

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

O.A No.2490/2014

New Delhi, this the 23rd day of August, 2016

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

Constable Vikas Tomar
 No. 2657/ND PIS No. (28100602)
 S/o. Naresh Tomar, Age 25 years
 R/o Village post Kishanpur Biral
 P.S Ramla Bagpat (UP). .. Applicant

(Argued by: Shri Sachin Chauhan)

Versus

1. Govt. of NCTD through
 the Commissioner of Police,
 PHQ, I. P. Estate,
 New Delhi.
2. The Jt. Commissioner of Police,
 New Delhi Range, New Delhi.
 Through Commissioner of Police,
 PHQ, I. P. Estate,
 New Delhi.
3. The Addl. Deputy Commissioner of Police,
 New Delhi Distt., New Delhi,
 Through Commissioner of Police,
 PHQ, I. P. Estate,
 New Delhi. .. Respondents

(By Advocate: Mr. K. M. Singh)

ORDER (ORAL)

Justice M.S. Sullar, Member (J)

Tersely, the facts and material, which needs a necessary mention for the limited purpose of deciding the core controversy involved in the instant Original Application (OA), exposed from the record, is that, on 11.02.2012, applicant Ct. Vikram Tomar has molested neice of

complainant Dharam S/o Jaya Ram. The complainant caught the applicant, red handed with the help of other persons, when he was trying to molest his neice. 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 31.05.2012 (Annexure A-1) by the competent authority. The EO recorded the evidence of the prosecution and after observing the due procedure of enquiry, the following charge/summary of allegation dated 28.05.2013 (Annexure A-4A) was served on him (applicant):-

"I, Inspector Dinesh Kumar (EO), PS Tilak Marg, New Delhi hereby charge you Constable Vikas Tomar No.13410/DAP (now 2657/ND) (PIS No.28100602) is (sic) that while you were posted in police station Mandir Marg, an information vide DD No.15A, regarding molestation and quarrel by a policeman was received at PS Mandir Marg and the same was marked to SI Kedar Yadav alongwith Constable Praveen, No.2649/ND reached at the spot, Jhuggi Upper Ridge Road towards Dhaula Kuan Road and verified the facts of the call. The SI met there one Shri Dharam S/o Shri Jaya Ram R/o Village Churara, Tehsil Maurani Pur, District Jhansi, Uttar Pradesh. After verifying the facts the SI recorded the statements of Shri Dharam S/o Shri Jaya Ram above, who confirmed the facts and alleged in his statement that on 11.02.2012 at about 3 p.m. his niece Raj Kumar, aged 12 years was molested by you Const. Vikas Tomar S/o Shri Naresh Tomar R/o Village Kishan Pur Viral, Tehsil Badaut, District Bhaghpur, UP and when you were trying to molest his neice Raj Kumari, he caught you at the spot of incident with the help of other labourers (sic).

On the basis of the circumstances and statement of Shri Dharam S/o Shri Jaya Ram above, SI Kedar Yadav got registered a case FIR No.22/12, dated 11.02.2012 u/s 354 IPC, PS Mandir Marg against you and effected your arrest in the above cited case. Later on, you were bailed out by the SI Kedar Yadav on the same date after you furnished the Bail Bond and personal bond for the sum of Rs.2000/-. For this misconduct, you were placed under suspension vide DD No.21A dated 11.02.2012, PS Mandir Marg read with order No.766-

90/HAP/NDD (D-I) dated 16.02.2012 and DE contemplation order was also issued against you vide office order No.865-80/HAP/NDD (D-1), dated 23.02.2012.

The above act on your part amounts to gross misconduct, mala fide (sic) intention, indiscipline and unbecoming of a member of police force, which renders you liable for punishment under the provision of Delhi Police (Punishment & Appeal) Rules, 1980 read with Section 21 of D.P. Act".

3. Thereafter, the applicant denied the charges and made his statement of defence. The EO completed & evaluated the evidence on record in the DE, and came to a definite conclusion that the charges against the applicant stand fully substantiated, vide enquiry report dated 05.07.2013 conveyed to the applicant vide impugned Memo dated 15/16.07.2013 (Annexure A-4).

4. Having completed all the codal formalities and tentatively agreeing with the findings of the EO, a penalty of dismissal from service was imposed on the applicant, vide impugned order dated 19.08.2013 (Annexure A-2) by the Disciplinary Authority (DA).

5. Likewise, the appeal filed by the applicant, was dismissed, vide impugned order dated 07.05.2014 (Annexure A-3) by the Appellate Authority (AA) as well.

6. Aggrieved thereby, the applicant has preferred the instant OA, challenging the impugned DE proceedings and orders, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985, on the various grounds mentioned therein and termed the impugned orders as arbitrary, illegal, mala fide and against the statutory rules &

principles of natural justice. On the strength of the grounds mentioned therein, applicant sought quashing of the impugned orders in the manner indicated hereinabove.

7. The contesting respondents refuted the claim of the applicant and filed the reply. Virtually acknowledging the factual matrix & reiterating the validity of the DE proceedings and impugned orders, the respondents have stoutly denied all the allegations & grounds contained in the main 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. Meanwhile, the applicant was acquitted of the charge in criminal case, vide judgment of acquittal dated 19.06.2014, [placed on record as (Annexure A-10)] by Metropolitan Magistrate, New Delhi. The judgment of acquittal was stated to have already attained the finality.

10. At the very outset, inviting our attention towards the judgment of acquittal dated 19.06.2014 (Annexure A-10) of the criminal court, the learned counsel has vehemently urged, that since the applicant has already been acquitted by the criminal court, so the impugned punishment awarded to him, in the DE 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 DA 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. Having heard the learned counsel for the parties, having gone through the relevant record with their valuable assistance, legal provisions and considering the entire matter, we are of the firm view 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. On the contrary, the contention of the learned counsel for respondents 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. A bare perusal of the record would reveal, that the indicated penalty was imposed on the applicant, vide impugned order dated 19.08.2013 (Annexure A-2) passed by

the DA and his appeal was rejected on 07.05.2014 (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 09.06.2014 (Annexure A-10), 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 applicants. The dates of decisions either in the departmental enquiry or in the

criminal case depends upon variety of circumstances, beyond the control of the applicants. They cannot be blamed in this regard. Moreover, they are only claiming reconsideration of their case in view of their 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 19.06.2014 (Annexure A-10) in terms of Rule 12 of the D.P. Rules, and then to pass appropriate orders.

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

22. 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 19.06.2014 (Annexure A-10) 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 still remains aggrieved by the orders of Disciplinary and Appellate Authorities, he would be at liberty to challenge the same on all the grounds, as pleaded by him in the present OA, by filing an independent OA, subject to all just exceptions and in accordance with law.

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

Rakesh

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

23.08.2016