
(2019) 08 CAT CK 0059

In the Central Administrative Tribunal

Case No : Original Application No. 2232 Of 2019

Nirmal Singh

APPELLANT

Vs

Commissioner Of Police And Ors

RESPONDENT

Date of Decision : 27-08-2019

Acts Referred:

Prevention Of Corruption (PC) Act, 1988 — Section 7, 13(1)(d), 13(2)

Code Of Criminal Procedure, 1973 — Section 378(3)

Delhi Police (Punishment And Appeal) Rules, 1980 — Rule 12, 25B, 148(2)

Citation : (2019) 08 CAT CK 0059

Hon'ble Judges : S.N. Teral, J; Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : Ajesh Luthra, P.K. Gupta

Final Decision : Dismissed

Judgement

Pradeep Kumar, Member (A)

1. The applicant is working as a Sub Inspector in Delhi Police. He pleads that vide order dated 08.02.2016 respondents initiated a Departmental Enquiry against the applicant on the allegations that a case FIR No.RC-DA1-2015-A09995 dated 11.02.2015 Under section 7 of Prevention of Corruption (PC) Act, 1988, Anti-Corruption Branch, CBI, New Delhi was registered against him on the complaint of one Shri Vipin Kumar, alleging therein that he had demanded bribe of Rs.1 lakh for settlement of a complaint made against said Shri Vipin Kumar by one Ms. Poonam Aggarwal @ Anchal while applicant was posted in Operation Cell, North District, Delhi. It was also alleged in the said complaint that the applicant was caught red handed by the CBI team accepting the bribe amount of Rs.70,000/-and was arrested in the case on 11.02.2015.

2. Following the above, a Departmental Enquiry (DE) was ordered against the applicant and while the said DE was in progress the trial in the criminal case concluded where the applicant was acquitted by the Court of Shri Manoj Jain, Special Judge (PC Act) (CBI-04), Central District Tis Hazari Courts Delhi vide

order dated 08.09.2017. This order reads as under:

"As an upshot of my foregoing discussion and considering the jerks and jolts, in the shape of disjointed evidence, I am compelled to give benefit of doubt to accused. Accused is, therefore, acquitted of all the charges. However, observations appearing in the judgment would not come in the way of Departmental Proceedings, if any where the evaluation is on less stringent degree of preponderance of probabilities."

In view of his acquittal the applicant submitted a representation on 02.11.2017 requesting to drop the DE.

The said DE was dropped vide order dated 27.04.2018 by the Deputy Commissioner of Police (DCP), 1st Battalion, DAP Delhi, operative part of this order reads as under:

"Consequent upon acquittal of SI (Ex.) Nirmal Singh, No. 1720/D (PIS No. 28800178) vide judgment dt. 08.09.2017 passed by the Hon'ble Court of Sh. Manoj Jain, Ld. Spl. Judge (PC Act) (CBI)-04/Central Ditt. Tis Hazari Court, Delhi, in case FIR No. RC-DAI-2015-A- 0005 dated 11.02.2015, u/s 7 P.C. Act 1988, PS AC Branch, CBI, New Delhi, the judgment has been examined under Rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980 wherein the undersigned is discretionary power to drop the D.E. Hence, the DE initiated against SI (Ex.) Nirmal Singh, No. 1720/D (PIS No. 28800178) vide order No. 1807-1836/HAP(P-I)/North Distt. dated 08.02.2016 is hereby dropped. His suspension period w.e.f. 11.02.2015 to 31.07.2016 is also decided as period spent on duty for all intents and purposes including seniority.

Let the SI be informed accordingly."

3. Subsequently, CBI filed an appeal against the order of the Special Judge, Tis Hazari Court, before the Hon'ble High Court of Delhi in CRL.L.P.409/2018 & Crl.MA No.11819/2018, where the following order was passed on 08.04.2019:

"The present leave petition has been filed by the petitioner under Section 378(3) of Cr.P.C. for grant of special leave to appeal against the order dated 08.09.2017 passed by Special Judge, CBI, Central District, Tis Hazari Courts, Delhi whereby the accused/respondent was acquitted in C.C. No. 05/2016 filed under Section 7/13(2) r/w Section 13(1)(d) PC Act.

Trial Court Record has been received.

Issue notice to the respondents through all modes returnable on 20.02.2020."

4. It appears that once the notice on appeal filed by the CBI was issued, the Additional CP approved for re-initiation of DE from the stage it was dropped, vide order dated 30.05.2019. The operative part reads as under:

"The Departmental Enquiry initiated against SI Nirmal Singh No 1720-D (PIS No. 28800178) vide order No. 1807-1836/HAP/P-I/North District, dated 08.02.2016

which was later dropped vide order No. 3647-69/HAP/P-I/1st Bn. DAP, dated 27.04.2018 is hereby re-opened from the stage where it was dropped i.e. prosecution stage since the delinquent has been acquitted by giving the benefit of doubt vide judgment dated 08.09.2017 in case FIR No RC-DAI-2015-A-0005 dated 11.02.2015, u/s 7 POC. Act 1988 which was now challenged by CBI in CrL LP No. 409/2018. As such the acquittal of the delinquent SI does not fulfill the precondition prescribed in Rule 12 of Delhi Police (Punishment and Appeal) Rules 1980."

5. Accordingly, the DCP has nominated an Enquiry Officer (EO) also vide order dated 10.06.2019. This order reads as under:

"The departmental enquiry initiated against SI Nirmal Singh, No. 1720-D (PIS No. 28800178) vide order No. 1807-1836/HAP (P-I)/North Distt., dated 08.02.2016 which was later dropped vide order no. 3647-69/HAP/P-I/1st Bn. DAP, dated 27.04.2018 and re-opened vide order No. 6183-6205/HAP/P-I/1st Bn. DAP dated, Delhi the 30.05.2019 from the stage it was dropped i.e. prosecution stage since the delinquent has been acquitted by giving the benefit of doubt vide judgment dated 08.09.2017 in case FIR No. RC-DAI-2015-A-0005 dated 11.02.2015 u/s 7 POC Act 1988 which was now challenged by CBI in CrL LP No. 409/2018.

The departmental enquiry against SI Nirmal Singh, No. 1720-D (PIS No. 28800178) is hereby entrusted to Sh. Rajesh Kumar, ACP, DE Cell. He will conduct the D.E. on day to day basis and submit his findings expeditiously to the disciplinary authority."

6. Feeling aggrieved with this re-initiation of DE, the applicant made a representation dated 11.06.2019 against the order dated 30.05.2019, which was rejected vide order dated 12.07.2019. This rejection order reads as under:

"Kindly refer to your office dispatch No. 451/R1/1st Bn. DAP dated 11.06.2019 on the subject cited above.

The representation of SI Nirmal Singh, No 1720-D has been considered by the worthy Spl CP/AP but the same could not be acceded to as his case was examined under Rule 12 of Delhi Police (Punishment & Order) Rules, 1980 and DE has been re-opened as per rules."

7. Applicant is aggrieved that once DE was dropped, there is no authority of revision with the respondents as per Delhi Police Act, 1980 and as such DE cannot be reinitiated. This re-initiation is said to be without authority. Instant OA has been filed for this grievance and applicant has sought relief by way of quashing the orders dated 30.05.2019, 10.06.2019 and 12.07.2019 along with other consequential benefits.

7.1 It is pleaded that in the past there was a provision of review under Rule 25-B of Delhi Police (Punishment & Appeal) Rules, 1980. This came under adjudication before Tribunal in OA Nos.77/1997, 2283/1997, 1988/1999, 2800/1999,

532/2000 and 537/2000 as a batch (Head Constable Rajpal Singh and Ors. etc. etc. v. Union of India & Ors.) and was decided on 14.09.2000. The vires of Rule 25-B were examined and it was held ultra vires. The operative parts of Tribunal's order read as follows:

"A perusal of the aforesaid order dated 03.11.1999 reveals that the only argument advanced on behalf of applicants in both the OAs was that Amendment Rule 25(B) ibid was not valid because

(i) It has not been placed before Parliament for approval, as was required under Rule 148(2) Delhi Police Act and therefore it had no force. Hence the action taken by respondents under this Rule was null and void.

(ii) As Amendment Rule 25(B) empowered by way of review the Commissioner of Police etc. to revise or enhance the punishment inflicted upon an employee it went beyond the competence of the Rule making authority and was, therefore, ultravires the provisions of the Delhi Police Act.

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38. We, therefore, answer the reference as follows:

(A)

Rule 25 B Delhi Police (Punishment and Appeal) Amendment Rules 1983 is not invalid merely because it has not been placed before both Houses of Parliament as yet.

(B)

Rule 25 B Delhi Police (Punishment and Appeal) Amendment Rules 1983 is ultra vires the provisions of the Delhi Police Act."

39. Let these OAs now be returned to appropriate Benches for disposal in accordance with law and on merit."

This rulings arrived at by Tribunal, was quoted by Hon'ble High Court of Delhi while deciding another case, Commissioner of Police v. Anil Kumar Yadav and Anr., in their order dated 17.09.2002.

7.2 The applicant also relied upon an order of this Tribunal in OA No.3259/2015 (Dr. Sandeep Miglani v. GNCTD), decided on 02.11.2018, where the Tribunal held as under:

"23. The well established principle of law is that the power of review must emanate from the relevant statute and in the absence of such a conferment, it cannot be exercised. To be precise, the power of review is something which needs to be conferred but not inferred.

24."

It was pleaded that power for review needs to be conferred and it cannot be

exercised by inference.

7.3 The applicant further relied upon another decision of a Full Bench of this Tribunal in OA No.2816/2008 (Sukhdev Singh & Anr. v. GNCTD & Ors.), decided on 18.02.2011, where the Tribunal held as follows:

"9. In view of the discussion made above, we hold that there is no bar, express of (sic) implied, in the Rules of 1980 for holding simultaneous criminal and departmental proceedings. However, in case departmental proceedings may culminate into an order of punishment earlier in point of time than that of the verdict in criminal case and the acquittal is such that departmental proceedings cannot be held for the reasons as mentioned in rule 12, the order of punishment shall be re-visited. The judicial verdict would have precedence over decision in departmental proceedings and the subordinate rank would be restored to his status with consequential reliefs.

10. In view of our findings on the first issue, there would be no need to put on hold the final orders in departmental proceedings awaiting the decision of the criminal court.

11. The questions as referred to the Full bench are answered as above. Registry shall list this matter for hearing before the Division Bench for any other submissions that may be made by the counsel representing the applicants."

It was pleaded that decision of criminal trial will take precedence over decision of DE, if DE were concluded prior to the conclusion of criminal trial. In this context, even the decision of DE need to be re-visited if decision of criminal trial so warrants. And since instant criminal case has ended in acquittal, DE cannot be re-initiated.

7.4 In view of the foregoing, it was pleaded that re-initiation by way of review, cannot be sustained in the eyes of law and needs to be quashed.

8. The respondents opposed the OA. It was pleaded that once a Trial Court has given the verdict of acquittal and it has been challenged before the higher court and where notice has been issued, it is a state of continuity of trial which is yet to attain finality. This position was so observed by the Hon'ble Apex Court in Akhtari Bi (Smt.) v. State of M.P., [(2001) 4 SCC 355] as under:

"5.....Appeal being a statutory right, the trial court's verdict does not attain finality during pendency of the appeal and for that purpose his trial is deemed to be continuing despite conviction....."

8.1 It was pleaded that once the appeal has been filed by the CBI, against the acquittal order passed by the Special Judge (CBI), Tis Hazari Courts, Delhi, before the Hon'ble High Court of Delhi and where notice has been issued, the criminal trial is to be deemed to be continuing at present. Thus, it is a case where the criminal trial is still continuing.

8.2 In this context it was pleaded that once the Trial Court acquitted the

applicant the competent authority decided to drop the DE. But once the appeal against acquittal has been filed before the Hon'ble High Court of Delhi, it is a matter of continuing the said trial and thus the inherent underlying condition for dropping the DE is no more true. Accordingly the competent authority has reviewed the matter and decided to re-initiate the DE.

This review of one's own decision, when underlying circumstances of a decision taken earlier, have taken such an about turn, is governed by inherent powers of recall of one's orders and review. It cannot be confused with powers of review conferred on revising authority. The re-initiation of DE in instant case is to be treated under the realm of recall of order and not by a revising authority.

8.3 Moreover, the re-initiation of DE is not part of review under Rule 25-B of Delhi Police (Punishment & Appeal) Rules, 1980 but under Rule 12. Rule 12 reads as under:

"2. 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."

Instructions to this effect have also been issued in a circular dated 04.09.2015, where operative part reads:

"All concerned are hereby advised to examine the "discharge"/acquittals" of police personnel involved in criminal cases strictly in accordance with Rule-12 of Delhi Police (Punishment & Appeal) Rules, 1980 by following due procedure and before deciding the same, "clearance" from the prosecuting agencies must be obtained without fail."

8.4 In view of the foregoing, once the underlying conditions of acquittal which was the very basis of dropping of DE, was changed to continuation of trial, there is nothing wrong in re-initiation of DE. Accordingly, OA needs to be dismissed.

9. The matter has been heard at length. Shri Ajesh Luthra, learned counsel

represented the applicant and Mrs. P.K. Gupta, learned counsel represented the respondents.

10. In this case facts are not in doubt. Charge laid was bribery. Trial Court had acquitted the applicant of the criminal charge by giving benefit of doubt but while acquitting it was also noted that DE could go on as parameters of evaluation are different. Dropping of DE, was in this context.

Once appeal against the Trial Court judgment has been filed by CBI before the Hon'ble High Court of Delhi and notice has been issued, it has the status of continuation of the criminal trial. This is in accordance with observations by the Hon'ble Apex Court in Akhtari Bi (para-8 supra).

Under such circumstances, underlying conditions for dropping of DE are not only no more true but they had undergone a sea change. Therefore, re-initiation of DE has been ordered with the approval of Additional Commissioner of Police who is a higher ranking authority as compared to the DCP, who had dropped the DE earlier. This is in the nature of abundant caution by the respondents as there is no bar on the original authority to recall its order and pass fresh order if the situation so warrants.

The re-initiation is under Rule 12 and not under Rule 25-B of Delhi Police (Punishment & Appeal) Rules, 1980. This cannot be faulted. Accordingly, the decision of the Full Bench [Head Constable Rajpal Singh & Ors. Etc. Etc.] (para 7.1 supra) which is in the context of Rule 25-B, is not attracted in the facts of the instant case.

The ratio of the other relied upon judgment (para 7.2 supra) is also not attracted, as in that case the competent authority, viz., Hon'ble Lieutenant Governor (LG) had taken a decision in regard to a charge sheet and ruled to drop it. However, subsequently there was a change in incumbency of Hon'ble LG and after protracted notings on file, it was decided by the new Hon'ble LG to reinitiate the DE. However, while doing so, there was no underling change in the situation that was there before dropping vis-a-vis thereafter before re-initiation. Accordingly, the facts and circumstances of that case vis-a-vis that of instant case are totally different. Therefore, this relied upon judgment is of no help to applicant.

The pleas of applicant are not finding acceptability. The OA, therefore, fails, being without merit and is accordingly dismissed. No costs.