
(2019) 01 CAT CK 0139

In the Central Administrative Tribunal

Case No : Original Application No. 3143 Of 2013

Constable Virender Singh

APPELLANT

Vs

Govt. Of NCTD And Ors

RESPONDENT

Date of Decision : 03-01-2019

Acts Referred:

Indian Penal Code , 1860 — Section 376(2A), 506

Delhi Police Act, 1978 — Section 21

Delhi Police (Punishment And Appeal) Rules, 1980 — Rule 12, 16

Citation : (2019) 01 CAT CK 0139

Hon'ble Judges : Nita Chowdhury, Member (A), S.N. Terdal, J

Bench : Division Bench

Advocate : Sachin Chauhan, Harvinder Oberoi

Final Decision : Dismissed

Judgement

S.N. Terdal, J

1. We have heard Mr.Sachin Chauhana, counsel for applicant and Mrs.Harvinder Oberoi, 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 quash and set aside the order dated 4.5.12 whereby the extreme punishment i.e. dismissal from service is imposed upon the applicant and order 30.8.12 whereby the Appellate Authority has reduced the punishment to that of forfeiture of two years approved service permanently entailing proportionate reduction in his pay at A-1 and to direct the respondent that forfeited years of service be restored as it was never forfeited with all consequential benefits including seniority and promotion and pay and allowances and to further direct that intervening period from the date of dismissal to the date of reinstatement be treated as 'Spent on Duty' for all intent and purposes.

(ii) To quash and set aside the order of initiation of D.E.

(iii) To quash and set aside the finding of Enquiry Officer. Or/and Any other relief which this Hon'ble court deems fit and proper may also be awarded to the applicant."

3. The relevant facts of the case are that a departmental enquiry was initiated with respect to applicant by issuing the summary of allegation to the effect that he developed intimate relationship with a lady Smt. Sangeeta Bagoriya with a motive to help her in prosecuting her husband and subsequently raped her and spoil her life. The details of the summary of allegations are extracted below:-

"It is alleged against you Ct. Virender Singh, No. 973/SD (Now 3031/DAP, PIS No. 28941895) that on 23.12.2004 while posted in Police Station, Kalkaji, you maintained intimate relations with a lady Smt. Sangeeta Bagoriya, r/o B-112/B, Ground Floor, Kalkaji, New Delhi and misused your position as a Police Officer with the motive to help her in prosecuting her husband. She alleged that you Ct. Virender Singh visited her house at 9.30PM on 22.12.04 and put your service revolver on her head and threatened that if she disobeyed his words, it will be serious and you raped her. You further threatened that if she dare to disclose the matter, you will spoil her life. You also stated that you knows her-in laws and you had visited her house on their direction. When you left her house you asked her that you will visit her house again as you are performing night duty, if she did not open the door on you direction you will kill yourself in front of her house and implicate her in the case.

It is further alleged that on the complaint of Smt. Sangeeta Bagoriya a case FIR No. 1191/04 dated 23.12.04, u/s 376(2A)/506 IPC was registered at P.S. Kalkaji New Delhi against you Ct. Virender Singh. You Ct. Virender Singh No. 973/SD (Now 3031DAP) was placed under suspension vide order no. 10353-370/SD/P-II dated 23.12.2004. Later on, you were reinstated from suspension vide order no. 7914-94/HAP/P-II/SD dated 27.09.2010.

The judgment has been examined under Rule-12 of Delhi Police (P&A) Rules-1980 which clearly says that the department may take action against for having intimate relations with a lady (Smt. Sangeeta Bagoriya r/o B-112/B, Ground Floor, Kalkaji, New Delhi) in distress and to that extent misusing his position as a police officer to help her in prosecuting the husband of prosecutrix while posted at PS Kalkaji in the year 2004. The judgment also goes to say that the appellant (here delinquent) and Smt. Sangeeta Bagoriya were friendly and had sex with her consent. It denotes that Constable while posted in PS Kalkaji maintained illicit relations with Smt. Sangeeta Bagoriya by misusing his official position. It is a different issue that he has been acquitted by the Court.

The above act on the part of you Ct. Virender Singh, No. 973/SD, 3031/DAP amounts to grave misconduct, depravity, misuse of official position, lack of integrity and an act of unbecoming of police official which renders you liable to be dealt with departmentally under Rule 16 of Delhi Police (Punishment & Appeal) Rules, 1980, punishable under section 21 of D.P. Act."

4. Along with the summary of allegation, list of documents and list of witnesses were furnished to the applicant. As the applicant did not accept the summary of allegation, a departmental enquiry was initiated against him. After following the principles of natural justice and giving the applicant reasonable opportunity and following the relevant procedural rules, the Inquiry Officer conducted the departmental enquiry and after examining PW1 to PW6 and DW1 and DW 2 and after considering the defence statement and discussing the entire deposition, came to the conclusion that the charge levelled against the applicant was partly proved. In the departmental enquiry the complainant Smt. Sangeeta Bagoriya did not appear. But, however, there was sufficient evidence before the inquiry officer as such he held that the charge levelled against the applicant was partly proved. On the same set of facts an FIR no.1191/04 was lodged and the trial court in the criminal court convicted the accused by the Court of Shri V.K.Bansal, Addl. Sessions Judge, New Delhi in session case No. 27/2005 vide order dated 06.11.2007. The applicant filed an appeal. In the appeal he was acquitted. But, however, the Hon'ble High Court itself while acquitting the applicant observed that the conduct of the applicant amounts to misuse of his position as a Police Officer and gave liberty to the department to proceed against the applicant departmentally. The relevant portion of the observation is extracted below:-

"23. We may clarify that if the department is interested in any action against the appellant they may proceed against him for having intimate relations with a lady in distress and to that extent misusing his position as a police officer to help her in prosecuting the husband of the prosecutrix."

5. The disciplinary authority referred to the observation of the Hon'ble High Court extracted to above and considering the entire evidence before the inquiry officer and considering the representation of the applicant imposed the penalty of dismissal from service on the applicant vide order dated 04.05.2012. The appeal filed by the applicant was also considered by the appellate authority. But, however, the appellate authority reduced the penalty of dismissal to that of forfeiture of two years approved service permanently with proportionate reduction in his pay vide order dated 24.08.2012.

6. The counsel for the applicant vehemently and strenuously contended that as the complainant did not appear in the departmental enquiry, as such the Inquiry Officer seriously erred in holding that the charges leveled against the applicant are partly proved and it is a case of no evidence. He further submitted that as the applicant has been acquitted by the Hon'ble High Court in appeal, in view of the provisions of Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980, no punishment should have been imposed on the applicant.

7. We have perused the deposition before the inquiry officer. Though the complainant had not participated in the departmental enquiry but from the available evidence before the inquiry officer he had rightly come to the conclusion that the charge against the applicant was partly proved. By no stretch of imagination can it be said that it is a case of no evidence in view of sufficient

evidence available before the inquiry officer. As the High Court itself had observed that departmental enquiry could be held for misused of official position by the applicant, we cannot hold that the impugned orders are bad in law because of the acquittal passed by the Hon'ble High Court.

8. In the facts and circumstances narrated above and in view of the analysis made above, we are of the opinion that the impugned order do not suffer from any lacuna.

9. Accordingly, OA is dismissed. No order as to costs.