Central Administrative Tribunal
Principal Bench, New Delhi.

OA-3643/2012

Reserved on: 21.03.2018
Pronounced on: 20.04.2018

Hon'ble Mrs. Jasmine Ahmed, Member (J)
Hon'ble Mr. Uday Kumar Varma, Member (A)

Head Constable Vashisht Kumar No. 321/E,
S/o Sh. Ram Niwas,
R/o H-15 Police Station Lajpat Nagar
III, Delhi. ...Applicant

(By Advocate: Sh. Sachin Chauhan)

Versus

Govt. of NCTD through

1. The Commissioner of Police,
   Police Headquarters, MSO Building,
   I.P. Estate, New Delhi.

2. The Dy. Commissioner of Police,
   3rd Bn., DAP Vikaspuri,
   New Delhi.

3. Insp. Vimal Kishor,
   Enquiry Officer,
   3rd BN, DAP, Vikas Puri,
   New Delhi. ...Respondents

(By Advocate: Mrs. Sumedha Sharma)

ORDER

By Hon'ble Mr. Uday Kumar Varma, Member (A):

This OA is before us following a remand by the Hon'ble High Court of Delhi vide their order dated 02.07.2013. The High Court has set aside the order of the

Tribunal dated 28.01.2013 which in turn, had quashed and set aside the respondent-Delhi Police's order dated 12.9.2012 to initiate departmental proceedings against the applicant under Rule 12(a) of Delhi Police Manual. The Tribunal had held that as the applicant was exonerated in the criminal case on the same charges from the trial court on the ground of inadequate evidence and for the charges not having been established beyond any shadow of doubt, such acquittal cannot be termed as technical. The Tribunal had, therefore, quashed the order of the Delhi Police re-initiating departmental enquiry against the applicant. The operative part of Tribunal's judgment is reproduced below:-

> *"6. In our opinion, Learned Judge of the Trial Court examined 16 prosecution witnesses and 6 defence witnesses. She has carefully assessed the evidence adduced before her by the prosecution as well as the defence and has come to the conclusion that the prosecution has not been able to prove its case against the accused person. It was for the IO to associate public witness with the prosecution and if this was not done for whatever reason, this cannot be held against the applicant. We are convinced that this case is covered by the judgment of the Punjab and Haryana High Court in the case Bhag Singh (supra) relied upon by the applicant's counsel. We, therefore, hold that this acquittal cannot be termed as acquittal on technical grounds and consequently Rule-12(a) of Delhi Police (Punishment & Appeal) Rules, 1980 cannot be invoked to initiate departmental proceedings against the applicant. We, therefore, quash and set aside the order dated 12.09.2012 of the respondents by which disciplinary enquiry proceedings have been reopened against the applicant. The respondents will take a decision within 6 weeks regarding consequential benefits of pay and allowances, seniority and promotion of the applicant from the date of receipt of a certified copy of this order. There shall be no order as to costs."*

2. While setting aside the decision of the Tribunal in the OA, High Court has made the following observations: -

> *"1. In view of the decision pronounced on May 30, 2013 disposing of a batch of writ petitions leading matter being W.P.(C) No.4387/2007 Ex.Constable Ajayvir Gulia vs. UOI & Ors., with consent of parties impugned decision dated January 28, 2013 is set aside and O.A. No.3643/2012 is restored for fresh adjudication by the Central Administrative Tribunal with a direction that while re-deciding the matter the law declared by the Division Bench of this court in W.P.(C) No.4387/2007 shall be kept in mine.*
>
> *2. We are not expressing any opinion on the merits of the controversy lest either party is prejudiced at the remanded stage before the Tribunal.*
>
> *3. Liberty granted to the parties to file additional pleadings with documents keeping in view the law declared by the Division Bench of this Court in W.P.(C) No.4387/2007.*
>
> *4. Parties shall appear before the Registrar of the Tribunal on July 22, 2013 who shall grant an opportunity to the parties to file additional pleadings with documents if they so desire and thereafter would list the Original Application before the appropriate Bench for fresh adjudication."*

3. Briefly stated, the facts of the case are that the applicant (HC Vashisht Kumar) was allegedly involved in dacoity by waylaying a motorcycle rider, namely, Sh. M.A. Masood and allegedly looting Rs.4.52 lakhs at gunpoint. During investigation, a case u/s 395/398 IPC was registered against the applicant and others. For involvement in this case, the applicant was dismissed from Delhi Police vide their Order No. 8760-8860/HAP (P-

III)/East dated 18.05.2007. Aggrieved by this order of dismissal, applicant filed OA-1859/2007 before the Principal Bench of this Tribunal. On 18.03.2008 the Tribunal pronounced the judgment in the said O.A. and in pursuance of the same the applicant was reinstated in service w.e.f. the date of his dismissal i.e. 18.05.2007. By the same order, disciplinary enquiry proceedings were started afresh and the applicant was deemed to have been placed under suspension w.e.f. the same date. The applicant filed another OA-3115/2011 before this Tribunal for quashing the order dated 21.06.2011 regarding initiation of departmental enquiry against him. The applicant was granted interim relief in the aforesaid O.A. which was as follows: -

> *"The respondents shall not pass any final order in the departmental proceedings till the final outcome of the Present OA."*

Subsequently, the OA-3115/2011 was disposed of with the following order: -

> *"3. In view of the fact that the respondents have themselves kept the inquiry in abeyance, although this Tribunal has not granted the stay regarding not proceeding with the inquiry proceedings and rather the order passed by the Tribunal was that final order in the departmental proceedings shall not be passed till the final outcome of the present O.A., we are of the view that the present O.A. can be disposed of in the light of the aforesaid decision taken by the respondents. It will be, however, permissible for the respondents to look into the matter again in the light of the observations made by them in their own order in the light of the provisions*

> *contained and thereafter pass an appropriate order in case they want to proceed with the matter, within a period of three months from the date of receipt of a copy of this order."*

4. Criminal case against the applicant was decided by Additional Sessions Judge on 04.08.2011 by which he was acquitted. The operative part of the order of the Trial Court reads as follows: -

> *"41. In such circumstances when no independent public witness has been joined by the prosecution and the identity of accused persons as well as the recovery made from them is doubtful, it cannot be said that prosecution has been able to prove its case against the accused persons beyond shadow of doubt. As such both the accused persons are given benefit of doubt. They are acquitted of the offence. They are on bail. In view of the new amended section 437Aof Cr.P.C., the bail bond already furnished by the accused persons are extended for the period of 6 months with the condition that they shall appear before the Honble High Court as and when such notice is issued in respect of any appeal filed by the state against the judgement within a period of 6 months. Case property be confiscated to the state after the expiry of period of revision/appeal, if any. File be consigned to record room."*

5. However, the respondents, vide their order dated 30.01.2012, decided to reopen the departmental enquiry which had been kept in abeyance. Aggrieved, the applicant submitted a representation dated 03.02.2012 requesting the respondents not to initiate the departmental enquiry against him and file the same. It is submitted by the applicant that despite his request, when the respondents moved ahead in the departmental enquiry, he approached the Tribunal again and filed OA-567/2012, which was

decided by this Tribunal vide their order dated 18.07.2012, which reads as follows: -

> *"12. In all fairness, the respondents ought to have considered the representation on its merit, especially in view of the material which has a bearing on the decision in respect of applicability of Rule 12 of Delhi Police (Punishment Appeal) Rules, 1980.*
>
> *13. In view of facts and circumstances of the case, the impugned Order dated 30.01.2012 is quashed and set aside and the matter is remitted back to the authority concerned to apply its mind to Rule 12 of Delhi Police (Punishment Appeal) Rules, 1980 with reference to the judgment given by the Addl. Sessions Judge-01, North Delhi and decide as to under which clause of Rule 12, the enquiry is being reopened by the respondents. While doing so, the respondents shall give due consideration to the applicant's representation against such reopening (Annexure A-6). We further add that any observation made hereinabove shall not be construed as an expression of our opinion on the applicability of Rule 12 in the present case. Consequently, this OA is allowed. There is no order as to cost."*

6. Following the above direction of the Tribunal, the respondents again examined and considered the case of the applicant and holding that the applicant had been acquitted on technical grounds ordered reopening of the departmental enquiry against the applicant vide order dated 12.09.2012 under Rule-12 (a) of Delhi Police (Punishment & Appeal) Rules, 1980. The applicant made a representation dated 17.09.2012 against the order dated 12.09.2012 by which the departmental enquiry already initiated against him had been ordered to be reopened from the stage it was kept in abeyance. However, the same was

rejected by the respondents vide order dated 12.10.2012. Aggrieved by the same, the applicant has filed O.A. No.3643/2012.

7. The Tribunal after having heard the learned counsel for the parties and relying on the decision of the Hon'ble High Court of Punjab & Haryana in ***Bhag Singh Vs. Punjab & Sind Bank*** [2006(1) SCT 175] allowed the OA vide order dated 28.01.2013. The above decision of the Tribunal was challenged by the respondents by way of WP(C) No.3736/2013, which was allowed by the Hon'ble High Court of Delhi vide its order dated 02.07.2013 by setting aside the decision of the Tribunal and restoring the OA for fresh adjudication by the Tribunal with a direction that while re-deciding the matter, the law declared by the Division Bench of High Court in the case of ***Ex-Constable Ajayvir Gulia vs. UOI & Ors.*** [WP(C) No.4387/2007] shall be kept in mind.

8. At the time of fresh hearing, in pursuance of the High Court's directions, learned counsel for the applicant has reiterated the grounds as were earlier taken before the Tribunal placing reliance on Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 and stated that since the applicant has been acquitted in the criminal trial, he

cannot be proceeded against departmentally. Learned counsel also submitted that the acquittal of the applicant was not on technical ground and to buttress his arguments he placed reliance on the decision in case of ***George N.S. vs. Commissioner of Police*** [W.P.(C) No.4941/2000 decided on 12.08.2011].

9. Learned counsel for the applicant further added that the benefit of doubt as recorded in Trial Court judgment dated 04.08.2011 in para 41 is superfluous. He further placed reliance on the decision in ***Bhag Singh's*** case (supra) to submit that where the acquittal is for want of any evidence to prove the criminal charge, mere mention of 'benefit of doubt' by a criminal court is superfluous and baseless and such an acquittal is an "honorable acquittal". The learned counsel for the applicant has further submitted that decision in ***Ajayvir Gulia***'s case (supra) will not apply to the case of the applicant for the reason that all the witnesses cited as evidence in the case of the applicant in criminal case has appeared and deposed before the court. Moreover, the trial court in para 31 to 39 clearly demolished each and every limb of prosecution story against the applicant and none of the witnesses has turned hostile. On the contrary, the Trial Court refused to rely

upon their testimony even casting suspicion on the deposition of their witnesses.

10. Learned counsel for the respondents, on the other hand, submits that since the acquittal of the applicant by the trial court was on technical ground, the respondents are well within their right under Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 to re-open the departmental enquiry against the applicant. The respondents have further submitted that the High Court in ***Ajayvir Gulia's*** case (supra) has taken the similar view and, therefore, the Hon'ble High Court, while remanding the instant OA to the Tribunal for fresh adjudication, has mandated the Tribunal to decide the matter keeping in mind the ratio of ***Ajayvir Gulia's*** case (supra).

11. We find that the arguments by and large from both the sides have remained the same i.e. same grounds were raised in the earlier hearing and there is no material difference between the arguments put forth on earlier occasion and now. No new facts have also been brought to our notice.

12. Since we have been mandated by the Hon'ble High Court's order to consider the issues in the instant OA in the light of the observations made in ***Ex. Const. Ajayvir Gulia vs. Union of India & Ors.*** (supra), it is incumbent

upon us to really understand the letter and spirit that pervades the judgment in ***Ajayvir Gulia's*** case (supra). Before we come to specific observations, it seems appropriate that we may reproduce the operative part of the High Court's judgment in ***Ajayvir Gulia's*** case, which reads as under:-

> *"46. Pertaining to Ajayvir Gulia, as we have noted above, since the prosecutrix turned hostile, the learned Court of Sessions did not deem it appropriate to record any further evidence and notwithstanding Amita, Nisha, Rajvir Singh, HC Shrikrishan and SI Usha Sharma cited as witnesses, without examining them, Ajayvir was acquitted.*
>
> *47. Our interpretation of 'evidence cited' and the expression 'whether actually led or not'; the latter being surplus in the Rule, leads us to hold that the department was fully empowered to take departmental action against Ajayvir Gulia.*
>
> *48. We have briefly noted hereinabove in paragraph 8 the testimony of Nisha and Amita, the sisters of the prosecutrix and the same would bring out that soon after the traumatic experience faced by the prosecutrix who was lured to the place where she was raped, she narrated the traumatic experience to her two sisters and she named Ajayvir Gulia. The two witnesses have deposed that the prosecutrix, their sister was looking for a job and had come across an advertisement by a placement agency and a mobile number 9811844400 was disclosed to her and that on the day of the incident she left Anita's house telling her that a person named Ajayvir had told her to reach a place from where she would be taken for an interview. The testimony of Anita, corroborated by Nisha clearly brings out that the prosecutrix had left the house to meet a person named Ajayvir. She returned home after being ravished and told that Ajayvir had raped her. The excited utterances of the traumatized victim would not be hearsay evidence even as per strict standards of criminal law; these utterances would be admissible in evidence as res gestae evidence.*
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> *49. In the decision reported as 483 US 171 (1987) Bourjaily Vs. United States where a rape victim had turned hostile, but her excited utterances spoken of soon after the unfortunate incident being proved through witnesses, the direction to the jury to ignore the testimony of the prosecutrix and take into account res*

gestae evidence resulting in the accused being convicted was upheld.

50. In the decision reported as (1977) 2 SCC 491 State of Haryana & Ors. v. Rattan Singh the Supreme Court categorically held that at domestic inquiries the strict and sophisticated rules of evidence are not applicable and all materials which are logically probative for a prudent mind are permissible and that there is no allergy to hearsay evidence provided it has reasonable nexus and credibility. In said case, statements made by passengers of the bus to the raiding party were held admissible in evidence against the conductor of the bus who had charged the fare as per the statements made, but had not issued the tickets; the passengers not being examined at the departmental inquiry.

51. Thus, for our reasons given hereinabove W.P.(C) No.4387/2007 filed by Ajayvir Gulia is dismissed."

In our view, it will be equally essential to quote below a paragraph which summarizes the anguish and the concern of the court in a very telling manner: -

"64. Before bringing the curtains formally down, we cannot but resist to note that the three cases bring out a very disturbing trend which we are witnessing off lately concerning Delhi Police personnel. At the constabulary level we find that police officers are able to suborn witnesses and are getting away at the criminal trials and also at the domestic inquiries. The reason appears to be two fold. Firstly, the Delhi Police (Punishment & Appeal) Rules 1980 and especially Rule 12, 15(2) and 16 which are very heavily loaded in favour of the delinquents. We see no reason why the power to initiate disciplinary proceedings against officials of Delhi Police be curtailed as we find under Rule 12, 15(2) and 16. Why does the Commissioner of Police not consider simply adopting the CCA (CCS) Rules 1965 which strike a healthy balance vis-à-vis the rights of the charged officer and the department? Here we have before us Ajayvir Gulia who had enticed, entangled and raped a young girl. He suborned her to turn hostile. But fortunately we have sufficient res gestae evidence against him. We have before us Const.Ravinder Singh who was charged for kidnapping and murder as also for conspiracy. He got away at the criminal trial and so did his co-accused because two fathers who lost their sons turned hostile and did not support recoveries of clothes of children which they had allegedly witnessed. What further proof of Const.Ravinder Singh's clout can we have other than his audacity to threaten SI Nek Ram

> *and somewhat silence him. We have before us three force personnel, HC Mahesh Kumar, Const.Satender Kumar and Const.Dharmender Kumar, who way lay Sachin Bansal; rob him of `300/-, a gold chain and a mobile phone. They take him to an ATM to use his debit card to withdraw money in spite of the fact that Sachin Bansal saw the three for a sufficient duration of time, while supporting the incident, he did not identify the three force personnel. What more proof do we have of the clout of these three persons? Why is the Commissioner of Police retaining departmental inquiry rules which favour such kinds of police personnel? We are left wondering because in case after case learned counsel who appear for the Commissioner of Police lament that even they find it difficult to support the departmental actions because of the heavily loaded law in favour of the delinquent police personnel. This would explain our decision being a bit lengthy and a deep dive into the factual arena.*"

13. As is evident, the court has raised some very fundamental issues qua formulation of rules with regard to the way departmental proceedings are conducted in Delhi Police and this must have some bearing on the view that we take in this case.

14. At the outset, we wish to state that in our considered opinion, there is a need to make a distinction between trial in a criminal court and proceedings in a departmental enquiry. The trial in a criminal court is for an alleged crime which is defined under the Indian Penal Code or other criminal laws, whereas departmental enquiry essentially deals with the issue of misconduct of a delinquent employee. It is possible that a government employee gets exonerated on account of benefit of doubt in a criminal case of the charges that are also the basis of

departmental enquiry, but may still be proceeded departmentally if his conduct leading to the alleged crime or in any way associated with the crime, is deemed by the disciplinary authority to be unbecoming of a government servant. For instance, a government servant may be exonerated in a heinous crime like rape but if it is established that he had called the victim to a certain place with the intention to commit rape and this act of calling the victim with malafide intention is part of the charge in the departmental enquiry, he may still be held guilty of committing a misconduct. Therefore, mechanically applying the principle that once acquitted in a criminal case, department enquiry, if initiated on the same charges, must also be closed, may not be the right course of action. In our view, it is imperative for the authorities conducting departmental enquiry to come to this conclusion that even though the charge of alleged crime was not established in a court of law, his conduct still amounts to be unbecoming of a government servant. Such a distinction assumes great significance in cases where the acquittal is based on insufficient evidence or on doubtful evidence. It gets added traction if the acquittal is essentially based on court's reliance on factors which prima facie may generate some doubt and certainly a debate.

15. One of the landmark judgments on simultaneous continuance of criminal proceedings and departmental proceedings is that of ***Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr.*** [1999 (SCC) (L&S) 810]. The Apex Court has held that scope of these two proceedings is different and they can be continued independently. More significantly it held that "*the standard of proof required in those proceedings is also different from that required in a criminal case. While in departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt.*"

16. In the instant case while the main charges relate to the incident of decoity, there are some differences particularly in the list of witnesses. While in the departmental enquiry, HC Dharamvir Singh is named as witness, but he has not been examined in the criminal case. Therefore, these distinctions between the proceedings in a criminal court and in the departmental enquiry must have some bearing on adjudication of such matters.

17. If we go by the spirit of ***Ajayvir Gulia's*** case (supra), one cannot fail to notice that the observation of the court was with regard to such heinous crimes where the

defendants are able to manipulate the prosecutors. The case of ***Ajayvir Gulia*** (supra) was one of rape and molestation of a young girl; in the case of Constable Ravinder Singh, he was charged for kidnapping and murder as also for conspiracy. Likewise, there is the case of HC Mahesh Kumar, Const. Satender Kumar and Const.Dharmender Kumar, who way lay a citizen; rob him of Rs.300/-, a gold chain and a mobile phone.

18. The alleged crime committed by the applicant in the instant case is also of the same seriousness and gravity. This whole process raises serious question as to the propriety of dropping departmental enquiries against such persons who have somehow managed to get acquittals not because the crime was not proved but because the key witnesses either became hostile or absented themselves or did not depose in a manner that could have established the crime. It is this factor that the High Court, as observed in ***Ajayvir Gulia's*** case (supra), expects the Tribunal to keep in mind while adjudicating this particular case.

19. Ordinarily, there is no necessity to analyze in length and depth the Trial Court judgment. Such an exercise does not belong to Tribunal's domain. However, since in ***Ajayvir Gulia's case*** the High Court, before reaching its

conclusion, essentially dealt with the judgment at length and came to the conclusion that the Trial Court had in fact disregarded “res gestae” evidence and failed to examine other witnesses only because the prosecutrix had become hostile, therefore, we are duty bound to study the trial court’s judgment carefully to fully comprehend the import and implication of the judgment. The operative part of the decision of the Trial Court judgment dated 04.08.2011 has already been quoted in paragraph 4 earlier.

20. It is clear from the wording of the judgment that the trial court has not held that the accused persons had not committed the crime for which they were prosecuted. What it has held is that as there were no independent public witnessesand the identity of the accused and the recovery made by them was not established beyond shadow of doubt, the accused are given benefit of doubt.

21. Among major lacunae in the case against the accused according to the trial court is that there were no independent public witnesses to the alleged crime. The incident, as has been reported, happened in a very short period of time. Apparently, the victim was stopped by two persons on a motorcycle, who were soon joined by other motorcyclist; the keys of the motorcycle of the victim were

removed, the bag, which he was carrying, was snatched, and the motorcyclists sped away with the bag. This incident happened at around 10.30 in the morning. While not in any way questioning the finding of the trial court, it occurs to us that if the incident had lasted for some length of time, in all likelihood, many people may have seen the same, but if the same took place in a short slice of time, let's say in a few minute, then it is not unlikely that there was any independent public witness, and if this be the case then it may not be possible to produce an independent public witness to prove the charge. The trial court has also very strongly relied on the fact that the money recovered from the accused Vashisht Kumar was not shown to the complainant to establish that it was the same currency notes that he was carrying. If, for a moment, it is granted that the same should have been shown to the complainant, it still is doubtful whether the complainant would be able to identify the exact currency notes which he was carrying because he was carrying roughly an amount of Rs.4,52,000/- and the recovery was only for Rs. 10,000/-. It appears to us that it could be extremely difficult for anybody to identify the recovered currency notes unless the currency notes being carried by a victim at the time of dacoity were of a particular series or

of a combination of numbers which can easily be memorized by a person of average intelligence or a record was kept of the details of these currency notes by the victim.

22. Another ground taken by the trial court is that the keys recovered from the accused could be of any motor cycle of Hero Honda Brand. The Learned Judge has relied on the defense argument that anybody having the Hero Honda motorcycle will have the same type of key and on the basis of the word 'Hero Honda' engraved on one side and on the other emblem of Hero Honda, it could not be said on the basis of these identification marks that key belongs to the complainant only. Another reason for benefit of doubt being given to the accused is that the complainant had stated different versions with regard to his meeting the accused. At some place he has mentioned that he saw both the accused persons in the police station and at another he stated that he saw only one accused in the police station, subsequently he stated that he identified all the accused persons in video conferencing and lastly the trial court has relied upon the fact that TIP was not conducted in respect of the accused or in respect of the recovery made from them.

23. The purpose of highlighting some of the findings of the trial court is only to comprehend the trial court's line of logic while acquitting the applicant by giving him the benefit of doubt and not to analyze or dissect the order which does not fall in our domain. However, if we concede that a departmental enquiry is merely a process to find out the truth about the alleged misconduct and the process itself is not a pronouncement of guilt of any government employee, holding a departmental enquiry may seem to be in the interest of justice. It is true that the enquiry has been re-opened under Rule 12(a) of the Delhi Police (Punishment & Appeal) Rules, 1980 on the ground that acquittal of the delinquent employee had been on technical ground. The implication and import of the word 'technical ground' is for more extensive. It could be argued that not producing an independent public witness is also a technical lapse on the part of the prosecution. It may appear to be a weak argument but it is an argument nevertheless. The whole purpose of re-opening the departmental enquiry is to establish, in a sense, culpability of the delinquent employee in the alleged misconduct, if any. Therefore, denying departmental enquiry at this stage would mean that the logic of the criminal act not having been convincingly established in the criminal trial on

account of benefit of doubt is being extended to the process of departmental enquiry as well. In other words, it forecloses the option of the respondents to look at the alleged misconduct of the employee afresh through a due process of law.

24. Learned counsel for the applicant, at the time of oral hearing, vehemently pleaded that acquittal by the trial court in this case cannot be called an acquittal on technical ground. In support of his argument, he placed before us the judgment of Hon'ble High Court in ***George N.S. vs. Commissioner of Police*** [W.P.(C) No.4941/2000 decided on 12.08.2011]. He read out paragraph 12 of the judgment which we believe should be reproduced below to make the issue clear. The paragraph 12 of the judgment reads as under: -

> *"12. The acquittal on account of prosecution failing to prove its case beyond reasonable doubt or on account of lack of evidence or no evidence cannot be termed as acquittal on technical ground. Such grounds i.e. technical ground, would be, to illustrate a few, limitation which has now been prescribed by recent amendment in Cr.P.C or trial without obtaining sanction as required under Section 197 Cr.P.C in cases where it is required and the trial being held without obtaining such sanction. If the legislature intended that acquittal on account of benefit of doubt or prosecution failing to prove a case beyond reasonable doubt etc. were not to be a bar in the departmental proceedings, it would have so specifically provided as Exception in Rule 12. The legislature could not be oblivious of the situation as mentioned above, particularly when we know that most of the acquittals are based on the failure of the prosecution to prove the case beyond reasonable doubt or on account of benefit of doubt. The legislative wisdom only refers to acquittal on technical grounds as one of*

the exceptions for holding departmental proceedings. By any means we cannot hold that failure of the prosecution to lead evidence per se, would amount to acquittal on technical ground. The acquittal resulting on account of prosecution not leading evidence or leading insufficient evidence would definitely stand on different footing than acquittal resulting on technical ground. In the former case, the acquittal would be clean acquittal and even the words like "benefit of doubt" or "failing to prove beyond reasonable doubt" would be superfluous. The petitioner was acquitted by learned MM because there was no evidence led by the prosecution for many years and even the case property was also not produced for any justifiable reason. Such acquittal could not be said to be on a technical ground since the charges were not proved and the decision was arrived at on the basis of no evidence on record. A Division Bench of Punjab and Haryana High Court in Bhag Singh vs. Punjab and Sind Bank 2006(1) SCT 175 held that where the acquittal is for want of any evidence to prove the criminal charge, mere mention of" benefit of doubt" by a criminal court is superfluous and baseless and such an acquittal is an "honourable acquittal". Another Division Bench of Punjab and Haryana High Court in Shashikumari vs. Uttari Haryana Bijli Vitran Nigam 2005 (1) ATJ 154 has taken the same view. The instant case, however, appears to be on a better footing. Thus, we have no hesitation in arriving at a conclusion that exception (a) to the prohibition was not attracted in the present case."

25. The case in which the High Court passed the above order is slightly different from the one before us. In the case before the High Court, the Tribunal had initially dismissed the OA filed by the applicant challenging his punishment in the departmental enquiry. Apparently the petitioner before the High Court had not challenged the decision of the respondents to hold departmental enquiry but had challenged the action of the respondents after conclusion of departmental proceedings and award of punishment. The second major difference is that in this

case the charge of misconduct was of threatening one Dr. Rajiv Sharma on his telephone to pay him Rs. 50,000/-. The petitioner, while threatening on telephone, claimed himself to be a gangster of LTTE. Dr. Rajeev Sharma directed Nurse Licy to fix an appointment with the person who had called him to pay the amount which she did and at the appointed place and time when a bag containing plain paper was handed over to the petitioner, the police personnel who were nearby apprehended the petitioner. One of the grounds on which the petitioner in this case was acquitted was that the prosecution failed to lead any evidence except Nurse Licy who was examined-in-chief, but did not appear for cross-examination for many years.

26. In the instant case the alleged crime/misconduct of the applicant is that he committed a loot and a dacoity and he was proceeded against under Section 395/398 of IPC. Obviously, the nature of the offence is very different and while we concede that judgment of the High Court does not discuss a situation where a grave and heinous crime is committed and does not lay down any alternative recourse. Arguably the ratio is unambiguous and it is, that lack of evidence or inadequacy of evidence or a term like benefit of doubt shall not amount to a technical acquittal. However, we are circumscribed by the remand order of the High

Court in the instant case. It is on account of this unique direction of the High Court that we are mandated to look deeper into this question and while doing so we have no option but to keep in mind the gravity of the offence/crime committed by the applicant.

27. It may not be inappropriate to mention here in passing that the above discussed High Court's order in ***George N.S. vs. Commissioner of Police*** (supra), which was decided on 12.08.2011, was prior to the decision of the same High Court in ***Ajayvir Gulia's*** case (supra) which was passed on 30.05.2013. To us, it does not seem likely that the High Court of Delhi while passing the order in ***Ajayvir Gulia's*** case (supra), was unmindful of the judgment in ***George N.S. vs. Commissioner of Police*** (supra) delivered on 12.08.2011. Therefore, we would like to look at the facts of this case through the prism of High Court's order in ***Ajayvir Gulia's*** case (supra). The key issue for consideration before us is whether absence of an independent public witness given as a ground for acquittal in this case amounts to 'technical acquittal'. We have deeply thought about this and we have come to the conclusion that absence of independent witness could be construed as a technical acquittal. Here, the nature of the crime and the circumstances and timing of the crime raises

a distinct possibility that the incident may not have been noticed by anybody because in all likelihood it took place within a very short period of time. In our view, there was no requirement to produce any independent private witness because the circumstances in which the incident took place did not offer a possibility of an independent private witness. The fact of the matter is that the trial court, has, however, made it a very important ground. A reading of the trial court judgment reveals that the very first ground for acquitting the applicant is 'absence of independent public witness'. The basis for our saying so could be tenuous, but it is not without substance and, therefore, seen this in conjunction with other factors of the case and considering the unfortunate trend of police personnel getting away from the departmental proceedings even after committing heinous crimes because they got the benefit of doubt in criminal case, our balanced and considered view is that no injustice shall take place if the applicant is proceeded against departmentally. After all, departmental proceedings against him will also follow the rules laid down in this regard and initiation of a departmental enquiry does not, in any way, imply that the employee's misconduct stands proved and established. Departmental proceedings are expected to be conducted and concluded in a fair

manner and if in this process the applicant is found to be not guilty, so be it.

28. Keeping in view the letter and spirit which the High Court in case of ***Ajayvir Gulia's*** case (supra) has articulated, we are of the view that ends of justice will be better served if the applicant is proceeded against departmentally. The OA is accordingly dismissed. No costs.

(Uday Kumar Varma)
Member (A)

(Jasmine Ahmed)
Member (J)

/AhujA/