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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-37/2003

New Delhi this the 28th day of April, 2003.

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman(J)
Hon'ble Sh. Govindan S. Tampi, Member(A)

1. Gurdev Singh,
(PIS No.28720302)
HC of Delhi Police
R/o 346, Police Colony,
Ashok Vihar, New Delhi.
2. Jasbir Singh,
(PIS No.28901792)
Constable of Delhi Police
R/o VPO-Nidana, Tehsil/Meham,
Distt. Rohtak, Haryana. Applicants

(By Advocate : Sh. Anil Singal)

Versus

1. Commssioner of Police,
New Delhi Range, PHQ,
I.P. Estate, New Delhi.
2. Dy. Commissioner of Police,
New Delhi distt.,
Parliament Street, New Delhi.
3. Insp.Palvinder Singh(EO),
Addl. SHO/Parliament Street,
New Delhi. Respondents

(By Advocate : Sh. Ajesh Luthra)

ORDER (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman(J)

In this case, the applicants have impugned the action taken by the respondents in initiating Departmental proceedings and for a direction to the respondents to reinstate them in service, after revoking their suspension with all consequential benefits, including promotion/seniority and arrears of pay.

2. Admittedly, the applicants had been prosecuted before the competent Criminal Court i.e.

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learned Special Judge, Delhi in CC No.85/99. By judgement of the learned Special Judge, Delhi dated 22.2.2002 (Annexure A-2), the applicants were granted benefit of doubt in the criminal case as it was held that the prosecution was not able to prove its case against both the accused and they were acquitted giving "benefit of doubt".

3. We have heard Sh. Anil Singal, learned counsel for applicants and Sh. Ajesh Luthra, learned counsel for respondents and have perused the pleadings on record and the various judgements relied upon by both the learned counsel.

4. Learned counsel for applicants has relied on the judgements of the Tribunal in Kamal Singh Vs. Government of N.C.T. & Ors. (OA No.1214/2000) decided on 22.12.2000 (Annexure A-4) and Shriniwas Vs. Commissioner of Police & Ors. (OA-1629/2002) decided on 13.3.2003, copy placed on record. He has also relied on the judgement of Hon'ble Delhi High Court in Kundan Lal Vs. The Delhi Administration, Delhi & Ors. (1976(1)SLR 133) decided on 10.4.1975. He has contended that it is not disputed by applicant No.1 that he had accepted an amount of Rs.30,000/- from one Sh.Amrik Singh as part payment of Rs.1 Lakh he had earlier given to the latter, for obtaining passport and getting his son immigrated to the United States of America. He, however, relying on the aforesaid judgements of the Tribunal and the Hon'ble High Court submits that this amount of Rs.30,000/-

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admittedly received by him from one Sh. Amrik Singh in front of the American Embassy, New Delhi, was not part of the bribe money. He has also contended that the charge levelled against him in the Departmental proceedings is the same as the charge levelled against the applicant before the Criminal Court for which they have been acquitted, giving the benefit of doubt. In the circumstances, he has contended that the order dated 26.12.2002 (Annexure A-1) initiating Departmental proceedings against the applicants should be quashed and set aside. By ad interim order dated 7.1.2003, ^{an order} the order had been granted by the Tribunal to the effect that while the respondents may continue with the Departmental proceedings they shall not pass final orders till they appear and are heard and that interim order has been continuing from time to time.

5. Both learned counsel have relied on the provision of Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980, issued under the provisions of the Delhi Police Act, 1978. Sh. Ajesh Luthra, learned counsel has submitted that none of the judgements relied upon by the applicants will assist them in the light of recent judgement dated 22.4.2002 of the Hon'ble Supreme Court in Secretary, Ministry of Home Affairs & Anr. Vs. Tahir Ali Khan Tyagi's case (Forces Law Judgements 2002 page 174), copy placed on record. In this case, the Hon'ble Supreme Court has dealt with the question whether a departmental proceeding can be initiated after acquittal in the Criminal proceeding and whether rule 12 of the Delhi Police (Punishment and Appeal) Rules,

1980 would stand as a bar of initiation of such a proceeding. This is also precisely the contention of the learned counsel for applicant that no departmental proceedings could have been initiated against the applicants under Rule 12 of the aforesaid Rules after their acquittal.

6. The Hon'ble Supreme Court in Tahir Ali Khan Tyagi's case (supra) has held as follows:-

"6. Departmental proceedings and criminal proceeding can run simultaneously and departmental proceeding can also be initiated even after acquittal in a criminal proceeding particularly when the standard of proof in a criminal proceeding is completely different from the standard of proof that is required to prove the delinquency of a government servant in a departmental proceeding, the former being one of proof beyond reasonable doubt, whereas the latter being one of preponderance of probability.

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 proceeding 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 petitioner filed. 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."

7. Taking into account the facts and circumstances of the case, we respectfully follow the

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judgement of the Hon'ble Supreme Court in Tahir Ali Khan Tyagi's case (supra) which judgement is fully applicable to the facts of the present case. We may also mention that the order of the Tribunal dated 13.3.2003 in Shriniwas's case (supra) can only be treated as per incuriam as it appears that the judgement of the Hon'ble Supreme Court dated 22.4.2002 in Tahir Ali Khan Tyagi's case had not been brought to its attention.

8. In the result, for the reasons mentioned above, we find no merit in this case. The OA accordingly fails and is dismissed. Interim order stands vacated. No order as to costs.

(Govindan S. Tampi)
Member(A)

(Smt. Lakshmi Swaminathan)
Vice-Chairman(J)