

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

O.A No.100/2186/2015

New Delhi this the 10th day of August, 2016

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

Hon'ble Mr. V.N. Gaur, Member (A)

1. Balraj Singh
S/o Shri Surat Singh
Designation: Constable
Age 54 years,
R/o Village Sawda,
Delhi.
 2. Jalraj Singh
S/o Shri Surat Singh
Designation: Constable
Age 49 years,
R/o Village Sawda,
Delhi.
- ...Applicants

(Argued by: Mr. Sachin Chauhan, Advocate)

Versus

The Commissioner of Police,
Delhi Police,
Police Headquarters,
ITO Delhi.

..... Respondents

(By Advocate: Ms. Ritika Chawla)

ORDER (ORAL)

Justice M.S. Sullar, Member (J)

The crux of the facts and material, relevant for deciding the instant Original Application (OA), filed by the applicants Ct. Balaraj Singh and Ct. Jalraj Singh sons of Shri Suraj Singh, is that on 06.08.2009, they along with their other family members, caused injury to the complainant, Yogesh Kumar S/o Shri Pale Singh, damaged his car, stole stereo

and papers from his car. Subsequently, a criminal case was registered against them on accusation of having committed the offences punishable under Sections 323/325/427/379 and 34 IPC, vide FIR No.187/2009 by the police of Police Station, Kanjhawala. Delhi. Thus, they were stated to have committed gross misconduct and unbecoming of police officers.

2. As a consequence thereof, the applicants were 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 them and Enquiry Officer (EO) was appointed vide order dated 04.05.2012 (Annexure A-3) by the competent authority. After following the due procedure of record, the evidence etc., the following summary of allegations were served on them (applicants):-

"It is alleged that on 06/08/200 at about 7.30 AM, Shri Yogesh Kumar S/o Shri Pale Singh R/o Village Sawda, Kanjhawala, Delhi was going towards his fields near village Nizampur, Delhi in his Maurti Esteem Car. On the way, near Jain Mandir, his neighbour Ct. Jalraj was also going towards his field. While crossing Jalraj, left side of his car struck Jalraj owing to the narrow passage. Due to this impact, Jalraj fell in the pit dug for tube well. In the meantime, Yogesh saw Balraj, elder brother of Jalraj, coming towards his car armed with Lathi and shouting "PAKDO AUR MARO". Yogesh got scared and fled away towards his village abandoning his car to save his life. As he reached his village, he was wrongfully restrained and encircled by Pawan S/o Balraj, Smt. Nirmala W/o Balraj and Smt. Santosh W/o Jalraj. All these three people manhandled and beat them mercilessly. They inflicted injuries to Yogesh and also broke his two teeth. While running home, he saw Pawan, Smt. Nirmala and Smt. Santosh running towards site of incident to join hands with Jalraj & Balraj. All these five, damaged the car of Yogesh with Lathi and brickbats. Reaching home he narrated the entire incident to his father Shri Pale Ram. After a gap of time, he along with his father reached at site of incident and found his car overturned and completely damaged. All the five persons smashed the window panes, glasses and lights of his car with Lathi and brickbats and also stole stereo and papers from his car. Regarding this, a case FIR No.187/09

u/s 323/325/427/379/34 IPC PS Kanjhawala was registered against all of them.

The above acts on the part of Ct. Jalraj No.2419/DAP and Ct. Balraj No.7512/DAP amounts to gross misconduct and unbecoming of police officers, which renders them liable to be dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980".

3. Thereafter, the EO recorded and evaluated evidence of the parties in the DE and came to a definite conclusion that the charges against the applicants stand duly proved, vide enquiry report dated 07.12.2012 (Annexure A-4).

4. Having completed all the codal formalities and tentatively agreeing with the findings of the EO, a penalty of forfeiture of 1 year of approved service permanently was imposed on them entailing proportionate reduction in their pay with immediate effect, subject to the final judicial verdict in the criminal case, vide impugned order dated 24.10.2013 (Annexure A-1) by the Disciplinary Authority (DA).

5. Sequelly, the appeal filed by the applicants, were dismissed vide order dated 26.09.2014 (Annexure A-2) by the Appellate Authority (AA) as well.

6. Aggrieved thereby, the applicants have preferred the instant OA, challenging the impugned departmental enquiry proceedings and orders, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985, on the following grounds:-

"5.1 That the disciplinary authority awarded the applicants punishment of forfeiture of one year approved service permanently and the same was subject to final judicial verdict in case FIR No.187/2009 Police Station: Kanjhawala, Delhi. The Hon'ble Court in its judicial verdict acquitted the applicants. Hence, punishment of forfeiture of one year approved service permanently, is automatically invalidated. Therefore, the order

of appellate authority dated 26.09.2004 is null and void and is liable to be set aside.

5.2 That the departmental proceedings and the criminal case were based on indetical and similar set of facts and the charges. Charges in the departmental case against the applicants and charges before the criminal court are one and the same. Charges, evidence witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have same set of facts. The same set of material witnesses were examined in both investigation as well as enquiry. The same material witnesses were examined in the criminal case except formal witnesses and the criminal court on the examination came to the conclusion that no incriminating evidence has come against the accused persons. Accordingly, accused persons were acquitted because of lack of evidence on behalf of prosecution. Charge against the applicants in judicial pronouncement have not been proved. Under the circumstances, it would be unjust and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

5.3 That in a similar type of criminal case under FIR No.188/2005, Police Station Kanjhawala, Delhi and departmental proceedings against the applicants filed by the same party, the departmental proceedings against the applicants were stopped and they were reinstated in service vide order dated 01.02.2007 on their acquittal in the criminal case by Hon'ble Criminal Court. The same view is required to be taken in the present case also. It is (sic) settled law that rule is interpreted in a particular manner by a competent authority, the said interpretation cannot be changed by the same authority while dealing with similarly placed persons/cases.

5.4 In proving criminal charges the departmental proceedings cannot be above criminal proceedings held in a criminal court. Therefore, rejection of appeal of the applicants by the appellate authority, on the grounds that in the departmental enquiry, the charge levelled against the applicants was clearly proved, is bad in law. The order of appellate authority is, therefore, liable to be set aside".

7. According to the applicants, the impugned orders are arbitrary, illegal, mala fide and against the statutory rules & principles of natural justice. On the basis of the aforesaid grounds, applicants sought quashing of the impugned orders in the manner indicated hereinabove.

7. Refuting the claim of the applicants, 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 applicants filed their rejoinder. That is how we are seized of the matter.

9. During the pendency of this OA, the Additional Sessions Judge, Rohini, Delhi, has acquitted the applicants, vide judgment of acquittal dated 07.08.2014 (Annexure A-5). 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 07.08.2014 (Annexure A-5) of the criminal court, the learned counsel for the applicants has vehemently urged, that since the applicants have already been acquitted by the criminal court, so the impugned punishment awarded to them, 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 applicants and submitted, that they 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 applicants that the order of punishment passed against the applicants 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 applicants 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 applicants vide impugned order dated 24.10.2013 (Annexure A-2) passed by the DA and their appeal was rejected on 26.09.2014 (Annexure A-3) by the AA. It is not a matter of dispute, that the applicants have already been acquitted from the criminal charge in question, vide judgment of acquittal dated 07.08.2014 (Annexure A-5), 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 07.08.2014 (Annexure A-5) 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 07.08.2014 (Annexure A-5) 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 applicants remain aggrieved by the orders of Disciplinary and Appellate Authorities, they would be at liberty to challenge the same on all the grounds, as taken by them in the present OA, by filing an independent OA, in accordance with law.

(V.N. GAUR)
MEMBER (A)

Rakesh

(JUSTICE M.S. SULLAR)
MEMBER (J)
10.08.2016