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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.75 OF 2003

New Delhi, this the 16th day of September, 2003

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

HC-Ali Qamar,
No.1570/PCR, North Zone,
PCR, Delhi
And r/o Q.No.B/7, Police Line,
Chandni Mahal, Delhi

....Applicant
(By Advocate: Sh. Balwant Sharma for Sh. Yogesh Sharma)

Versus

1. N.C.T. of Delhi through The Chief Secretary,
New Secretariat, Delhi.
2. The Commissioner of Police,
Delhi Police, Police Head Quarters,
I.P. Estate, New Delhi.
3. The Additional Commissioner of Police,
PCR & Communication : Delhi
Delhi Police, Police Headquarters,
I.P. Estate, New Delhi.
4. The Addl. Dy. Commissioner of Police,
Police Control Room, Delhi
Delhi Police, Police Headquarters,
I.P. Estate, New Delhi.

....Respondents
(By Advocate : Shri Ashwani Bhardwaj for Shri Rajan Sharma)

ORDER (ORAL)

SHRI JUSTICE V.S. AGGARWAL:-

The applicant is a Head Constable in Delhi Police. Departmental proceedings had been initiated against the applicant and the inquiry officer had framed the following charges:

"I have carefully gone through the DE file, representation of the defaulter and other material available on record. For the sake of natural justice and fair play, the defaulter was also heard in O.R. on 3.4.02, but he did not advance any fresh plea except what ever he has already stated in his representation. The charge

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of grave misconduct against the defaulter has been proved and he needs to be dealt with heavy hands but taking a lenient view I, Dr. P.S. Bhushan, Addl.DCP/PCR, Delhi hereby order that his two years approved service is forfeited permanently entailing reduction in his pay from Rs.4500/- to Rs.4330/- P.M. His suspension period is also decided as period not spent on duty for all intents and purposes."

2. On the basis of the material on record, the inquiry officer returned the findings that the charge stood proved. The disciplinary authority accepted the findings of the inquiry officer and after discussion of the matter imposed a penalty, as under:

"You, HC, Ali Qamar No.1570/PCR (PIS NO. 28740930) are hereby charged that while posted at Central Zone PCR you proceeded 2+2 days Casual Leave on 3-3-2000. On 6-3-2000 Sh. Qasim Rajja S/o Sh. Arvind Rajja R/o Village - Rashol Pur Dholari, Distt. Meerut (U.P.) reported at P.S. Jani, Distt. Meerut that he alongwith his cousin Salman Mehndi S/O Sharafat Hussain were getting constructed the wall of their House. In the meantime his neighbour Mohd. Rahbar and you (HC. Ali Qamar No.1570/PCR) came there and asked how they had been constructing the wall. An altercation took place and you asked Mohd. Rehbar to bring the gun and shoot them. Mohd. Rehbar went to his house and came back alongwith the gun. He fired on his brother with aim to kill him. The left arm of his brother sustained injury. A case Vide FIR No.43/2000 U/S 307/34 IPC P.S. Jani was registered and you (HC. Ali Qamar No. 1570/PCR) were arrested in the above case later on you were bailed out by the Court. You were placed under suspension. Vide order No. 3143-60/HAP (P-IV), PCR dated 31-3-2000 w.e.f. from the Dt. of arrest i.e. 6-3-2000. you were re-instated from suspension Vide order No. 11995 -12015/ HAP (P-IV) PCR, dated 16-10-2000 without prejudice to the criminal case pending against you."

3. The applicant preferred an appeal, which was rejected by the Additional Commissioner of Police on 25.10.2002.

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4. By virtue of the present application, the applicant assails the orders referred to above passed by the disciplinary authority as well as appellate authority.

5. Learned counsel for the applicant has raised the following pleas for consideration: (a) the applicant had faced a criminal trial and has been acquitted by the Court pertaining to the same facts and, therefore, disciplinary proceedings could not be initiated against the applicant and (b) in any case, it was a matter in which there was no evidence before the inquiry officer and the disciplinary authority to hold the applicant to have derelicted duty in the disciplinary proceedings.

6. With regard to the first plea, reliance is placed on Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980. The said Rule reads as under:-

“12. Action following judicial acquittal.- When a police officer has been tried and acquitted by a criminal court, he should 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 concerned; or

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(d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings is available.

(e)....."

A perusal of Rule 12 referred to above clearly shows that ordinarily 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. However, Rule 12 carves out five exceptions to the above cited principle and one of them is mentioned in Rule 12 (b) of the Rules. If the Deputy Commissioner of Police is of the opinion that the prosecution witnesses have been won over, in that event, the departmental action can be initiated.

7. In the present case before us, Additional Commissioner of Police had on 19.7.2001 recorded specifically that the witnesses are stated to have been won over by the applicant and it is, therefore, that the disciplinary proceedings had been initiated. Once such is the situation and the fact had been recorded in an unambiguous term, we have no hesitation to reject the plea of the learned counsel of the applicant.

8. However, pertaining to the second argument, we briefly would refer to certain principles in law. It is not being disputed by either of the counsel.

9. In disciplinary proceedings, this Tribunal will not sit as a Court of appeal. Even if the

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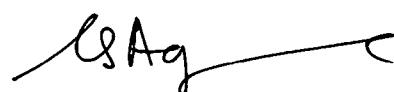
Tribunal was to come up with different findings on perusal of evidence still the findings of the proceedings arrived at by the inquiry officer/disciplinary authority will not be upset. However, there is a well settled exception to this general principle. The same is that if the findings are erroneous or perverse, no reasonable person would come to such a finding or where there is no evidence on record, in that event, such a finding cannot be sustained.

10. It is this exception, which is being highlighted on behalf of the applicant. The inquiry officer on perusal of the evidence had recorded:

"In view of above noted statements of PWS/DWS and the evidence of circumstances. The PWS 2 & 3 and the four DWS are saying that Ali Qamar (The Delinquent HC) was not present on the spot at the time of occurrence and they did not heard that Ali Qamar asked his brother to bring gun and shoot them. The eye witness are totally supporting the delinquent HC. However, it has been proved from PWS 5 & 6 that he was on leave and present in his Village the dt. & Time of the occurrence. It is not possible to remain absent from the spot/place of occurrence while his younger brother was involved in a quarrel.

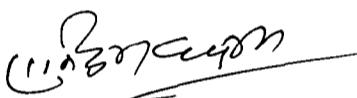
It is also a fact that on the same day of quarrel he was arrested by the I.O. of the case. Therefore, it is provedD.E. that the HC, was in his Village and in touch of the said quarrel. Therefore, the charge levelled against HC, Ali Qamar No.1570/PCR is proved."

11. Perusal of the above said facts clearly show that even before the inquiry officer the alleged eye witnesses have stated that the applicant was not present at the site on the date of incidence nor they

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had stated that the applicant has asked his brother to bring gun and shoot them. The inquiry officer as well as the disciplinary authority drew inference on basis of the facts that the applicant was on leave and was present in the village. Even if it is so, it is not a pointer towards dereliction of duty pertaining to the role of the applicant that he asked his brother to bring gun and shoot the witnesses. We have no hesitation to conclude that in the facts of the present case, no reasonable person would come to such a findings. They are totally based on no evidence.

12. Resultantly, we allow the present OA and quash the impugned orders. The applicant would be entitled to the consequential benefits.



(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER



(V.S. AGGARWAL)
CHAIRMAN

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