
(2020) 01 CAT CK 0012

In the Central Administrative Tribunal

Case No : Original Application No. 2364 Of 2016

Parveen Kumar

APPELLANT

Vs

Govt. Of NCTD And Ors

RESPONDENT

Date of Decision : 08-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 186, 307, 332, 353
Arms Act, 1959 — Section 25, 27, 54, 59

Citation : (2020) 01 CAT CK 0012

Hon'ble Judges : S.N. Terdal, J;A.K. Bishnoi, Member (A)

Bench : Division Bench

Advocate : Sourabh Ahuja, Harvinder Oberoi

Final Decision : Dismissed

Judgement

S.N. Terdal, J

1. We have heard Mr. Sourabh Ahuja, counsel for applicant and Ms. Harvinder Oberoi, counsel for respondents, perused the pleadings and the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

"(a) Quash & set aside the impugned order dated 18.05.2016, etc. referred to in Para-1 of OA. And

(b) Direct the respondents to consider the case of the applicant on his acquittal on merits in criminal cases) in terms of Rule 12 of Delhi Police (Punishment & Appeal) Rules, 1980 and in terms of Full Bench Judgment of this Hon'ble Tribunal in Sukhdev's Singh's case. And

(c) Reinstate the applicant in service and accord him all the consequential benefits viz. back wages, Promotion/ Seniority, fixation of pay, difference in pay along with interest @ 18% p.a. etc. And

(d) Award cost in favor of the Applicant and against the respondents And /or

(e) Pass any further order which this Hon'ble Tribunal may deem fit, just equitable in the facts and circumstances of the case."

3. The relevant facts of the case are that the applicant was involved in several criminal cases of robberies and dacoities in Haryana and Uttar Pradesh along with several other people with Delhi Fire Arms, daggers, pistols, button activated knives and as he was involved in various gruesome acts he was assessed as desperate character and found that his retention in Delhi Police is hazardous to the public at large to the functioning and credibility of the police force and because of his dangerous criminal propensities and his likelihood of putting the witnesses to the constant fear of threat to their person and property, recording the reasons as required under Article 311 (2)(b) of the Constitution, the applicant was dismissed from service vide order dated 20.09.2003. The said order is reproduced below:

"On 5th September, 2003, at about 8.00AM., an information was developed by Const. Vinod of P.P.Shahbad Dairy that a notorious gangster of U.P. Vikrant @ Vicky would be coming to commit dacoity in Delhi State Co-operative Bank, Shahbad Daulatpur, Delhi. The source also mentioned that he would be accompanied by his accomplices in two cars, one metallic green Santro and the other Silver gray Indica bearing registration Numbers HR-02-H-3758 and HR-61-BHQ-3655 respectively. The information was immediately brought to the notice of Dr. Rakesh Kumar Bansal, ACP/Narela and under his direct supervision a raiding party headed by Inspr. Babu Lal, SHO/Bawana and SI Sukram Pal was constituted and deployed in the area. The entire area was cordoned off from all sides. At about 10.50AM, both the cars were spotted near T-point, 80 Futa Road, Prahlad Vihar. The Police party tried to stop both the cars but the suspects tried to reverse and flee away. However, the alert raiding team gave chase. One suspect, later on identified as Vikrant @ Vicky fired at the Police Party. Both the cars were intercepted and the Police Party fired two rounds in retaliation. On their personal search, two .315 bore country made Pistols, one .415 bore country made Pistol, one dagger, two button-activated knives, three .415 bore cartridges, ten .315 bore cartridges, nine 9 m.m. bore cartridges and nine .32 bore cartridges (a total of 32 Cartridges) were recovered from their possession.

A case vide FIR No. 268/2003 U/s 307/186/353/ 332/411/473/34 IPC and 25/27/54/59 Arms Act was registered at P.S. Bawana and investigation was taken up. During sustained interrogation, it was found that Vikrant @ Vicky is a desperate and active criminal of Western U.P and belongs to the notorious gang of Satbir Acharya-Kuleep-Bablu. His associate who was identified as Harinder Malik @ Pheru @ Rana is also desperate and has committed scores of robberies and dacoities along with Vikrant @ Vicky. Another associate was identified as Praveen who is a serving Constable of Delhi Police and is presently posted at P.S. Shakarpur. During their sustained interrogation, they confessed to have committed 36 cases of robbery, dacoity, murder and attempt to murder.

It has also been revealed that Const. Praveen Kumar No. 751/E has also been involved in the following cases in Haryana as well as Uttar Pradesh.

1. On 5.7.2002, Vikrant @ Vicky, Harnder @ Rana @ Pher Amar Pal, Qayum and Const. Praveen Kumar No. 751/E enter the office of Rajesh Sachdeva M/s Grit Udyog Stone Crusher, village Naurangpur, Gurgaon and committed a robbery of Rs. 5 lacs and one Hundai Accent Car. A case FIR No. 149/2002 dated 5.7.2002 u/s IPC stands registered at P.S. Bilaspur,. Distt. Gurgaon, Haryana.
2. In the month of May, 2001, Vikrant @ Vicky, Harender @ Rana @ Pheru, Amar Pal and Const. Praveen Kumar No. 751/E tried to rob a dealer of live stock near Knadla, Distt. Muzzaffar Nagar, U.P. When the dealer fired from his rifle they escaped from the scene and the matter went unreported to the Police.
3. In the month of April, 2003, Vikrant @ Vicky, Rajender Phelwan, Harender @ Rana @ Pheru, Amar Pal and Const. Praveen Kumar No.751/E, robbed a cashier from Indian Oil Depot of Rs.3.23 lacs near Navyug Market, Ghaziabad. A case of robbery stands registered at P.S. Sehani Gate, Ghaziabad, U.P.
4. On 19.6.2003, at around 1.00 p.m. Vikrant @ Vicky, Harender @ Rana @ Pheru, Amar Pal and Const. Praveen Kumar No. 751/E, Amar Pal, Qaum, Rajender Chauhan and Malkiat robbed cooperative Bank, Modipuram Branch of Rs. 9.76 lacs. A case FIR No. 171/2003 u/s 392 IPC stands registered at P.S. Dauralla, Distt. Meerut, U.P.
5. All the five accused Vikrant @ Vicky, Rajender Chauhan, Harender @ Rana @ Pheru, Malkiat Singh @ Chhptu and Const. Praveen Kumar No. 751/E have been booked in a case FIR No. 268/03 u/s 307/186/353/332/411/473/34 IPC and 27/25/54/59 Arms Act P.S. Bawana. They have also been booked under 5 cases of Arms Act registered vide FIR No. 269, 270, 271, 272, 273 of the year 2003, P.S. Bawana.

It is evident from the above facts that Const. Praveen has committed a heinous crime, which is a highly abhorrent act on his part being member of the police force. Instead of discharging his sacred responsibility of upholding the rule of law, he himself indulges in an act of heinous crime and lawlessness, which has not only tarnished the image of Delhi Police but also badly shattered the faith of common man in the government authority. Such misconduct erodes the very basis of police functioning i.e. "Public Trust" without which the police as a service would become rather irrelevant.

The aforesaid misconduct of the defaulter Police Officials clearly shows that he is a desperate character and his retention in Delhi Police is hazardo to the public at large. The society expects a policeman to protect the life and property of its citizens but on the contrary this constable himself is found indulging in such a gruesome act. After such a shameful and criminal act, which has eroded the faith of common people in Police, his continuance in Police force is likely to cause an irreparable loss to the functioning and credibility of Delhi Police.

The manner, in which he committed this act strongly indicates that this was not his first act. The above act and circumstances clearly shows that he is highly desperate and dangerous person who may be having several associates with similar dangerous criminal propensity. It is thus certain that the witnesses would not be in a position to muster enough courage to depose against the said Police Officer due to fear of severe reprisal from him.

During the entire process of departmental proceedings the witnesses would be put under constant fear of threat to their person and property from the delinquent Police Officer.

Under the entire circumstances, explained above, I Alok Kumar, Addl. DCP/East Distt hereby dismiss Const. Parveen Kumar No. 751.E (PIS No. 28980533) from the force with immediate effect under Article 311 (2)(b) of the Constitution of India."

4. The appeal filed by the applicant against the said order was dismissed by the appellate authority vide order dated 09.07.2004 by a reasoned and speaking order. The applicant filed OA no. 2320/2004 before this Tribunal challenging the orders passed by respondents, which was dismissed vide order dated 26.07.2005 and the Review Application filed against the order dated 26.07.2005 was also dismissed on 1.08.2006. He filed Writ Petition (C) no.2295/2007 before the Hon'ble High Court which was also dismissed by the Hon'ble High Court. The Review Petition filed in the High Court was also dismissed by the Hon'ble High Court. The applicant filed SLP (Civil) No. 31767-31768 before the Hon'ble Supreme Court and the SLP was also dismissed on 23.11.2009. Though the applicant has not stated the above facts of he having approached this Tribunal, High Court and the Hon'ble Supreme Court, but the respondents in their reply gave all the details of his pursuing the case upto Hon'ble Supreme Court in para 6, 7 and 8 of their counter reply, which are extracted below:

"6. That the applicant had filed an OA No.2320/2004 before the Hon'ble Tribunal against the orders of disciplinary authority and appellate authority. The OA was dismissed by the Principal Bench of the Hon'ble CAT vide its order dated 26.07.2005. The applicant filed RA No. 207/2005 in OA No. 2320/2004 but the RA was also dismissed by the Hon'ble CAT vide its order dated 01.08.2006.

7. That the applicant Constable then filed W.P (C) No. 2295/2007 against the order/judgment of the Hon'ble CAT's dated 26.07.2005 before the Hon'ble High Court but the W.P (C) was dismissed by the Hon'ble Delhi High Court vide its order dated 13.07.2007. The applicant thereafter preferred Review Petition No. 15/2008 against the order/judgment of W.P (C) No. 2295/2007 but the Review Petition was also dismissed by the Hon'ble Delhi High Court vide its order dated 15.05.2008.

8. That the applicant had filed SLP (Civil) No. 31767-31768/2009 before the Hon'ble Supreme Court of India but the SLP (Civil) was dismissed by the Hon'ble Supreme Court on the ground of delay vide its order/Judgment dated

23.11.2009."

5. The case of the applicant is that in all the criminal cases he was acquitted by the Criminal Courts, some of the acquittals are based on benefit of doubt. For instance, (i) the Court of Shri R.P.Pandey, Additional Sessions Judge-Outer (II) Rohini Courts, Delhi in FIR Nos.268/03 and 270/03 under Sections 307/353/332/186/411/ 34 IPC and 25/27/54/59 Arms Act, vide order dated 07.06.2010 giving benefit of doubt, acquitted the accused. The relevant portion of the order is extracted below:-

"63. In view of my findings on the facts, as above, I hold that the prosecution has failed to bring home the guilt of the accused persons beyond reasonable doubts and, therefore, the accused persons are found entitled to the benefit of doubt. Accordingly, they all are acquitted of the offences charged against them. They are on bail. Their bail bonds are cancelled and surety bond stands discharged."

And (ii) the court of Shri Jasbir Singh, Chief Judicial Magistrate, Gurgaon in Criminal case No. 411 of 2004/2005 (FIR No. 149 of 5.7.2002) under Sections 392 IPC & 25/54/59 of Arms Act, decided on 2.01.2012 acquitted the accused giving benefit of doubt. The relevant portion of the order is extracted below:

"It is settled law that prosecution is required to prove its case against accused beyond shadow of reasonable doubt. However, in view of the hostile testimony of complainant and the eye witness, there is no evidence against accused. Parveen Kumar, Harender @ Rana @ Feru and Vikrant @ Vicky and they are entitled to acquittal and accordingly acquitted in this case for want of evidence. Their bail bonds and surety bonds stand discharged. File be consigned to record room after due compliance."

6. On the basis of those acquittals and on the basis of the full Bench order passed by this Tribunal in Sukhdev Singh and Others Vs. Govt. of NCT of Delhi and others (OA 2816/2008) case on 18.02.2011, the applicant submitted a representation on 27.03.2012 seeking setting aside his dismissal order. The respondents by the impugned order dated 18.05.2016 by a reasoned and speaking order rejected his representation. The impugned order is extracted below:-

"In pursuance of order dated 2.2.2016 passed by the Hon'ble Tribunal in OA No. 1087/2013-Ex.Const. Parveen Kumar, No. 751/E Vs. Govt. of NCT of Delhi and others, the representation dated 27.3.2012 submitted by the applicant has been examined.

The applicant had requested that his dismissal order dated 20.09.2003 may be revised and he may be reinstated in service forthwith with all consequential benefits as he has been acquitted in the criminal cases FIR No. 149/02 u/s 392 IPC r/w 25/54/59 Arms PS Bilaspur, District Gurgaon, Haryana, FIR No. 268/2003 u/s 307/186/353/332 /411/473/34 IPC & 278/25/54/59 Arms Act, PS

Bawana, Delhi and FIR No. 171/2003 u/s 392/395 IPC, PS Daurala, District Meerut (UP).

Ex. Const. Praveen Kumar, No. 751/E was dismissed from service with immediate effect under article 311(2)(b) of the Constitution of India vide order No. 12229-300/HAP(P-III)/East dated 20.09.2003 due to involvement in number of heinous criminal cases. The statutory appeal filed by applicant Ex.Constable against the order dated 20.09.2003 was rejected by the Appellate Authority vide order No. 2640-43/SO/NDR dated 09.07.2004. The OA No. 2320/2004 filed by the applicant for quashing and setting aside the order dated 20.9.03 was dismissed by the Hon'ble Tribunal vide order dated 26.07.2005. The RA No.207/2005 in OA 2320/2004 filed by him for seeking review the order dated 26.7.2005 of the Hon'ble Tribunal in OA No. 2320/04 was dismissed by the Tribunal vide its order dated 01.08.2006. The W.P (C) No.2295/2007 filed by the applicant in the Hon'ble High Court of Delhi was dismissed by the Hon'ble High Court of Delhi vide its order dated 13.07.2007. The SLP No. CC 18088-18089/2009 filed in the Hon'ble Supreme Court of India had also been dismissed on 23.11.2009. As such the order dated 20.9.2003 passed by the disciplinary authority for invoking the provision of Article 311(2)(b) of the Constitution of India against the applicant has attained finality in the eyes of law.

The Hon'ble Tribunal vide its order dated 2.2.2016 directed to consider the representation dated 27.3.2012 of the applicant keeping in view the full Bench decision dated 18.2.2011 of the Tribunal in OA No. 2816-Sukhdev Singh & Ors Vs. Govt. of NCT of Delhi and Others. The Hon'ble Tribunal in its decision dated 18.2.2011 has held that

".....there is no bar, express or 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 revisited. The judicial verdict would have precedence over decision in departmental proceedings and the subordinate rank would be resorted to his status with consequential reliefs....."

Whereas, it has already been decided to dispense with the D.E. proceedings against the applicant and resorted to the provision of Article 311(2)(b) of the Constitution. As such there is no reason to revisit the punishment order particularly in view of the fact that the said punishment order is not the final outcome of departmental proceedings. The observation of the Hon'ble Tribunal in its order dated 18.2.2011 in OA No. 2816-Sukhdev Singh & Ors Vs. Govt. of NCT of Delhi and others is not applicable in the case of the applicant. The representation dated 27.3.2012 submitted by the applicant is rejected being devoid of merit and substance."

7. The counsel for the applicant vehemently and strenuously contended that

under Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 as interpreted in above stated Sukhdev Singh case, he is entitled to the relief of getting the order passed under Article 311 (2) (b) be re-visited.

8. The counsel for the respondents equally vehemently and strenuously submitted that the applicant having exhausted all his remedies against the order passed under Article 311 (2) (b) of the Constitution upto the Hon'ble Supreme Court by no stretch of imagination entitled for the reliefs in this OA particularly in view of the acquittals based on benefit of doubt and also particularly in view of the fact that in the present case the applicant was not dismissed on the basis of any departmental enquiry after framing a charge, as such the applicant cannot seek any remedy on the basis of the provisions of the above said Rule .

9. From the perusal of the above stated judgment of Sukhdev Singh and Others (supra), it is clear that the law laid down in that case is applicable only when there is full scale departmental proceedings of framing charge, issuing charge sheet, thereafter appointing Inquiry Officer, holding departmental enquiry, submitting inquiry report, consideration of the inquiry report and taking action thereon; and the acquittal on merit in the criminal trial on the same charge. Further the said case of Sukhdev Singh (supra) is based on the interpretation of above said rule 12. For these reasons also the applicant cannot be granted any relief based on the ratio in the case of Sukhdev Singh (supra). In these facts and circumstances, we are of the view that the impugned order dated 18.05.2016 do not suffer from any infirmity.

10. Accordingly, OA is dismissed. No order as to costs.