CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A No.3509/2013
New Delhi this the 31st day of May, 2016

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

Sh. Sudheer
S/o. Sh. Suresh Chand
R/o. 4B/76, Sadat Pur Ext.
West Karawal Nagar, Delhi-94. ...Applicant

(Argued by:Shri Ajesh Luthra, Applicant)

Versus

1. Commissioner of Police
PHQ, MSO Building,
IP Estate, New Delhi.
2. Addln. Commissioner of Police
(PCR),
PHQ, MSO Building,
IP Estate, New Delhi.
3. Addln. Deputy Commissioner of Police
(PCR),
Model Town-II,
Delhi. ...Respondents

(By Advocate :Ms. Sangeeta Rai)

ORDER (ORAL)

Justice M.S. Sullar, Member (J)

Applicant, Constable (Executive) Sudhir Kumar, has preferred the instant Original Application (OA), challenging the impugned order dated 24.11.2007, whereby Departmental Enquiry (DE) was ordered against him and order dated 04.07.2012 (Annexure A-2), by means of which a penalty of forfeiture of 3 (three) years approved service permanently in the time scale of pay, entailing the proportionate reduction,

was imposed on him. He has also assailed the impugned order dated 05.06.2013 (Annexure-1), by virtue of which his appeal was also dismissed as well by the Appellate Authority (AA).

2. The crux of the facts and material, exposited from the record and relevant for deciding the instant OA, is that on 12.05.2006, the applicant has illegally detained Shri Deena Nath, relative of complainant Shri Lallan Saroj and demanded Rs.20,000/- as illegal gratification, for his release. Thus, he was stated to have committed gross misconduct, exhibited lack of integrity and devotion to duties. Consequently, he was departmentally dealt under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter to be referred as "D.P. Rules").

3. As a consequence thereof, he was charge-sheeted in the following manner:-

> "On 12.5.06 Sh. Lallan Saroj s/o Sh. Lottan Saroj r/o N-9/127 Lal Bagh, Azad Pur, Delhi lodged a complaint in Anti Corruption Branch GNCT of Delhi that one of his relatives namely Sh. Deena Nath has been detained by Const. Sudhir of P.S. Model Town who has demanded Rs.20,000/- as illegal gratification for releasing Sh. Deena Nath. The complainant reportedly expressed his inability to pay the huge amount. Then he agreed to accept Rs.5,000/- as Ist instalment which was to be paid near Hans Cinema Hall, Mahendru Enclave in between 1.30 PM to 2.00 PM.
>
> On the basis of the above complaint a trap was organised by the Anti Corruption Branch GNCT of Delhi. Constable Sudhir came on a motor cycle which he parked in front of Hans Cinema Hall and one Sh. Harpal Kapoor a private person was sent to collect the bribe money of Rs.5000/-. In the meantime Const. Sudhir ran away from the spot leaving behind his motor cycle. A case u/s 7/8/13 POC Act has been registered and Harpal Kapoor was arrested. Constable Sudhir is absconding.

> Thus the above act on the part of Const. Sudhir No. 2220/MW PS Model Town, North West Distt., Delhi, by his above acts of omission and commission has exhibited lack of integrity and devotion to duties and conducted himself in a manner in becoming of Govt. servant thereby violated the Rule 3 of CCS (Conduct) Rules, 1964 and renders himself liable for departmental action."

4. At the same time, a criminal case was also registered against the applicant and his other co-accused Harpal Kapoor vide FIR No.35/06 dated 12.05.2006 on accusation of having committed the offences punishable under Sections 7, 13(1)(d) & 13(2) of the Prevention of Corruption Act, 1988 read with Section 120 B IPC, by the police of Police Station, Anti Corruption Branch (ACB), New Delhi.

5. In pursuance of the DE, an Enquiry Officer (EO) was appointed, who recorded the statement of witnesses and came to a definite conclusion that the charges framed against the applicant stand fully proved vide enquiry report dated 14.05.2012 (Annexure A-3).

6. Meanwhile, the applicant was acquitted of the criminal charge vide judgment of acquittal dated 30.11.2011 (Annexure A-5) by Special Judge, Tis Hazari, Delhi.

7. Thereafter, tentatively agreeing with the findings of the EO, the DA (Annexure A-2) has awarded the above mentioned punishment to the applicant and his appeal was dismissed as well by the AA (Annexure A-1).

8. Aggrieved thereby, the applicant has instituted the present OA, to challenge the impugned orders, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985 on the following grounds:-

> "(A) Because the impugned action of the respondents are absolutely illegal, arbitrary, unjustified and unconstitutional.
>
> (B) Because the applicant has been exonerated/acquitted of the same allegations by the Hon'ble Court after a full fledged trial where same witnesses were examined in evidence by the prosecution. The Hon'ble Court acquitted the applicant since those witnesses were not found worth credence. The judicial findings must prevail over the quasi-judicial findings. The enquiry report contrary to the judicial finding cannot be sustained in the eyes of law.
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> (C) Because neither did the EO nor the disciplinary authority and appellate authority have considered and appreciated the judicial verdict, while they were bound to do so.
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> (D) Because without prejudice to the above, it is submitted that the impugned action is in absolute violation of Rule 12 of Delhi Police (Punishment & Appeal) Rules.
>
> (E) Because Rule 12 of the Delhi Police (Punishment & Appeal) Rules, does not envisage penalty where acquittal is on benefit of doubt.
>
> (F) Because acquittal is an acquittal for all purposes.
>
> (G) Because even though the term 'benefit of doubt' has been used by the Hon'ble Court, it is submitted that the acquittal is on merits and the usage of said term is superfluous.
>
> (H) Because in Bhag Singh Vs. Punjab & Sind Bank, it is so held that at times the 'benefit of doubt' is superfluous. Present case is like nature.
>
> (I) Because the respondents have failed to consider and appreciate the various factual pleas raised by the applicant vide his defence statement, representation and appeal.
>
> (J) Because the impugned orders are otherwise also illegal and liable to be set aside".

9. On the basis of aforesaid grounds, the applicant sought to quash the impugned orders in the manner indicated hereinabove.

10. The contesting respondents refuted the claim of the applicant and filed the reply, wherein factual matrix of the case was admitted. It was pleaded that the applicant has demanded an amount of Rs.20,000/- (Rupees Twenty Thousand) as illegal gratification for releasing detenu Deena Nath, relative of the complainant. The respondents have acknowledged the acquittal of the applicant vide judgment dated 30.11.2011 (Annexure A-5). However, it was alleged that the delinquency of an employee in departmental proceedings is not required to be proved as the guilt of an accused facing criminal trial. The criminal charge has to be proved beyond reasonable shadow of doubt, whereas evidence of preponderance of probability is required in departmental proceedings.

11. Virtually reiterating the validity of the impugned orders, it was pleaded, that enquiry against the applicant was conducted in accordance with the statutory rules and principles of natural justice were duly observed. It will not be out of place to mention here, that the respondents have stoutly denied all other allegations contained in the O.A. and prayed for its dismissal.

12. What cannot possibly be disputed here, is that the applicant has challenged the impugned orders on variety of grounds, contained therein in the OA. Be that as it may, during the course of arguments, learned counsel has confined

his argument only to the limited extent of applicability of Rule 12 of D.P. Rules.

13. At the very outset, inviting our attention towards the judgment of acquittal dated 30.11.2011 (Annexure A-5) of the Special Judge, Tis Hazari, Delhi, the learned counsel has contended with some amount of vehemence, that although applicant has produced the copy of the judgment of acquittal (Annexure A-5), but neither the DA nor the AA have considered its effect as per Rule 12 of D.P. Rules, so the impugned punishment and appellate orders are illegal. Thus, he prayed that the matter be remitted back to DA to consider this aspect of the matter.

14. On the contrary, learned counsel for the respondents, although has acknowledged the fact of acquittal, but opposed the prayer of the applicant on the ground that the judgment of acquittal is not relevant to decide the departmental proceedings. Hence, he submitted for dismissal of OA.

15. Having heard he learned counsel for the parties, having gone through the relevant record, legal provision and after bestowal of thoughts over the entire matter, we are of the firm view that the instant OA deserves to be partly accepted, for the reasons mentioned hereinbelow.

16. As is evident from the record, that the indicated penalty was imposed on the applicant vide impugned order dated 04.07.2012 (Annexure A-2) passed by the DA, whereas he

was acquitted by way of judgment of acquittal dated 30.11.2011 (Annexure A-5) by the Special Judge, Tis Hazari, Delhi, much prior to the passing of the impugned punishment order by the DA.

17. It is not a matter of dispute that the copy of the judgment of acquittal (Annexure A-5) was produced by the applicant during the course of enquiry, but the DA did not record any cogent reason in this regard. The contention of the applicant was negated by writing one line "merely his acquittal in the criminal case does not absolve him from his involvement in the said misconduct of corruption". The same very error was committed by the AA as well. It was the statutory duty of the DA and AA to consider the applicability and effect of judgment of acquittal, as per provision contemplated under Rule 12 of D.P. Rules and thereafter to pass speaking and reasoned orders.

18. In this regard, Rule 12 of the D.P. Rules postulates 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.

19. 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.

20. Thus, the impugned orders deserve to be revisited on account of acquittal of the applicant 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".

The same view was again 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.

21. Moreover, the DA and AA were required to pass reasoned and speaking order and to deal with all the points raised by the applicant. Above all, it is the statutory duty of the AA to pass speaking and reasoned order, as contemplated in Rule 25(2) of D.P. Rules, which is totally lacking in the instant case.

22. It is not a matter of dispute that Central Vigilance Commission in its wisdom has taken a conscious decision and issued instructions vide Office Order No.51/09/03 dated 15.09.2003, which reads as under:-

> "**Subject: - Need for self-contained speaking and reasoned order to be issued by the authorities exercising disciplinary powers**.
>
> Sir/Madam,
>
> It was clarified in the Department of Personnel & Administrative Reforms' OM No. 134/11/81/AVD-I dated 13.07.1981 that the disciplinary proceedings against employees conducted under the provisions of CCS (CCA) Rules, 1965, or under any other corresponding rules, are quasi-judicial in nature and therefore, it is necessary that orders issued by such authorities should have the attributes of a judicial order. It was also clarified that the recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy, or reached on ground of policy or expediency. Such orders passed by the competent disciplinary/appellate authority as do not contain the reasons on the basis whereof the decisions communicated by that order were

reached, are liable to be held invalid if challenged in a court of law.

2. It is also a well-settled law that the disciplinary/appellate authority is required to apply its own mind to the facts and circumstances of the case and to come to its own conclusions, though it may consult an outside agency like the CVC. There have been some cases in which the orders passed by the competent authorities did not indicate application of mind, but a mere endorsement of the Commission's recommendations. In one case, the competent authority had merely endorsed the Commission's recommendations for dropping the proposal for criminal proceedings against the employee. In other case, the disciplinary authority had imposed the penalty of removal from service on an employee, on the recommendations of the Commission, but had not discussed, in the order passed by it, the reasons for not accepting the representation of the concerned employee on the findings of the inquiring authority. Courts have quashed both the orders on the ground of non-application of kind by the concerned authorities.

3. It is once again brought to the notice of all disciplinary/appellate authorities that Disciplinary Authorities should issue a self-contained, speaking and reasoned orders conforming to the aforesaid legal requirements, which must indicate, inter-alia, the application of mind by the authority issuing the order."

23. Exhibiting the necessity of passing of speaking orders, the Hon'ble Apex Court in the case of ***Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others (2009) 4 SCC 240*** has held as under (para 8):-

"8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N.Mukherjee vs. Union of India reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. **Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation"**.

24. An identical question came to be decided by Hon'ble Apex Court in a celebrated judgment in the case of ***M/s Mahavir Prasad Santosh Kumar Vs. State of U.P. &***

Others 1970 SCC (1) 764 which was subsequently followed in a line of judgments. Having considered the legal requirement of passing speaking order by the authority, it was ruled that "**recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim**. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just". It was also held that "while it must appear that the authority entrusted with the quasi-judicial authority has reached a conclusion of the problem before him: it must appear that he has reached a conclusion which is according to law and just, and for ensuring that he must record the ultimate mental process leading from the dispute to its solution". Such authorities are required to pass reasoned and speaking order. The same view was again reiterated by Hon'ble Apex Court in the case of ***Divisional Forest Officer Vs. Madhuusudan Rao JT 2008 (2) SC 253.***

25. Therefore, the impugned orders (Annexure A-2) passed by the DA and (Annexure A-1) passed by the AA cannot legally be sustained. The matter has to be re-examined, revisited and the DA is required to consider the matter of applicability, import and effect of judgment of acquittal dated 30.11.2011 (Annexure A-5) in terms of Rule 12 of D.P. Rules and then to pass appropriate orders at the first instance.

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

27. 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. The impugned orders dated 04.07.2012 (Annexure A-2) passed by the DA and dated 05.06.2013 (Annexure A-1) passed by the AA are hereby set aside. The case is remitted back to DA to reconsider the matter of applicability, effect and import of judgment of acquittal dated 30.11.2011 (Annexure A-5), rendered by the criminal court, Special Judge, Tis Hazari, Delhi and other indicated relevant factors in terms of Rule 12 of D.P. Rules and then to pass speaking and reasoned appropriate order in accordance with law, within a period of

3 months from the date of receipt of a certified copy of this order. No costs.

Needless to mention that since the matter has been decided mainly on the ground of applicability of Rule 12 of D.P. Rules and non-speaking order, so in case the applicant still remains aggrieved by the orders of Disciplinary and Appellate Authorities, in that eventuality he would be at liberty to challenge the same on all the grounds contained in this OA, subject to all just exceptions.

(V.N. GAUR)
MEMBER (A)

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

Rakesh