
(2014) 09 DEL CK 0290

In the Delhi High Court

Case No : Writ Petition (Civil) 7541/2007

Joint Commissioner of Police

APPELLANT

Vs

Nawal Kishore

RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:

Constitution of India, 1950 — Article 12, 311(2)(b)
Penal Code, 1860 (IPC) — Section 120B, 395, 397, 398

Citation : (2014) 09 DEL CK 0290

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

Bench : Division Bench

Advocate : V.K. Tandon and Kartik Jindal, Advocate for the Appellant; Jyoti Singh, Sr. Advocate, Sameer Sharma and Amandeep Joshi, Advocate for the Respondent

Judgement

S. Ravindra Bhat, J.—The Govt. of NCT of Delhi is aggrieved by an order of the Central Administrative Tribunal (CAT) dated 25.04.2007 by which O.A. No.1015/2006 was allowed. That application was preferred by the respondent (hereafter called "the applicant") , questioning the findings of the Enquiry Officer in a disciplinary proceeding dated 26.09.2005, dismissing him from the service of Delhi Police.

2. The brief facts are that the petitioner was working as Addl. SHO at Police Station Nabi Karim, when he was named as an accused and charged with offences punishable under Sections 395/ 397/ 398/ 120-B IPC. The allegation was that he had conspired with other accused, to rob one Prem Narain, who was a passenger in a car on way from the airport. Further allegation was that the said Prem Narain, in his statement, had implicated several individuals and alleged that gold belonging to him was sought to be robbed and in the process chilly powder was thrown at his driver.

3. The applicant was charged with committing the offence and he faced trial. At that stage, the Govt. of NCT of Delhi dispensed with the enquiry by invoking its

powers under Article 311(2)(b) of the Constitution of India. That action was challenged by the applicant in a previous application, O.A. No.1711/1997 which was allowed on 03.07.2001. The CAT in that instance noted that during the intervening period, the applicant had been acquitted from the charge on account of the fact that the star witness in support of the prosecution failed to turn up and support its version. In these circumstances, the CAT permitted the Govt. of NCT of Delhi to initiate departmental proceedings. Yet another round of litigation ensued with the issuance of charge sheet. In the second round, the CAT declined to interfere with the proceedings and granted liberty to the applicant to question the final orders in O.A. No.919/2005.

4. In the meanwhile, on 30.07.2002, a memorandum of charges with summary allegations was issued along with a list of witnesses and documents sought to be relied upon. This led to a full-fledged enquiry at the culmination of which the Enquiry Officer, after discussing the evidence presented to him, concluded that the charges levelled were partially proved. The findings of the Enquiry Officer were recorded in his report dated 22.11.2004. The Joint Commissioner of Police (hereafter referred to as the "Jt. CP") - the concerned disciplinary authority, on receipt of the report, was of the opinion that the Enquiry Officer had not taken into account certain materials and, therefore, invoked the power under Rule 16(x) of the Delhi Police (Punishment and Appeal) Rules. This led to revised findings being furnished to the disciplinary authority subsequently; the applicant was given an opportunity and he represented against the revised findings. Ultimately, by the order dated 26.09.2005, the penalty of dismissal was imposed upon the applicant. The applicant's appeal against the disciplinary authority's order was rejected on 21.04.2006.

5. He consequently approached the CAT in the present round by filing O.A. No.1015/2006 which has culminated in the impugned order. The CAT, in the impugned order, after discussing the sequence of events and material facts, furnished two reasons for quashing the entire departmental proceedings and the penalty order as well. It, firstly, held that the mandate of Rule 16(x) did not permit the police authorities, i.e. the Govt. of NCT of Delhi to give a direction to the Enquiry Officer in the manner that was done and that, consequently, the exercise of power leading to the consequential dismissal order was beyond the authority of law. It was secondly found that Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 entitled an incumbent in the course of proceedings to protection against departmental proceedings in a matter where he had faced criminal trial and was acquitted of the charges.

6. It is urged by the Govt. of NCT of Delhi that the order is unsustainable for the reasons that even if the scope of the latter part of the Rule did not authorise the giving of a direction for reappraisal of the existing evidence, the substantive power of every disciplinary authority - empowered to exercise statutory powers on behalf of the Government subsists. Elaborating, it was submitted that under Rule 16(x) itself, the authority has to consider the record of enquiry and pass

"his orders on the enquiry in each charge". Therefore, the latter part of the Rule was a mere elaboration and expansion of the previous one in that if in the opinion of the disciplinary authority, further material was necessary, a remit/remand had to be necessarily made. Further, if the existing materials enabled the disciplinary authority to record findings contrary to the conclusions of the EO, the Rule did not in any manner inhibit, but rather empowered it to do so. It was consequently urged that in the present instance, the CAT's findings are erroneous because the enquiry itself was initiated on account of the earlier order of the CAT - quashing the dismissal order passed without an enquiry, by invocation of power under Article 311(2)(b) . It was further submitted that the disciplinary authority in this case had applied its mind and required the enquiry to be held under Article 12.

7. Learned counsel for the applicant/respondent submitted that the scope of Rule 16(x) was correctly appreciated by the CAT in the present case, and that the direction for reappreciation of the evidence in the manner sought to be done by the disciplinary authority was not permissible. She also urged that the findings of Rule 12 are based upon the materials considered by the CAT.

8. Rule 16(x) of the Delhi Police (Punishment and Appeal) Rules, 1980 which empowers every disciplinary authority to proceed and record its orders either accepting, modifying or disagreeing with conclusions of the Enquiry Officer (EO) reads as follows:

"(x) On receipt of the Enquiry Officer's report the disciplinary authority shall consider the record of the inquiry and pass his orders on the inquiry on each charge. If in the opinion of the disciplinary authority, some important evidence having a bearing on the charge has not been recorded or brought on the file he may record the evidence himself or sent back the enquiry to the same or some other enquiry officer, according to the circumstance of the case for such to be duly recorded. In such an event, at the end of such supplementary enquiry, the accused officer shall again be given an opportunity to lead further defence, if he so desires, and to submit a supplementary statements, which he may wish to make."

9. A textual reading of the Rule - particularly the first sentence - reveals that the disciplinary authority is duty bound to consider the record and pass its own orders on the enquiry on each charge. There can be no doubt that the emphatic manner of the wording of the Rule places an obligation upon the Disciplinary Authority to pass his orders on the enquiry on each charge. This necessarily implies independent application of mind to the evidence led in respect of each charge and the recording of reasons for the conclusions. Intrinsically connected with this is the power of the disciplinary authority to disagree - whenever records so warrant - with the conclusions of the EO. The CAT's reasoning, with due respect, in our opinion, appears to be based on complete ignorance of the first sentence of the Rule. The second part of the Rule empowering the disciplinary authority to remit the matter to the Enquiry Officer is conditional upon an opinion

formation that some important material having a bearing on the charge has not not been recorded. Whilst in the circumstances of the case, the remit order might not have been justified, nevertheless, the final order of the CAT quashing the entirety of the proceedings is unwarranted in law. In other words, having found that the Disciplinary Authority's recourse to the power to remit being conditioned upon opinion formation that some important evidence had been missed out, was not justified, the CAT ought to have quashed the final order and left it to the disciplinary authority to proceed further from that stage. In our opinion, the impugned order suffers from a fundamental infirmity in complete misreading of the Rule. The first submission of the respondent based upon the findings of the CAT in this regard are, therefore, unsound and rejected. So far as the second ground with regard to initiation of proceedings after judicial acquittal goes, the relevant provision reads as follows:

"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 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."

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.

11. For the above reasons, we are of the opinion that the impugned order cannot stand; it is accordingly set aside. The disciplinary authority shall proceed further and record his findings on the material available to him. In case of a disagreement with the report dated 22.11.2004 of the EO, the said disagreement

note shall be furnished to the respondent/applicant in accordance with law and procedure outlined in the judgment of the Supreme Court in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , and applicable rules, if any, shall be followed. The entire exercise shall be completed as expeditiously as possible, and preferably within six months

The petition is allowed to the above extent.