CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A No.100/4128/2012

New Delhi this the 2nd day of September, 2016

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

Constable Vishamber Dayal
No.6243/DAP, No.1152/W,
(PIS No.28900255)
Age 43 years,
S/o Sshri Bhim Sen
R/o H.No.284, G.No.15,
Mithapur Extension,
Part-III,
Badarpur,
New Delhi. ..Applicant

(Argued by:Shri Sachin Chauhan, Advocate)

Versus

1. Govt. of NCTD,
Through the Commissioner of Police,
PHQ, I.P.Estate, New Delhi.

2. The Joint Commissioner of Police,
South Western Range through
the Commissioner of Police,
PHQ,
I.P.Estate, New Delhi.

3. The Deputy Commissioner of
Police, West District, New Delhi,
Through Commissioner of Police,
PHQ, I.P. Estate, New Delhi.

4. The Addl. Deputy Commissioner of Police,
West District, New Delhi,
Through Commissioner of Police,
PHQ, I.P. Estate,
New Delhi. ..... Respondents

(By Advocate: Mr. N.K. Singh for Mrs. Avnish Ahlawat)

ORDER (ORAL)

Justice M.S. Sullar, Member (J)

The pith and substance of the facts & material, relevant for deciding the instant Original Application (OA), and arising out of the record, is that, applicant Ct. Vishamber Dayal, has produced the forged (Meena) Caste Certificate, at the time of recruitment in Delhi Police. Thus, he was stated to have committed the grave misconduct, at the time of his initial appointment.

2. As a consequence thereof, Departmental Enquiry (DE), was initiated against the applicant and Enquiry Officer (EO) was appointed under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter to be referred as "D.P. Rules"), vide impugned order dated 30.05.1994 (Annexure A-1) by the competent authority.

3. After following the due procedure of enquiry, the following summary of allegations was served upon the applicant:-

> "It is alleged that a complaint against you Ct. Vishamber Dayal, No.6243/DAP (Now 1152/w) (PIS No.28900255) was received from Shri Prem Pal Singh s/o Shri Babu Ram, Village Badhavas District Bulandshaher (UP). In the office of DCP/III Bn. DAP, Delhi through DCP/Vigilance, Delhi alleging therein that you Ct. Vishamber Dayal has got yourself enlisted in Delhi Police by submitting forged "Meena" Caste Certificate whereas you belong to "Thakur" Caste. On scrutiny of your service record, it was found that the Caste Certificate bearing No.1076 was issued to you on 18.05.1980 under the signature of Sub-Divisional (sic) Magistrate, District Bharat Pur (Rajasthan), wherein the address is given as under:-
>
> Vishamber Dayal
> S/o Shri Bhim Singh
> Village Mehrawar Pur, Teh. Kumher,
> District Bharat Pur (Rajasthan).
>
> The genuineness of this Caste Certificate was got verified from District Magistrate, Bharat Pur (Rajasthan) vide DCP/III Bn. DAP,

Delhi's letter on 2558/R Cell, dated 28.08.1993. The Collector-cum-District Magistrate, Bharat Pur (Rajasthan) informed vide his letter No.Judge/416/12(1)/86/93/6849 dated 06.12.1993 that the caste certificate No.1076 was not issued to Constable Vishamber Dayal S/o Shri Bhim Sen by the Sub-Divisional Magistrate, as the same was issued to one Shri Govind Singh S/o Shri Hukam Singh, Village Nagla Kumha on 16.08.1980 by the Sub-Divisional Magistrate, Bharat Pur (Rajasthan). Hence (sic) the caste certificate of your, Constable Vishamber Dayal S/o Shri Bhim Sen is forged/bogus. The signature made upon the stamp of Sub-Divisional Magistrate, Bharat Pur (Rajasthan) are (sic) also fictitious and the No.1076 dated 18.05.1980 of Caste Certificate is also forged.

From the above facts, it is evident that you Ct. Vishamber Dayal, No.1152/w has got your recruited as Constable, in Delhi Police, by adopting deceitful means.

The above act on your part Constable Vishamber Dayal, No.1152/w amount to gross misconduct which renders you liable for departmental action under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980".

4. At the same time, a criminal case was also registered against the applicant, on accusation of having committed the offences punishable u/s 420/468/471 IPC vide FIR No.213 dated 24.09.1994, by the police of Police Station, Mukherjee Nagar, Delhi.

5. Thereafter, the EO recorded & evaluated the evidence of the parties, and came to a definite conclusion, that the charges framed against the applicant stand duly proved, vide impugned enquiry report (Annexure A-4).

6. Having completed all the codal formalities and agreeing with the findings of the EO, a penalty of dismissal from service was imposed on the applicant, by way of impugned order dated 26.02.1999 (Annexure A-2), by the Disciplinary Authority (DA).

7. Feeling aggrieved thereby, the applicant has filed the appeal. He was heard in Orderly Room on 06.08.1999. The

Appellate Authority (AA) decided, that decision on his appeal will be taken after finalization of the criminal case.

8. Meanwhile, after passing the impugned order by DA and before the decision on his statutory appeal by AA, the applicant was acquitted of the charges, vide judgment of acquittal dated 31.01.2012 (Annexure A-9) by the Metropolitan Magistrate, Rohini, Delhi.

9. Surprisingly enough, that although initially the AA kept the decision in abeyance, to wait till the decision of the Criminal Case, but subsequently it dismissed the appeal of the applicant, without considering the applicability and effect of judgment of acquittal (Annexure A-9), in terms of Rule 12 of D.P. Rules, vide impugned order dated 15.11.2012 (Annexure A-3) by the AA.

10. Aggrieved thereby, the applicant has preferred the instant OA, to challenge the impugned DE proceedings and orders of DA & AA to be arbitrary, illegal, without jurisdiction and on variety of other pleaded grounds, mentioned therein, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

11. The respondents refuted the claim of the applicant and filed their reply. Virtually acknowledging the factual matrix & reiterating the validity of the impugned DE proceedings and orders, the respondents have stoutly denied all other

allegations and grounds contained in the OA and prayed for its dismissal.

12. 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.

13. At the very outset, it will not be out of place to mention here, that the applicant has challenged the impugned orders on various pleaded grounds mentioned therein, but during the course of final hearing, learned counsel for the applicant has confined his argument only to the limited extent of non-application of mind, inasmuch as the applicability and import of Rule 12 of D.P. Rules by the AA.

14. Learned counsel for the applicant has submitted, that although the AA had kept the decision on statutory appeal of the applicant in abeyance, till the decision of criminal case, but when the judgment of acquittal (Annexure A-9) was placed on record of the appeal, the same was not at all considered in terms of Rule 12 of D.P. Rules by the AA. The argument is that, it was the statutory duty of the AA to consider the applicability and import of judgment of acquittal vis-à-vis the punishment order passed by the DA, and to pass a speaking and reasoned order as mandated by Rule 25 (2) of D.P. Rules. Thus, he prayed, that the matter be remitted back to the AA for fresh consideration of this matter.

15. On the contrary, although the learned counsel for the respondents has fairly acknowledged, that the AA has adjourned the appeal to await the decision of the Criminal Court but he urged that applicant cannot take benefit of subsequent acquittal in the garb of Rule 12 of D.P. Rules, so his appeal was rightly rejected by the AA.

16. We have heard the learned counsel for the parties and have gone through the record with their valuable help.

17. Ex-facie, the argument of the learned counsel for the applicant, that the order of punishment passed by the DA, has to be revisited in view of his acquittal in the criminal case by the AA, has considerable

18. On the other end, the contention of learned counsel for respondents, that the applicant cannot claim the benefit of subsequent acquittal by the Criminal Court, in the garb of Rule 12 of D.P. Rules, is neither tenable nor the observations of Hon'ble Delhi High Court in case of ***Ex. Constable Ajayvir Gupta Vs. U.O.I. & Other W.P. (C) No.4387/2007*** decided on 30.05.2013 are at all applicable to the facts of the present case, wherein the import of its earlier judgment in case ***Govt. of NCT of Delhi & Others Vs. Rajpal Singh*** was explained and it was observed (para 41) as under:-

> "41. In the decision reported as ***100 (2002) DLT 385 Government of NCT of Delhi & Ors. Vs. Rajpal Singh*** Rule 12 of the Delhi Police (Punishment & Appeal) Rules 1980 was given a purposive interpretation to resolve the issue of an acquittal rendered on giving the benefit of doubt i.e. an acquittal which was not an honourable acquittal vis-à-vis a departmental inquiry. The Court held that since the departmental inquiry had commenced prior to the acquittal at the criminal trial the departmental proceedings could continue. The Court highlighted that the heading of the Rule: **'Action following judicial**

> **acquittal"** made it clear that what was prohibited was taking departmental action after a police officer had been acquitted and ex-facie had no concern where the departmental proceedings were initiated simultaneously or soon before or soon after the charge was laid at the criminal trial".

19. Therefore, on the peculiar facts and in the special circumstances of the cases, it was observed, that an acquittal rendered on giving the benefit of doubt, i.e., an acquittal which was not an honourable acquittal vis-à-vis departmental enquiry, the benefit of Rule 12 of D.P. Rules was not available to the delinquent therein.

20. Possibly no one case dispute with regard to the aforesaid observation, but the same would not come to the rescue of the respondents in the instant controversy, for the following reasons.

21. As indicated hereinabove, the AA itself has kept the decision on the statutory appeal of the applicant in abeyance till the disposal of the criminal case, perhaps for the simple reason of dealing the matter in terms of Rules 11 and 12 of the D.P. Rules, as the case may be. But subsequently the AA, has just ignored the matter of effect of judgment of acquittal (Annexure A-9) as per Rule 12 of D.P. Rules. It was the statutory duty of the AA to record the specific findings as to whether the import of the judgment of acquittal dated 31.01.2012 (Annexure A-9) is relevant or has to be ignored on account of exception clauses of Rule 12. AA has miserably failed in this relevant connection.

22. Meaning thereby, the applicant has raised very important issue of revisiting his punishment in terms of Rule 12 of D.P. Rules. Strangely enough, the AA has kept the appeal in abeyance to await the decision of criminal case, at the first instance and when the judgment of acquittal (Annexure A-9), was brought to his notice, then he just ignored the same with impunity and has not considered the applicability & effect of judgment of acquittal dated 31.01.2012 (Annexure A-9), in terms of Rule 12 of D.P. Rules, which is not legally permissible.

23. 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.

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 a narrow sense, so as to deny its benefit to the applicant. The dates of decisions in the departmental enquiry or in the criminal case depend upon variety of circumstances, beyond the control of the applicant. The applicant is only claiming reconsideration of his case in view of his acquittal in the criminal case and nothing else.

25. Therefore, the DE proceedings shall have to be revisited on account of the acquittal of the applicant by the criminal court, in terms of Rule 12 of D.P. Rules. This matter is no more res integra and is now well settled.

26. As identical case came to be decided by the Full Bench 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.*** Having considered the scope of Rule 12 of D.P. Rules, it was ruled 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".

27. 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.

28. There is yet another aspect of the matter which can be viewed entirely from a different angle. 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."

29. 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"**.

30. 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.***

31. Therefore, the ratio of law laid down in the aforesaid judgments is *mutatis mutandis* applicable to the facts of the present case and is a complete answer to the problem in

hand. As such, the matter has to be re-examined, revisited and the Appellate Authority is required to consider the matter of applicability & effect of acquittal of the applicant, vide judgment dated 31.01.2012 (Annexure A-9) by the Criminal Court in terms of Rule 12 of the D.P. Rules, and then to pass an appropriate order in this regard. Moreover, the AA is required to pass a speaking and reasoned order, as contemplated under Rule 15(2) of D.P. Rules, which is totally lacking in the present case.

32. 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 Appellate Authority, the OA is partly allowed. The impugned order dated 04.06.2014 (Annexure A-2) passed by the AA is set aside. The case is remitted back to the Appellate Authority to reconsider the matter afresh in view of the applicability and effect of judgment of acquittal dated 09.08.2012 (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 speaking and reasoned order on the applicant's statutory appeal in view of the aforesaid observations 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 since the matter has been decided mainly on the ground of applicability of Rule 12 of D.P. Rules, so in case the applicant still remains aggrieved by the order of the Appellate Authority, he would be at liberty to challenge the impugned orders on all the grounds, as pleaded by him in the present OA, by filing a fresh OA, in accordance with law and subject to all just exceptions.

(V.N. GAUR)
MEMBER (A)
01.09.2016

(JUSTICE M.S. SULLAR)
MEMBER (J)
01.09.2016

Rakesh