)

Justice V.S. Aggarwal:-

Applicant seeks quashing of the order passed
by the Deputy Commissioner of Police, South District
dated 21.11.2003 which reads:

"The departmental enquiry of Sub
Inspir.(Exe.) Anuj Agarwal, No.D/988 (PIS
No.16950153) who received the summary of
allegations etc. on 11.9.2000, which was

Anuj Agarwal

held in abeyance till the decision of criminal case pending against him in which the Hon'ble Court of Sh. Sanjiv Jain, M.M., New Delhi discharged the S.I. of the offence punishable under section 218/109/120-B IPC in case FIR No.542/99 on 6.9.2003 on the grounds that the sanction in r/o the S.I. was not obtained within one year of the offence as stipulated under Section 140 of the Act, the cognizance against him is barred by limitation, vide this office order No.7477-85/SD (P-II), dated 20.8.2001 in compliance of Hon'ble Judgement dated 24.7.2001 in MA No.1251/2001 in OA No.2031/2000 - Anuj Agarwal Vs. C.P., Delhi & Ors. is hereby re-opened and the same will be conducted by the Enquiry Officer to be nominated by DCP/DE Cell, on day to day basis who will submit the findings expeditiously.

The progress of the D.E. should also be intimated to the undersigned fortnightly."

2. The relevant facts are basically not in dispute that a fatal accident involving a car and a scooter had occurred in the night between 22/23-10-99 in the area falling under the jurisdiction of Police Station Ambedkar Nagar. There were some reports that the family of the victim was grossly dissatisfied with the investigation. They were ~~alleging~~ ^{asserting} against the police to the effect that the police was shielding the real offender, alleged to be the son of a rich businessman, by substituting the real accused with a poor employee. As the allegations were of a serious nature, preliminary inquiry was ordered. The preliminary enquiry reported that during the intervening night of 22/23-10-1999 an accident took place as a result of which the scooterists died. It mentioned that driver of the car was one Arihant Jain while the applicant with full knowledge of the accident, substituted an innocent person Mohd. Manzoor as the driver of the car involved in the accident in place of Arihant Jain in

A handwritten signature in black ink, appearing to read "18 Ag".

order to shield the latter from being prosecuted, with respect to the offence punishable under Section 304-A read with Section 279 IPC. It was also found that the applicant released the vehicle without making proper verification regarding the ownership of the said vehicle. On 31.10.1999 it is alleged that the applicant was personally called to the Office of Additional Deputy Commissioner of Police-II, South Distt. for verification of the facts. The applicant, in the presence of Shri R.C.Thakur and Shri Durga Prasad, ACP, admitted that the findings with respect to his conduct referred to above were correct, and that he had accepted Rs.25000/- which was given to him by the family of Arihant Jain.

3. The applicant initially was dismissed from service invoking Article 311(2)(b) of the Constitution of India. He preferred a departmental appeal. In the departmental appeal he was reinstated in service and was placed under suspension and the regular inquiry had been initiated.

4. The crux of the departmental inquiry had been incorporated in the summary of allegations which are:

"Pursuant to a newspaper report dated 28.10.99 in the daily Rashtriya Sahara, it came to notice that a fatal accident, involving a car and a scooter had occurred in the night between 22/23.10.99 in the area falling under the jurisdiction of Amb. Nagar Police Station.

In the said news item, it had been reported that the family of the victim was grossly dissatisfied with the investigation of the police in as much as a grave allegation had been levelled against the police to the effect that the

MS Ag

police was shielding the real offender, alleged to be the son of a rich businessman, by substituting the real accused with a poor employee. As the allegations levelled in the news item were of a serious nature, having a bearing upon the faith of the public on the impartiality of the police machinery, a preliminary enquiry was ordered into the incident. The said enquiry was conducted by Mr. R.C.Thakur, the then ACP/HQ/SD, New Delhi.

In his report dated 31.10.99, Mr. R.C.Thakur has found that during the night of 22/23.10.99, an accident took place involving a car Mitsubishi Lancer make and Scooter of LML Vespa make, as a result of which the scooterist died. The report, supported by statements of police officials, mentions that the driver of the car at the time of the accident was one Arihant Jain. Further, with full knowledge of the accident, SI Anuj Aggarwal, No.D/988 substituted an innocent person, Mr. Mohd. Manzoor as the driver of the car involved in the accident in place of Arihant Jain in order to shield the latter from being prosecuted for the crime committed by him. It has also been found by Mr. R.C. Thakur that SI Anuj Aggarwal released the car involved in the accident without making proper verification regarding the ownership of the said vehicle.

On 31.10.99, SI Anuj Aggarwal was personally called to the office of Addl. DCP-II/South Distt. to verify the facts stated in the report of Mr. R.C. Thakur. SI Anuj Aggarwal, in the presence of Sh. R.C. Thakur, ACP and Mr. Durga Prasad, ACP confessed that the findings with respect to his conduct regarding the above stated incident as mentioned in the report of Mr. R.C. Thakur were true. SI Anuj Aggarwal further confessed that he had done the same for a consideration of Rs.25000/- which was given to SI Anuj Aggarwal by the family of Arihant Jain.

Thereafter, Mr. Mohd. Manzoor was discharged from the case and Arihant Jain has been made to stand trial as the prime accused by the new I.O. A case vide FIR No.542/99 u/s 218/109 IPC, PS/Amb. Ngr. dated 12.11.99 has also been registered against SI Anuj Aggarwal for fabricating false evidence, conspiring to destroy evidence and implicating an innocent person intentionally in a false case with a view to shield the real offender.

Ms Aggarwal

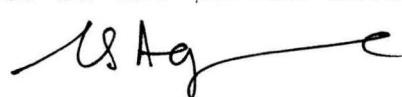
The above act on the part of SI Anuj Aggarwal, No.D/988 amounts to gross misconduct, negligence and unbecoming of a member of discipline force which renders him liable for departmental action punishable under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980."

5. In the meantime, the criminal case had also started. The applicant had preferred OA No.2031/2000. This Tribunal on 24.7.2001 directed the respondents to keep the departmental proceedings in abeyance till the disposal of the criminal case that was pending against the applicant. In compliance of the directions of this Tribunal the disciplinary proceedings against the applicant had been kept in abeyance.

6. It is not in dispute that the case registered against the applicant was with respect to the offences punishable under Section 218/109/120-B IPC before the learned Metropolitan Magistrate. The applicant was discharged on the ground that cognizance against the applicant was barred by limitation because the sanction in respect of the applicant has not been obtained within one year of the offence.

7. It is thereafter that the present proceedings are claimed to be initiated contending that once the criminal case against the applicant is over in accordance with the directions of this Tribunal, the respondents can restart the disciplinary proceedings.

8. On behalf of the applicant it has been contended that the applicant has wrongly been mentioned to be the person involved. Learned counsel

A handwritten signature in black ink, appearing to read "Ag".

read to us different orders and judgements of the learned Metropolitan Magistrate in this regard. He contended that in the trial Arihant Jain has been acquitted with respect to the offences punishable under Section 304-A of the IPC read with Section 279 of the IPC. He also contended that as already mentioned above, the learned Court even had discharged the applicant in the connected matter with respect to the offence punishable under Section 218/109/120-B IPC.

9. We have heard the parties' counsel. So far as the criminal case against the Arihant Jain with respect to the offences punishable under Section 304-A read with Section 279 of the IPC is concerned, a dispute was as to who was driving the vehicle at the relevant time. The learned Metropolitan Magistrate recorded:

"Now coming to the question who was driving the offending vehicle at the time of accident. As per the FIR and rukka Ex.PW1/A and Ex.PW11/A, accd. Mohd. Manzoor was driving the offending car at the time of accident as he was arrested by SI Anuj Aggarwal, the Investigating Officer. However, vigilance enquiry was conducted at the instructions of DCP (South) where it was found that accd. Arihant Jain was driving the car at the time of accident but when the prosecution witnesses were examined in the court, they have categorically denied the suggestions of the prosecution that it was Arihant Jain, a boy fattish in complexion, who was driving the car at the time of accident. The two eye witnesses of the accident Ct. Mohar Pal examined as PW11 and Chandreshwari PW12 have stated that the car was being driven by accd. Mohd. Manzoor at the time of accident. They have categorically and repeatedly denied the suggestions given by the prosecution that Arihant Jain was driving the car at the time of accident and he was replaced by Mohd. Manzoor by SI Anuj Aggarwal at the instance of parents of Arihant Jain.

18 Ag

They have also denied the suggestions that they had signed the documents prepared by SI Anuj Aggarwal of the accused Mohd. Manzoor in good faith and in the enquiry conducted by ACP they had correctly deposed the facts to the extent that accused Arihant Jain was driving the car at the time of accident. According to the prosecution these two witnesses were the witnesses of accident. Though there is one more witness PW8 Munir Ahmed who happens to be friend of Arihant Jain but he stated that he was not there at the time of accident. The testimony of the prosecution witnesses show that SI Virender Singh and others came on the spot after the accident had occurred and did not see the accident with their own eyes. Even they have stated that the whole incident was narrated by Ct. Mohar Pal PW11 to them and they had taken action at his instance only. Ct. Mohar Pal sticked to his stand taken earlier that offending vehicle was being driven by Mohd. Manzoor not by Arihant Jain at the time of accident.

It is pertinent to mention that an application was moved by SI Shish Ram of PS Ambedkar Nagar for recording the statement of Mohd. Manzoor under Section 164 Cr.P.C., after completion of enquiry but it was not pursued with the reasons best known to the prosecution. The purpose of the investigation is that a truth must come on record and it should not be the purpose of the investigation that the facts not favouring the prosecution be suppressed."

10. It is a settled principle in law that in a criminal case the proof required is beyond reasonable doubt before a person can be held guilty but in a departmental proceedings, the findings can be arrived at on preponderance of probabilities. Therefore, merely because if Arihant Jain had been acquitted by the learned Metropolitan Magistrate cannot be taken as a finding that applicant cannot be dealt with departmentally with respect to offences punishable under Section 218/109/120(B) IPC.

IS Ag

11. Learned counsel for the respondents referred to us the admissions made by the applicant in this regard but we make it clear that we are not delving into the said controversy because it can only embarrass either side.

12. As regards the discharge of the accused from the offences punishable under Section 218/109/120(B) IPC is concerned, the learned Metropolitan Magistrate has recorded:

"It is an admitted case of the prosecution that Anuj Aggarwal was posted as Sub Inspector in Delhi Police at PS Ambedkar Nagar and was discharging his duties as police officer being a public servant. Section 140 of Delhi Police Act gives protection to the police officials which provides that they cannot be prosecuted without obtaining sanction by Lt. Governor of Delhi. This section also provides limitation for obtaining sanction as one year. The alleged accident took place on the night of 22/23.10.99, the news was reported in daily 'Rashtriya Sahara' on 29.10.99. A fact finding enquiry report was submitted on 9.11.99 holding Anuj Aggarwal preparing incorrect record during the investigation of case FIR No.513/99. The case was registered on 12.11.99. The sanction for prosecution was accorded by the Competent Authority on 23.3.01. The charge sheet was filed on 25.5.01 after expiry of more than one year.

It was held in SI MANOJ PANT'S CASE 1999(1) JCC (DELHI)-I that Delhi Police Act is a special law and the provisions contained in a special Act must prevail over the provisions contained in the general law like Cr. P.C. Hence this Act being a special law, restrictions and limitations enumerated therein should apply to cases falling within the ambit of Section 140 of the Act. The Magistrate's order condoning the delay and further giving time to submit charge sheet was held to be illegal and of no consequences. It was held that since the sanction could not be obtained within one year of offence, the prosecution and framing of the charge be quashed.

This case also come within the ambit of the above case supra. In this case the sanction was not obtained within

MS Ag

one year of the offence as stipulated under Section 140 of the Act, so the cognizance against SI Anuj Aggarwal is also barred by limitation."

13. Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 provides as under:

"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.

14. A perusal of the findings of the learned Metropolitan Magistrate clearly reveal that the applicant firstly has not been acquitted. He has simply been discharged and secondly he has been discharged on a technical ground. Once such is the situation, and the applicant has been discharged on a technical ground that the sanction had not been granted/contemplated under Section 140 of the Delhi Police Act, 1978, there is no bar in initiation of the departmental proceedings.



15. As already referred and is mentioned at the risk of repetition, the proceedings had been kept in abeyance till the disposal of the criminal case. In the said matter the applicant has been discharged on technical grounds and therefore, we find no reason to accept the contention of the applicant that the departmental proceedings could not be initiated.

16. Resultantly, the OA being without merit must fail and is dismissed.

Naik

(S.K.Naik)
Member (A)

V.S. Aggarwal

(V.S. Aggarwal)
Chairman

/NSN/