

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

O.A No. 1134/2013

New Delhi this the 25th day of April, 2016

Hon'ble Mr. Justice M. S. Sullar, Member (J)

Hon'ble Mr. K. N. Shrivastava, Member (A)

Constable (Exe.) Aman Singh
(8794/DAP, PIS No.28893006)
S/o Late Shri Ramphal Singh
R/o K-203, Vijay Nagar, Sector-9,
Ghaziabad (UP).
Group 'C', Aged 42 years. .. Applicant

(Argued by: Shri Surabh Ahuja, Advocate)

Versus

1. Govt. of NCTD
Through Commissioner of Police,
Police Head Quarters, I.P. Estate,
New Delhi.
2. Joint Commissioner of Police,
South Eastern Range, New Delhi,
Through Commissioner of Police,
Police Head Quarters, I.P. Estate,
New Delhi.
3. Deputy Commissioner of Police,
East District, Delhi
Through Commissioner of Police,
Police Head Quarters, I.P. Estate,
MSO Building, New Delhi. ..Respondents

(By Advocate: Shri Amit Anand)

ORDER (ORAL)

Justice M.S. Sullar, Member (J)

The matrix of the facts which needs a necessary mention for deciding the instant Original Application (OA) is that in the wake of complaint of complainant, Smt. Santosh Gupta, a criminal case was registered against the applicant,

Constable Aman Singh, on accusation of having committed the offences punishable under Sections 354/506 IPC vide FIR No.1044 dated 09.12.2006 by the police of Police Station, Shakarpur.

2. At the same time, he was also served with the following summary of allegation (Annexure A-5 Colly):-

“On 09-12-06, you Ct. Aman Singh No.1372/E (PIS No.28893006) was posted at P.S. Shakarpur Distt. East Delhi and detailed for picket duty with Ct. Dhannender No.1063/E (PIS No.28932696) at picket SP-5, that locates on Mother Dairy road near School block Shakarpur.

One Smt. Santosh Gupta W/o Sh. Sanjay Gupta R/o H.No.B-43 South Ganesh Nagar, Delhi ages about 25 years stated that for the last 3 years she used to drop and pick up her 5 years old son Gautam to his school Little Angels Convent School, Shakarpur. On 9.12.2006 at 8.00 AM when she came to drop her son at school and crossed picket SP-5. You Ct. Aman Singh said “Hallo” to her son. After dropping her son Gautam, when she was returning to her home by the same route. You were (sic) already on the mid of the fly-over met her. You asked her that you would visit her house and take a cup of tea. You also caught her hand and enquired about her husband whether he was present at home or not. You also said that I would come to her home and threatened her that if she would not accompany with you, you (sic) would kill her son. She refused to go with you. Mrs. Santosh narrated the whole incident at her home. At about 11.45 am she (sic) came again to pick-up her son from school. You Ct. Aman Singh followed her on motorcycle up to school and later up to her home. She narrated the whole episode to her husband and all of them came together (sic) at the picket. They manhandled you. Ct. Dharmender No.1063/E also detailed at picket SP-5 with you informed the police station about the incident and SHO/Shakarpur along with other staff reached at the spot and rescued you.

A case FIR No.1044/06 dated 9.12.06, u/s 354/506 IPC P.S. Shakarpur has been registered on the statement of Mrs. Santosh Gupta. You were medically got examined at L.B. Shastri Hospital vide MLC No.9695/06 and doctor found alcoholic smell from mouth and breath. You were found drunk when on duty.

You were totally incompatible with official duties. You were (sic) supposed to take legal action against the unscrupulous persons indulged in anti social activities and to provide respite to sufferer and oppressed section of society. On contrary you indulged in anti social and shameful act, which not only created embarrassment to superior officers but also brought a bad name to the institution.

The above act on your part amounts to gross misconduct, indiscipline and dereliction in discharge of official duties, which render you liable to be dealt with departmentally under the provision of Delhi Police (Punishment and appeals) Rules 1980.”

3. As a consequence thereof, Enquiry Officer as well as Presenting Officers were appointed to conduct the enquiry as per the provision laid down under Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter referred to as “D.P. Rules”). After completion of the formalities, the EO submitted his report dated 20.07.2009 (Annexure A-3).

4. Having completed all the codal formalities and tentatively agreeing with the findings of the EO, a penalty of forfeiture of 4 years approved service permanently with cumulative effect was imposed on the applicant vide impugned order dated 13.01.2010 (Annexure A-2) by the competent authority. Similarly, the appeal filed by him was dismissed by way of order dated 26.10.2012 (Annexure A-1) by the Appellate Authority. Aggrieved thereby, the applicant has preferred the instant OA to challenge the impugned orders.

5. At the very outset, the learned counsel for the applicant has contended with some amount of vehemence that after passing the impugned order by the Disciplinary Authority, the applicant was acquitted of similar charges in criminal case vide judgment of acquittal dated 06.02.2010 by Metropolitan Magistrate, Mahila Court (E) (Annexure A-6).

The argument is that although the applicant has raised a specific plea that he has already been acquitted in the criminal case by the trial court, and is entitled to be exonerated in terms of Rule 12 of D.P. Rules but the appellate authority ignored this fact and dismissed the appeal in a mechanical manner as time barred. Hence he prayed that the matter be remanded to Disciplinary Authority to consider this aspect of the matter.

6. On the contrary, the learned counsel for the respondents has acknowledged this factual matrix but vehemently opposed the prayer of the applicant and urged that the applicability of Rule 12 can also be decided by this Tribunal.

7. After hearing the learned counsel for the parties and going through the record with their valuable help, we find merit in the contention of the learned counsel of the applicant. It is not a matter of dispute that Disciplinary Authority passed the impugned punishment order on 13.01.2010. The applicant was acquitted in the criminal case on 06.02.2010, i.e., after passing the penalty order by the Disciplinary Authority and much before the passing of the order by the Appellate Authority. The applicant has specifically taken a plea of acquittal in his representation-cum-appeal dated 11.08.2011 (Annexure A-8). The Appellate Authority did not address the real issue and just ignored the

judgment of acquittal with impunity and dismissed the appeal only on the ground that 'contention of the applicant is not convincing and appeal is time barred'. Here the Appellate Authority committed a legal error.

8. Rule 12 of the D.P. Rules posits 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. Therefore, it was statutory duty of the Appellate Authority to consider all the pointed conditions & the judgment of acquittal of the criminal court and then to pass appropriate order in terms of Rule 12 of D.P. Rules, which is totally lacking in the present case.

9. We are also of the view that instead of deciding the matter of applicability of Rule 12 of D.P. Rules by this

Tribunal or to remand the case back to the Appellate Authority, it would be expedient in the interest of justice if the matter of applicability of Rule 12 of D.P. Rules is decided by the Disciplinary Authority at the first instance. Otherwise, the applicant would be deprived of his statutory right of appeal which is not legally permissible.

10. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

11. In the light of the aforesaid reasons and without commenting further anything on merits, lest it prejudice the case of either side, during its consideration by the Disciplinary Authority, the OA is partly allowed. The impugned punishment orders dated 13.01.2010 (Annexure A-2) passed by the Disciplinary Authority and dated 26.10.2012 (Annexure A-1) passed by the Appellate Authority are hereby set aside. The matter is remitted back to the Disciplinary Authority to consider the applicability and effect of judgment of acquittal dated 06.02.2010 (Annexure A-6) passed by the criminal court 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.

Nothing observed hereinabove, would reflect on merits of the case in any manner before Disciplinary Authority as the same has been so recorded for a limited purpose of deciding

the present OA. At the same time it is also made clear that if the applicant would be aggrieved by the fresh order of Disciplinary Authority, he will be at liberty to challenge the same in an appeal in accordance with law. No costs.

(K.N. SHRIVASTAVA)
MEMBER (A)

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

Rakesh