
(2014) 12 DEL CK 0234
In the Delhi High Court
Case No : WP (C) No. 196/2003

Ex. Const. Satbir Singh

APPELLANT

Vs

National Capital Territory of Delhi

RESPONDENT

Date of Decision : 22-12-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 42, 50

Citation : (2015) 1 AD 537

Hon'ble Judges : Vipin Sanghi, J; S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Arun Bhardwaj, Advocate for the Appellant; Zubeda Begum, Advocate for the Respondent

Judgement

S. Ravindra Bhat, J.—In this writ petition, the order of the Central Administrative Tribunal (CAT) dated 8.11.2002 dismissing O.A. No. 3375/2001 has been questioned. The CAT upheld the punishment of dismissal imposed upon the petitioners after a Departmental Enquiry.

2. The brief facts are that the petitioners were enrolled as Constables in the Delhi Police at different times in 1984 and 1986. On 14.01.91, a First Information Report (FIR) was lodged against them (FIR No. 19/91). According to the allegations in the FIR, on the night of 13/14.01.91, the petitioners (who at that time, were posted at the Badarpur Police Station and were on patrol duty) had caught a thief, recovered Rs.1,38,000 from him, but deposited only Rs.56,200 in the police station as the recovered amount, and had misappropriated the rest. These became the subject matter of a criminal prosecution. After these allegations, on 7.02.1991, the respondent Government of NCT of Delhi ("GNCTD") placed the petitioners under suspension, w.e.f. 17.01.91. On 25.11.91, a joint departmental enquiry was initiated against the Petitioners. On 12.07.1992, the Enquiry Officer framed the charge against the petitioners, and on 22.02.93, after holding the enquiry, during which statement of witnesses were

recorded, found that the allegation of misappropriation had been established against the petitioners. By order dated 12.4.93, in OA No. 147/92, the CAT directed the respondents to keep the departmental proceedings in abeyance until the final decision of the criminal court.

3. On 03.02.99, the petitioners were acquitted by the criminal court. As a result they applied to the GNCTD, seeking revocation of their suspension. However, on 17.08.99, the GNCTD issued a show-cause notice asking them to submit their representations against the findings of the Enquiry Officer. They represented on 20.8.99. On 20.10.99, the disciplinary authority issued a punishment order dismissing the petitioners from service. The petitioners' appeal to the concerned authority, dated 22.11.99, was rejected on 24.07.11. The petitioners then challenged the appellate authority's order before the CAT in OA No. 3375/2001. By the impugned order dated 08.11.2002, the CAT dismissed the OA.

4. The petitioners argue that under Rule 12 of the Delhi Police (Punishment and Appeal) Rules of 1980, their acquittal in the criminal proceedings precludes a departmental enquiry against them. Rule 12 states:

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
- (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.

5. The petitioners also argue that the departmental enquiry was vitiated by the fact that, despite a request to the respondents, relevant documents were not made available to them to prepare their defence.

6. Both these arguments were taken before, but rejected by CAT, which held that the exception under Rule 12 (e) had been satisfied in the facts of the present case since, in the Departmental Enquiry, the Inquiry Officer had access to a number of witnesses who had not appeared before the Court. CAT also held that, as a matter of fact, it had not been sufficiently proven that the petitioners had made a request for the documents allegedly denied to them, and that in any event, the nature of such documents (which primarily pertained to the criminal trial) would be available to the petitioners and, thus, the non-supply of these

documents was not so as to cause substantial prejudice to their ability to put forward a defence. Consequently, the CAT affirmed the findings of the DE as well as the punishment of dismissal.

7. Before this Court, the petitioners have reiterated their submissions about the scope and interpretation of Rule 12 of the Delhi Police Rules, and on the non-supply of material documents requested. It was emphasized that the interpretation of Rule 12 (e) adopted by the CAT was, in the circumstances of the case, improper. Counsel emphasized that the said rule was read in isolation. However, a cumulative effect of all the clauses and the overall objective underlying the said rule was to ensure that the police personnel who were acquitted of criminal charges should not be put through the ordeal of a departmental enquiry. Counsel argued that a careful consideration of the judgment of the criminal court would reveal that contrary to the prosecution's assertions, the star witnesses did not even turn up, as a result of which the court acquitted the accused, i.e the petitioners. In the circumstances, the departmental proceedings could not have been permitted to go ahead. It was next argued that the mainstay of the prosecution case was the alleged recovery of money from the petitioners' residences. There was nothing to substantiate the truth of these contentions or allegations. It is submitted that Rule 12 is the rule which has to be followed after judicial acquittal, which shows that when a police officer has been tried and acquitted by a criminal court, he cannot be punished departmentally on the same set of allegations, except in certain exceptions. It is submitted that the nomenclature of the rules suggests that any disciplinary action, including punishment, would have to be initiated only after the outcome of the criminal trial, particularly when a police officer is acquitted of the charges.

8. Learned counsel argued that what is meant by failure on technical grounds is, for instance, if an unauthorized person files a complaint, or if there is no proper sanction, or if the report had 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. It was further argued 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 led and for some reasons that cannot prove the charges 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.

9. Learned counsel submitted that the departmental proceedings were also vitiated because, despite a demand during the said proceedings, copies of the documents relied upon by the Delhi Police were not supplied. It was argued that CAT fell into error in overlooking these aspects completely and, instead, holding

that since, presumably, the relevant documents were supplied during the criminal trial, the respondents were absolved from the duty of furnishing them during the departmental enquiry. It was lastly contended that the inquiry officer could not be said to have relied on any additional evidence or material, which was not considered during the criminal trial.

10. Counsel for the GNCTD argued that the order of the CAT is reasonable and justified. It was argued that the Petitioners were well aware of the charges and had been supplied all the documents which enabled them to defend the criminal charges; the same documents and materials had been used in the departmental proceedings. Thus, they were possessed of all those documents - copies whereof they sought. It was argued that the demand for copies of the documents afresh was merely with a view to obstruct the enquiry and was not bonafide. It was argued on behalf of the GNCTD that departmental proceedings in this case had concluded, but the findings were not given effect to, because of an interim order of the CAT. In the circumstances, the material available with the department included the depositions of witnesses including those who did not appear in the criminal trial. They were duly cross examined, both as to the amount recovered from the petitioners and the places of recovery. Furthermore the victim of the theft too had deposed. In these circumstances, there was nothing required to be done, in the departmental proceedings, except issue the penalty.

Analysis and Findings

11. The Enquiry Officer's findings demonstrate that in the Departmental Enquiry, a large number of witnesses were examined. PW1, SI Rajesh Kumar, deposed that he had received a complaint from the victim, Ashok Puri, to the effect that Rs.1,38,000 had been stolen. PW-1 also deposed that during the course of the investigations, he had arrested the petitioners, and recovered amounts of Rs.34,700 and Rs.40,000 from them, respectively. Both the recovery memos were exhibited. This was confirmed by PW5, H.C. Basant Ballabh, who affirmed that in Register No. 19, SI Rajesh Kumar had showed recovery of Rs.34,700 and Rs.40,000 from the petitioners. Photocopies of the entries were shown to the Enquiry Officer. PW4 - H.C. Brahma Nand also deposed that while working as a Duty Officer on the night of 14/15/1.91, the petitioners had entered the reporting room, and produced the thief - one Vijay - whom they had apprehended, and claimed to have recovered an amount of Rs.56,200 from him. PW4 stated that he had prepared the recovery memo, and lodged a report, which was exhibited as PW-4/A. Furthermore, PW-6, S.I. Ram Singh, who was performing Emergency Duty that night, also deposed that the accused Vijay was brought in by the petitioners, and that he arrested him and recovered a sum of Rs.56,200, by the duty officers. PW-7, who was the original victim - Shri Ashok Puri - deposed that a sum of Rs.1,38,000 was stolen from him by his servant Vijay on the night of 14.1.91, after which he reported the incident. He also deposed to having accompanied SI Rajesh Kumar to the residences of the petitioners, where Rs.34,700 and Rs.40,000 were recovered respectively. He

deposed to having seen recovery memos, and identified the signatures of both the petitioners. PW8, Sh. HPS Cheema, Inspector SHO Vivek Vihar, deposed that he had interrogated the accused, Vijay, who confirmed that he had stolen money that comprised seven bundles of 100 rupee currency notes, 10/11 bundles of 50 rupee currency notes, 6 bundles of 20 rupee currency notes and 1 bundle of 10 rupee currency notes, all of which add up to a figure approximating Rs.1,38,000. Both petitioners produced three defense witnesses each, who deposed that no recovery had been made from their houses. On the basis of the deposition of witness, the Enquiry Officer found that the charge of misappropriation against the petitioners had been proved to his satisfaction.

12. On 03.02.1999, the petitioners were acquitted in the criminal case against them. Before the Metropolitan Magistrate, the prosecution examined only one witness. Therefore, on account of the failure of the prosecution to produce any other incriminating evidence, the Magistrate acquitted them. In light of the outcome of the criminal case, the petitioners made representations against the findings of the DE. In its final order, the GNCTD noted that the Enquiry had examined numerous witnesses, whose accounts were mutually corroborative. On the contrary, in the criminal proceedings, only one witness was examined, and therefore, sufficient evidence was not produced. On this basis, it was observed that the fact of misappropriation had been proved in the Departmental Enquiry, and an order of dismissal was passed against the petitioners. The petitioners' departmental appeal was also rejected. It was In light of this, the petitioners filed O.A. No. 3375/2001 before the CAT.

13. This Court notes, therefore, that after a detailed examination of witnesses, the Departmental Enquiry found the petitioners guilty of misappropriation on 22.2.1993. Before a punishment could be awarded, proceedings were stayed by the CAT in light of the ongoing criminal proceedings. Crucially, a finding of guilt had already been reached in the departmental enquiry before the stay.

14. With respect to the interpretation of Rule 12, and whether it was attracted in the instant case, this Court notes that this question must be answered in light of the Supreme Court's observations in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, :

As we shall presently see, there is a consensus of judicial opinion amongst the High Courts whose decisions we do not intend to refer in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas.

15. Rule 12 came for interpretation before a Division Bench of this Court in Govt. of NCT of Delhi and Others Vs. Rajpal Singh, , where the Court held, in

observations that are squarely on point:

The heading of the said Rule is: "Action following judicial acquittal". Thus, what is prohibited is that no departmental action shall be taken in terms whereof the departmental action had been taken on the charge whereupon the police officer had been tried and acquitted by a criminal court. Ex-facie, therefore, the same does not debar initiation of departmental proceedings as also a criminal trial. Only in the event departmental proceedings had not been initiated and/or the same had not culminated in imposition of punishment, Rule 12 afore-mentioned, could be held to be attracted. Only because an appeal was pending, the same would not mean that the order of punishment passed by the Disciplinary Authority remained under animated suspension. It had for all intent and purport remained operative.

16. In *Joginder Singh vs. Govt of NCT, Delhi*, (W.P. (C.) No. 2371/2004, the petitioner was dismissed from service on grounds of forgery. He was also acquitted in the criminal trial, when the complainant turned hostile. A division bench of this Court held that:

Mere fact that the petitioner has been acquitted in the criminal case which in view of the observation made by the Learned Magistrate while passing the Judgment of acquittal is not a clean acquittal but is based upon benefit of doubt inasmuch as the complainant turned hostile does not entitle the petitioner to take benefit thereof as his case is not covered by any of the exceptions in Rule 12 more so when the acquittal has come only after the departmental proceedings were over.

17. Similarly, in *Dilwar Singh vs. Commissioner of Police*, W.P.(C) No. 986/2001, a division bench of this Court held:

From a bare reading of Rule 12 it is evident that it deals with a punishment after an acquittal. That is not the situation in the present case where the departmental punishment was imposed before the acquittal.

18. In present case, a distinguishing feature is that the Departmental Enquiry had commenced, and a finding of guilt had been entered before the acquittal in the criminal case. However, the penalty could not be imposed on account of an order dated 12.4.93, in OA No. 147/92. This was because the CAT on that occasion was of the opinion that it would be appropriate that in view of the criminal proceedings, departmental penalty ought not to be imposed. However, this situation differs radically from one where the department or the public employer chooses not to proceed departmentally, but await the outcome of the criminal trial. It is in this situation that the restriction placed by Rule 12 would operate. Holding that in all cases - regardless of the existence of interim orders secured by the employee, and regardless of the employer's steps to complete the inquiry, Rule 12 has to operate, would be inequitable and result in creating an artificial distinction between those police personnel who approach the CAT for relief (to await the outcome of criminal proceedings) and those who do not, or

cannot do so. Such basis for discrimination is not made out in the Rule, nor is discernible, especially considering that the public employer has a discretion to initiate an inquiry (or proceed not to) wherever criminal charges are pending trial before a competent court. In other words, that perchance a police official is able to secure an interim order, preventing the completion of his departmental proceeding, by an injunction not to issue the penalty order, cannot confer a greater advantage upon him. Consistency and uniformity in state action, and even handed treatment of persons falling within one class is the bedrock of the equal protection clause decreed by Article 14 of the Constitution of India. Asymmetrical or dissimilar treatment, based on artificial distinctions, destroys the fabric of the equality principle. The petitioners' argument that they should be given the benefit of Rule 12 is premised on the fortuitous circumstance of their securing a judicial interdict enjoining the issuance of a penalty order. Another police officer, less fortunate - but who might nevertheless, like them, be acquitted later in criminal proceedings, would, by the interpretation pressed (by the petitioners) not receive the benefit of Rule 12 because he or she would not be "punished departmentally on the same charge" for the simple reason that he would have already suffered the penalty imposed by the department. This only underlines that the act of court (as an interim order would be) cannot do any harm to either party, on an application of the principle of *actus curiae neminem gravabit*.

19. Furthermore, this Court also notes that exceptions (a), (b) and (c) are all arguably attracted in the present case, since the acquittal was based on the fact that prosecution witnesses, who had deposed in the Departmental Enquiry, failed to appear. In this regard, the observations of the Supreme Court in *Secretary, Ministry of Home Affairs and Another Vs. Tahir Ali Khan Tyagi*, , are pertinent:

That apart, the second part of Rule 12 of the rules, unequivocally indicates that a departmental proceeding could be initiated if in the opinion of the court, the prosecution witnesses are found to be won over. In the case in hand, the prosecution witnesses did not support the prosecution in the criminal proceeding on account of which the public prosecutor cross-examined them and therefore, in such a case, in terms of Rule 12, a departmental proceeding could be initiated.

20. Furthermore, a Division Bench of this Court, in *Shri V. Jayapalan Vs. Commissioner of Police and Others*, , noted that:

We are of the opinion that the said Rule permits the respondent-Police to initiate departmental even action on the same charge even after the Police Officer has been tried and acquitted by a criminal court. Departmental action can be initiated if any of the circumstances specified in Clauses (a) to (e) above exist. The Tribunal in the instant case reached a conclusion that the case had been decided on merits. The Tribunal noted that the independent witness produced was in fact a tainted witness and it was thus failure to lead other evidence, which resulted in the acquittal. Curiously, the Tribunal in para 25 of the impugned order also found on a perusal of the judgment of the High Court in Criminal Appeal No. 242/97

that acquittal was based on technical grounds, inasmuch as there was non-compliance with Sections 42 and 50 of the NDPS Act. The matter did not rest here. The Tribunal further went on to observe based on the judgment of the High Court in appeal that the prosecution had failed to prove the case beyond a shadow of doubt. In these circumstances, it would be seen that the Tribunal holds the case of acquittal to be one on merits as well as on technical grounds. In these circumstances, the Tribunal took an equitable position of allowing subsistence allowance for this period from the date of his dismissal i.e. 8th January, 1998 to the date of ultimate reinstatement treating the said period to be one of deemed suspension.

Having perused the judgment of the learned Single Judge of this Court in Criminal Appeal No. 242/97 as well as the judgment of the Tribunal, we are of the view that in the present case Rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980 would get attracted. We have also noted the observations of the Tribunal with regard to the acquittal being based also on technical grounds due to non-compliance with Sections 42 and 50 of NDPS Act. The learned Single Judge while deciding Criminal Appeal No. 242/97 had observed that the prosecution had failed to prove the case beyond shadow of doubt. In our view, this itself could well bring the case within Sub-clause (C) of Rule 12, where the suspicion could rest on the concerned official. Thus the departmental proceeding initiated, in our view, cannot be said to be without jurisdiction. After due initiation of the departmental proceedings the Tribunal had upheld the order of the disciplinary authority regarding forfeiture of service but had provided for payment of subsistence allowance, we are of the view that the order passed by the Tribunal subserves the ends of justice and does not call for any interference in the exercise of writ jurisdiction.

21. In the present case, the Petitioners had sufficient opportunity to cross-examine the eight prosecution witnesses, and did so; despite that, the Departmental Enquiry - and subsequently, the disciplinary and appellate authorities - returned a finding of guilt. In light of this, and in light of the fact that before the criminal proceedings, the very same witnesses who had deposed and were cross-examined did not appear, this Court is of the opinion that the criminal acquittal can be said to be little more than on technical grounds. Therefore, in light of clear precedents on this issue, this Court feels that the argument that Rule 12 acts as a bar to the Departmental Enquiry and punishment is not well-founded.

22. Moving on to the second contention, the Court notes that there is a factual dispute over whether the petitioners actually requested the documents in question, or not. The CAT has entered a finding against the petitioners on this count, and in the absence of cogent evidence to the contrary, this Court sees no reason to interfere with that finding. In any event, a perusal of the record reveals that the petitioners were provided with a Summary of Allegations dated 06.01.1992, as well as the list of witnesses. The petitioners argue that as they

were not provided a list of additional documents, such as a copy of the memorandum, the order of the D.E. and the appointment of the E.O., a copy of the memos prepared by the E.O., and so on - they were unable to make an effective defense. Most of these documents pertained to the criminal trial, and in any event, given the nature of the departmental enquiry, this Court does not consider that the non-availability of those additional documents caused any substantial prejudice to the case of the petitioners. The Court also notes that the CAT considered this issue as well, and came to the same conclusion.

23. This Court notices that the petitioners highlighted some procedural flaws during the course of the police investigation, including the results of the cross-examination of the witnesses. While this could imply that the case against them was not proved beyond reasonable doubt, it is noteworthy that standards of proof in departmental enquiries are different. In *Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others*, the Supreme Court held:

The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability."

24. Similarly, in *Capt. Paul M. Anthony's* case (*supra*), the Supreme Court noted:

Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the Disciplinary Authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubts.

25. This is a settled position of law. In this case, this Court feels that on the basis of the evidence before it, the Departmental Enquiry was entitled to come to a conclusion, on the balance of probabilities, that while the money stolen was

Rs.1,38,000, only Rs.56,200 had been deposited by the delinquent police officers, and that the witness testimonies made it clear that the delinquent officers were responsible for the misappropriation.

26. This Court is of opinion that none of the cases cited by the petitioners - most of which relate to illegal dismissals - advance the case of the petitioners on either of the two legal propositions at issue in this matter, pertaining to the interpretation of Rule 12 of the Delhi Police Rules, and the standards of proof in a departmental enquiry. For these reasons, the Court sees no merit in the writ petition, which is accordingly dismissed.