
(2011) 09 DEL CK 0311

In the Delhi High Court

Case No : Writ Petition (C) No. 22584 of 2005

Commissioner of Police

APPELLANT

Vs

H.C. Laxmi Chand

RESPONDENT

Date of Decision : 09-09-2011

Acts Referred:

Administrative Tribunals Act, 1956 — Section 19
Constitution of India, 1950 — Article 226, 311(2)
Criminal Procedure Code, 1973 (CrPC) — Section 161, 227, 232, 247, 313
Delhi Police (Punishment and Appeal) Rules, 1980 — Rule 12, 12A, 8
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 12, 42, 50
Penal Code, 1860 (IPC) — Section 381, 411, 414
Punjab Police Rules, 1934 — Rule 16.3(1)

Citation : (2011) 8 AD 227 : (2011) 185 DLT 135 : (2012) 1 ILR Delhi 46

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : Bhupesh Narula, for the Appellant; Anil Singhal, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The Petitioner, Commissioner of Police, has challenged the order dated 25th May, 2005 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, titled as "H.C. Laxmi Chand v. Government of NCT of Delhi", allowing the original application of the Respondent and setting aside the order of punishment dated 28th July, 2003 passed by the Disciplinary Authority awarding the forfeiture of 4 years of approved service permanently and also setting aside the Appellate order dated 11th October, 2004 dismissing the appeal of the Respondent.

2. Brief facts to comprehend the controversies are that one Lal Bahadur S/o Gorakh Bahadur, a domestic servant of Sh. Shanker Lal Sangwani S/o Sh. Prahlad Rai Sangwani, a resident of Plot No. 34, Kanwar Nagar, Jaipur, Rajasthan had committed theft in the house of his owner and had left for Delhi along with some jewelry and other articles.

3. The Respondent along with Constable Sheel Bahadur was posted on Picket Duty at Farash Khan, S.N. Marg, Delhi on 28th May, 1995. They checked the belongings of Lal Bahadur who was allegedly in possession of the stolen goods. The allegation was made that the stolen goods were taken by the Respondent and Const. Sheel Bahadur from Lal Bahadur. A departmental enquiry was ordered against the Respondent and Constable Sheel Bahadur by order dated 21st June, 1995 on the allegation that the Respondent as well as Constable Sheel Bahadur on finding that Lal Bahadur was in possession of stolen goods, instead of producing him before the senior officers, had kept all the valuable articles and cash with themselves and let off Lal Bahadur without taking any legal action.

4. The alleged act of the Respondent and the other Constable came to light when SI Narain Singh of Police Station Subhash Chowk, Jaipur (Rajasthan) visited the Police Station Lahori Gate, Delhi and arrested the Respondent on the disclosure statement of and identification by Lal Bahadur who was the main accused in FIR No. 83/1995 u/s 381 and 411 of the Indian Penal Code, P.S. Subhash Chowk, Jaipur.

5. It was alleged that the goods which were stolen by Lal Bahadur and which were subsequently taken from him by the Respondent and Constable Sheel Bahadur, were allegedly recovered from them as well. The Respondent and Constable Sheel Bahadur were accused of extortion and criminal misappropriation of stolen property and having committed a breach of trust and also having tarnished the image of the whole police department in the eyes of the public by failing to maintain the integrity and devotion to duty and in acting in a manner very unbecoming of police officers, which was also in contravention of CCS (Conduct) Rules, 1964.

6. The Respondent was placed under suspension by DCP/North District by Order No. 4008-30/HAP-N dated 9th June, 1995. The departmental enquiry was directed to be conducted on a day to day basis. Summary of allegations, list of witnesses and list of documents were prepared and supplied to the Respondent. During the departmental proceeding, the Respondent did not admit the allegations made against him. During the departmental proceedings on behalf of the department various witnesses were examined.

7. During the pendency of the departmental proceeding, the Respondent and his co-defaulter filed an original application No. 1636 of 1995 before the Tribunal against the departmental enquiry initiated against them. As per the directions of the Tribunal by order dated 1st July, 1996 the departmental enquiry was kept in abeyance, till the decision in the criminal case as on the same charge and evidence the Criminal case was pending against the Respondent.

8. The suspension case of the Respondent was reviewed as FR No. 53 and he was reinstated and his suspension was revoked vide order No. 1057-76/HAP/North dated 13th February, 2001.

9. The criminal case No. 234/1995, titled as "State of Rajasthan v. Lal Bahadur

and Ors." was decided by the Additional Chief Judicial Magistrate, Jaipur by order dated 22nd January, 2001 and he exonerated the Respondent of charges u/s 414 and 411 of the Indian Penal Code. Learned Magistrate held that the main issue in the case was whether stolen goods were recovered from the Respondent and Constable Sheel Bahadur. The main accused Lal Bahadur who had allegedly stolen the goods from his owner had been declared a proclaimed offender. The Magistrate perused the testimonies of PW1 Mahesh Kumar, PW2 Smt. Mayawati, PW3 Shankar Lal, PW4 Prema Ram, PW5 Bhoori Lal, PW6 Vijay, PW7 Ramesh Kumar, PW8 Anoop Singh, PW9 Narain Singh, PW10 Ram Krishan and PW11 Bijender and held that on the basis of the testimonies on these witnesses nothing could be proved against the Respondent and co-accused Constable Sheel Bahadur. The statement of PW9 Narain Singh, the witness of the alleged recovery was disbelieved, as the other witnesses of recovery PW7 Ramesh Kumar and PW8 Anoop Singh had turned hostile and refuted the allegations of the prosecution that the recovery had been made from the Respondent. It was held that there was no evidence available on the records which could corroborate the statement of PW9 Narain Singh and consequently, it was held that the prosecution had failed to prove the charges against the Respondent and therefore the co-accused Constable Sheel Bahadur as well as the Respondent were acquitted.

10. After acquitting of the Respondent, the Petitioner reopened the disciplinary proceedings which were in abeyance under the provisions of Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980. The Rule 12 of Delhi Police (Punishment & Appeal) Rules, 1980 is 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.

The said rule does not permit departmental proceedings in a case where an employee is acquitted in criminal case after his trial on the same evidence. However, the said rule carves out five exceptions to this general principle.

11. By order dated 17th May, 2001 passed by the Deputy Commissioner of Police, North District, Delhi, Rule 12 was invoked to conclude the departmental proceedings against the Respondent. While invoking Rule 12, it was held that during trial two witnesses had turned hostile as they were won over by the Respondent and hence the acquittal was on technical grounds. Consequently, it was ordered that the departmental enquiry in respect of the Respondent be reopened. In the enquiry proceedings three witnesses namely, Constable Ram Krishan, HC Prema Ram and SI Narain Singh were not examined. According to the allegations of the Petitioner, despite sincere efforts made by the enquiry officer, these three witnesses could not be examined as they were not found residing at the addresses given by them. The Petitioner further asserted that on the basis of the testimonies of the P Ws, the enquiry officer concluded that the charges framed against the Respondent stood proved and submitted its findings to the Disciplinary Authority. Thereafter the Disciplinary Authority served copies of the same on the Respondent and Constable Sheel Bahadur by order dated 6th February, 2002 with a direction to produce their defense witnesses as well as defense statement. Three defense witnesses were examined on behalf of the Respondent. On the basis of the testimonies recorded before the Inquiry Officer, and the defense representations it was held by the Disciplinary Authority that the charges against the Respondent and his co-defaulter were proved. The Disciplinary Authority also held that in the criminal case the Respondent was acquitted only on account of certain witnesses turning hostile.

12. A copy of the enquiry report was provided to the Respondent and after considering the representation made by the Respondent against the enquiry report, the Disciplinary Authority imposed the punishment of forfeiture of 4 years of approved service permanently by order dated 28th July, 2003. The Disciplinary Authority referred to the testimonies and observed that the seizure memo was prepared in the barrack of Police Station Lahori Gate, Delhi, which was signed by IO Ramesh, Anoop Singh, the Respondent, Constable Sheel Bahadur and Constable Prema Ram. It was held that though Ramesh and Anoop Singh had appeared during the criminal trial, they had turned hostile and they could not be traced in the departmental proceedings, however Constable Prema Ram had admitted and upheld the signatures and contents of the seizure memo.

13. Aggrieved by the punishment awarded by the Disciplinary Authority, the Respondent preferred an appeal to the Appellate Authority, Joint Commissioner of Police/Northern Range. The appeal was dismissed by order dated 12th July, 2002 by the Appellate Authority. Against the order of the punishment and the dismissal of appeal by order dated 12th July, 2002, the Petitioner filed an Original Application being O.A. No. 2634 of 2002, titled as "HC Laxmi Chand v. Joint Commissioner, Delhi Police and Ors." The Administrative Tribunal vide judgment dated 26th May, 2003 quashed the order of the punishment, as well as, the order of the Appellate Authority dated 12th July, 2002 and remitted the matter back to the Disciplinary Authority for reconsidering the matter from the stage the penalty order was passed.

14. Pursuant to remitting the matter back to the Disciplinary Authority and on considering the PHQ's circular dated 16th April, 2002 relating to the clarification of Rule 8 (d)(ii) of the Delhi Police (Punishment & Appeal) Rules, 1980, the matter was reconsidered and by order dated 28th July, 2003 the punishment of forfeiture of 4 years of approved service permanently was awarded to the Petitioner resulting in the reduction of his pay from Rs. 4050/- per month to Rs. 3710/- per month in the time scale of Rs. 3200-85-4900/- and his suspension period from 6th June, 1995 to 12th February, 2001 was also ordered to be treated as period not spent on duty for all intents and purposes.

15. Against the order dated 28th July, 2003, the Petitioner filed an appeal which was dismissed by the Appellate Authority by order dated 11th October, 2004.

16. Aggrieved by the order dated 28th July, 2003 passed by the Disciplinary Authority and order dated 11th October, 2004 passed by the Appellate Authority dismissing the appeal, the Respondent filed an Original Application being O.A. No. 2664/2004 u/s 19 of the Administrative Tribunal Act, 1956 contending inter-alia, that the Respondent was acquitted by the criminal court on merits and not on any technical ground. It was also asserted that the criminal court did not give any finding that the witnesses were won over by the Respondent and they had turned hostile on account of Respondent winning them. The Respondent contended before the Tribunal that merely because the witnesses had turned hostile, it would not lead to a conclusive inference that the witnesses had been won over by the Respondent. Consequently, the order dated 17th May, 2001 of reopening the enquiry under Rule 12 of Delhi Police (Punishment & Appeal) Rules, 1980 was not in consonance with the said provision, as neither was it a criminal case against the Respondent dismissed on technical grounds, nor was there any basis for the Deputy Commissioner to infer that the prosecution witnesses had been won over by the Respondent. The order dated 17th May, 2001 passed by the Deputy Commissioner of Police, North District reopening the enquiry under Rule 12 of Delhi Police (Punishment & Appeal) Rules, 1980 is as under:

A joint departmental enquiry against HC Laxmi Chand No. 77/N and Const. Sheel Bahadur No. 736/N ordered vide this office order No. 4213-50/HAP/North dated 21.06.95 was held in abeyance vide this office order No. 7719-22/HAP/North dated 01.07.96 till the finalization of case FIR No. 83/95 u/s 381/411 IPC PS Subhash Chowk, Jaipur, Rajasthan, registered against them. The case has been finalized by the court of Sh. Brijesh Purohit, RJS, Jaipur, Rajasthan. During trial two witnesses turned hostile as they were won over by the defaulters. The acquittal is based on technical grounds. The DE against HC Laxmi Chand No. 77/N is hereby re-opened in terms of Rule 12 (A) of Delhi Police (Punishment & Appeal) Rules, 1980 and entrusted to Inspr. Ganga Singh, DIU/North who will submit his findings to the under signed expeditiously. Const. Sheel Bahadur No. 736/N, the co-defaulter has already been dismissed from service in another DE vide this office order No. 10975/HAP/North dated 8-12-98. The DE in respect of

Const. Sheel Bahadur No. 736/N, will be re-opened in case he comes in service on some appeal/revision/tribunal orders etc.

(SANDEEP GOEL)

DEPUTY COMMISSIONER OF POLICE,

NORTH DISTRICT, DELHI

17. The Respondent contended that since he was acquitted of the charges on merit, it was against the principle of natural justice to punish the Respondent on the same allegations and charges based on the same evidence from which he had been exonerated by a competent Court of law. The Respondent also challenged the punishment imposed upon him by order dated 28th July, 2003 on the ground that the material witnesses, namely Ramesh Kumar, Anoop Singh and accused Lal Bahadur on whose alleged disclosure statements the Respondent was arrested, were not examined. The Respondent contended that though these witnesses were available, they were deliberately not examined as the department knew that they would not support the false allegations levelled against the Respondent.

18. The Original Application filed by the Respondent before the Central Administrative Tribunal, Principal Bench was contested by the Petitioner contending inter-alia that after reopening the disciplinary proceedings against the Respondent under Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980, the enquiry was entrusted to Inspector Ganga Singh who had examined two witnesses on behalf of the department and the opportunity to cross-examine the said witnesses was given to the Respondent and Constable Sheel Bahadur. It was asserted on behalf of the Petitioner that 7 P Ws were to be examined but three witnesses of the department did not join the enquiry despite efforts made by the Enquiry Officer, since they were not found residing at the address given by them. It was contended that on the basis of the evidence on record, the charges were framed and the Respondent had submitted the list of his witnesses as well as the defense statement. The statement of the three defense witnesses were recorded and on the basis of the evidence on record and on perusing the judgment of the criminal court in the case of FIR 83/95, under Sections 381/411 of the Indian Penal Code, PS Subhash Chowk, Jaipur (Rajasthan), the Enquiry Officer held that the charge against the Respondent was proved. The Disciplinary Authority too agreed with the findings of the enquiry officer and awarded the forfeiture of 4 years of approved service permanently and appeal filed against the order of punishment was also dismissed.

19. The Petitioner contended that the acquittal of the applicant in the criminal case was not on merit. Regarding the allegation that the witnesses had been won over, nothing was alleged in the reply filed before the Tribunal nor any explanation and the reasons to come to such a conclusion, except pleading in para 5.3 that there was nothing amounting to violation of Rule 12 of Delhi Police (Punishment & Appeal) Rules, 1980 in initiating and finalizing the departmental

proceeding against the Respondent. The Tribunal after considering the pleas and contentions of the parties, by order dated 25th May, 2005 allowed the original application of the Respondent holding that Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 does not permit the opening of the departmental proceedings where an employee has been acquitted by a criminal court, unless the exceptions carved out in the said rule are made out in the facts and circumstances of the case. The Tribunal also relied on the case of Vijender Singh v. Commissioner of Police, Original Application No. 2640 of 2002 decided on 24th July, 2003 holding that if the decision is arrived at on the basis of the evidence on record in such a case if the charge is not substantiated or the evidence is insufficient, it will not be acquittal on technical grounds. It was held that once the evidence had been allowed to be produced and is not forthcoming, it would be an acquittal rather than an acquittal on technical grounds. As to what acquittal on technical ground means the Tribunal held that failure on technical grounds would be if an unauthorized person files a complaint or if there is no proper sanction or if the report has not been lodged by a competent authority or on account of any procedural flaw which may prompt the court to put an end to prosecution case, then only it will be an acquittal on the technical grounds. It was further held that in such cases prosecution or the State may still be in a position to come to the court after removing the said technicalities. However, where the evidence is allowed and for some reasons it does not prove the charge framed or the testimonies of the witnesses who turned hostile for some reasons is not reliable, the prosecution and the State cannot come and file another case on the same charge. If the criminal court takes note of the evidence on record and for want of evidence holds that the charge is not proved it will not be an acquittal on technical ground and the exception carved out under Rule 12 (a) of the Delhi Police (Punishment & Appeal) Rules, 1980 cannot be invoked. On perusing the order of the criminal court, the Tribunal had held that the order dated 22nd January, 2001 was on perusal of the evidence and the acquittal pursuant to the perusal of the evidence by the criminal Court could not be construed as an acquittal on technical grounds. The Tribunal had further held that if the statement of Narain Singh PW9 could not be relied on without any corroboration, it will not be construed as a dismissal of the criminal case on technical grounds. In para 10 of the judgment impugned by the Petitioner, the Tribunal had held as under:

10. Identical would be the position herein. We have already given the brief resume pertaining to the acquittal of the Appellant at Jaipur. Perusal of the order passed by the Learned Court clearly reveals that the acquittal was on appreciation of evidence. The Learned Court did not deem it appropriate to convict the applicant on the statement of Narain Singh, PW-9 because there was no corroboration forthcoming to the said statement. Therefore, it cannot be taken that the criminal case failed because of any technical ground to which we have referred to above already but it failed because the Learned Court appreciated the evidence of the witnesses and held that the charge stood not

proved. Resultantly, the contention of the Respondents cannot be accepted.

The Tribunal, in the circumstances, had set aside the order of the Disciplinary Authority dated 28th July, 2003 and the Appellate Authority order dated 11th October, 2004 on the ground that the disciplinary proceedings could not be reopened under Rule 12 of Delhi Police (Punishment & Appeal) Rules, 1980.

20. The Petitioner has challenged the order of the Tribunal dated 25th May, 2005 in the present writ petition inter-alia on the grounds that the charges leveled against the Respondent and Constable Sheel Bahadur amounted to gross misconduct, dishonesty and dereliction in performance of duty by the Respondent in contravention of the CCS Conduct Rules, 1964 which were not looked into or probed by the ACJM, Jaipur and therefore, the acquittal of the Respondent was on different charges and hence it would not debar the Petitioner from holding the departmental enquiry. It was further contended that the standard of proof required in disciplinary proceedings is different from the standard of proof required in criminal cases. Relying on Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980, it was contended that the said rule could be invoked and departmental proceeding could be reopened if in the opinion of the Deputy Commissioner of Police the prosecution witnesses have been won over. It was contended that the prosecution witnesses Sh. Anoop Singh and Sh. Ramesh Chand had turned hostile as they had been won over by the Respondent and therefore, under Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 the departmental proceeding could be reopened. Relying on the statement of PW9 Narain Singh, it was contended that his testimony unambiguously disclosed the facts which justified the departmental proceeding on the different charges of breach of trust, dishonesty, dereliction of duty and loss of confidence etc. It was also contended that the additional evidence during the departmental enquiry was sufficient to prove the charges levelled against the Respondent. Refuting the inferences drawn by the Tribunal that the statement of PW9 Narain Singh was not corroborated by PW7 Ramesh Chand and PW8 Anoop Singh, resulting in acquittal of the Respondent, it is contended that it could only be inferred as an acquittal on technical grounds as corroboration was not required in respect of the statement of PW9 Narain Singh in peculiar circumstances. The Petitioner also contended that the failure of the criminal charges on technical ground has not been defined and in such eventuality, acquittal on technical grounds depends on the facts and circumstances of each individual case. The counsel for the Petitioner has relied on Harbans Lal Nihal Chand Vs. Superintendent of Police, Karnal and Others, Gurdev Singh Vs. State of Punjab and Another, Inspector General of Police, Punjab and Others Vs. Amrik Singh, ; Shri Daya Nand and another Vs. Commissioner of Police and Others, ; Govt. of NCT of Delhi and Others Vs. Rajpal Singh, Secretary, Ministry of Home Affairs and Another Vs. Tahir Ali Khan Tyagi, Ex. Constable Vinod Kumar Vs. Union of India (UOI) and Addl. Dy. Commissioner of Police, ; Noida Entrepreneurs Assn. Vs. Noida and Others, Shri V. Jayapalan Vs. Commissioner of Police and Others, ; Dilwar Singh Vs. Commissioner of Police and Another

Harvir Singh Vs. Union of India (UOI) and The Deputy Commissioner of Police, ;
ASI Ravinder Kumar and Others Vs. Union of India (UOI) and Others and
Joginder Singh Vs. Govt. of NCT of Delhi and Others

21. The Respondent contested the petition on the same grounds which were raised before the Tribunal and relied on the pleas and contentions raised in the original application before the Tribunal. The counsel for the Respondent has relied on Government of NCT of Delhi and Ors. v. Satyadev Singh, W.P(C) No. 4431-33/2005 decided on 21st April, 2005; G.M. Tank v. State of Gujarat and Anr. 2006 (3) SCT 252; Commissioner of Police and Others Vs. SI Karuna Sagar, Khurshid Ahmad v. State of Haryana and Ors. W.P(C) No. 1689/2009 decided by Punjab & Haryana High Court on 16th July, 2009 Govt. of NCT of Delhi Vs. Asi Karan Singh and Govt. of NCT of Delhi and Ors. v. Jag Saran W.P(C) No. 623/2009 decided on 25th May, 2010.

22. This Court has heard the learned Counsel for the parties in detail, as well as, perused the record which was before the Tribunal and also directed the Petitioner to produce the copies of the testimonies of PW7 and PW8, namely Ramesh Chand and Anoop Singh, witnesses of the recovery who had turned hostile in the criminal case. The precedents relied on by the counsel for the Petitioners are distinguishable. None of the precedents have laid down that if the acquittal of an accused is on account of insufficiency of evidence because of witnesses turning hostile, then it has to be construed as technical acquittal.

23. In Harbans Lal Nihal Chand (Supra) the employee was not punished departmentally on the same charges and so the Court had not gone into the question of whether the different charges upon which he was punished was based "upon the evidence sought in the criminal case" or not. It was held that the case fell within the category of cases excluded by Clauses (a), (b) and (c) from the purview of sub Rule 1 of the Rule 16.3 as the criminal charges had failed because the investigating officer did not prove the handwriting of the defaulter by an expert evidence and so it was agreed that this was an omission of a technical nature during the investigation and thus it was held that the employee had escaped conviction in the criminal proceedings merely because of a technical flaw in the investigation of the case. In Gurdev Singh (Supra) the question involved was whether the acquittal of the employee u/s 247 of the Code of Criminal Procedure, barred the institution of the departmental proceeding against him. It was admitted in that case that the charges and the evidence in support of the prosecution and in the departmental enquiry were the same, as in the criminal complaint. The Criminal complaint was however dismissed in default and it consequently led to the acquittal of the delinquent employee. In the criminal case the complainant had not appeared on the date of hearing, as a result of the absence of the complainant, the order of the acquittal had to be passed u/s 247 of the Code of Criminal Procedure. Thus it was held that it was a case where the criminal charge fell on technical ground as the charge had fallen on account of the absence of complainant on the date of hearing and not

because the charge had been enquired into, but had not been substantiated. It was also held that another trial could be held in the criminal Court against the employee on the same charge, as the acquittal u/s 247 of the Code of Criminal Procedure would not bar the departmental proceedings being taken against him in respect of the same charge and on the same evidence. In *Inspector General of Police v. Amrik Singh* (Supra) the criminal charge against the employee had failed on a technical ground because the Magistrate had refused to record the evidence of the two prosecution witnesses who were available and without recording their evidence he had expressed the opinion, that he would not convict the Respondent on their testimony. As a result of which the employee was acquitted since the available prosecution evidence was shut out by the Magistrate and it was not because no evidence had been led against him as the Magistrate refused to record any evidence in the case. In the circumstances, it was held that the acquittal of the employee by the Magistrate was not only contrary to the procedure prescribed in the Code of Criminal Procedure but was also without jurisdiction. In the circumstances, it was held that the criminal charge against the employee fell on a technical ground and the disciplinary action could be taken against the delinquent under Clause (a) of Rule 16.3 (1) of the Punjab Police Rules, 1934.

24. In *Daya Nand and Anr* (Supra) decided by a Division Bench of this Court it was held that the order of discharge in a criminal case does not amount to an order of acquittal. The distinction was culled from Section 227 and 232 of the Code of Criminal Procedure itself. In the circumstances it was held that Rule 12 of the Delhi Police (P&A) Rules, 1980 could be invoked for initiating departmental proceedings against the delinquent employee. In *Government of NCT of Delhi and Ors. v. Rajpal Singh* (Supra) a Division Bench of this Court had held that only in the event that the departmental proceedings had not been initiated and/or the same had not culminated in the imposition of punishment, could Rule 12 of Delhi Police (P&A) Rules, 1980 be attracted. It was further held that only because an appeal was pending against the order passed in the departmental proceedings it could not mean that the order of punishment passed by the Disciplinary Authority remained under animated suspension and that for all intent and purport the same would remain operative. It was held that the principle that an appeal is a continuation of a proceeding has nothing to do with the interpretation of Rule 12 as the same has to be interpreted literally.

25. In *Secretary, Ministry of Home Affairs and Anr v. Tahir Ali Khan Tyagi* (Supra) the Supreme Court had held that departmental inquiry and criminal proceeding can run simultaneously and departmental proceeding can also be initiated even after acquittal in a criminal proceeding, particularly when the standard of proof in a criminal proceeding is completely different from the standard of proof that is required to prove the delinquency of a Government servant in a departmental proceeding. It was further held that under Rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980 departmental proceeding could also be initiated, if in the opinion of the Court the prosecution witnesses are found to be won over. In

Ex Constable Vinod Kumar (Supra) the employee was acquitted not on the ground that there was no evidence against him but on the basis of a compromise affected between the complainant and the employee. On account of the compromise the criminal Court compounded the offence. In the appeal the Appellate Court considered the factum of acquittal, however declined to set aside the punishment as the employee was acquitted only on the basis of the compromise. In the circumstances it was held that departmental action could be taken against the employee and therefore, the punishment of dismissal from the service for his corrupt activities was upheld. It was held in the circumstances that Rule 12 of Delhi Police (P&A) Rules, 1980 was not applicable as the rule applies to a case where a police officer has been tried and acquitted by a criminal Court and is subsequently punished departmentally on the same charge or a different charge on the same evidence cited in the criminal case whether actually led or not. In the said case the police officer was proceeded against departmentally and his services were terminated by way of punishment, before he was acquitted by the criminal Court not on merits but on the basis of a compromise and compounding of the offence.

26. In Noida Entrepreneurs Assn. (Supra) dropping of enquiry on the ground that enquiry was not required after consideration of CBI enquiry report was held to be illegal and the order dropping the enquiry was quashed. It was held that there would be no bar to proceed simultaneously with the departmental enquiry and trial of a criminal case, unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. In V. Jayapalan (Supra) the police official was acquitted in the criminal case based on technical grounds due to non compliance with Sections 42 and 50 of NDPS Act. In these circumstances it was held that the disciplinary proceedings could be initiated under Rule 12 of the Delhi Police (P&A) Rules, 1980 and that the departmental proceeding was not without jurisdiction. In Dilwar Singh (Supra) a Division Bench of this Court had held that departmental proceedings and proceedings in a criminal case can proceed simultaneously, as there is no bar in their being conducted simultaneously, though separately. However, if departmental proceedings and criminal cases are based on identical and similar set of facts and involve a complicated question of law and fact, then it would be desirable to stay the departmental proceeding till the conclusion of the criminal case. In this case the police official was dealt with departmentally and dismissed from service, however, in the criminal case he was acquitted subsequently in appeal on account of delay in registration of FIR. In the circumstances it was held that the acquittal on account of delay in registration of FIR would not be a valid ground to absolve the police official of the consequences of the disciplinary proceedings.

27. In Harvir Singh (Supra) an order was passed under Article 311(2) of the Constitution of India dispensing with the departmental enquiry on the ground that it was not reasonably practicable to hold such an enquiry. The delinquent in this case was working as a constable and he was involved in the theft of several cars. The criminal case filed against the delinquent official, however, resulted into

either his discharge or acquittal and based on the discharge/acquittal the police official sought setting aside of his order of dismissal and his reinstatement in service. The application of the police official was rejected and aggrieved by this an original application was filed, which was allowed by the Tribunal and the Tribunal had ordered the reinstatement of Petitioner in the service. However no orders were passed with regard to consequential benefits. Before the High Court the grievance of the Petitioner was limited to the grant of consequential benefits. On considering the matter, the High Court was of the view that the order of reinstatement passed by the Tribunal though was erroneous, however, did not perceive it to be prudent to interfere with the order of the Tribunal since the police official had already been reinstated pursuant to the order of the Tribunal and had been working for 15 years and there was nothing against him during his working for 15 years. In these circumstances, the order of the Tribunal setting aside the order of dismissal passed under Article 311(2)(b) was not interfered with.

28. In *ASI Ravinder Kumar (Supra)* it was held that there were no grounds to stay the departmental proceedings against the delinquent police official against whom the criminal proceedings were also pending. Considering the facts and circumstances of the case, it was held that as the purpose of departmental enquiry and of criminal prosecution is different and on distinct aspects, they can be allowed to continue simultaneously, except where complicated questions of law are involved in the criminal trial and in the departmental proceedings. In *Joginder Singh (Supra)* it was noticed that the acquittal of the police official was not a case of clean acquittal as the observations made while acquitting reflected that there was manipulation in the certificate which was produced by the police official for availing the employment with Delhi Police. In the circumstances, it was held that the police official was not entitled for the benefit of Rule 12 of Delhi Police (P&A) Rules, 1980. Consequently the pleas and contentions raised on behalf of the Petitioners are not supported by any of the precedents relied by them.

29. Per contra in *Satyadev Singh (Supra)*, relied on by the counsel for the Respondent, a Division Bench of this Court had held that the charged officer was acquitted on appreciation of evidence by the Session Judge who had held that the evidence was insufficient to convict the charged officer and had acquitted him by giving him the benefit of doubt. Considering the acquittal of the charged officer on giving him the benefit of doubt, it was held that none of the exceptions as provided in Rule 12 of the Delhi Police (P&A) Rules, 1980 were attracted. In the said case Clause (b) of Rule 12 was specifically and solely relied on, however it was held that the said exception was not attracted, on the ground that though the witness had turned hostile in his examination, however, he had supported the prosecution case during the cross examination. Therefore, it could not be alleged that the said witness was won over by the charged officer. In *G.M. Tank (Supra)* a public servant had been charged criminally and departmentally for possessing assets disproportionate to his known source of income. In the departmental

enquiry he was found guilty and the order of dismissal was passed, however, he was acquitted in the corruption case. Witnesses in the departmental enquiry and in the criminal case were the same and in the circumstances order of dismissal from service was set aside without back wages as the charged officer had already retired. The Supreme Court had held that normally where the accused is acquitted honorably and completely exonerated of the charges it would not be expedient to continue the departmental enquiry on the very same charges on the same set of facts and evidence. In the said case the order of dismissal was passed on 21st October, 1982 whereas the Criminal Court had acquitted him on 30th January, 2002. The Supreme Court had held that though the findings recorded in the domestic enquiry was found to be valid by the Courts below, when there is an honorable acquittal of the employee during the pendency of proceeding challenging the dismissal, the same requires to be taken note of.

30. In *SI Karuna Sagar (Supra)* a Division Bench had held that after the criminal Court examined all the witnesses and thereafter closed the evidence, since no material had come out from the witnesses who had already been examined and, therefore, even the statement of formal witnesses and the statement of accused was not recorded u/s 313 of Code of Criminal Procedure and after going through the statements u/s 161 of Code of Criminal Procedure and the statements recorded before the trial Court and after declaring the witnesses hostile and considering cross examination of hostile witnesses by public prosecutor, if nothing had come out from the proceedings before the trial Court, then there could be no rationale to conduct departmental enquiry as nothing adverse would come out against the charged officer from the same set of witnesses. The Court had noticed that it was not the case of the department that they have some additional documents in possession which they would rely upon in the departmental enquiry and in the circumstances no further departmental action could be taken against the charged officer and thus the writ petition filed by the department against the order of the Tribunal setting aside the decision of the department to proceed against the charged officer u/s 12 of the Delhi Police (P&A) Rules, 1980 was dismissed.

31. In *Khurshid Ahmad (Supra)* on perusal of the copy of the judgment of acquittal by the criminal Court, it had transpired that even the prosecutor had turned hostile and refused to identify the charged officer and the other persons, who had allegedly sexually assaulted her. The prosecutor who had turned hostile was cross examined by public prosecutor and even the father of the prosecutor had not stated much against the charged officer. The Court had held that normally, the witnesses which are won over are given up by the prosecution and not produced in the Court, and a witness who is produced in the Court but does not support the case of the prosecution, is termed as a "hostile witness". The law permits such witness to be asked questions by the party producing him which are generally put by the opposing party. The evidence of a witness who has turned hostile cannot be discarded in its entirety merely on the ground that the witness turned hostile. The evidence of a hostile witness can still be relied upon, if

otherwise found trustworthy. Therefore, it was held that it would be difficult to brand a witness who turns hostile, to be a witness who has been won over. It was further held that such a witness is a witness who suppresses the truth and to elicit the truth, an opportunity is given to the opposing party to address questions in the nature of cross examination. It was therefore, held that merely because a witness has turned hostile it does not lead to an inference that he had been won over by the opposing party unless there is finding to that effect by the competent Court or some other material to establish that fact. In the said case it was held that since the evidence in the criminal trial and the version in the departmental proceedings were the same, therefore, there being no difference, the delinquent officer could not be made to suffer a different finding which is not even supported by the evidence led in the departmental proceedings. Similarly in ASI Karan Singh (Supra) a Division Bench of this Court had held that while acquitting the delinquent officer the Sessions Judge did not record any finding that the witnesses were won over and, therefore, findings recorded by the disciplinary authority that the prosecutor and her family members were won over was without any basis. It was further held that if the guilty police officer is tried and acquitted by the criminal Court, he cannot be punished departmentally on the same charge or for a different charge based on the same evidence which is cited in the criminal case unless acquittal has resulted on the grounds as mentioned in Clauses (a) to (e) of Rule 12 of Delhi Police (P&A) Rules, 1980. In Jag Saran (Supra) since the allegations in the FIR against the delinquent officer were the same as the charges made against him, the disciplinary inquiry was kept in abeyance till the finalization of the criminal proceedings. Rather the charged officer was acquitted by the criminal Court also on account of some of the prosecution witnesses turning hostile. This Court had held that the department had not been able to substantiate that the prosecution witnesses who had turned hostile, had been won over by the charged officer and, therefore, the department could not initiate the departmental proceedings under Rule 12(b) of the said Rules.

32. The Respondent had been charged in the departmental proceeding for the same allegation for which he was charged in the criminal trial. The witnesses who were examined in the criminal case, some of them were also examined in the departmental proceedings, after acquittal of the Respondent in the criminal case. The witnesses who had turned hostile in the criminal case were not examined on account of the fact that they could not be allegedly traced by the Petitioners despite alleged efforts made by them. The departmental proceedings which were initiated against the Respondent were directed to be kept in abeyance as the criminal case against the Respondent was based on identical and similar set of facts and the charges in the departmental proceedings and before the criminal court against the Respondent were almost identical.

33. The criminal Court acquitted the Respondent holding that the main accused Lal Bahadur is absconding and there was no evidence against the Respondent from the statement of PW1 Mahesh Kumar, PW2 Smt. Mayawati, PW3 Shankar

Lal, PW4 Prema Ram, PW5 Bhorl Lal, PW6 Vijay, PW10 Ram Krishan & PW11 Bijender on the basis of which anything could be proved against the Respondent and establishing his culpability. The statement of PW9 Narain Singh, alleged to be a witness of recovery was not relied on since the other important witnesses of recovery, namely, PW7 Ramesh and PW8 Anoop Singh had turned hostile and had not supported the story of the prosecution regarding recovery of stolen articles from the Respondent. In the circumstances, it was held that there was no evidence available on the record which could corroborate the statement of PW9 Narain Singh, and thus, the prosecution failed to prove the charge against the Respondent and consequently, acquitted the Respondent from the charges u/s 414 and 411 of the Indian Penal Code. The Petitioners even after the acquittal of the Respondent by the criminal court, revived the departmental proceedings by invoking the exceptions carved out u/s 12 of the Delhi Police (P&A) Rules, 1980 contending that the criminal charge had failed on technical ground and that the prosecution witnesses had been won over by the Respondent.

34. In the order dated 17th May, 2001 except stating that the acquittal is based on technical grounds, no reason had been given as to why the acquittal is allegedly based on the technical ground. The tribunal while setting aside the order passed by the Petitioner reopening the disciplinary proceedings relying on the exception in Rule 12 had referred to a decision of another Coordinate Bench in OA No. 2640/2002, titled as "Vijender Singh v. Commissioner of Police" decided on 24th July, 2003 where it was held that once evidence had been allowed to be produced and the evidence adduced is not sufficient, then in such circumstances, the acquittal of the accused would be an acquittal and not an acquittal on technical ground. Citing some of the instances of technical acquittal it was held that it would be acquittal on technical grounds, if an unauthorized person files a complaint or the petition fails before a court or it fails on technical aspect e.g. there is no proper sanction, or the report has not been lodged by the competent authority, or there is such other procedural flaw which may prompt the criminal Court to put an end to the prosecution case. Then in such circumstances acquittal will be a technical acquittal. However, in such cases of technical acquittal the prosecution may still be in a position to come back to the court after rectifying the technical flaw. But if the acquittal is after appreciation of evidence adduced against the accused, the prosecution or State cannot go back and initiate another criminal case against the accused or bring more evidence on the same charges. The learned Counsel for the Petitioner has not been able to demonstrate in the facts and circumstances that the acquittal of the Respondent is on technical grounds, even though the criminal court had perused the evidence of all the witnesses and did not find sufficient evidence to conclude on the guilt of the Respondent. The Court did not think it appropriate to rely on the testimony of the PW9 Narain Singh, one of the witnesses of the alleged recovery, in view of the other witnesses of recovery becoming hostile and not supporting the prosecution version. The prosecution did not even challenge the order of the acquittal of the Respondent in appeal. No precedent has also been cited on

behalf of the Petitioner to establish that in such circumstances as in the case of the Respondent, acquittal can be construed as a technical acquittal.

35. Consequently, the inferences on behalf of the Petitioner in its order dated 17th May, 2001 invoking Sub-section (a) of Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 cannot be sustained and it cannot be held that the acquittal of the Respondent was on technical grounds so as to give jurisdiction to the Petitioner to re-open the departmental proceedings which were kept in abeyance on account of the pendency of the criminal case against the Respondent on the same charges.

36. The next plea raised on behalf of the Petitioner for reopening the departmental proceedings against the Respondent was on the ground that the two witnesses who had turned hostile were won over by the Respondent. There is no presumption in law that if a witness has turned hostile, he/she has been won over by the accused. In W.P.C.623/2009, titled as "Govt. of NCT of Delhi and Ors. v. Jag Saran" decided on 25th May, 2005, it was held that the accused cannot be saddled with the liability of the prosecution witness turning hostile, nor it can be assumed that the accused won over the said witness unless there are cogent facts and circumstances on the basis of which such inferences can be drawn. In Govt. of NCT of Delhi Vs. Asi Karan Singh the accused was acquitted on account of lack of evidence in support of charges of rape against him as all the witnesses including the prosecutor had not supported the prosecution case. The Disciplinary Authority, however, invoking the Rule 12 (b) of the Delhi Police (P&A) Rules, 1980 initiated the departmental proceeding on the premise that the witnesses had been won over by the accused. The High Court had held that there was no finding recorded by the criminal Court that the witnesses who had turned hostile had been won over by the accused nor was there any material before the Disciplinary Authority to come to the conclusion that the witnesses had been won over by the accused so as to invoke Rule 12 (b) of the Delhi Police (P&A) Rules, 1980 and in the circumstances, the disciplinary proceedings against the accused were quashed. In Khurshid Ahmad (Supra) the prosecutor had turned hostile and refused to identify the charged officer and the other persons, who had allegedly sexually assaulted her. The prosecutor who had turned hostile was cross examined by public prosecutor. The Court had held that normally the witnesses which are won over are given up by the prosecution and not produced in the Court; and a witness who is produced in the Court but does not support the case of the prosecution, is termed as a "hostile witness". The law permits such witness to be asked questions by the party producing him which are generally put by the opposing party. The evidence of a witness who has turned hostile cannot be discarded in its entirety merely on the ground that the witness turned hostile. The evidence of a hostile witness can still be relied upon, if otherwise found trustworthy. Therefore, a witness who turns hostile cannot be termed as a witness who has been won over. It was further held that such a witness is a witness who suppresses the truth and to elicit the truth, an opportunity is given to the opposing party to address questions in the nature of cross examination.

Therefore, merely because a witness has turned hostile it does not lead to an inference that he had been won over by the opposing party unless there is finding to that effect by the competent Court or some other material to establish that fact. The order of the Petitioners in the circumstances that the witnesses who had turned hostile had been won over cannot be sustained.

37. Considering the entirety of the facts and circumstances, this Court does not find any illegality, irregularity or un-sustainability in the order of the Tribunal dated 25.5.2005 setting aside the order dated 17th May, 2001 of the Petitioners so as to interfere with the same in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is therefore, without any merit and it is dismissed. All the pending applications are also disposed of. The parties are, however, left to bear their own costs.