

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (Civil) No. 986/2001**

% Reserved on: November 10, 2009

Decided on: December 7, 2009

DILWAR SINGH Petitioner

Through: Ms. Avnish Ahlawat, Advocate.

versus

COMMISSIONER OF POLICE & ANR. Respondents

Through: Mr. V.K. Tandon, Advocate.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

MUKTA GUPTA, J.

1. The Petitioner by way of present petition challenges the impugned order dated 20th September, 2000 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 1533/1997 wherein he had

challenged the rejection of his representation for reinstatement and sought reinstatement with all consequential benefits.

2. The facts leading to the dismissal of the Petitioner are that on 22nd March, 1986 the Petitioner trespassed into the house of his fellow colleague Head Constable Sultan Singh in an intoxicated state and in the absence of the said Head Constable tried to outrage the modesty of his wife Smt. Meera Bai at about 9.45 a.m. The incident was reported by Head Constable Sultan Singh and his wife Smt. Meera Bai to Inspector Roop Chand and Inspector Prem Singh resulting in the registration of FIR No. 124/1986. The Petitioner faced trial in the said case and was convicted. On appeal the Additional Sessions judge acquitted the Petitioner on 3.11.1995 giving him the benefit of doubt, primarily for the reason that the FIR was registered belatedly on 2.4.1986.

3. Simultaneously departmental proceedings were initiated against the Petitioner wherein the Petitioner was dismissed from service vide order dated 14th January, 1987.

4. After the acquittal in the criminal case, the Petitioner made a representation to the authorities to reinstate him in service, contending that he was wrongly dismissed from the post. The representation was not decided by the Respondents. The Petitioner filed O.A. No. 2004/1996 before the Tribunal

which was disposed of with a direction to the Respondents to pass a speaking order on the representation of the Petitioner for reinstatement after he had been acquitted in the criminal case. The Petitioner's representation was rejected. Challenging the same the Petitioner filed O.A. No. 1533/1997 which was dismissed vide order dated 20th September, 2000 which is the impugned order before us.

5. The Petitioner has filed the present writ petition primarily on the two grounds. Firstly, that having been acquitted in the criminal case the Petitioner could not have been dismissed in the departmental proceedings as the charges in the two were similar. The Petitioner in this regard relies on the decision rendered by the Hon'ble Supreme Court in the case of ***Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr., (1999) 3 SCC 679***. The second ground taken by the Petitioner was that Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 debars holding of a departmental inquiry for the same charge of which the Petitioner had been acquitted.

6. We have heard learned counsel for the parties and perused the records. It is well settled law that the departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately. The judgment in the case of ***Capt M. Paul Anthony (Supra)*** itself states:

“(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.”

It was further held in the said case that if departmental proceedings and criminal cases are based on identical and similar set of facts and involve a complicated question of law and fact it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. It was also held that the departmental proceedings cannot be unduly delayed.

7. In *NOIDA Entrepreneurs Association v. NOIDA, AIR (2007) SC 1161*

it was held:

“11. The purpose of departmental enquiry and of prosecution is two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it

should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act, 1872 (in short the 'Evidence Act'). Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the department enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances."

8. In *Allahabad District Cooperative Bank Ltd., Allahabad v. Vidhya Varidh Mishra*, 2004 (6) SCC 482 in para 12 it was held that:

"Mr. Rao submitted that the respondent had been exonerated by the criminal court. He submitted that the termination was only on the basis of his conviction. He submitted that as his conviction is set aside, the courts below were right in reinstating the respondent. We are unable to accede to this submission. The termination was pursuant to a disciplinary inquiry. It is settled law that in a disciplinary inquiry a conclusion different from that arrived at by a criminal court, may be arrived at. The strict burden of proof required to establish guilt in a criminal court is not required in disciplinary proceeding. The respondent had not claimed that the disciplinary proceedings were not conducted fairly. As the termination was based on findings of the Disciplinary Committee, the fact that the Appellate Court exonerated the respondent was of no consequence."

9. The second contention of the Petitioner that the departmental proceedings cannot be held against him, he could not be dealt departmentally

having been acquitted in the criminal case in view of Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 also holds no ground. Rule 12 of the Delhi Police (Punishment and Appeal) 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.”

That from a bare reading of Rule 12 it is evident that it deals with a punishment after an acquittal. That is not the situation in the present case where the departmental punishment was imposed before the acquittal. Moreover, where a criminal charge falls on technical grounds there is no bar to proceed against a delinquent departmentally on the same charge. In the present case the Petitioner has been acquitted by the Additional Session Judge

on the ground that there was a delay in registration of the FIR and has thus been granted benefit of doubt.

10. The Petitioner was in the present case dealt with departmentally and dismissed from service on 14.1.1987. He has been acquitted subsequently in appeal on 3.11.1995. The standard of proof being different in the two, the delay in registration of FIR resulting in acquittal would not be valid ground to absolve the delinquent of disciplinary proceedings as well. We may also note that before the Tribunal the prayer was to quash the order dated 13th November, 1996 and all other earlier orders. There was no specific challenge to the order of dismissal dated 14th January, 1987 or the findings of the disciplinary proceedings.

11. We find no infirmity in the impugned order dated 29th September, 2000 passed by the Central Administrative Tribunal.

12. Hence the present writ petition is dismissed. No order as to costs.

MUKTA GUPTA, J

MADAN B. LOKUR, J

DECEMBER 7, 2009

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