

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No-3291/2014

New Delhi, this the 23rd day of January, 2020



**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)**

1. Constable Nihal Singh, Age 48 years
No. 7938/ DAP (PS No. 28881164)
S/o late Sh. Bhalley Singh
R/o C-694, LIG Flat East Colony Road
Sadra Delhi, P.S. Mansarovar Park, Delhi.
2. HC Mahesh Kumar, Age 50 years
No. 7043/DAP PIS no. 28850681
S/o Shri Akhan Khirwar
R/o Flat No. 247, Point No. 1 & 2nd Phase
Netaji Subhash Apartment
Sector -13, Dwarka, Delhi.
3. HC Ramesh Chander, Age 50 years
No. 7132/DAP(P) (PIS No. 28821722)
S/o Sh. Phool Singh
R/o Khatiwas, PS Beari
Distt. Jhajjar, at present at Delhi.
4. Constable Subhash, Age 45 years
No. 7291/DAP (PIS No. 28900997)
S/o Sh. Kishan Singh
R/o Village Silana, PS Charproli
Distt. Bagpat (UP). ... Applicants

(through Sh. Gyanendra Singh)

Versus

1. The Govt. of NCT of Delhi
Through its Chief Secretary
New Secretariat, IP Estate, New Delhi.

2. The Commissioner of Police
PHQs, MSO Building
IP Estate, ITO, New Delhi-110002.

3. The Deputy Commissioner of Police
3rd Bn. DAP, New Delhi. ... Respondents
(through Sh. Amit Anand)



ORDER(ORAL)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman

The applicants, 1 and 4, are Constables and applicants 2 and 3 are Head Constables, in the Delhi Police. Disciplinary proceedings were initiated against them, by issuing charge memo dated 19.09.2007. It was mentioned that the applicants were part of a police party, to escort one Sh. Sakil alias Kalia, an under trial prisoner, lodged in Tihar Jail, for production in a Court at Patiala, Punjab, through Dadar Express Train, on 29.06.2007. It was alleged that, on account of the negligence on the part of the applicants, the under trial prisoner escaped from the toilet by removing the glass pane. The charge further reveals that Sakil was a dreaded criminal, who was facing the charges of murder, burglary, extortion, robbery and commissions of acts under Arms Act and though, he had notorious history, and despite that, the applicants did not exhibit required amount of care and caution.

2. The explanation submitted by the applicants was not found to be satisfactory and accordingly, a departmental inquiry was

conducted. The charge levelled against the applicants was found proved. The Disciplinary Authority (DA) passed an order dated 03.09.2008, imposing the punishment of forfeiture of ten years of approved service of the applicants, on permanent basis. In the appeal filed by them, the Appellate Authority passed an order dated 16.10.2009 reducing the punishment to the one, of forfeiture of approved service of five years, on permanent basis.



3. The applicants filed four OAs in the year 2010, challenging the order of punishment, as modified by the Appellate Authority. The OAs were dismissed by this Tribunal, on 19.03.2011. It is stated that a criminal case was instituted against the applicants on the same charges and they were acquitted by the Trial Court, through judgment dated 26.05.2012. It is also stated that the appeal preferred by the State was dismissed by the Sessions Judge on 11.07.2013. In view of these developments, the applicants submitted representation dated 02.05.2013 to the DA, with a request to revoke the punishment, imposed against them. According to the applicants, the allegations contained in the criminal case on the one hand, and the disciplinary proceedings on the other, were the same and, in view of the judgment rendered by a Full Bench of this Tribunal in ***Sukhdev Singh and Anr. vs. GNCTD & Ors.*** in OA No. 2816/2008 dated 18.02.2011, the respondents were under an obligation to recall the punishment, once they were acquitted in the criminal case.

4. Through an order dated 16.12.2013, the DA refused to modify the order of punishment and rejected the representation made by the applicants. This OA is filed challenging the said order. The applicants contend that, once the criminal court has acquitted them for the same charge, as was framed in the departmental proceedings, the DA was under an obligation to revisit it, as mandated by the Full Bench of this Tribunal.



5. The respondents filed counter affidavit, opposing the OA. It is stated that the order of punishment passed against the applicants assumed finality with the dismissal of the OAs and that the representation submitted by them, based upon the acquittal in the criminal court was treated in accordance with the Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980, and that no exception can be taken to the impugned order.

6. We heard Sh. Gyanendra Singh, learned counsel for the applicants and Sh. Amit Anand, learned counsel for the respondents.

7. The charge framed against the applicants was, no doubt, serious in nature. A dreaded criminal escaped from the custody of the applicants while in transit to court at Patiala. The disciplinary proceedings on the one hand, and the criminal case on the other, were initiated against them. The disciplinary proceedings ended up in imposition of the punishment of forfeiture of ten years of approved service on permanent basis, on each of them. The Appellate

Authority reduced the same to half, i.e., five years. The OAs filed by the applicants in the year 2010 were dismissed on 29.03.2011, and thereby, the order of punishment as modified in the appeal, assumed finality.



8. The criminal case ended up in acquittal on 26.05.2012 and the appeal was also dismissed on 11.07.2013. That naturally gave right to rise to certain rights, in favour of the applicants. The Full Bench of this Tribunal in OA No. 2816/2008, held that whenever the same set of facts has given rise to initiation of disciplinary proceedings on the one hand, and institution of criminal case on the other, the result in the criminal case must be taken into account by the DA.

9. Here again, two situations emerge. In case, the acquittal in the criminal case is earlier in point of time, Rule 12 of the Rules gets attracted. Despite the acquittal, the DA shall be entitled to proceed to impose the punishment depending upon the nature of acquittal. If, on the other hand, the punishment was already imposed and acquittal came later, then the order of punishment, needs to be revisited. The instant case falls into the second category. On a joint representation made by the applicants, consequent upon their acquittal, the DA passed the impugned order dated 13.06.2013, which reads as under:

“ A Joint Representation addressed to C.P., Delhi submitted by HC Mahesh, No. 7043/DAP (Now 4193/DAP), HC Ramesh, No. 7132/DAP (Now 1696/PCR, Constable



Subhash, No. 7291/DAP (Now 1573/DAP) and Constable Nihal Singh, No. 7938/DAP (Now 304/DAP) against the reduced/modified punishment of forfeiture of ten years approved service permanently to that of forfeiture of five years approved service permanently, in an appeal filed by them, vide order No. F.XVI/97-100/2008/513-17/P.Sec.Spl. CP(AP) dated 16.10.2009 and on the basis of Acquittal by the Court vide its judgment dated 26.05.2012 in case FIR No. 135 dated 29.06.2007 u/s 223/224 IPC, P.S. GRP Ambala Cantt., has been considered but the same could not be acceded to as all the representationists have already exhausted the channel of appeal and Hon'ble Tribunal as well and even their case has also been examined under rule 12 of Delhi Police (Punishment & Appeal) Rules, 1980, as such, their present representation is not maintainable.”

10. Substantial part of it is, in the form of a preamble. The underlined portion of the order, can be said to be the one, referable to the consideration of the representation. This hardly constituted any valid consideration. The DA was under an obligation to take note of the charge in the criminal case on the one hand, and the allegations in the disciplinary proceedings on the other, and to verify whether there is any overlapping or similarity, and if so, the result of the acquittal. If his finding is that the charges in both the proceedings are different, he could have expressed a view that the judgment of the Full Bench does not apply to the facts of the case. If, on the other hand, the allegations are similar, there existed an occasion for him to revisit the order.

11. Learned counsel for the applicants has placed before us, a copy of the order dated 26.12.2019, passed by the Deputy Commissioner of Delhi Police. There also, a punishment imposed



against the police officials assumed finality, with the dismissal of the OA filed challenging the order of punishment. However, on discharge of the officials in the criminal case, the DA has set aside the punishment and the period of suspension, was treated, as the one, spent on duty. For all practical purposes, the effect of punishment was completely wiped out.

12. Two options are open to us. The first is to set aside the impugned order and to remand the matter to the DA for fresh consideration and disposal. The second is, to take the entire gamut of the case into account, and to give a quietus to it. The proceedings started way back in the year 2007. Several rounds of litigation in respect of disciplinary proceedings as well as the criminal proceedings have taken place. The Appellate Authority has already extended the same benefit to the applicants by slashing the punishment imposed by the DA, to half. The criminal, who escaped while on journey is said to have been apprehended within two days and that he was killed in an encounter thereafter. In a case of almost similar nature, the DA has revoked the punishment imposed earlier, solely on the basis of the discharge of the employee, in the criminal case.

13. We are of the view that, ends of justice would be met, in case the punishment imposed against the applicants is treated as one on temporary basis and not permanent basis. When we indicated this,

learned counsel for the applicants consulted his clients and did not express any reservations about it.

14. We, therefore, partly allow the OA, setting aside the impugned order and directing that the punishment imposed against the applicants, shall stand modified to the one of forfeiture of five years of approved service on temporary basis and not on permanent basis. The resultant benefits shall be worked out for the applicants, but they shall not be entitled to be paid any arrears of wages upto date of this order. The exercise shall be completed within two months from the date of receipt of a copy of this order. There shall be no order as to costs.



(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/ns/