CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A No.3721/2013

New Delhi this 27th day of July, 2016

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

ASI Phool Kumar
Age-59 years
S/o Shri Ch. Ram Narayan,
R/o VPO-Barai, District Dhajjar,
Haryana, Delhi. ....Applicant

(Argued by: Mr. Sachin Chauhan, Advocate)

Versus

1. Govt. of NCTD through
   The Commissioner of Police (DAP),
   PHQ, I. P. Estate,
   New Delhi.

2. The Special Commissioner of Police,
   Armed Police,
   Through Commissioner of Police,
   PHQ, I. P. Estate,
   New Delhi.

3. The Deputy Commissioner of Police,
   3rd BN, DAP,
   Vikas Puri, New Delhi.

4. The Dy. Commissioner of Police
   Vigilance,
   Through Commissioner of Police (AP),
   PHQ, I. P. Estate,
   New Delhi. .... Respondents

(By Advocate: Ms. Rashmi Chopra)

<u>ORDER (ORAL)</u>

Justice M.S. Sullar, Member (J)

Tersely, the facts and material, exposited from the record, relevant for deciding the instant Original Application

(OA), preferred by the applicant, ASI Phool Kumar S/o Shri Ch. Ram Narayan, is that, on 14.07.2002, he started talking about medical check up of rape victims and making obscene gestures, moving two fingers in a complete obscene manner in her presence. Thus, he was stated to have committed grave misconduct, during the course of his employment.

2. As a consequence thereof, the applicant was dealt with 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, by the competent authority. After following the due procedure of record, the evidence etc., the following summary of allegation was served on him (applicant):-

> "It is alleged against ASI Phool Kumar that one Miss Umang Pathak, a Post Graduate student of Deptt. Of Social Work, University of Delhi who is placed on project "Umeed" of Association of Development an NGO looking after the needs of child rape victims, met him in connection with rape victims of case FIR No. 835/02 u/s 363 IPC, dated 14.07.02, PS Sultan Puri at PP Prem Nagar on 27.8.02 as Trainee Social Worker, ASI Phool Kumar, the IO of FIR No. 835/02, in no time and without any context, the ASI started talking about medical check up of rape victims and making obscene gestures moving two fingers in a complete obscene manner and kept on describing the details of check up. The ASI further started asking personal questions from Ms. Pathak like what kind of husband she would like to have and also told her that he was a widower with three children and that his eldest daughter was married. The ASI also asked Ms. Pathak for her phone number and also wanted her to ask her father as to what kind of son-in-law her father would like to have. Miss Umang Pathak made a written complaint to DCP/NW against outrageous and indecent behaviour of ASI Phool Kumar.
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> ASI Phool Kumar crossing all limits of dignity cited an example of an old case before Ms. (sic) Pathak in which a girl eloped with a boy and stayed with him for sixteen days at Calcutta without the fear of her parents or anybody. The ASI used such filthy language in narrating the elopement that it shocked Ms. Pathak. A case vide FIR No. 1105/02 u/s 509/IPC was also registered against ASI Phool Kumar in connection of insulting the modesty of women.
>
> ASI, Phool Kumar who is a member of disciplinary force is expected to behave in a proper manner with public and particularly with respectable lade who had come to meet him in connection with

> counselling of child rape victims. The behaviour of ASI has brought bad name to police department (sic) and also shattered the confidence of Ms. Pathak in police force. The above act on the part of ASI Phool Kumar, No. 3871/D amounts to grave misconduct, indiscipline and unbecoming of a police officer which renders him liable to be dealt with departmentally under the provision of Delhi Police (Punishment & Appeal) Rules 1980."

3. At the same time, a criminal case was also registered against the applicant on accusation of having committed the offences punishable under Sections 509, vide FIR No.1105/2002 by the police of Police Station, Sultan Puri, New Delhi.

4. Subsequently, the EO recorded and evaluated evidence of the parties in the DE and came to a definite conclusion that the charges levelled against the applicant stand duly proved, vide enquiry report dated 19.09.2011, conveyed to the applicant vide Memorandum dated 28.09.2011 (Annexure A-4).

5. 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 temporarily was imposed on the applicant, vide order dated 21.10.2011 (Annexure A-1) by the Disciplinary Authority (DA).

6. Sequelly, the appeal filed by the applicant, was dismissed vide order dated 28.08.2012 (Annexure A-2) by the Appellate Authority (AA) as well. It is not a matter of dispute that these orders have already attained finality.

7. Thereafter, the applicant was acquitted in the said criminal case, vide judgment of acquittal dated 08.11.2012

(Annexure A-13) by Metropolitan Magistrate, Rohini Courts, Delhi.

8. After acquittal in the criminal case, the applicant made representation to the competent authority along with a copy of judgment of acquittal, for reviewing the order of punishment in the light of Rule 12 of D.P. Rules. The representation was rejected, vide impugned order dated 14.08.2013 (Annexure A-3).

9. Aggrieved thereby, the applicant has preferred the instant OA, challenging impugned order on variety of grounds mentioned therein, terming the orders as vitiated, arbitrary, illegal, whimsical, mala fide and against the statutory rules & principles of natural justice. On the basis of the aforesaid grounds, the applicant has sought quashing of the impugned order in the manner indicated hereinabove.

10. The contesting respondents refuted the claim of the applicant, filed the reply, wherein all the allegations and grounds contained in the OA were stoutly denied and prayed for its dismissal.

11. 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.

12. At the very outset, it may be added that, although the applicant has challenged the impugned order (Annexure A-3), on variety of grounds, but during the course of arguments,

learned counsel has confined his argument to challenge the applicability of Rule 12 of D.P. Rules, only on the ground of non-speaking impugned order and applicability of judgment of acquittal (Annexure A-13) in terms of Rule 12 of D.P. Rules.

13. In this regard, learned counsel has contended with some amount of vehemence, that since the applicant has already been acquitted by the criminal court, so the punishment awarded to him in the DE, deserves to be reviewed and revisited, in terms of Rule 12 of the D.P. Rules, but the DA has rejected his claim on unsustainable grounds and without application of mind. Hence, he prayed that the matter be remitted back to the DA to consider this aspect of the matter.

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

15. Having heard the learned counsel for the parties, having gone through the relevant record, legal provision and considering the entire matter, we are of the firm opinion that the instant OA deserves to be partly allowed, in the following manner.

16. 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.

17. The contention of learned counsel for respondents to the contrary 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.

18. As is evident from the record that the indicated penalty was imposed on the applicant, vide order dated 21.10.2011 (Annexure A-1) passed by the DA and his appeal was dismissed on 28.08.2012 (Annexure A-2) by the AA. It is not a matter of dispute that the applicant has subsequently been acquitted from the criminal charge in question, vide judgment of acquittal dated 08.11.2012 (Annexure A-13) by the Metropolitan Magistrate, Delhi.

19. Having been acquitted in the criminal case, the applicant filed the representation along with copy of judgment of acquittal for reviewing his punishment order in the DE. However, the same was rejected vide impugned order dated 14.08.2013 (Annexure A-3), which, in substance, is as under:-

> "In this connection it is stated that as per records ASI Phool Kumar, No.3871/D has already exhausted the channel of Appellate Authority, as such his present appeal to review the punishment upon acquittal in criminal case FIR No.1105/2002 u/s 509 IPC PS Sultan Puri, Delhi does not lie. Moreover, his present disciplinary authority has examined the judgment of Trial Court in said criminal case under Rule 12 of Delhi

> Police (Punishment & Appeal) Rules, 1980 vide order No.12021-56/HAP/(P-IV) PCR dated 20.06.2013 which clearly indicates that the punishment awarded to the ASI is justified.
>
> Therefore, the applicant ASI Phool Kumar, No.3871/D may be informed accordingly at your end".

20. Meaning thereby, the DA has not examined the matter in the right perspective in terms of Rule 12 of D.P. Rules and just rejected the representation of the applicant, mainly on the ground that he has already exhausted the channel of AA, by a very brief and cryptic impugned order (Annexure A-3). The DA was required to consider and record the valid reasons with regard to the applicability & import of judgment of acquittal, in terms of Rule 12 of D.P. Rules in the impugned order, which are totally lacking.

21. What cannot possibly be disputed here is that Central Vigilance Commission in its wisdom has taken a conscious decision with regard to passing of speaking orders 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.
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> 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."

22. 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 in para 8 held as under:-

> "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.***

23. 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.

24. 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.

25. 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".

26. 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.

27. Therefore, the DA was required to re-examine, revisit the punishment order and to consider the matter of applicability and effect of subsequent acquittal of the applicant in the criminal case, in terms of Rule 12 of D.P. Rules, and then to record, cogent reasons, by passing a speaking order, which is totally lacking in the present case. Hence, the impugned order (Annexure A-3) cannot legally be sustained and deserves to be set aside, in the obtaining circumstances of the case.

28. 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 order dated 14.08.2013 (Annexure A-3) is set aside. The case is remitted back to Disciplinary Authority to reconsider the matter of applicability and import of judgment of acquittal dated 08.11.2012 (Annexure A-13) passed by the criminal court and other indicated factors, in terms of Rule 12 of D.P. Rules, and then to pass appropriate speaking order in accordance with law, within a period of 2 months from the date of receipt of certified copy of this order. However, the parties are left to bear their own costs.

Needless to mention that nothing observed hereinabove, would reflect in any manner on the merits of the case, as the

same has been so recorded for the limited purpose of applicability of Rule 12 of D.P. Rules.

(V.N. GAUR)
MEMBER (A)

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

Rakesh