

(2016) 12 DEL CK 0053
In the Delhi High Court
Case No : W.P. (C) No. 12466 of 2006

Govt. of N.C.T. Delhi

APPELLANT

Vs

Bhisham Kumar

RESPONDENT

Date of Decision : 08-12-2016

Acts Referred:

Constitution of India, 1950 — Article 311(2)(b)
Delhi Police (Punishment and Appeal) Rules, 1980 — Rule 12(a)

Citation : (2017) 237 DLT 636

Hon'ble Judges : Mr. G.S. Sistani and Mr. Vinod Goel, JJ.

Bench : Division Bench

Advocate : Ms. Niti Jain, Advocate, for the Petitioner; Mr. Sanjeev Sagar with Ms. Jasvin Dhama, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sistani, J.(Oral)—Order dated 30th March, 2006 passed by the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") has led to the filing of the present writ petition by the petitioner.

2. The necessary facts required to be noticed for disposal of this writ petition are that a FIR No.14/1996 was registered under Sections 395/397/34 IPC and Sections 25/27/54/59 of the Arms Act against the present respondent and three others. We may notice that the respondent has since expired leaving behind his wife and children. After the registration of the FIR, the respondent was dismissed from service by an order dated 21st March, 1996 under Article 311 (2)(b) of the Constitution of India.

3. An appeal against the aforesaid order was rejected which led to filing of OA No.3070/2002 which was allowed by the Tribunal on 27th August, 2003. Pursuant to the order of the Tribunal, the respondent was reinstated and thereafter placed under suspension.

4. Simultaneously, a disciplinary inquiry was initiated. The respondent was held

guilty, dismissed from service and the intervening period was to be treated as "not spent on duty". This led to filing of the second O.A.

5. The main thrust of the argument and which found favour with the Tribunal was that disciplinary proceedings were conducted against him without taking into consideration the provisions of Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980. The case of the respondent before the Tribunal was that he stood acquitted in the criminal trial and the charges, allegations, facts and evidence in both the proceedings i.e. criminal trial and domestic inquiry were the same. The respondent relied upon a decision rendered by the Supreme Court in the case of Government of NCT of Delhi & Others v. Satya Dev Singh, CC 10487-10489/2005; order of the Tribunal in HC Jag Saran v. GNCT & Ors., O.A. No. 1296/2003; and Sushil Kumar v. Food Corporation of India & Ors., 2003 (1) Service Cases Today 920.

6. The stand of the petitioner/Government of NCT of Delhi before the Tribunal and also before this Court is that the respondent had been acquitted on account of a technical reason that the star witnesses of the prosecution were not available but in the departmental inquiry, on the basis of evidence, the charges against the respondent stood proved.

7. Learned counsel for the petitioner submits that the acquittal of the respondent was on a technical ground as the prosecution was not able to produce a single witness to support its case. Such a situation, according to the learned counsel for the petitioner, would stand covered under the exception to Rule 12 contained in Sub-rule (a) of the Delhi Police (Punishment and Appeal) Rules, 1980. Learned counsel for the petitioner also submits that in the case of Nawal Kishore, who was also a co-accused with the respondent, a writ petition, being Joint Commissioner of Police v. Nawal Kishore, W.P (C) No. 7541/2007 was filed by the department against the order of the Tribunal, where the matter has been remanded back for fresh hearing. It is also pointed out by the learned counsel for the petitioner that another co-accused had died prior to initiation of the inquiry and keeping in view his family conditions, no further action was taken in the matter.

8. Mr. Sagar, learned counsel for the respondent, points out that the case of Nawal Kishore was covered by Rule 12 (b), (c) and (d) and not Rule 12 (a) of the Delhi Police (Punishment and Appeal) Rules, 1980.

9. At this stage, Mr. Sagar, learned counsel for the respondent, submits that the respondent is willing to forgo back wages and consequential benefits, but would only pray that the widow of the deceased be granted pension from the date of his death. On the merits of the matter, it is submitted that reading of the order dated 3rd February, 2004 passed by the department would show that the department did not take recourse to Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 but, a general inquiry was sought to be conducted. Reliance on Rule 12 (a) of the Delhi Police (Punishment and Appeal) Rules, 1980 by the

petitioner herein is an afterthought. More so, counsel submits that the acquittal on account of lack of evidence does not fall within the definition of technical grounds. Reliance is placed on *George N.S. v. Commissioner of Police*, 183 (2012) DLT 226, more particularly paragraph 12. Reliance is also placed on *Sushil Kumar (supra)*, wherein it was held that if a criminal charge and charge sheet issued departmentally are based on the same facts and have to be proved by the same witnesses, acquittal in the criminal proceedings will by itself put an end and nullify the departmental proceedings. Reliance is also placed on the case *Government of NCT of Delhi & Ors. v. Satya Dev Singh*, W.P. (C) No.4431-4433/2005, decided by a Division Bench of this Court on 21st April, 2005. Reliance is placed on paras 3 and 4 of the said judgment. It is pointed out that this judgment of the Division Bench was upheld by the Supreme Court as the SLP filed by the Government (being CC 10487-10489/2005) was dismissed on 21st November, 2005. Reliance is also placed on *GNCTD v. Asi Karan Singh*, more particularly paras 18 and 19.

10. We have heard the learned counsel for the parties and considered their rival submissions. The basic facts are not in dispute that an FIR was registered against the respondent, relying on Article 311 (2) (b) of the Constitution of India, the respondent was dismissed from service and an O.A. was filed, the order was set aside, the respondent was reinstated, however, he was placed under suspension and departmental inquiry was initiated. In the inquiry, he was held guilty and again dismissed from service.

11. Both counsels have placed reliance on Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980, which reads as under: -

"12. Action following judicial acquittal. ? When a police officer has been 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 ground; 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."

(Emphasis Supplied)

12. The case of the petitioner is that since the respondent was acquitted on technical grounds, Rule 12(a) of the Delhi Police (Punishment and Appeal) Rules,

would be applicable and petitioner was well within its right to hold an inquiry despite the fact that the charge was same and the witnesses were also the same. This submission of the learned counsel for the petitioner is unacceptable in view of the decision of a co-ordinate Bench of this Court in the case of George N.S. (Supra), wherein the Division Bench of this Court has held that lack of evidence cannot be termed as acquittal on technical grounds. While interpreting Rule 12 (a) of the Delhi Police (Punishment and Appeal) Rules, 1980, it has been held that technical grounds would include ground of limitation as per Section 197 of Cr.P.C. or a trial held without obtaining sanction. The Division Bench held that in case the legislature intended that an acquittal on account of benefit of doubt or prosecution failing to prove case beyond reasonable doubt etc. were not to be a bar in departmental proceedings, it would have so specifically provided as an exception in Rule 12. We may also notice that in this case the order of holding the departmental inquiry does not show that the department intended to hold an inquiry taking recourse to Rule 12 (a) of the Delhi Police (Punishment and Appeal) Rules. The relevant paragraphs of the judgment in George N.S. (Supra) read as under:

"12. The acquittal on account of prosecution failing to prove its case beyond reasonable doubt or on account of lack of evidence or no evidence cannot be termed as acquittal on technical ground. Such grounds i.e. technical ground, would be, to illustrate a few, limitation which has now been prescribed by recent amendment in Code of Criminal Procedure or trial without obtaining sanction as required under Section 197 Code of Criminal Procedure in cases where it is required and the trial being held without obtaining such sanction. If the legislature intended that acquittal on account of benefit of doubt or prosecution failing to prove a case beyond reasonable doubt etc. were not to be a bar in the departmental proceedings, it would have so specifically provided as Exception in Rule 12. The legislature could not be oblivious of the situation as mentioned above, particularly when we know that most of the acquittals are based on the failure of the prosecution to prove the case beyond reasonable doubt or on account of benefit of doubt. The legislative wisdom only refers to acquittal on technical grounds as one of the exceptions for holding departmental proceedings. By any means we cannot hold that failure of the prosecution to lead evidence per se, would amount to acquittal on technical ground. The acquittal resulting on account of prosecution not leading evidence or leading insufficient evidence would definitely stand on different footing than acquittal resulting on technical ground. In the former case, the acquittal would be clean acquittal and even the words like "benefit of doubt" or "failing to prove beyond reasonable doubt" would be superfluous. The Petitioner was acquitted by learned MM because there was no evidence led by the prosecution for many years and even the case property was also not produced for any justifiable reason. Such acquittal could not be said to be on a technical ground since the charges were not proved and the decision was arrived at on the basis of no evidence on record. A Division Bench of Punjab and Haryana High Court in Bhag Singh v. Punjab and Sind Bank 2006 (1) SCT

175 held that where the acquittal is for want of any evidence to prove the criminal charge, mere mention of "benefit of doubt" by a criminal court is superfluous and baseless and such an acquittal is an "honourable acquittal". Another Division Bench of Punjab and Haryana High Court in *Shashikumari v. Uttari Haryana Bijli Vitran Nigam* 2005 (1) ATJ 154 has taken the same view. The instant case, however, appears to be on a better footing. Thus, we have no hesitation in arriving at a conclusion that exception (a) to the prohibition was not attracted in the present case."

(Emphasis Supplied)

13. The learned counsel for the petitioner had drawn our attention to the judgment of co-accused Nawal Kishore in *Nawal Kishore (Supra)*, where a coordinate bench of this Court had come to the following conclusion:

"10. No doubt, in this case, charges could not be proved in the criminal trial. The record reveals that the star witnesses, including the complainant, did not respond to summons and, therefore, did not participate during the trial. However, the disciplinary authority appears to have applied its mind and proceeded in terms of Rule 12(b),(c) and (d). The Disciplinary Authority in his note observed that the EO had not appreciated the evidence of PW-2, which related to the allegation contained in the charges with respect to manipulation of record and tampering of evidence made by the delinquent official/applicant. In the circumstances, it cannot be said that the blanket bar against the departmental proceedings, following acquittal in criminal charges would apply in this case. The CAT's reasoning on this aspect also is erroneous."

(Emphasis Supplied)

14. The learned counsel for the petitioner has also urged before us that having regard to the gravity of the matter, it would lead to a bad precedent and a mere technicality should not stand in the way of justice.

15. At this stage, Mr. Sagar, learned counsel for the respondent, submits that the legal heirs of the respondent are willing to give up back wages, promotion and other benefits and pray that having regard to the fact that the respondent has expired leaving behind his widow and children, they should be entitled to pension from the date of his death, but for the purpose of computing his pension, the benefits accrued to him including the benefits of Pay Commission may be considered.

16. Having regard the totality of the matter, facts of the case and more particularly that the respondent has expired, we dismiss the present writ petition, but bind the respondent to the statement made by the learned counsel for the respondent that the respondent would be entitled to pension on the basis of pay last drawn but for the purpose of computing his pension, the benefits accrued to him including benefit of Pay Commission be considered. In case the pension is released within a period of three months from the receipt of this order,

the respondent would not be entitled to any interest. In case the pension is released after three months, the respondent would be entitled to interest @ 6% per annum.