

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No. 1012/2020

This the 14th day of January, 2021

(Through Video Conferencing)

**Hon'ble Mr. A. K. Bishnoi, Member (A)
Hon'ble Mr. R.N. Singh, Member (J)**



Head Constable Omvir
Aged 49 years, Group C
S/o Sh. Charan Singh
Working as Head constable (Exe.) in Delhi Police
R/o H.No. 22, Gali No. 5, Kailash Puram II
Ghaziabad (UP). ... Applicant

(through Sh. Yogesh Sharma)

Versus

1. Govt. of NCT of Delhi through
The Chief Secretary
IP Estate, New Delhi.
2. The Commissioner of Police
Delhi Police Headquarter
ITO, New Delhi.
3. The Additional Commissioner of Police (Operations)
Delhi Police Head Quarter
IP Estate, New Delhi.
4. The Deputy Commissioner of Police
5th Bn. DAP, Delhi.
5. The Deputy Commissioner of Police
Police Control Room, Delhi. ... Respondents

(through Sh. Amit Yadav)

ORDER (Oral)**Hon'ble Mr. R. N. Singh, Member (J):**

The applicant, who is working as Head Constable under the respondents, has filed the present OA under Section 19 of Administrative Tribunals Act, 1985 to challenge the order dated 06.03.2020 (Annexure A/1), order dated 24.01.2015 (Annexure A/2) and Appellate Order dated 17.08.2015 (Annexure A/3). It is contended on behalf of the applicant that the applicant was appointed in Delhi Police to the post of Constable (Executive) on 20.01.1993 and subsequently, he was promoted to the post of Head Constable and since then, has been working as such. In the year 2009, he was implicated in case FIR No. 218/09 registered under Section 302/34, 201 IPC with Police Station Aarnia, District Bulandshar and he was arrested in the said case FIR. The applicant was suspended w.e.f. 28.10.2009 and subsequently, on being released on bail, the suspension of the applicant was revoked by the respondents vide order dated 22.04.2010. The respondents passed order dated 06.01.2011 to initiate disciplinary proceeding against the applicant on the same charges as that in the aforesaid case FIR. The following charges were framed:

“I, Insp. Satish Kumar Insp. Admn./North East Zone/PCR(EO) hereby charge you, Const. Ombir Singh, No. 2617/PCR (2165/E) that while posted in East District (PS Geeta Colony) you were involved in a criminal case FIR No. 218/09 dated 24.7.2009 u/s 302/201/34 IPS PS Arniya District Buland Shahar (UP) and arrested in this case and alter on released on bail. There are also clear instructions of Govt. of India that D.E. proceedings can be conducted in respect of individuals, who are facing criminal charges as Para 10 of Standing order No. 125/08 deals with parallel D.E. when court cases are pending.

The above act on the part of Const. Ombir Singh, No. 2617/PCR (2165/E) amounts to gross misconduct, indiscipline and unbecoming of Police Official, which renders him liable to be dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980.”



2. The Inquiry Officer submitted his finding/report dated 22.12.2014 and has observed therein as under:

“In view of circumstances the charge levelled against the delinquent stands proved to the extent that he was arrested in case FIR No. 218/09 dated 24.7.2009 u/s 302/201/34IPC. PS Arniya, Distt. Buland Shahar (UP) and released on bail. However, the involvement of the delinquent in the above said case could not be ascertained from the statement of PWs or other relevant record available on DE file, as there are various contradiction between PW-1 and court witness, which were recorded by the EO as well as before the sessions court of Bulandshahar (UP), which gives benefit of doubt to the delinquent.”

3. The Disciplinary Authority by issuing disagreement note proved the charges of involvement of the applicant in the aforesaid FIR and inflicted the penalty of forfeiture of five years of approved service permanently in the time scale of pay with immediate effect, entailing proportionate reduction in his pay, vide order dated 24.01.2015 (Annexure A/2). The appeal preferred by the applicant was rejected by the Appellate Authority vide order dated 17.08.2015 (Annexure A/3). The applicant was acquitted by the learned Session Court vide Order/Judgment dated 11.06.2018. The applicant on being acquitted by the learned Session Court has preferred a representation dated 11.03.2019 (Annexure A/7) requesting the respondents to revisit the order of penalty. However, vide the impugned

order dated 06.03.2020 (Annexure A/1), the request of the applicant has been rejected by the respondents.



4. Sh. Yogesh Sharma, learned counsel for the applicant argues that the impugned order dated 06.03.2020 is bad in the eyes of law keeping in view the provisions of law, Rule 12 of Delhi Police (Discipline and Appeal) Rules, 1980 and the Order/Judgment of the Full Bench of this Tribunal in the case of ***Sukhdev Singh, ASI and Anr. vs. Govt. of NCT of Delhi through Commissioner of Police***, reported in 2011 SCC Online CAT 4238. He further argues that the impugned order dated 06.03.2020 is result of non-application of mind by the authority concerned and the respondents were duty bound to consider the representation of the applicant for revisiting the order of penalty keeping in view the provisions of Rule 12 of Delhi Police (Discipline and Appeal) Rules, 1980 and the judgment of this Tribunal in ***Sukhdev Singh*** (supra). He further argues that the judgment of ***Sukhdev Singh*** (supra) has been followed by this Tribunal in catena of cases including in Order/Judgment dated 04.11.2019 in OA No. 2748/2014 titled ***Sanjay Verma vs Delhi Police and others*** (Annexure A/8). In the case of ***Sanjay Verma***, the applicant was inflicted the penalty of dismissal from service and on an appeal, the said penalty was affirmed by the respondents. On being acquitted from the competent Court of law in the criminal trial, the applicant therein has preferred a representation to the competent authority for revisiting the order of penalty. However, the same was refused by the respondents and in that background, the applicant therein has approached this Tribunal. After



taking into consideration the Rule 12 of the Delhi Police (Discipline and Appeal) Rules, 1980, the judgment of a Division Bench of Hon'ble High Court of Delhi in ***George N.S. vs Commissioner of Police***, reported in 183 (2011) Delhi Law Times 226 (DB), and the judgment of Full Bench of this Tribunal in ***Sukhdev Singh*** (supra) in the case of ***Sanjay Verma*** (supra), this Tribunal in paras 16 to 18 observed as under:

“16. In the judgment of the Hon'ble High Court in George N.S. (supra), it is ruled that a delinquent officer cannot be punished departmentally if on the same charge, he has been acquitted by a Criminal Court in view of the provisions of rule 12 of Delhi Police (Punishment and Appeal) Rules 1980. We may also refer to a judgment of Full Bench of this Tribunal in ***Sukhdev Singh, ASI & Anr. Vs. Govt. of NCT of Delhi through Commissioner of Police***, reported in 2011 SCC Online CAT 4238. In para 9 thereof, this Tribunal held as under:

“9. In view of the discussion made above, we hold that there is no bar, express or implied, in the Rules of 1980 for holding simultaneous criminal and departmental proceedings. However, in case departmental proceedings may culminate into an order of punishment earlier in point of time than that of the verdict in criminal case, and the acquittal is such that departmental proceedings cannot be held for the reasons as mentioned in rule 12, the order of punishment shall be re-visited. The judicial verdict would have precedence over decision in departmental proceedings and the subordinate rank would be restored to his status with consequential reliefs.”

17. In view of the facts involved and judgment of the Hon'ble High Court in George N.S. (supra) and also the judgment of Full Bench of this Tribunal in Sukhdev Singh (supra), we are of the considered view that on acquittal of the applicant vide order/judgment dated 4.03.2014 in case FIR No.399/01, the respondents were duty bound to revisit the impugned disciplinary and appellate orders dated 12.04.2013 and 14.08.2013 and, it is incorrect at their end, to hold in their letter dated 29.04.2014 that the representation dated 24.03.2014 is not maintainable.



18. In view of the aforesaid, the OA is partly allowed with direction to the respondents to consider the applicant's aforesaid representation dated 24.03.2014 (Annexure 'H') afresh keeping in view the judgment of the Hon'ble High Court in *George N.S.* (supra) and the judgment of the Full Bench of this Tribunal in *Sukhdev Singh* (supra) and pass appropriate speaking order within 10 weeks of receipt of a certified copy of this order. There shall be no order as to costs."

5. In response to the notice from this Tribunal, the respondents have filed counter reply. The applicant has filed rejoinder.

6. Sh. Amit Yadav, learned counsel for the respondents with the assistance of the counter reply filed on behalf of the respondents vehemently opposed the prayer made by the applicant. However, we have found that in the impugned order, the respondents have specifically submitted that they will not consider the representation of the applicant keeping in view the judgment of the Full Bench of this Tribunal in *Sukhdev Singh* (supra).

7. We have heard the learned counsels for the parties at length. We have also perused the pleadings on record as well as the judgments referred to hereinabove.

8. In view of the facts and circumstances, we are of the considered view that the respondents are required to consider the representation dated 11.03.2019 (annexure A/7) of the applicant for revisiting the order of penalty keeping in view the judgments of this Tribunal in *Sukhdev Singh* (supra) and *George N.S.* (supra). Accordingly, the impugned order dated 06.03.2020 is quashed and set aside with direction to the respondents to



consider the representation dated 11.03.2019 (Annexure A/7) of the applicant keeping in view the judgment of the Hon'ble Full Bench of this Tribunal in ***Sukhdev Singh*** (supra) and pass a fresh reasoned and speaking order as expeditiously as possible and in any case, within eight weeks from the date of receipt of copy of this Order. The OA is disposed of in aforesaid terms. No order as to costs.

(R.N. Singh)
Member (J)

(A. K. Bishnoi)
Member (A)

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