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**(2015) 07 DEL CK 0236**  
**In the Delhi High Court**  
**Case No : Writ Petition (C) 6532 of 2012**

Mani Budhankar

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 13-07-2015

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 406, 498-A  
Probation of Offenders Act, 1958 — Section 12, 3, 4

**Citation :** (2015) 07 DEL CK 0236

**Hon'ble Judges :** G.S. Sistani, J; Sangita Dhingra Sehgal, J

**Bench :** Division Bench

**Advocate :** Manish Mohan, CGSC, Sidhi Arora and Manisha Rana Singh,  
Advocates for the Respondent

**Final Decision :** Disposed off

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## Judgement

G.S. Sistani, J—Aggrieved by the order dated 25.8.2011 passed by the Central Administrative Tribunal by which the OA filed by the petitioner was dismissed as being barred by limitation, the petitioner has filed the present petition. Challenge in this writ petition is also made to the order dated 7.5.2012 by which the review petition filed by the petitioner herein was also dismissed.

2. The necessary facts to be noticed for disposal of the present writ petition are that the petitioner was working as Bench Officer with the Company Law Board. On account of a matrimonial dispute an FIR was registered against the petitioner under Section 498-A read with Section 406 IPC. The petitioner was convicted by an order dated 4.3.1998 and vide order dated 9.3.2008 sentenced to undergo rigorous imprisonment for six months for each of the offences and also with fine of Rs. 3000/- and Rs. 2000/- respectively and in case of default in making the payment of fine, further rigorous imprisonment for 15 days each was also awarded. The sentences were to run concurrently.

3. In view of the conviction suffered by the petitioner, disciplinary proceedings were conducted against him under Rule 19 of the Central Civil Services

(Classification, Control and Appeal) Rules, 1965. A show cause notice was issued and the petitioner was given an opportunity to make a representation. The petitioner submitted his representation to the show cause notice on 15.11.1999 and by an order dated 1.3.2001 petitioner was compulsorily retired. During the pendency of the OA his retiral benefits were also released to him. The Original Application filed by the petitioner was dismissed only on the ground that it was barred by limitation.

4. The petitioner, who appears in person submits that the learned Tribunal has failed to take into consideration that, in fact OA was filed within a period of one year from the date of rejection of his representation for reinstatement which the petitioner sought on the basis of the order dated 28.11.2008 by which the Additional District and Sessions Judge on an appeal filed by the petitioner upheld the order of conviction but modified the sentence to probation of two years on good conduct.

5. The petitioner has drawn attention of the court to paragraph 5 of the order of the Central Administrative Tribunal, wherein the Tribunal has in fact recognized the fact that in case the petitioner is exonerated by the High Court where the revision is pending, it would result in a fresh cause of action. The petitioner accordingly prays that the order of the Central Administrative Tribunal be recalled and set aside and the respondent should consider the representation of the petitioner afresh based on the settled law.

6. Counsel has placed reliance on Charan Singh Vs. Municipal Corporation of Delhi [WP(C) No. 18725/2005 decided on 5.10.2006].

7. We have heard petitioner in person and counsel for the respondent. The basic facts in this case are not in dispute that pursuant to an FIR registered against the petitioner, petitioner was convicted by an order dated 4.3.1998 and vide order dated 9.3.1998 petitioner was sentenced to undergo rigorous imprisonment for six months for each offences and to pay fine of Rs.3,000/- and Rs.2000/- respectively. In view of the the said proceedings, the petitioner was compulsorily retired. Section 12 of the Probation of Offenders Act reads as under:

"12. Removal of disqualification attaching to conviction." Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law:

Provided that nothing in this section shall apply to a person who, after his release under section 4 is subsequently sentenced for the original offence."

8. We have also examined the order of 17.6.2009 by which representation of the petitioner was rejected. The order dated 17.6.2009 reads as under:

"To,

Shri Mani Ram, S/o.Shri Budh Ram, R/o.3026, Arya Pura, Subzimandi,

Delhi-110 007

Subject : Reinduction/Reinstatement into service by revoking order No.C-10311/16/88 Vig. Dated 01.03.2001 for compulsory retirement - regarding

Sir,

I am directed to refer to your representation dated nil on the subject mentioned above and to state that your request for reinstatement into service has been considered by this Ministry in consultation with the Department of Personnel & Training and the Ministry of Law and this Ministry has decided not to accept your request for revoking the order of even number dated 01.03.2001

S/d. 17.6.09 (R.C. TULLY) Under Secretary to the Govt. of India-

9. Reading of the above order would show that the respondent has failed to take into account the provisions of Section 12 of the Probation of Offenders Act, 1958. A circular/memorandum of Deputy Director General (Vigil) dated 30.8.1971, also provides that in case a person is released on probation, the disciplinary authority would be precluded under Section 12 of the Probation of Offenders Act, from dismissing/removing an employee merely because he is convicted of an offence. The circular/memorandum of Deputy Director General (Vigil) dated 30.8.1971 reads as under:

"CIRCULAR/MEMORANDUM OF DEPUTY DIRECTOR GENERAL (VIGIL) P&T D.O. No. 3/16/71 DIC II, DATED THE 30TH AUGUST, 1971)

(b) Under Probation of Offenders Act - In accordance with Section 4 of the Probation of Offenders Act, 1958, when any person is found guilty of having committed an offence and the court is of the opinion that having regard to the circumstances of the case, including the nature of the offence and the character of the offence, it is expedient to release him on probation of with or without sureties for keeping peace and good behaviour for a specified period Section 12 of the same Act states that a person found guilty of an offence and dealt with under the provision of Section 4 shall not suffer disqualification, if any, attached to conviction of an offence under such law it has been represented that persons convicted by courts under such law and released under Probation of Offenders Act are not liable to be removed or dismissed from service merely on the ground of their conviction in accordance with the provisions contained in Section 12 cited above.

The matter has been considered in consultation with the Ministry of Law and it has been held that the Disciplinary Authority is precluded under Section 12 of the Probation of Offenders Act from dismissing/removing an employee merely because he is convicted of an offence. That Ministry has held that the order of dismissal/removal, etc. of the employees should be on the ground of conduct which has led to his conviction and not the conviction itself.

The above implication may be made known to all Disciplinary Authorities so that

the order of punishment is suitably expressed laying therein stress on the ground of conduct which he led to the conviction for imposition of a penalty under Rule 19(i), CCS (CCCA) Rules, 1965."

10. For the reasons aforegoing and more particularly for the fact that the representation of the petitioner has been decided against the very circular issued by the respondent and having disregard to Section 12 of the Probation of Offenders Act, the impugned order is set aside. The petitioner shall make a fresh representation within a period of two weeks from the date of receipt of the order. Respondents are directed to consider the representation of the petitioner in the light of the law laid down under Section 12 of the Probation of Offenders Act, 1958 and would thereafter pass a speaking order within a period of six weeks. In case the petitioner is aggrieved by the final order, which may be passed, he shall be entitled to assail the same in accordance with law.

11. The petition stands disposed of, in above terms.