

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.4577/2014

New Delhi this the 15TH July, 2016

HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. V.N. GAUR, MEMBER (A)

Pawan Singh
PIS No. 28810005
ASI (Dvr.) of Delhi Police
Aged about 54 years
S/o. Sh. Harnand
R/o. Vill. : Isherheri
PO : Bahadurgarh.
Distt : Jhazzar, Haryana.

Applicant.

(By Advocate : Mr. Anil Singal)

Versus

1. Govt. of NCT of Delhi
Through Commissioner of Police,
PHQ, IP Estate, New Delhi.
2. Addl. Commissioner of Police,
Traffic, PHQ, I. P. Estate, New Delhi.
3. DCP/Traffic (VIP)
Through Commissioner of Police,
PHQ, IP Estate, New Delhi.

.....Respondents

(By Advocate : Ms. Sumedha Sharma)

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

Tersely, the facts, which needs a necessary mention for the limited purpose of deciding the core controversy, involved in the instant Original Application (OA), filed by applicant, Pawan Singh, ASI(Driver) of Delhi Police, is that, in the night intervening 25/26.01.2012, he caused a motor vehicle accident, while driving the police vehicle, bearing

Registration No.DL-ICJ-0580. Consequently, a criminal case was registered against him vide FIR No.17 of 2012, on accusation of having committed the offences punishable under Section 279 IPC and 185 of Motor Vehicles Act. Having completed the investigation, the applicant was put to criminal trial by the police of Police Station, Baba Haridass Nagar, Delhi. In this manner, he was stated to have committed grave misconduct and carelessness in discharge of his official duty.

2. As a consequence thereof, the applicant was also dealt departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980 [hereinafter to be referred as "D.P. Rules"] and served with the following summary of allegations:-

"It is alleged against ASI(Driver) Pawan No. 4114-D (PIS No. 28810005) that in the night intervening 25/26-1-12, while he was posted in Traffic Unit and was attached with Shri Raj Kumar Tyagi, ACP-T/HQ took the govt. vehicle bearing No. DL-1-CJ-0580 unauthorisedly at his own, instead of parking the same in police station Najafgarh after dropping Sh. Raj Kumar Tyagi, ACP at his house, as per his lawful directions and met with an accident with a stationary tractor/trolley at Surakhpur Road, falls in the area of P.S. Baba Hari Dass Nagar, Delhi. In this regard a PCR Call vide DD No. 85 B dated 25.01.2012, was received at P.S. Baba Hari Das Nagar and was entrusted to SI A.A. Khan for enquiry and report. After reaching at the spot he found one tractor No. HR 06C 1315 Swaraj 735 and white Traffic Police Qualis No. DL 1CJ0580 in accidental condition. The injured was already removed by PCR Van to RTRM Hospital for treatment. In the hospital, SI A. A. Khan found injured Pawan S/o. Harnand R/o Village Issher Heri admitted vide MLC No. 295/12 with the alleged history of RTA and Smell of Alcohol. Dr. declared him unfit for statement. Thereafter, SI A. A. Khan registered a case vide FIR No. 17/12 dt. 26.1.2012 U/s 279/337 IPC P.S. Baba Haridass Nagar and took up the investigation of the case. During investigation he recorded the statement of tractor driver, eye witness as well as other witnesses and found that the accident took place due to the rash and negligent driving of ASI (Driver) Pawan No. 4114/D and hit govt. Qualis vehicle in the road side stationary tractor trolley, while he drove the govt. vehicle he was under the influence of alcohol. Accordingly section 337 IPC was removed and section 185 M.V. Act was added in the case. SI A. A. Khan arrested accused Pawan Singh (ASI) S/o Harnand Singh R/o. VPO-Issher Heri P.S. Bahadur Garh, Jhajjar Haryana on 04.03.2012 and released on police bail as the section of law are bailable. After completing the investigation, he filed the charge sheet U/S 279 IPC & 185 MV Act against accused Pawan (ASI of Delhi Police) in the Court of law for judicial verdict and presently case is pending

trial. ASI Pawan No. 4114/D hit his govt. vehicle in a road side stationary tractor trolley from opposite side after consuming the alcohol and disobeyed the lawful directions of his senior officer and instead of parking the vehicle in PS Najafgarh, he took the government vehicle unauthorisedly at his own risk (sic) and tarnish the image of Delhi Police in the general public.

The above act on the part of ASI (Driver) Pawan No. 4114-D (PIS No. 28810005) amounts to gross negligent, misconduct, carelessness, unbecoming of a police officer and he also disobeyed the lawful directions of his senior during the discharge of his official duties for which he is liable for the departmental action under the provisions of Delhi Police (P&A) Rules-1980 read with section 21 of D.P. Act, (sic) 1978.”

3. An Enquiry Officer (EO) was appointed. The EO recorded, evaluated the evidence of the parties and came to a definite conclusion that charge levelled against the applicant stands proved vide his enquiry report dated 10.06.2013 (Annexure A-1).

4. Having completed all the codal formalities and tentatively agreeing with the findings of the EO, a penalty of forfeiture of one year approved service permanently, entailing subsequent reduction in the pay was, awarded to the applicant by way of impugned order dated 09.07.2011 (Annexure A-2) by the Disciplinary Authority (DA).

5. Dissatisfied with the impugned orders, the applicant filed the statutory appeal.

6. Meanwhile, during the pendency of statutory appeal, the applicant was acquitted of the offences punishable under Sections 279 IPC and 185 of the Motor Vehicles Act vide judgment of acquittal dated 22.10.2013 (Annexure A-5) by the Metropolitan Magistrate, Dwarka Courts, New Delhi.

7. However, the statutory appeal filed by the applicant was dismissed vide impugned order dated 13.02.2014 (Annexure A-3) by the Appellate Authority (AA).

8. Aggrieved thereby, the applicant has preferred the instant OA, challenging the impugned departmental enquiry proceedings and orders, on variety of grounds mentioned therein, terming the impugned 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 sought to quash the impugned enquiry proceedings and orders in the manner indicated hereinabove.

9. The contesting respondents refuted the claim of the applicant, filed the reply, virtually acknowledging the factual matrix and reiterating the validity of the enquiry proceedings and impugned orders, the respondents have stoutly denied all other allegations contained in the OA and prayed for its dismissal.

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

11. At the very outset, inviting our attention to the judgment of acquittal dated 22.10.2013 (Annexure A-5) of the Metropolitan Magistrate, Dwarka Courts, New Delhi, the

learned counsel for the applicant has contended with some amount of vehemence that although applicant has placed the copy of the judgment of acquittal before the AA, but the same was not considered in terms of Rule 12 of D.P. Rules and was just ignored by the AA. The argument is that since the applicant has already been acquitted by the criminal court and copy of judgment of acquittal was placed before the AA, so the impugned punishment awarded to him, in the departmental 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.

12. On the contrary, learned counsel for 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 passed by the DA. Hence, she prayed for dismissal of the OA.

13. Having heard the learned counsel for the parties, having gone through the relevant record, legal provisions with their valuable help and after bestowal of thoughts over the entire matter, we are of the firm opinion that the instant OA deserves to be partly allowed in the following manner.

14. As is evident from the record that the indicated penalty was imposed on the applicant vide impugned order dated 09.07.2013 (Annexure A-2) passed by the DA. Dissatisfied thereby, the applicant filed the statutory appeal. It has been specifically pleaded in para 4.6 of OA, that after acquittal, he appeared in Orderly Room (OR) before the AA along with copy of judgment of acquittal dated 22.10.2013 (Annexure A-5) and requested that, as he has been honourably acquitted by the Criminal Court, so he is entitled to exoneration with all consequential benefits. These specific pleadings have not been denied in the reply by the respondents. Moreover, the learned counsel for respondents has acknowledged the factual matrix.

15. Such thus being the position on record, now the short and significant question that arises for consideration in this case is, as to whether relevant authorities are bound to consider the judgment of acquittal of the applicant vis-à-vis punishment order in the departmental enquiry or not?

16. Having regards to the rival contention of learned counsel for the parties, in our view, the answer must obviously be in the affirmative.

17. In this context, 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.

18. 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.

19. 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”.

20. 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.

21. Therefore, the ratio of indicated law is fully applicable to the facts of the present case and is complete answer to the problem in hand. The impugned orders cannot legally be sustained and deserve to be set aside in the obtaining circumstances of the case.

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

23. 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 departmental enquiry, the OA is partly allowed. The impugned orders dated 09.07.2011 (Annexure A-2) passed by the DA and dated 13.02.2014 (Annexure A-3) passed by the AA, are hereby set aside. The case is remitted back to the DA, to decide the matter afresh, in view of aforesaid observation in terms of Rule 12 of D.P. Rules and in accordance with law, within a period of 3 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 nothing observed hereinabove would reflect on the merits of the case, in any manner during the course of subsequent hearing in departmental enquiry by DA, as the same has been so recorded for a limited purpose for deciding the instant OA on the indicated limited point. It is also made clear that in case applicant remains aggrieved by the order of Disciplinary & Appellate Authorities, he would be at liberty to challenge the same on all the grounds pleaded by him, in the present OA by filing fresh Original Application.

(V.N. GAUR)
MEMBER (A)

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

Rakesh