CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 1614/2013

Reserved on 29.05.2019
Pronounced on 30.07.2019

Hon'ble Mr. S.N.Terdal, Member (J)
Hon'ble Mr.A.K.Bishnoi, Member (A)

Constable Ajit Singh,
Age-43 years,
S/o Late Shri Kirpra Ram,
VPO-Shikoh Pur,
District-Gurgaon (Haryana). … Applicant

(By Advocate: Mr. Sachin Chauhan)

VERSUS

1. Govt. of NCTD Through the
Commissioner of Police,
Police Headquarters, MSO Building,
IP Estate, New Delhi.

2. The Spl.Commissioner of Police,
Delhi Armed Police,
Through the Commissioner of Police,
Police Headquarters, MSO Building,
IP Estate, New Delhi.

3. The Dy. Commissioner of Police,
VII Bn.DAP
Through the Commissioner of Police,
Police Headquarters, MSO Building,
IP Estate, New Delhi. … Respondents

(By Advocate: Mr.Amit Anand)

O R D E R

Hon'ble Mr.S.N.Terdal, Member (J):

We have heard Mr. Sachin Chauhan, counsel for applicant and Mr. Amit Anand, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

"(i) To set aside the impugned order dated 5.9.11 whereby the major punishment i.e. forfeiture of 5(five) year approved service permanently entailing proportionate reduction in pay is imposed upon the applicant at A-1 and order dated 6.3.13 whereby the appeal of the applicant is rejected by the Appellate Authority at A-2 and to further direct the respondents that the forfeited years of service alongwith pay scale and increment be restored as it was never forfeited with all consequential benefits including seniority and promotion and pay and allowances.

(ii) To direct the respondent that Suspension period of the applicant be treated as 'Spent on Duty' for all intent and purposes.

(iii) To set aside the finding of enquiry officer A-3.

(iv) To set aside the order of initiation of D.E. dated 19.9.07."

3. The relevant facts of the case are that on the allegation that the applicant having demanded and accepted a bribe of Rs.3000/- with respect to construction activity of one Smt. Bala Devi W/o Late Shri Daya Chand, disciplinary proceeding was initiated against the applicant. The summary of allegation was served on the applicant. The relevant portion of the summary of allegation is extracted below:

> "…..on the allegation that while posted at Police Post Burari, PS Timarpur, in the beat of Kamal Pur area, which includes Tomar Colony, they went to the house of one Smt. Bala Devi W/o Late Shri Daya Chand who was getting the construction of house done at her plot situated in Tomar Colony and stopped the construction work. Smt. Bala revealed the facts to her brother-in-law Shri Bale Ram S/o Sh.Baljeet Singh R/o 333, Takia Chowk, Burari, Delhi who went to Police Post Burari, next day where he met Const. Mukesh Kumar No. 1679/N. The Constable demanded Rs.6000/- from Sh. Bale Ram for allowing to re-start the construction and after negotiation he agreed for Rs.3000/- The amount was to be paid on 17.04.2006 between 1PM to 1.30PM. On the other hand, Shri Bale Ram approached the Anti Corruption Branch & Filed a complaint against them. A team of Anti Corruption Branch conducted raid and both the constables were caught hed handed while they accepting bribe of Rs.3000/- from Sh. Bale Ram. Accordingly a case vide FIR No. 29/2006 dated 17.04.2006 u/s 7/13 P.O.C. Act PS Anti-Corruption Branch, GNCT of Delhi, was registered and no the Constables were arrested were arrested in the case."

4. Alongwith the summary of allegation, list of witnesses and list of documents were served on the applicant. With respect to above said incident the applicant was caught red handed and he was arrested and he was consequently dismissed from service invoking the provisions of Article 311 (2) (b) of the Constitution of India vide order dated 18.04.2006. The applicant filed OA No. 2252/2006. In view of the order passed by this Tribunal in the said OA dated 7.06.2007, the applicant was reinstated in service and was placed under suspension. As the applicant did not admit the allegation, an Inquiry Officer was appointed. The applicant filed another OA no.3667/2010 alongwith others seeking the prayer of keeping the departmental enquiry in abeyance till the disposal of the criminal case. This Tribunal vide its order dated 18.03.2011 did not stay the proceedings awaiting the decision of the criminal court. The Inquiry Officer conducted the departmental enquiry following the principles of natural justice as well as the relevant procedural rules of holding the departmental enquiry and examined PW1 to PW7 and DW1 and also given opportunity to the applicant to examine DW1 on his behalf and taken on record defence statement of the applicant dated 25.05.2011 and examined the evidence brought on record and taken into account the defence statement and after analyzing and discussing the evidence came to the conclusion that the charge levelled against the applicant was proved vide his inquiry report dated 6.06.2011. The inquiry report was served on the applicant. The applicant filed representation against the inquiry report. The disciplinary authority taking into account the entire history of the case and taken into account the entire evidence of all the PW1 to PW7 and also of DW1 and taken into account the grounds raised by the applicant in his representation against the inquiry report and

passed an order imposing the penalty of forfeiture of five years approved service permanently on the applicant vide order dated 5.09.2011. The applicant did not file the appeal within 30 days. He waited for the judgment in criminal trial. The court of Shri B.R.Kedia, Special Judge-07 (Central) (PC Act cases of ACCB, GNCTD), Delhi vide its judgment dated 22.05.2012 in C.C.No. 43/11 acquitted the applicant. The applicant filed appeal after the above said acquittal by the criminal court. The appellate authority also considered the entire evidence and discussed and also took into account the grounds raised in the appeal including heard the applicant in orderly room on 27.02.2013 and specifically held that the departmental enquiry is a quasi-judicial proceedings and that the standard of proof require to be applied is that of preponderance of probability, as such the acquittal in the criminal case has no relevance to the duly concluded departmental proceedings and duly passed penalty order by the disciplinary authority and vide order dated 6.03.2013 rejected the appeal of the applicant. The applicant in his OA averred that there was preliminary enquiry and without seeking the prior approval of the Additional Commissioner of Police as required under Rule 15(2) of Delhi Police (Punishment and Appeal) Rules, 1980, the disciplinary proceedings have been initiated as such the initiation of the departmental proceedings is bad in law. In response to the above stated averment th respondents have stated specifically in their counter affidavit that there was no preliminary enquiry held in this case and that there was a criminal case pending and as such Rule 15(2) is not applicable to the facts of this case. The relevant averments made in counter affidavit are extracted below:

> "In the instant case, no preliminary enquiry was got conducted for the simple reason that the criminal case into the matter had already been registered against the applicant and his co-accused, Ct. Mukesh Kumar. Rather in the case, a D.E. was initiated parallel to the criminal case, registered already. Therefore, provisions of Rule 15, ibid were not applicable on the present case."

5. The counsel for the applicants vehemently and strenuously contended that in view of the Full Bench order passed by this Tribunal dated 18.02.2011 in the case of **Sukhdev Singh and another** Vs **Govt. of NCT of Delhi through Commissioner of Police and Others** (OA 2816/2008) and in view of the orders passed by this Tribunal dated 5.05.2016 in the case of **Constable Acheta Nand** Vs. **Govt. of NCTD through Commissioner of Police and Others** (OA No.2493/2014), dated 19.05.2016 in the case of **Head Constable Ram Dayal and another** Vs. **Govt. of NCTD through Commissioner of Police and Others** (OA No.3620/2013), dated 30.08.2018 in the case of **Constable Mangal Singh** Vs. **Govt. of NCTD through Commissioner of Police and Others** (OA No.3687/2013), dated 16.11.2018 in the case of **Constable Om Pal** Vs. **Govt. of NCTD through Commissioner of Police and Others** (OA No.4054/2013) and dated 6.05.2016 in the case of **Ct. Shaji E.J.** Vs. **Govt. of NCTD through Commissioner of Police and Others** (OA No.3617/2013) and the compliance orders dated 29.07.2016, 23.06.2016 and 17.06.2016 passed in OAs No 2493/2014, 3620/2013 and OA 3617/2013 which have been passed following the order dated 18.02.2011 passed in the Full bench case of Sukhdev Singh (supra) and in view of the provisions of Rule 12 of the aforesaid Rules the respondents are bound to re-visit the penalty imposed upon them in view of they being acquitted in a criminal trial and are, therefore, entitled to the reliefs prayed for.

6. The Hon'ble Supreme Court in para 23, 26 and 27 in the case of **Deputy Inspector General of Police and Another** Vs. **S.Samuthiram,** reported in (2013) 1 SCC 598), has clearly laid down the law that the acquittal in the criminal proceeding will have no impact on the departmental proceedings initiated earlier unless the rules governing the employee specifically provide for revisiting the punishment imposed in the departmental enquiry. Para 23, 24 and 26 of the judgment, are extracted below:

> "23. We are of the view that the mere acquittal of an employee by a criminal court has no impact on the disciplinary proceedings initiated by the Department....
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> xxx xxx
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> 26. As we have already indicated, in the absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a Criminal Court, no right is conferred on the employee to claim any benefit including reinstatement.
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> 27. We have also come across cases where the service rules provide that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court, he be reinstated. In such cases, the re-instatement is automatic. There may be cases where the service rules provide in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Such provisions are absent in the Tamil Nadu Service Rules."

The law laid down in the case of S.Samuthiram is relied upon, approved and followed in the case of **State of West Bengal and Others** Vs. **Sankar Ghosh** (2014)3 SCC 610) and **Baljinder Pal Kaur** Vs. **State of Punjab and Others** (2016) 1 SCC 671). In para 16 of the judgment in the case of Sankar Ghosh (supra), the Hon'ble Supreme Court has held as follows:

"16. In Inspector General of Police v. S. Samuthiram, this Court in paras 24, 25 and 26 of the judgment has elaborately examined the meaning and scope of the "honourable acquittal" and held as follows:-

> "26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so."

7. The Hon'ble Supreme Court in the case of **Union of India and Another** Vs. **Purushottam,** reported in (2015) 3 SCC 779) has clearly recorded the reasons for not disturbing the punishment imposed after holding due departmental enquiry even if subsequently there is an acquittal in the criminal trial stating that firstly, standard of proof required in the criminal trial is that of establishing the guilt beyond reasonable doubt, whereas in the case of departmental enquiry the standard of proof required is only that of preponderance of probability; Secondly, criminal prosecution is not within the control of the concerned department and acquittal could be the consequence of shoddy investigation or slovenly assimilation of evidence, or lackadaisical if not collusive conduct of the trial etc; Thirdly, an acquittal in a criminal prosecution may preclude a

contrary conclusion in a departmental enquiry if the former is a positive decision in contradistinction to a passive verdict which may be predicated on technical infirmities; and Fourthly the consequences of these two proceedings are also entirely different, namely, the criminal proceedings result in punishment by way of imprisonment or imposition of some amount of fine and if he is acquitted he will not be sent to jail or fined and he will not have stigma of being called criminal; whereas in the departmental enquiry the conduct of the employee will be considered for his suitability in continuing in service or he may lose some service benefits. In the case of Purushottam (supra), the Hon'ble Supreme Court has clearly recognised the above differences in para 14 of the judgment after referring to various earlier judgments as follows:

> "14. ……..However, on this aspect of the law we need go no further than the recent decision in Deputy General of Police vs. S. Samuthiram (2013) 1 SCC 598, since it contains a comprehensive discourse on all the prominent precedents. This Court has concluded, and we respectfully think correctly, that acquittal of an employee by a Criminal Court would not automatically and conclusively impact Departmental proceedings.
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> 14.1. Firstly, this is because of the disparate degrees of proof in the two, viz. beyond reasonable doubt in criminal prosecution contrasted by preponderant proof in civil or departmental enquiries.
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> 14.2. Secondly, criminal prosecution is not within the control of the concerned department and acquittal could be the consequence of shoddy investigation or slovenly assimilation of evidence, or lackadaisical if not collusive conduct of the Trial etc.
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> 14.3. Thirdly, an acquittal in a criminal prosecution may preclude a contrary conclusion in a departmental enquiry if the former is a positive decision in contradistinction to a passive verdict which may be predicated on technical infirmities. In other words, the Criminal Court must conclude that the accused is innocent and not merely conclude that he has not been proved to be guilty beyond reasonable doubt."

These are fundamental differences in the criminal trial resulting in acquittal and the civil consequence of departmental proceedings.

8. In para 12 and 13 in the case of **B.C.Chaturvedi** Vs. **UOI & Others** (AIR 1996 SC 484), the Hon'ble Supreme Court laid down the law regarding the procedure followed in the departmental disciplinary proceedings and the sanctity of finality attached to them saying that these proceedings shall not be subjected to appellate jurisdiction and that they are subjected only of the power of judicial review wherein scope of challenge to the departmental proceedings is limited only decision making process and not the decision itself. Para 12 and 13 of the judgment, are extracted below:

> "12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. ***Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding.*** When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent office is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.
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> 13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and

> findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H. C. Goel (1964) 4 SCR 718: (AIR 1964 SC 364), this Court held at page 728 (of SCR):(at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued".

Thus no Court can disturb the sanctity attached to the finality attained in the legally conducted disciplinary proceedings.

9. In the case of **Life Insurance Corporation of India & Others** Vs. **S.Vasanthi** (Civil Appeal No. 7717/2014), the Hon'ble Supreme Court after referring to catena of cases laid down the law stating that courts have no jurisdiction to interfere with the quantum of punishment imposed by the competent departmental authorities as a consequent of holding departmental enquiry, with one exemption of the punishment being shockingly disproportionate as stated in para 6, which is extracted below:

> "6. When the charge proved, as happened in the instance case, it is the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed. Of course, this discretion has to be examined objectively keeping in mind the nature and gravity of charge. The Disciplinary Authority is to decide a particular penalty specified in the relevant Rules. Host of factors go into the decision making while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in department or establishment where he works, as well as extenuating circumstances, if any exist. The order of the Appellate Authority while having a re-look of the case would, obviously, examine as to whether the punishment imposed by the Disciplinary Authority is reasonable or not. If the Appellate Authority is of the opinion that the case warrants lesser penalty, it can reduce the penalty so imposed by the Disciplinary Authority. Such a power which vests with the Appellate Authority departmentally is ordinarily not available to the Court or a Tribunal. The Court while undertaking judicial review of the matter is not supposed to substitute its own opinion on reappraisal of facts.(See: Union Territory of Dadra & Nagar Haveli vs. Gulabhia M.Lad (2010) 5 SCC 775) In exercise of

> power of judicial review, however, the Court can interfere with the punishment imposed when it is found to be totally irrational or is outrageous in defiance of logic. This limited scope of judicial review is permissible and interference is available only when punishment is shockingly disproportionate, suggesting lack of good faith. Otherwise, merely because in the opinion of the Court lesser punishment would have been more appropriate, cannot be a ground to interfere with the discretion of the departmental authorities."

Thus no Court can interfere with the quantum of punishment imposed by the disciplinary and appellate authority unless it is shockingly disproportionate.

10. Even in the case of Constable Acheta Anand (supra), relied upon by the counsel for the applicant the impugned orders of the disciplinary authority and appellate authority were not set aside.

11. When the law laid down in the above cases was being noticed at the time of hearing, the counsel for the applicants Shri Sachin Chauhan submitted that in view of the above, he is not pressing for either re-visiting the impugned orders nor he is pressing for setting aside them and he further submitted that he may be permitted to file a representation under Rule 12 of Delhi Police (Punishment and Appeal) Rules and the respondents be directed to consider the said representation in terms of the aforesaid Rule 12. From a perusal of the relief prayed for which are extracted in para 2 above, it is clear that he has not asked for any specific prayer regarding the same. However, in view of the settled law as laid down in Sukhdev Singh and Another (supra) and other cases decided accordingly, as referred to in Para 5 above, without setting aside the impugned orders, we dispose of the present O.A. with direction to the respondents that if the applicant makes a representation as stated above, within two weeks of receiving a certified copy of this order, then the

respondents shall consider the same and pass an appropriate order in accordance with law within a period of two months thereafter.

12. Accordingly, OA is disposed of. No order as to costs.

(A. .K.Bishnoi)
Member (A)

(S.N.Terdal)
Member (J)

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