

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No.100/1090/2013

New Delhi this 9th day of August, 2016

**Hon'ble Mr. Justice M. S. Sullar, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)**

Chand Ram,
Const., 1430/DAP (PIS No. 28840864),
Age-50 years,
S/o Shri Mange Ram,
R/o Village Neelwal, PO-Tikrikakan,
PS Nangloi, District – West Delhi.Applicant

(Argued by: Mr. Sachin Chauhan, Advocate)

Versus

1. Govt. of NCTD through
The Commissioner of Police,
Police Headquarters, I.P. Estate,
M.S.O Building, New Delhi.
2. The Special Commissioner of Police,
Armed Police, Delhi,
Police Headquarters, I.P. Estate,
M.S.O Building, New Delhi.
3. The Dy. Commissioner of Police,
1st BN. DAP : Delhi,
Police Headquarters, MSO Building,
I.P. Estate, New Delhi.Respondents

(By Advocate : Mr. Vijay Pandita)

ORDER (ORAL)

Justice M.S. Sullar, Member (J)

The sum and substance and material, exposed from the record, relevant for deciding the instant Original Application (OA), filed by applicant, Ct. Chand Ram Sehrawat S/o Shri Mange Ram, is that, on 20.04.2010, complainant

Siddharth Khanna approached Anti Corruption Branch (ACB) and filed the complaint, alleging therein, that applicant had demanded Rs.3000/- on 04.04.2010 and subsequently, took Rs.2000/- from him on 06.04.2010 to settle a dispute of minor accident/altercation with a tempo driver. Thus, he was stated to have committed grave misconduct during the course of his employment.

2. As a consequence thereof, the applicant was dealt departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter to be referred as "D.P. Rules"). The Departmental Enquiry (DE) was initiated against him and Enquiry Officer (EO) was appointed vide order dated 23.03.2011 (Annexure A-1) by the competent authority. After following the due procedure of enquiry, the following summary of allegation was served on him (applicant):-

"I, Inspector Nirmala Devi hereby charge you ct. Chand Ram No.1697/N, now 1430/DAP (PIS No.28840864) that on 20.04.2010, one Shri Siddharth Khanna S/o Shri O.P. Khanna R/o C-2/47C, Lawrence Road, Delhi-110035 approached AC Branch and filed a complaint against you Ct. Chand Ram Sehrawat posted at PS Roop Nagar, North District, alleging therein that you Ct. Chand Ram Sehrawat had demanded Rs.3000/- on 04.04.2010 and subsequently took Rs.2000/- from him on 06.04.2010 to settle a dispute of minor accident/altercation with a tempo driver and not to impound his vehicle and he (complainant) was called on 20.04.2011 with the remaining Rs.1000/-. On this, a trap was laid by AC Branch officials and you Ct. Chand Ram Sehrawat No.1697/N, now 1430/DAP (PIS No.28840864) posted in PS Roop Nagar, North District, Delhi were caught red handed while demanding, accepting and obtaining a bribe of Rs.1000/- from the complainant and a case FIR No.17/10 u/s 7/13 POC Act dated 21.04.2010 PS AC Branch, GNCT, Delhi was registered against you. You were also arrested in said case.

The above acts on the part of you ct. Chand Ram No.1697/N, now 1430/DAP (PIS No.28840864) amounts to gross misconduct, dereliction in discharge of your official duty, lack of integrity, violation of rule 3(i)(ii) of CCS (Conduct) Rules, 1964 and unbecoming of a

Police Officer which renders you to be punished departmentally under the provisions of Delhi Police (Punishment and Appeal) Rules, 1980".

3. At the same time, a criminal case was also registered against the applicant on accusation of having committed the offences punishable under Sections 7/13 of the Prevention of Corruption Act (POC), 1988 vide FIR No.17/2010 by the police of Police Station, ACB, New Delhi.

4. Subsequently, the EO recorded and evaluated evidence of the parties in the DE, and came to a definite conclusion that the charges against the applicant stand proved, vide impugned enquiry report dated 03.03.2012 conveyed to the applicant vide memo dated 16.03.2012 (Annexure A-4).

5. Having completed all the codal formalities, tentatively agreeing with the findings of the EO and taking into consideration, the entire evidence on record, a penalty of dismissal from service was imposed on the applicant, vide impugned order dated 03.05.2012 (Annexure A-2) by the Disciplinary Authority (DA). The order of punishment was upheld by way of an order dated 23/27.02.2013 (Annexure A-3) by the Appellate Authority (AA).

6. Aggrieved thereby, the applicant has preferred the instant OA, challenging the impugned departmental enquiry proceedings on variety of grounds mentioned therein, terming the impugned orders as vitiated, arbitrary, illegal, mala fide and against the statutory rules & principles of natural justice. On the basis of the aforesaid grounds, the

applicant has sought quashing of the impugned orders in the manner indicated hereinabove, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

7. Refuting the claim of the applicant, the respondents filed the reply, stoutly denying all the allegations and grounds contained in the OA and prayed for its dismissal.

8. Controverting the pleadings in the reply and reiterating the grounds contained in the OA, the applicant filed his rejoinder. That is how we are seized of the matter.

9. During the pendency of this OA, the Special Judge, ACB, Tis Hazari Courts, Delhi, has acquitted the applicant vide judgment of acquittal dated 24.10.2013 (Annexure R-1). The judgment of acquittal was stated to have attained the finality.

10. At the very outset, inviting our attention towards the judgment of acquittal dated 24.10.2013 (Annexure R-1) of the criminal court, the learned counsel for the applicant has vehemently urged, that since the applicant has already been acquitted by the criminal court, so the impugned punishment awarded to him, in the departmental enquiry proceedings, deserves to be reviewed and revisited, in terms of Rule 12 of the D.P. Rules. Hence, he prayed that the matter be remitted back to the Disciplinary Authority to consider this aspect of the matter.

11. Per contra, learned counsel for the respondents, although has acknowledged the factual matrix, but opposed the prayer of the applicant and submitted, that he cannot take the benefit of subsequent acquittal by the Criminal Court vis-à-vis his impugned punishment orders in departmental proceedings.

12. After hearing the learned counsel for the parties, having gone through the relevant record with their valuable help, legal provision and considering the entire matter, we are of the firm opinion that the instant OA deserves to be partly allowed, for the reasons mentioned hereinabove.

13. Ex-facie, the argument of the learned counsel for the applicant that the order of punishment passed against the applicant in departmental proceedings, has to be revisited in view of his acquittal in the criminal case, has considerable force.

14. The contention of learned counsel for respondents to the contrary that applicant cannot claim the benefit of subsequent acquittal by the Criminal Court, in the garb of Rule 12 of D.P. Rules, is not legally tenable.

15. As is evident from the record that the indicated penalty was imposed on the applicant vide impugned order dated 03.05.2012 (Annexure A-2) passed by the DA and his appeal was rejected on 23/27.02.2013 (Annexure A-3) by the AA. It is not a matter of dispute, that the applicant has already

been acquitted from the criminal charge in question, vide judgment of acquittal dated 24.10.2013 (Annexure R-1), by the Criminal Court, Delhi.

16. In this context, Rule 12 of the D.P. Rules envisage that 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, the criminal charge has failed on technical grounds or in the opinion of the court or on the Deputy Commissioner of Police, the prosecution witnesses have been won over or the court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned, or the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on different charge or the additional evidence for departmental proceedings is available.

17. Thus, Rule 12 is a statutory beneficial rule in favour of the employees. This rule has to be harmoniously construed and its import and scope cannot be read in its narrow sense, so as to deny its benefit to the applicant. The dates of decisions either in the departmental enquiry or in the criminal case depends upon variety of circumstances, beyond the control of the applicant. He cannot be blamed in this

regard. Moreover, he is only claiming reconsideration of his case in view of his acquittal in criminal case and nothing else.

18. Therefore, the case of departmental enquiry shall have to be revisited on account of his acquittal by the criminal court, in terms of Rule 12 of D.P. Rules in view of the ratio of law laid down by Full Bench judgment of this Tribunal in **OA No.2816/2008** decided on 18.02.2011 titled as ***Sukhdev Singh and Another Vs. Govt. of NCT of Delhi and Others***

wherein in para 9 it was 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 of the 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 revisited. The judicial verdict would have precedence over decision in departmental proceedings and the subordinate rank would be restored to his status with consequential reliefs”.

19. Again, same view was reiterated in **OA No.2493/2014 titled as Constable Acheta Nand Vs. Govt. of NCTD and Others** decided on 05.05.2015, **OA No.277/2013 titled as HC Dilbagh Singh Vs. Govt. of NCTD and Others** decided on 16.05.2015 **and OA No.3434/2014 titled as Laxman Singh Vs. Govt. of NCT of Delhi and Others** decided on 02.05.2016 by this Tribunal. The same view was also followed in **OA No. 2088/2011 titled as Satender Pal Vs.**

Govt. of NCT of Delhi and Others decided on 22.08.2012 by this Tribunal.

20. Therefore, the ratio of law laid down in the aforesaid judgments is *mutatis mutandis* fully applicable to the facts of the present case and is a complete answer to the problem in hand. Thus the matter has to be re-examined, revisited and the Disciplinary Authority is required to consider the matter of applicability and effect of subsequent acquittal of applicant, vide judgment dated 24.10.2013 (Annexure R-1) in terms of Rule 12 of the D.P. Rules, and then to pass appropriate orders.

21. In the light of the aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of hearing before the Disciplinary Authority, the OA is partly allowed. Without setting aside the impugned orders, the case is remitted back to the Disciplinary Authority to reconsider the matter of applicability and effect of judgment of acquittal dated 24.10.2013 (Annexure R-1) passed by the Criminal Court, Delhi and other indicated relevant factors in terms of Rule 12 of D.P. Rules and then to pass an appropriate order in accordance with law, within a period of 2 months from the date of receipt of a certified copy of this order. However, the parties are left to bear their own costs.

Needless to mention that since the matter has been decided mainly on the ground of applicability of Rule 12 of D.P. Rules, so in case the applicant remains aggrieved by the orders of Disciplinary and Appellate Authorities, he would be at liberty to challenge the same on all the grounds, as taken by him in the present OA, by filing an independent OA, in accordance with law.

**(V.N. GAUR)
MEMBER (A)**

**(JUSTICE M.S. SULLAR)
MEMBER (J)
09.08.2016**

Rakesh