

(2023) 04 CAT CK 0029

In the Central Administrative Tribunal

Case No : Original Application No. 3609 Of 2019

Gurmej Singh, Group ?B?

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 15-04-2023

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 409, 420, 468, 471
Code Of Criminal Procedure, 1973 — Section 313
Delhi Police (Punishment & Appeal) Rules, 1980 — Rule 11, 12, 12(b), 16(v), 17
Central Civil Services (Pension) Rules, 1972 — Rule 9, 9(2)(a)
Constitution Of India, 1950 — Article 311, 311(2)

Citation : (2023) 04 CAT CK 0029

Hon'ble Judges : Anand Mathur, Member (A); Manish Garg, Member (J)

Bench : Division Bench

Advocate : Anil Singal, Sameer Sharma, R.V. Sinha

Final Decision : Allowed

Judgement

Manish Garg, Member (J)

1. In the present OA, the applicant has sought following reliefs:

"1. To call for the records of the case and quash/set aside the impugned Orders dated 13.1.2011, 10.5.2019 and 26.11.2019 with all consequential benefits including retrospective promotion/ seniority and arrears of pay and direct the respondents to fix applicant's pension-cum-retirement benefits and pay the same with all consequential benefits including interest thereon @ 12% PA.

2. To award cost in favor of the applicant and pass any order or orders, which this Hon'ble Tribunal may deem just & equitable in the facts & circumstances of the case."

2. Brief facts:-

The applicant, who was posted in the office of respondents, was implicated in case FIR No.285/98 PS Civil Lines, Delhi. After a delay of 13 years, disciplinary

inquiry was initiated on the same set of allegations on which the criminal case was pending. In pursuance to that, the inquiry officer issued the summary of allegations and on denial of charges, started conducting the inquiry. The applicant retired on superannuation on 31.12.2017. He was acquitted on merits by the Court of Ms. Chetna Singh, ACMM, Tis Hazari Courts, Delhi in case FIR No.285/98. Respondent No. 4, vide order dated 10.05.2019, illegally and in violation of Rule 12 of Delhi Police (Punishment & Appeal) Rules, 1980 (for short 'Rules, 1980'), instead of dropping the departmental inquiry, reopened the same. The applicant submitted representation dated 03.06.2019, requesting respondent No.3 that since he has been honourably acquitted by the Court in the criminal case, the departmental inquiry may be dropped. Respondent No.5, vide order dated 26.11.2019, in violation of Rules 12 & 16 (v) of the Rules, 1980, directed the applicant to submit his defence statement.

3. Learned counsel for the applicant contended that respondent No.5, vide order dated 26.11.2019, illegally and in violation of Rules 12 & Rule 16 (v) of the Rules, 1980 instead of dropping the departmental inquiry, directed the applicant to submit his defence statement without examination of any defence witness. He further submitted that departmental inquiry can be initiated/reopened after retirement only by the President as per Rule 9 of CCS (Pension) Rules, 1972 after consultation with the respondent No.2 and not by the respondent Nos.3 to 5.

4. Learned counsel for the applicant relied upon the following case laws in support of his claim:-

i) OA No.1296/2003 - HC Jag Saran v. GNCT of Delhi and Ors.

(ii) OA No.2225/2006 - HC Jag Saran v. Govt. of NCT of Delhi and Ors.

(iii) OA No.33/2008 - Ram Phool Meena v. Commissioner of Police

5. The learned counsel drew a reference to ad-interim order dated 13.12.2019 passed by the Tribunal, which reads as under:-

"The department is at liberty to proceed against the disciplinary enquiry, however, the punishment shall not be imposed upon the applicant, till the present OA is decided."

6. Per contra, learned counsel for the respondents would contend that a criminal case vide FIR No.285/98 u/s 409/420/468/471/120-B IPC, P.S. Civil Lines, Delhi was registered against the applicant Inspr. Gurmej Singh, No. D-I/962 (PIS No. 18860001) (now Retd.). He was placed under suspension vide Officer Order No. 3131-55/HAP/P&L dated 22.09.1998 and later on reinstated from suspension vide Office Order No. 1044-1094/HAP/P-II/P&L dated 28.06.2013. Departmental Proceedings against the applicant were approved by the competent authority on having been involved and charge sheeted in case FIR No. 285/98 u/s 409/420/468/471/120-B IPC, P.S. Civil Lines, Delhi. Accordingly, the departmental inquiry contemplation order against him was issued vide Order dated 01.04.2010. Thereafter, a regular departmental inquiry was initiated

against him under the provisions of Delhi Police (Punishment & Appeal) Rules 1980, vide Order dated 13.01.2011, on the allegation that the applicant while posted as Inspr. MT/Opr./OPL from 1996 to 1998 was detailed to deposit the Entry Tax in the Sales Tax Department, Delhi in respect of new vehicles purchased by Delhi Police after obtaining the amount as sanctioned by PHQ. He misappropriated the Government funds earmarked for the Entry Tax of newly purchased Government vehicles of Delhi Police. As per inquiry report, it has been established that applicant misappropriated the Government funds to the tune of Rs.4,84,596/-in respect of 28 vehicles. The above act on the part of the applicant amounts to grave misconduct, rendering him unfit for police and an act unbecoming of a police officer, warranting departmental action under the provision of the Rules 1980. The departmental inquiry was entrusted to DCP/D.E. Cell to conduct the same on day to day basis and submit his findings expeditiously. Later on, the said inquiry was kept in abeyance vide order No. 1944-70/P.Cell/(P-IV)/Vigilance dated 15.04.2015 till the finalization of case FIR No. 285/98 u/s 409/420/468/471 IPC, P.S. Civil Lines, Delhi registered against him. Meanwhile, the case has been decided and the applicant was acquitted for the offence punishable u/s 409/420/468/471 IPC in the above said case by the learned trial court vide judgment dated 16.05.2018 but it cannot be overlooked that the trial court, while acquitting him, has held in paragraph 38 of the judgment that most of the material witnesses have resiled from their original statements and benefit of doubt goes in favour the accused. Therefore, the acquittal cannot be termed as on merit.

7. Learned counsel for the respondents further submitted that the applicant had misinterpreted Rule 9 of CCS (Pension) Rules, 1972. The order of departmental inquiry was issued against the applicant while he was in service. As per Rule 9 (2) (a) of CCS (Pension) Rules, 1972, "The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service". He further contended that it is not the responsibility of applicant to decide whether the acquittal comes under any exception of Rule 12 of the Rules, 1980 or not. It is the discretion of the competent authority only.

8. We have heard learned counsel for the parties and perused the records of the case.

9. Analysis :-

9.1 We draw reference to Rule 12 of the Rules, 1980, which 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 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 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.”

9.2 In OA No.1296/2003 titled HC Jag Saran v. GNCT of Delhi and Ors., the Tribunal, vide Order dated 14.01.2004, had held as under :-

“7. The above said rules clearly show that ordinarily when a police officer was tried and acquitted by a Court of law, he is not to be punished departmentally on the same charges. However, there are five exceptions that have been drawn to this general rule, namely, the criminal charge has failed on technical grounds; in the opinion of the Deputy Commissioner of Police, the prosecution witnesses have been won over; the Court has recorded that the offence was actually committed and the suspicion rests upon the police officer concerned; the evidence cited in the criminal case discloses that there should be a departmental action; or there being additional evidence available.

9. The expression that the witnesses 'turning hostile' as used in common parlance, is where they re-sile from their earlier recorded statements whether under Section 161 of the Code of Criminal Procedure or whatever statements that are so recorded. In every case, where the witness re-sile's from his earlier recorded statements, it cannot be termed that he has been won over by the accused person in that controversy. Facts of each case have to be examined to come to such a conclusion. In one matter in which the applicant was the accused, i.e., FIR No.1082/1997 Police Station R.K. Puram, New Delhi decided by the learned Additional Session Judge, New Delhi the learned Additional Session Judge observed during the course of the decision that it was the investigating officer, SI, Sanjay Dutt who left no stone unturned to leave/provide some technical flaws in the prosecution case. In fact, the learned Additional Session Judge had recommended departmental action against the said investigating officer. In the subject matter FIR No.1083/1997, learned Metropolitan Magistrate, Delhi acquitted the accused for lack of evidence. There is no finding recorded that the witnesses have been won over by the accused. Therefore, merely because they did not support the prosecution case, it cannot be termed that in criminal cases the witnesses turning hostile would be a ground for this Tribunal to uphold the order of the Deputy Commissioner of Police that the witnesses were won over.

13. Resultantly, without dwelling into other submissions, we allow the present Original Application and quash the impugned order. However, we make it clear that if the Deputy Commissioner of Police deems fit to pass an order, he may pass a fresh order in accordance with law. Consequential benefits, if any, accruing to the applicant, be granted by the respondents.

9.3 In OA No.2225/2005 titled, HC Jag Saran v. Govt. of NCT of Delhi and Ors. vide Order dated 22.08.2007, the Tribunal observed as under:-

"24. Taking the totality of facts and circumstances of the case into consideration, we come to the inevitable conclusion that the impugned orders of the respondents are misconceived inasmuch as they are founded on misinterpretation of rule 12 (b) of Rules of 1980. The order of this Tribunal in OA No. 1296/2003 (supra) enjoined upon the respondents to proceed strictly within the four corners of Rule 12 of Rules 1980. The applicant having been acquitted by the Criminal Court cannot be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal cases unless one of the five exceptions mentioned in Rule 12 *ibid.* is squarely applicable to the case. It is, therefore, not at issue, as mentioned in the impugned order dated 09.06.2005 (supra), whether the act of the applicant relating to the criminal cases was unbecoming of a police personnel or not. What is important, therefore, is the ground taken by the respondents in terms of the exceptions, mentioned in Rules 12 of Rules of 1980 and relied upon by the respondents, while initiating/continuing with disciplinary enquiry. After reopening the disciplinary enquiry, admittedly in terms of Rule 12 (b) of Rules of 1980 and upon this Tribunal, in OA No. 1296/2003 (supra) giving a clear finding that the said provision was not applicable to the facts and circumstances of the case, the respondents cannot now turn around to argue that it was done on some other ground, when the only ground on which the enquiry could be sustained has to be within the four corners of Rule 12 of the Rules of 1980. The conclusion is supported by a conjoint reading of Rules 11, 12 and 17 of the Rules of 1980."

9.4 Further in OA No. 33/2008 titled, Ram Phool Meena v. Commissioner of Police decided on 02.06.2008, it was observed by this Tribunal as under:-

"12. Both on law and facts, we are of the view that there is no justification for proceeding departmentally against the applicant. The concerned authority, i.e., Deputy Commissioner of Police, while passing the impugned order, it may be noted, did not even consider either the applicability of Rule 12 of the Rules of 1980 or the manner in which the applicant was acquitted. It is rather strange to note that even the factum of acquittal of the applicant has not been mentioned. We were at one stage thinking of quashing the impugned order with direction to the concerned authority to examine the issue of departmentally proceeding against the applicant keeping in view the provisions of Rule 12 and the manner in which the applicant was acquitted, but once, it is a written stand of the respondents that acquittal on benefit of doubt would be termed as if acquittal is on technical grounds, it would have been an exercise in futility to remit the case

to the concerned authority for taking decision as mentioned above.

13. Before we may part with this order, in all fairness to Ms. Jyoti Singh, learned counsel representing the respondents, we may mention that she placed reliance on the judgment of the Honble Supreme Court in Commissioner of Police, New Delhi v Narender Singh [(2006) 4 SCC 265] to urge that Rule 12 of the 1980 Rules applies in a case where as person was tried and discharged, and inasmuch as, in the present case the applicant was not discharged, Rule 12 would not be applicable. We find no merit in the aforesaid contention of the learned counsel. In fact, when confronted with the position that the accused in the said case was discharged from the criminal case by order dated 1. 8.2001 as the concerned Magistrate had found that apart from confession of the accused, there was no other material on records and the confession was also not admissible and, therefore, he was not tried at all, the learned counsel had nothing more to say. We may only mention that the reliance of the learned counsel on the judgment of the Honble Supreme Court is only on the observations contained in paragraph 32, which reads as follows:

32. Reliance placed by Mr. Krishnamani on Rule 12 of the 1980 Rules is misplace. The said rule applies in a case where as person was tried and discharged. The respondent herein was not tried and acquitted by a criminal court and, thus the said provision would not apply.

The only meaning of the extracted portion of the judgment of the Honble Supreme Court can be that when there is no trial and accused is discharge, Rule 12 would not be applicable and further that when there is a trial and acquittal, the said Rule will apply.

13. In view of the discussion made above, we allow this Application. Ordr dated 27.11.2007 (Annexure A-1) directing holding of departmental proceedings against the applicant is quashed and set aside. The applicant shall be entitled to consequential reliefs as admissible under rules. There shall, however, be no order as to costs."

9.5 After a gap of 13 years, the respondents, vide the impugned Office Order dated 13.01.2011, ordered a regular departmental inquiry against the applicant. The relevant part of the said order reads as under:-

"Therefore, I M.S. SANDHU, Special Commissioner of Police, Prov. & Logistics, Delhi, hereby order as regular departmental enquiry against Inspr. Gurmej Singh, No.D-I/962 (PIS No. 18860001) to be conducted by DCP/D.E. Cell, Delhi on day to day basis and submit his findings to the undersigned expeditiously."

9.6 Further, vide impugned Office Order dated 10.05.2019, following order was passed:-

"ORDER

The Departmental Enquiry initiated against Inspr. Gurmej Singh, No.D-I/962 (PIS

No. 18860001) (now retd.) vide order No. 456-85/P.Cell(P-IV)/Vig., dated 13.01.2011, which was held-in-abeyance vide order No. 1944 -70/P.Cell(P-IV)/Vig., dated 15.04.2015 till the finalization of case FIR No. 285/98 u/s 409/420/468/471 IPC PS Civil Lines, Delhi, registered against him, is hereby re-opened from the stage where it was held-in-abeyance and entrusted to Shri Shankar Chaudhary, IPS, Addl. DCP/PCR, (Enquiry Officer) for conducting the same on day to day basis who will submit his findings expeditiously to the undersigned. Insp. Satya Parkash, No. D-I/1268, from PCR unit will be the presenting officer to present the case in support of the allegations on behalf of the undersigned."

9.7 Thereafter, vide impugned Office Order dated 27.11.2019, following observations were made by respondent authorities:-

"No. 3064/P.Sec./A.ddl.DCP/PCR, dated Delhi, the 27/11/2019

To

Sh. Gurmej Singh (Retd.Inspector)

R/o H.No.29, Nehru Gali

Maion Sant Nagar West

Burari Raod, Delhi- 84.

Subject Regarding departmental enquiry initiated against Ex. Insp. Gurmej Singh No. D-1/962 (Retd) M.T. (Technical vide Order No. 2422-35/P.Cell(P-IV)/Vig dated 10.05.2019

Memo.

This is informed you that your representation dated 03.06.2019 to DE proceedings pending against you has been examined by the competent authority and not acceded to.

Therefore, you are hereby directed to submit your defense statement within 10 days positively otherwise case will be decided on its merits."

9.8 We find the present case as the one where FIR No.285/1998 filed against the applicant culminated into filing a charge sheet; on the basis of which, a regular case was instituted on 30.08.2001. Learned Competent Court/Tis Hazari Courts, Delhi on 16.05.2018 passed the judgment, whereby the applicant was acquitted for the offence punishable u/s 409/468/471 IPC. The relevant paragraphs of the same read as under:-

"1. The story of the prosecution is that during May 1998 and July 1998, accused Gurmej misappropriated a sum of rs.4,84,596/-which was received while acting in respect of M.T. OPS-P & L as advance amount of entry tax in respect of new

Govt. Vehicle purchased by Delhi Police in the name of DCP/P & L to sales Tax Deptt., Delhi and submitted bogus bills dated 05.05.1998 in the sum of Rs. 51,921/-, bill dated 21.05.1998 and bill dated 19.06.1998 in the sum of Rs. 1,21,149/-, bill No. 411 dated 09.07.1998 for a sum of Rs. 34,614/- and bill No. 409 dated 04.07.1998 in the sum of Rs. 34,614/- but did not deposit the amount to the sales. tax deptt., claim the entry tax of vehicle chasis NO. 183230 twice in bill No. 255 as well as bill No. 376, again claim entry tax in respect of 5 vehicles twice, once on the basis of original document in bill No. 941 and again in bill No. 255 on the basis of forged documents and misappropriated the amount and also forged Form II & form V submitted alongwith above said. 5 bills in token of having deposited the entry tax in respect of vehicles under these bills for the purpose of cheating. It is further alleged that accused Gurmej Singh misappropriated the public money entrusted to him by submitting forged Form II and Form IV alongwith above said bills for adjustment towards advance amount received by him and used the above said forged documents, knowing the same to be forged one and thereby committed offences punishable under Section 409/468/471 IPC.

2. On the basis of the chargesheet, charges of offences under section 409/468/471 IPC were framed against accused namely Gurmej Singh and the charge was duly explained to him in vernacular to which he pleaded not guilty and claimed trial on 16.11.2002. Thus, the matter was put to trial.

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22. As 17 witnesses were examined in total by the prosecution, prosecution evidence was closed vide order dated 07.05.2018. Statement of the accused, i.e., the applicant U/s 313 Cr. PC was recorded on 15.05.2018 and as no defence evidence was lead, matter was listed for final arguments. Final arguments were heard on 16.05.2018.

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38. It is clear from the above mentioned observations that none of the witnesses have been able to prove the allegations of misappropriation and forgery against the accused. Most of the witnesses have resiled from their original statement and remaining have not been examined. The case of the prosecution remains unproved and hence the accused is required to be given the benefit of doubt.

39. It has been held in case of Sadhu Singh V/s State of Punjab 1997(3) Crime 55 the Hon'ble Punjab & Haryana High Court:-

"In a criminal trial, it is for the prosecution to establish its case beyond all reasonable doubts. It is for the prosecution to travel the entire distance from may have to must have. If the prosecution appears to be improbable or lacks credibility the benefit of doubt necessarily has to go to the accused."

40. Thus considering the above mentioned reasons, the prosecution has failed to prove its case beyond reasonable doubt. Thus, none of the ingredients of Section

409/468/471 IPC have been fulfilled by the prosecution and thus accused Gurmej Singh is required to be acquitted. Hence, accused Gurmej Singh is acquitted for the offence punishable u/s 409/468/471 IPC.”

9.9 It is seen that the Impugned Officer Order dated 13.01.2011 is based on same set of facts for which a police officer has been tried and acquitted by a Criminal Court, that too, after a gap of thirteen years from the date of FIR. The impugned office order(s) dated 10.05.2019 and 27.11.2019 have been passed in cryptic and non-speaking manner without examining the Rule position under Rule 12 of the Rules, whereby it is contemplated that the police officer shall not be punished departmentally on the same charge. The respondents have failed to take into account the submissions made by the applicant in his detailed representation dated 03.09.2019 (Annexure-A-5). Neither, the contentions urged by the applicant in his representations have been dealt with, nor is there any reasoning or finding as to whether the criminal charge has failed on technical grounds or any other provisions contemplated under Rule 12 of the Rules, 1980. There is no observation with regard to the fact that the applicant has been given benefit of doubt or reasons for reopening the departmental proceedings in terms of Rule 12 of the Rules, 1980. Even otherwise, the applicant had retired on 31.12.2017.

9.10 The paramount consideration to bear in mind is that the exception to Rule 12 will apply only where the conduct of a government servant is such that he deserves the punishment of dismissal, removal or reduction in rank. Therefore, before denying a government servant his Constitutional right to an inquiry, the first consideration would be whether the conduct of the government servant concerned is such as justifies the penalty of dismissal, removal or reduction in rank even though on same charges. However, no such reasoning has been assigned in impugned order(s) in continuing or reopening the inquiry. Even in cases where the employee has been convicted, the provisions of Article 311 of the Constitution have to be followed. A well-settled rule of construction of statutes that where two interpretations are possible, one of which would preserve and save the constitutionality of the particular statutory provision, while the other would render it unconstitutional and void, the one which saves and preserves its constitutionality should be adopted and the other rejected. Such constitutionality can be preserved by interpreting that statutory provision as directory and not mandatory. It is equally well-settled that where a statutory provision is directory, the Court / Tribunal cannot interfere to compel the performance or punish breach of duty created by such provision; and disobedience of such a provision would not entail any invalidity (See Craies on Statute Law, Seventh Edition at page 229). In such a case, breach of such statutory provision would not furnish any cause of action or ground of challenge to a government servant for at the very threshold, such cause of action or ground of challenge would be barred by the second proviso to Article 311(2).

10. Conclusion :-

We have no hesitation in allowing the present OA and thereby quashing and setting aside the impugned Annexure A-1 dated 13.01.2011, Annexure A-2 dated 10.05.2019 and Annexure A-3 dated 26.11.2019. The applicant shall be entitled to all consequential relief(s), as admissible under the Rules, including regularization of his period of suspension. The said exercise shall be completed within a period of three months from the date of receipt of a certified copy of this order.

11. The OA is allowed in the aforesaid terms.

12. No order as to costs.