

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA-4135/2016

New Delhi, this the 23rd day of May, 2019

**Hon'ble Sh. A.K. Bishnoi, Member(A)
Hon'ble Sh. R.N. Singh, Member(J)**

Constable (Exe.) Vinod Sharma,
PIS No. 28981482, Belt No. 4245/Security,
S/o sh. Ram Hari Sharma,
R/o L-2/72, Shastri Nagar,
Delhi- 110052.

Aged around 38 years

Presently posted at:
Security, Vinay Marg,
New Delhi.

...Applicant
(through Mr. Sourabh Ahuja)

Versus

1. GNCT of Delhi,
Through its Chief Secretary,
Delhi Secretariat, IP Estate,
New Delhi.
2. Commissioner of Police,
Police Head Quarters, IP Estate,
MSO Building, New Delhi.
3. Joint Commissioner of Police (Security),
Through Commissioner of Police,
Police Head Quarters, IP Estate,
MSO building, New Delhi.
4. Deputy Commissioner of Police, (Security)
Through Commissioner of Police,
Police Head Quarters, IP Estate,
MSO Building, New Delhi.

... Respondents

(through Ms. Pratima Gupta)

ORDER(ORAL)

Hon'ble Sh. R.N. Singh, Member (J)

The applicant is working as Constable (Executive) under the respondents and has approached this Tribunal challenging the findings dated 24.02.2016 of the Inquiry Officer (Annexure A-1), penalty order dated 31.03.2016 of the Disciplinary Authority (Annexure A-2) and the order dated 08.09.2016 of the Appellate Authority (Annexure A-3) in pursuance to the departmental proceedings against him by way of the present O.A.

2. The brief facts leading to filing of the present O.A. are that a case FIR No. 513/2006 dated 27.12.2006 under Section 376 IPC was registered against the applicant with P.S. – Sarai Rohilla, Delhi and the applicant was placed under suspension from the date of his arrest on 27.12.2006. Lodging of the aforesaid FIR, further, resulted into the departmental proceedings and also a criminal trial against the applicant. It is not disputed that the allegations in the criminal case and that in the departmental proceedings were based on the same set of facts, list of documents and witnesses.

3. In pursuance to the criminal trial in the aforesaid case FIR, the applicant was acquitted for offence under Section 376 of IPC by the Learned Court of Additional Sessions Judge-SFTC-2 (Central), Tis Hazari Courts, Delhi vide order/judgment dated 19.12.2015 (Annexure A-7).

4. In pursuance to the aforesaid departmental proceedings the Inquiry Officer vide his findings dated 24.02.2016 reported that the charge against

the applicant is proved beyond any shadow. The applicant on receipt of the findings of the Inquiry Officer submitted his objections to such findings of the Inquiry Officer before the Disciplinary Authority and the Disciplinary Authority vide order dated 31.03.2016 (Annexure A-2) inflicted the penalty of forfeiture of five years of approved service of the applicant permanently with proportionate reduction in pay with immediate effect and also decided the period of suspension as 'not spent on duty' for all intents and purposes.

5. Aggrieved by such disciplinary order, the applicant preferred the statutory appeal before the Appellate Authority and the Appellate Authority vide order dated 08.09.2016 (Annesure A-3) upheld the order of penalty, passed by Disciplinary Authority.

6. The learned counsel for the applicant argues that in view of Rule-12 of Delhi Police (Punishment and Appeal) Rules, 1980, the Inquiry Officer, the Disciplinary Authority as well as the Appellate Authority were duty bound to consider, as to whether, the applicant was required to be punished in the departmental proceeding or not after taking into account his acquittal in the aforesaid case FIR. The learned counsel, further, adds that the applicant has produced the order/judgment of his acquittal from the aforesaid criminal case before the Inquiry Officer, the Disciplinary Authority as well as the Appellate Authority; however, the same has been ignored by such authorities without application of mind and without any cogent reason.

7. In response to the notice issued by the Tribunal, the respondents filed their counter reply and the applicant has filed rejoinder.

8. Ms. Pratima Gupta, learned counsel for the respondents submits that the Inquiry Officer, Disciplinary Authority as well as the Appellate Authority have considered the factum of his acquittal in their respective orders, however, they have come to a conclusion on the basis of the evidence gathered in the departmental proceeding that the allegations made against the applicant in the departmental proceeding were proved and sufficient material was available for the impugned IO's report which warranted the impugned orders of penalty against the applicant.

9. In rejoinder, the learned counsel for the applicant has submitted that the provisions of Rule-12 have been ignored in the impugned orders and he has drawn our attention to the provision of Rule-12 of the Delhi Police (Punishment and Appeal) Rules, 1980 which reads as under:-

"12. Action following judicial acquittal- 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:-

- (a) the criminal charge has failed on technical grounds, or
- (b) in the opinion of the court, or on the Deputy commissioner of Police the prosecution witnesses have been won over; or
- (c) the court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned; or
- (d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge; or
- (e) additional evidence for departmental proceedings is available."

10. He has also relied upon the order/judgment dated 25.04.2016 in O.A. NO. 1134/2013 titled **Constable (Exe.) Aman Singh vs. Govt. of NCTD & Ors.** and another order/judgment dated 12.08.2011 of the Hon'ble High Court of Delhi in W.P. (C) No. 4941/2000 **George N. S. vs. Comm. of Police.** The relevant portion of order/judgment dated 25.04.2016 titled **Constable (Exe.) Aman Singh vs. Govt. of NCTD & Ors.** (supra) reads as under:-

“8. Rule 12 of the D.P. Rules posits 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. Therefore, it was statutory duty of the Appellate Authority to consider all the pointed conditions & the judgment of acquittal of the criminal court and then to pass appropriate order in terms of Rule 12 of D.P. Rules, which is totally lacking in the present case.

9. We are also of the view that instead of deciding the matter of applicability of Rule 12 of D.P. Rules by this Tribunal or to remand the case back to the Appellate Authority, it would be expedient in the interest of justice if the matter of applicability of Rule 12 of D.P. Rules is decided by the Disciplinary Authority at the first instance. Otherwise, the applicant would be deprived of his statutory right of appeal which is not legally permissible.

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

11. In the light of the aforesaid reasons and without commenting further anything on merits, lest it prejudice the case of either side, during

its consideration by the Disciplinary Authority, the OA is partly allowed. The impugned punishment orders dated 13.01.2010 (Annexure A-2) passed by the Disciplinary Authority and dated 26.10.2012 (Annexure A-1) passed by the Appellate Authority are hereby set aside. The matter is remitted back to the Disciplinary Authority to consider the applicability and effect of judgment of acquittal dated 06.02.2010 (Annexure A-6) passed by the criminal court and other indicated relevant factors in terms of Rule 12 of D.P. Rules and then to pass an appropriate order in accordance with law, within a period of 2 months from the date of receipt of a certified copy of this order.

Nothing observed hereinabove, would reflect on merits of the case in any manner before Disciplinary Authority as the same has been so recorded for a limited purpose of deciding the present OA. At the same time it is also made clear that if the applicant would be aggrieved by the fresh order of Disciplinary Authority, he will be at liberty to challenge the same in an appeal in accordance with law. No costs.”

11. Para-9 of the order/judgment dated 12.08.2011 of the Hon’ble High Court in **George N. S. vs. Comm. of Police** (supra), reads as under:-

“9. From the plain reading of the aforesaid Rule, it would be clear as to what is prohibited is that when a police officer is 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 the same was actually led or not. However, there were few exceptions to the said prohibition. One of those being that if the criminal charge has failed on technical grounds and the second being that additional evidence was available in the departmental proceedings. As per the interpretation of both these Exceptions as provided in Clause (a) and (e) as enumerated above, what needs to be considered is as to whether the case of the petitioner will fall in any of the two clauses namely whether he was acquitted on technical ground or whether there was some additional evidence available in the departmental proceedings, which was not available before the criminal court. If the case falls under any of the two, then these exceptions would apply and the departmental proceedings would be maintainable, even if the petitioner stood acquitted by the criminal court.”

12. Thus, in view of the judgments of this Tribunal as well as by the Hon'ble High Court, in **Constable (Exe.) Aman Singh vs. Govt. of NCTD & Ors.** (supra) and **George N. S. vs. Comm. of Police** (supra), respectively, it is clear that Rule-12 of Delhi Police Rules mandates 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 on other grounds as brought under Rule 12 under reference.

13. We have considered the pleadings on record as well as the rival contentions on behalf of the parties. We find that once the applicant has produced the order/judgment about the factum of his acquittal from Learned Trial Court in the aforesaid criminal case before the Inquiry Officer, the Disciplinary Authority and the Appellate Authority, these authorities were required to take into consideration the same while passing the aforesaid impugned orders.

14. In view of the aforesaid discussion, we are of the view that impugned order dated 05.01.2016 (Annexure A-6), 24.02.2016 (Annexure A-1), 31.03.2016 (Annexure A-2) and Appellate Authority order dated 08.09.2016 (Annexure A-3) are passed in violation of the provisions of the Rule-12 of Delhi Police (Punishment and Appeal) Rules, 1980. Accordingly, the same are quashed and set aside and the matter is remitted to the respondents who are at liberty to pass fresh orders keeping in view the provisions of the Rule-12 of Delhi Police (Punishment and Appeal) Rules, 1980 and also the

order/judgment passed by Learned Trial Court in the Criminal proceedings. The applicant shall be entitled for consequential benefits in accordance with the relevant rules. Accordingly, the O.A. is disposed of with the above directions. There shall be no order as to costs.

(R.N. Singh)
Member(J)

(A.K. Bishnoi)
Member(A)

/ankit/