
(2019) 05 CAT CK 0081

In the Central Administrative Tribunal

Case No : Original Application No. 100, 3151, 2013

Const. Chhatar Pal

APPELLANT

Vs

Govt. Of Nct Of Delhi

RESPONDENT

Date of Decision : 07-05-2019

Acts Referred:

Indian Penal Code, 1860 — Section 323, 498A, 506
Dowry Prohibition Act, 1961 — Section 3, 4, 21
Delhi Police??(Punishment & Appeal) Rules 1980 — Rule 12
Central Civil Services (Conduct) Rules, 1964 — Rule 3(i), 3(ii), 13A
Constitution of India, 1950 — Article 311(2)(a)

Citation : (2019) 05 CAT CK 0081

Hon'ble Judges : L. Narasimha Reddy, J;Aradhana Johri, J

Bench : Division Bench

Advocate : Sachin Chauhan, Pratima Gupta

Final Decision : Allowed

Judgement

1. The applicant was working as a Constable in Delhi Police. Disciplinary proceedings were initiated against him through order dated 9.03.2012. It was alleged that he himself and his other family members harassed Smt. Hemlata, wife of brother of the applicant herein. An FIR No.114/09 was filed in PS Kotwali, District Mathura (U.P.), alleging offences punishable under Section 498-A/323/506 IPC read with Section 3/4 of Dowry Prohibition Act. It was also mentioned that the applicant was arrested and subsequently released on bail. The applicant submitted his explanation to the same. Following the procedure prescribed in the relevant Service Rules, witnesses were examined and thereafter charges were framed.

2. After giving opportunity to the applicant to make representation and further steps in accordance with law, the Inquiry Officer (IO) submitted the report holding that the charge against the applicant is proved. Taking that into account, the Disciplinary Authority (DA) passed order dated 27. 12.2012 imposing the punishment of forfeiture of two years approved service permanently entailing

proportionate reduction in his pay with immediate effect. It was also directed that the period of suspension from 31.05.2010 to 13. 10.2010 shall be treated as period not spent on duty. The appeal preferred against the said order was rejected by the Appellate Authority (AA) i.e. Special Commissioner of Police, Delhi on 31.05.2013. Hence, this OA.

3. The applicant contends that allegation as to demand of dowry or harassment of Hemlata was totally incorrect and, at any rate, it was mostly a matter pertaining to domestic affairs. He contends that there was no basis for the DA to initiate the proceedings against him. Reliance is placed on various judgments of this Tribunal and High Courts. He further contends that on their own accord, the respondents have examined the matter under Rule 12 of Delhi Police (Punishment & Appeal) Rules 1980 and passed an order which reflects non-application of mind.

4. On behalf of respondents, counter affidavit is filed. It is stated that the allegation against the applicant was serious in nature and taking note of the same, disciplinary proceedings were initiated in accordance with the rules. It is also stated that the charges were held proved and that punishment, commensurate with the proved acts of misconduct, was imposed. The respondents further stated that the AA has examined the matter in detail and has taken an independent view.

5. We heard Shri Sachin Chauhan, for the applicant and Ms. Pratima Gupta, for the respondents.

6. The disciplinary proceedings were initiated against the applicant through order dated 9.03.2012. The relevant portion thereof reads as under:

"It is alleged against Constable Chhatar Pal, No.3019/DAP (PIS No.28880432) that the marriage of one Smt. Hemlata, D/o Shri Mahipal Singh, R/o 205/136, Shastri Nagar, Krishan Nagar, PS-Kotwali, Mathura (U.P.) was solemnized with Gajraj Singh, S/o Shri Padam Singh, R/o Samaipur Road, Gurjar Chowk, Gali No.3, Rajeev Colony, Sector-25, Ballabgarh, District-Faridabad, Haryana (Brother of Ct. Chatter Pal) in the year 2004 on 22.11.2004 as per Hindu rituals. Constable Chhatar Pal, No.3019/DAP, being brother-in-law (Jeth) of Smt. Hemlata along with his family members started harassing her for dowry articles in the form of cash and household articles just after few months of this wedlock. To serve this purpose Ct. Chhatar Pal, No.3019/DAP and his family members tortured Smt. Hemlata mentally, physically and also gave regular beatings to her. On the complaint of Smt.Hemlata dated 30.05.2009, a case FIR No.114/09 dated 30.05.2009 u/s 498-A/323/506 IPC, ¾ Dowry Act PS Kotwali, District Mathura (U.P.) has been registered against Ct. Chhatar Pal and his family members. In the above mentioned case Ct. Chhatar Pal, No.3019/DAP was arrested & subsequently release on bail.

The above act on the part of Ct. Chhatar Pal, No.3019/DAP amounts to gross misconduct lack of integrity in violation of Rule 3 (i), (ii) & 13A of CCS (Conduct)

Rules 1964, which render him liable to be dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980, punishable under Section 21 of DP Act."

7. From this, it becomes clear that the only allegation against the applicant is that he, along with other family members, demanded dowry and harassed Smt. Hemlata, mentally and physically. Since the applicant was arrested in that, he was placed under suspension.

8. It is not uncommon that simultaneous proceedings are initiated whenever criminal proceedings are initiated against an employee. However, a subtle distinction needs to be maintained. In case, the allegation in the criminal case is as to acts of moral turpitude and the same is in the course of discharge of official duties by an employee, the disciplinary proceedings can certainly be initiated. On the other hand, if the allegation as to moral turpitude has nothing to do with the discharge of official duties, it is not at all necessary to initiate disciplinary proceedings. This is upto the stage of trial of the criminal case. However, if the employee is convicted of an offence reflecting moral turpitude then, whether or not the acts of omission on his part were in relation to discharge of his official duties, he can straightaway be punished in accordance with the relevant provisions of law without the necessity of conducting any inquiry. This course is referable to Article 311 (2) (a) of the Constitution.

9. In the instant case, it was not even alleged that the acts alleged against the applicant had anything to do with the discharge of official duties. It is a different matter that he was acquitted in the criminal case. The issue is about the very initiation of disciplinary proceedings. In Jogeshwar Mahanta Vs. Union of India, O.A.2411/2007 decided on 19.12.2008, this Tribunal dealt with this very issue in detail. After referring to various judgments of the High Court and the Supreme Court, it held that an employer cannot initiate disciplinary proceedings against an employee on the sole basis of pendency of a criminal case, unless the allegations in the criminal case pertained to discharge of official duties by the same employer. Similar situation obtains in this case.

10. During the pendency of the OA, the respondents have undertaken an exercise referable to Rule 12 of Delhi Police (Punishment & Appeal) Rules. Rule 12 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 laid 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 disclose 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."

11. From the perusal of this, it becomes clear that the rule making authority wanted to avoid a situation of mechanical reinstatement of employees and the consequences upon acquittal in a criminal case. Since the Delhi Police is a disciplined force, they wanted to ensure that the technical acquittal does not turn out to be a blessing to an otherwise indisciplined member of the force.

12. As many as five exceptions are carved out in the rule. The applicant did not make an application but on their own accord, the respondents have examined the case of the applicant with reference to Rule 12 of the aforesaid Rules. It is essential to mention that apart from the case mentioned in the charge memo, the applicant was also shown as an accused in Crime No.8/2012 in relation to the death of his sister-in-law, Hemlata. In both the cases, the applicant was acquitted. Since the applicant was not punished with reference to that offence, there was no necessity to refer to that at all.

13. While dealing with the acquittal of the applicant in the case referable to FIR 114/09, the DA observed as under:

"As far as acquittal in case crime No.518/09 (FIR No.114/09) u/s 498-A/323/506 IPC & ¾ Dowry Prohibition Act, PS Kotwali, Distt. Mathura, UP is concerned, he has already been dealt with departmentally and punishment forfeiture of two years approve service permanently awarded to him vide order No.18061-82/HAP (P-I)/1st Bn. DAP dated 27.12.2012."

14. This hardly constitutes any step, referable to Rule 12. Except that it was noted that an order of punishment was passed against the applicant, the concerned authority did not take into consideration, any facets of Rule 12. In that view of the matter, the necessity for us to deal with that aspect, is also obviated.

15. We, therefore, allow the OA and set aside the impugned order. If any service benefit was denied to the applicant on account of the punishment imposed, it shall be restored to him in all respects, within three months from the receipt of a certified copy of this order. There shall be no order as to costs.