

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

O.A No.2493/2014

New Delhi this 5th day of May, 2016

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

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

Constable Acheta Nand

Age 45 years

S/o Ramesh Prasad

R/o 32-A, Gali No.5, K.K. Extension,

Part-I, Laxmi Nagar,

Delhi-110092.

.. Applicant

(Argued by: Shri Sachin Chauhan, Advocate)

Versus

1. Govt. of NCTD
Through Commissioner of Police,
Police Head Quarters, MSO Building,
I.P. Estate,
New Delhi.
2. Deputy Commissioner of Police,
Ist Bn. DAP, Delhi.
3. Special Commissioner of Police,
Delhi Police,
Through Commissioner of Police,
Police Head Quarters, MSO Building,
I.P. Estate, New Delhi. ..Respondents

(By Advocate: Ms. Sumedha Sharma)

ORDER (ORAL)

Justice M.S. Sullar, Member (J)

The epitome of facts, relevant for deciding the instant Original Application (OA) filed by the applicant, Constable Acheta Nand, is that he was dealt departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980

(hereinafter referred to as “D.P. Rules”) with the following allegations:-

“that on 24.10.2002, SI Yogesh Kumar Tyagi along with ASI Rajbir Singh, HC Yogesh Kumar, No.494/C, Ct. Ravinder, No.1251/C, Ct. Prahlad, No.611/C were doing patrolling . At about 5.30 PM while they were present near Ajmeri Gate, a secret information was received that 4/5 persons were sitting in Shivaji Park who on the pretext of exchange offer i.e. Rs.3/- in place of Rs.1/-, showing New packets of currency notes inducing innocent persons were cheating huge amount, if a raid is conducted they may be apprehended. The SI along with informer and the staff prepared a raiding party and disclosing the facts asked some passes by to join the raiding party, but they did not agree. So, the SI deployed Ct. Ravinder Kumar as decoy customer and Rs.3,000/-were given to him after signing on the rear side through handing over note with the direction to deal with the above said persons and to indicate by proving the hand above his head. HC Yogesh Kumar was deployed shadow Ct. Ravinder Kumar to vigil this dealing. As per directions above, decoy customers and his shadow reached at Shivaji Park, Minto Road and the remaining raiding party concealed itself behind a wall. The dealing was completed by the decoy customer and at about 7.05 PM, he indicated by moving his hand above his head. So, SI alongwith staff having reached the spot, apprehended the above said four persons whose names, parentage and (sic) addresses were known later on as (1) Naresh Sahni S/o Bajjnath Sahni r/o village Mohbar Chhapra, PS Turkolia, Distt. Motibari, Bihar (2) Mehant, S/o Bhikam Rai, r/o Vill. Jaisinghpur Bandrah, PS Turkolia, Distt. Motihari, Bihar (3) Ct. Acheta Nand Prasad, No.877/DAP, S/o Shri Ramesh Prasad, r/o C-25, Guru Ram Das Nagar, Laxmi Nagar, Delhi domicile address Vill. Barwa Ojha, PS Jogapatti, Distt. Betia, Bihar (4) Ct. Nagender Kurmi, No.6147/DAP, Ist Bn. DAP S/o Shri Ram Bachan Kurmi r/o H.No. 10/2, Mohlaband Ext. Badarpur, Delhi, domicile address Vill, Chhutka Rajpur, PS Simri, Distt. Baxar, Bihar. Further the decoy customer told the whole dealing with the above said persons. He told that they induced him to give Rs.10,000/- in place of his Rs.3,000/-and he gave Rs.3,000/- to Naresh Sahni who kept the same in the right pocket of his worn pant and directed Acheta Nand who was keeping a suitcase of black colour in his hand to give Rs. 10,000/- to him. So, after taking out two packets of Rs.50/50 denominations from the suitcase, wrapped the same in newspaper and handed over him and Acheta Nand told him to go at once. Ct. Ravinder Kumar produced the above said two packets of currency notes to SI who after checking found that both packets were having only two new notes and the remaining were blank white papers of Rs.50/- size notes. The SI after taking the said suitcase from the hand of Acheta Nand checked and recovered four more packets of Rs.50/50 notes of same denomination as mentioned above. The above said recovered two packets of Rs.50/50 denomination were marked with S-1 and

S-2 and four packets of suitcase marked as S-3, S-4 and S-5 and S-6 with the number of notes and sealed with the seal of Y-T keeping in separate pullandas. The handing over amount Rs.3,000/- was recovered from the pocket of Naresh Sahni which also kept in a separate pullanda and sealed with the seal of YT. Two similar I-Cards were recovered from the pocket of Ct. Nagender Kurmi and one from the pocket of Acheta Nand. All the above recovered items were taken into police possession through seizure memo. The seal after use was handed over to Ct. Ravinder Kumar. Thus the above said accused persons dishonestly and fraudently having criminal conspiracy with each other cheated the amount on the pretext of exchange offer of 3 in place of 1 committed offence u/s 420/120-B IPC.”

2. At the same time, a criminal case was also registered against the applicant and his other co-accused, on accusation of having committed the offences punishable under Section 420 and 120 IPC vide FIR No.367 of 2002 by the Police of Police Station, Kamla Nagar.

3. Aggrieved by the initiation of the departmental enquiry during the pendency of the criminal case, the applicant filed OA bearing No.1534/2003 which was partly allowed vide order dated 17.10.2003 by a Coordinate Bench of this Tribunal, the operative part of which is as under:-

“13. For these reasons, we dispose of the present application by making the following order:-

(a) In the facts of the present case, the departmental proceedings would remain in abeyance till the criminal proceedings are pending before the learned Metropolitan Magistrate at Delhi; and

(b) In case there is inordinate delay in completion of the criminal proceedings referred to above, the respondents would be within their rights to restart the departmental proceedings”.

4. As inordinate delay was taking in the completion of the proceedings in the criminal case, departmental enquiry was resumed against the applicant. An Enquiry Officer (EO) was

appointed. The EO recorded and evaluated evidence of the parties and came to a definite conclusion that the charges against the applicant stand proved.

5. Having completed all the codal formalities and tentatively agreeing with the findings of the EO, a penalty of forfeiture of 5 years approved service permanently entailing proportionate reduction in his pay with immediate effect was imposed on the applicant vide impugned order dated 21.01.2013 (Annexure A-2) by the Disciplinary Authority.

6. Sequelly, the appeal filed by the applicant was dismissed as well vide impugned order dated 26.06.2013 (Annexure A-2) by the Appellate Authority.

7. Aggrieved thereby, the applicant has preferred the instant OA challenging the impugned orders, on variety of grounds, but during the course of argument, he has only taken and urged that D.P. Rules have not been followed. However, the main ground of defence pleaded by applicant in para 5.11 of the OA is as under:-

“5.11. That the applicant is placing its reliance on Rule 12 of DP (P&A) Rules, 1980. Once the applicant gets acquittal in criminal case on the very same allegation in respect of whom the applicant was subjected to a DE then it is incumbent upon the authority to re-visit the order of punishment as the acquittal of the applicant from the criminal case is on merits and does not falls under any of the exception of Rule 12 of DP(P&A) Rules, 1980”.

8. The applicant has also termed the entire disciplinary proceedings and the impugned orders as illegal, arbitrary

and unjust. He has assailed the impugned orders mainly on the ground of applicability of Rule 12 of D.P. Rules.

9. The contesting respondents refuted the claim of the applicant and filed the reply to para 5.11 of the OA acknowledging the acquittal of the applicant. However, it was pleaded that he is trying to dilute his misconduct by placing reliance on Rule 12 of D.P. Rules after his acquittal in the criminal case. There is no such rule that after acquittal, punishment order must be revisited. However, if any request is received from the applicant, the same would be considered on merits. It will not be out of place to mention here that the respondents have stoutly denied all the allegations contained in the OA and prayed for its dismissal.

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

11. At the very outset, the learned counsel for the applicant has contended with some amount of vehemence that after passing of the impugned orders by the Disciplinary Authority and Appellate Authority, the applicant was acquitted of the charges in criminal case vide judgment of acquittal dated 04.04.2014 (Annexure A-9) by Metropolitan Magistrate, Delhi. The argument is that the applicant has been acquitted by the criminal court and hence the punishment awarded to him in the DE proceedings deserves to be reviewed and

revisited in terms of Rule 12 of the D.P. Rules. He prayed that the matter be remitted back to the Disciplinary Authority to consider this aspect of the matter.

12. Per contra, learned counsel for the respondents although acknowledged the factual matrix but vehemently opposed the prayer of the applicant and urged that the applicant cannot take the benefit of subsequent acquittal by the Criminal Court vis-à-vis his punishment orders.

13. Having heard the learned counsel for the parties and after going through the relevant legal provision and considering the entire matter, we are of the firm view that the instant OA deserves to be partly allowed.

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

15. On the contrary, the contention of 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 tenable.

16. As is evident from the record that the pointed penalty was imposed on the applicant vide impugned order dated 21.01.2013 (Annexure A-1) passed by the Disciplinary Authority and his appeal was dismissed on 26.06.2013 (Annexure A-2) by the Appellate Authority. It is not a matter

of dispute that the applicant was acquitted from the criminal charge vide judgment of acquittal dated 04.04.2014 (Annexure A-9) by the Criminal Court, Delhi.

17. 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.

18. Thus, Rule 12 is a statutory beneficial rule in favour of the employee. The import and scope of this Rule cannot be read in its narrow sense so as to deny its benefit to the applicant. The dates of decision 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 consideration of case in view of his acquittal in criminal case and nothing else.

19. Therefore, the case of departmental enquiry shall have to be revisited in view of his acquittal by the criminal court, 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”.

The same view was again followed by this Tribunal in **OA No. 2088/2011 entitled as Satender Pal Vs. Govt. of NCT of Delhi and Others** decided on 22.08.2012.

20. Therefore, 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 04.04.2014 (Annexure A-9) 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 prejudice the

case of either side during the course of hearing by the Disciplinary Authority, the OA is partly allowed. Without setting aside the impugned orders, the matter is remitted back to the Disciplinary Authority to consider the matter of applicability and effect of judgment of acquittal dated 04.04.2014 (Annexure A-9) 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. No costs.

Needless to mention since the matter has been decided mainly on the ground of violation 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.

(K.N. SHRIVASTAVA)
MEMBER (A)

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

Rakesh