

HIGH COURT OF DELHI: NEW DELHI

+ Writ Petition (Civil) No. 11739/2009

Judgment reserved on: 17th September, 2009
% Judgment delivered on: 23rd September, 2009

GOVT. OF NCT OF DELHI Petitioner
Through: Ms. Ansuya Salwan, Adv.
Versus

ASI KARAN SINGH Respondent
Through: None.

WITH

Writ Petition (Civil) No. 11741/2009

GOVT. OF NCT OF DELHI Petitioner
Through: Ms. Ansuya Salwan, Adv.
Versus

CONST. SUBHASH CHAND Respondent
Through: None.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE A.K. PATHAK

1. Whether the Reporters of local papers may be allowed to see the judgment? Not Necessary
2. To be referred to Reporter or not? Not Necessary
2. Whether the judgment should be reported in the Digest? Not Necessary

A.K. PATHAK, J.

1. Both these writ petitions are disposed of by this judgment, as the same germinate from the common order

dated 17th January 2009, passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'Tribunal'), in O.A. Nos. 80/2008 titled as Subhash Chand vs. Govt. of NCT of Delhi & Ors. and 146/2008 titled as Karan Singh vs. Govt. of NCT of Delhi & Ors.

2. At the relevant time, Karan Singh was working as Assistant Sub Inspector (ASI); whereas Subhash Chand was working as Constable in the Delhi Police. FIR No. 448/2003 was registered against them by the Police Station Seelampur, under Section 376/34 IPC, on the allegation that they committed rape upon Ms. Asma, maid servant of Ms. Seema Bhattacharya, on 4th December, 2003 at about 1:45 pm at house No. A-124, Dilshad Garden, Delhi.

3. Both, ASI Karan Singh and Constable Subhash (Respondents), were placed under suspension on 8th December, 2003. They were subsequently reinstated in service only on 11th June, 2005.

4. A departmental proceeding for major penalty was initiated against them on the same allegation of rape, which

constituted misconduct on their part. However, disciplinary enquiry was kept in abeyance vide order dated 8th July, 2004 as both the delinquents were in judicial custody. Enquiry was reopened on 27th November, 2004 after they were released on bail but again the same was kept in abeyance pending criminal case in respect of same incident.

5. Additional Sessions Judge, Karkardooma, Delhi acquitted ASI Karan Singh and Constable Subhash (Respondents) vide judgment dated 28th January, 2005. Learned Additional Sessions Judge concluded that there was not even an iota of evidence against Constable Subhash Chand; So far as ASI Karan Singh is concerned, he was acquitted for lack of evidence by giving benefit of doubt. In fact, during the criminal trial, all the witnesses did not support the prosecution case. Prosecutrix made a categorical statement that she was not raped by ASI Karan Singh and Constable Subhash Chand. Mother of the prosecutrix, namely, Ms. Fatima, and Ms. Seema Bhattacharya, employer of the prosecutrix, also did not support the prosecution in the criminal trial. As per prosecution ASI Karan Singh (Respondent) had confessed his

guilt before Ms. Seema Bhattacharya and Mr.Mehtab (Press Reporter). However, during trial they stated that no apology/confession was made by ASI Karan Singh.

6. In view of the above, learned Additional Sessions Judge acquitted ASI Karan Singh and Constable Subhash Chand (Respondents). However, while acquitting them learned Additional Sessions Judge directed the DCP to hold a departmental enquiry.

7. Departmental enquiry was again reopened on 11th June, 2005. During the enquiry proceedings as many as seven witnesses including prosecutrix and her mother stepped in the witness box. Enquiry Officer gave his report to the Disciplinary Authority. In his report, Enquiry Officer concluded that there was no evidence on record to prove the guilt of both the delinquents and that no charge was made out against them.

8. Disciplinary Authority did not agree with the findings of the Enquiry Officer and recorded disagreement note. As per the Disciplinary Authority prosecutrix and her family members had been won over by the ASI Karan Singh and

Constable Subhash Chand (Respondents). Disciplinary Authority observed that the prosecutrix had alleged rape at the time of registration of FIR and later on while making a statement under Section 164 Cr.P.C. before the Magistrate. Prosecutrix had been married and in order to save her married life she might have decided not to proceed further in the case and, therefore, she had resiled from her earlier statement. Disciplinary Authority held that the clause (b) of Rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980 was attracted in this case. Disciplinary Authority was also of the view that in a criminal trial charges were to be proved beyond reasonable doubt; whereas in a departmental proceedings, even strong probability would be sufficient to prove the guilt of a person.

9. Disagreement note was served on the Respondents along with findings of Enquiry Officer and they were called upon to submit the reply within fifteen days. ASI Karan Singh and Constable Subhash Chand submitted their written representations. Thereafter, Disciplinary Authority passed a punishment order whereby forfeited the approved two years service permanently of ASI Karan Singh and Constable

Subhash Chand (Respondents). Suspension period from 8th December, 2003 and 10th June, 2005 was also ordered to be treated as period not spent on duty for all intents and purposes.

10. ASI Karan Singh and Constable Subhash Chand filed appeal before the Appellate Authority which was also dismissed vide order dated 16th October, 2007.

11. Aggrieved by the order passed by the Disciplinary Authority and Appellate Authority, ASI Karan Singh and Constable Subhash Chand, preferred original applications being O.A. Nos. 146/2008 and 80/2008 respectively, which have been allowed vide impugned order dated 17th January, 2009. Tribunal quashed the order passed by the Disciplinary Authority as well Appellate Authority and directed that Petitioner shall restore all the consequential benefits treating suspension period as spent on duty, within a period of two months.

12. Aggrieved by the impugned order of the Tribunal Petitioner has preferred the present writ petitions. We have

heard the learned counsel for the Petitioner and have perused the material placed on record.

13. Tribunal held that the prosecutrix and other witnesses had not supported the prosecution, therefore, ASI Karan Singh and Constable Subhash Chand were acquitted by the learned Additional Sessions Judge. Learned Additional Sessions Judge had not returned any findings that the witnesses were won over by ASI Karan Singh and Constable Subhash Chand. No material was there before the Disciplinary Authority to take a view that prosecutrix and her family members had been won over. Accordingly, case did not fall within the ambit and scope of Rule 12 (a) to (e) of Delhi Police (Punishment & Appeal) Rules, 1980. Tribunal concluded that ASI Karan Singh and Constable Subhash Chand could not have been punished departmentally in view of Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980.

14. We do not find any error in the findings returned by the Tribunal. Record shows that the prosecutrix did not support the prosecution during the criminal trial. She categorically stated that ASI Karan Singh and Constable Subhash Chand

did not rape her. Mother of the prosecutrix had also not supported the prosecution. Even Ms. Seema Bhattacharya and Mr. Mehtab had stated in the criminal court that the accused (ASI Karan Singh) had not made any confession before them regarding the incident. So far as the alleged apology/confession letter is concerned, the same was available on the record of the criminal case as exhibit PW1/D but same was not taken into account since no hand writing expert was produced to show that the same was written by ASI Karan Singh. For the lack of evidence both ASI Karan Singh and Constable Subhash Chand were acquitted. Learned Additional Sessions Judge did not record any finding that the witnesses were won over. Even otherwise, ASI Karan Singh and Constable Subhash Chand could not have won over the witnesses as it appears that they were in judicial custody for a considerable period during the trial.

15. Prosecutrix and her mother also stepped in the witness box during the enquiry proceedings. However, they did not support the incident. Prosecutrix categorically stated that ASI Karan Singh and Constable Subhash Chand had not raped her. Mother of the prosecutrix stated that she along

with prosecutrix was taken to Police Station with regard to a theft case from where prosecutrix was taken to G.T.B. Hospital in a car. From G.T.B. Hospital she and prosecutrix returned home. This shows that no evidence was available even before the Enquiry Officer to conclude that ASI Karan Singh and Constable Subhash Chand had raped the prosecutrix. Ms.Seema Bhattacharya and Mr.Mehtab were not even present in the house at the time of incident and they had allegedly come to know about the incident from the prosecutrix and their statements are hearsay. Enquiry Officer returned a categorical finding on the basis of evidence adduced before him that the charges remained unproved. In our view there was no cogent material available before the Disciplinary Authority to take a different view than what was taken by the Enquiry Officer; more so when prosecutrix had categorically stated that she was not raped by ASI Karan Singh and Constable Subhash Chand. She was the best person to prove the allegation of rape. In absence of her statement affirming rape, the incident remained unproved. Disagreement note is based on no evidence.

16. Findings recorded by the Disciplinary Authority that prosecutrix and her family member were won over was also without any basis. No such finding was recorded by the learned Additional Sessions Judge. Accordingly, the view expressed by the Disciplinary Authority in this regard is of no consequence in as much as it is not based on any material to indicate this fact.

17. Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 reads as follows :-

“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”.

18. Perusal of the above provision makes it clear that if a police officer has been tried and acquitted by a criminal court he cannot be punished departmentally on the same charge or for different charge, based upon the same evidence, which is cited in the criminal case unless acquittal has resulted on the grounds, as mentioned in clauses (a) to (e). In this case no such finding was returned by the learned Additional Sessions Judge, that accused were entitled to the acquittal on technical grounds, therefore, this case does not fall under clause (a). So far as clause (b) is concerned, no such opinion was expressed by the learned Additional Sessions Judge that the prosecution witnesses had been won over. So far as Disciplinary Authority is concerned, as already stated above, his view in this regard is based on no material. Accordingly, in our view, this case also does not fall within the clause (b) as well. Clause (c) to (e) are not attracted in this case as the court had not expressed any opinion that the suspicion rests upon the ASI Karan Singh and Constable Subhash Chand in respect to the incident of rape. It is also not a case where additional evidence was available to proceed against ASI

Karan Singh and Constable Subhash Chand departmentally. In fact same witnesses were examined in the departmental proceedings. In our view this case does not fall within the ambit and scope of exceptions carved out by way of clauses (a) to (e) of Rule 12 of Delhi Police (Punishment & Appeal) Rules, 1980.

19. In view of above, we are of the opinion that the Tribunal has rightly concluded that the exceptions carved out in the Rule 12 of Delhi Police (Punishment & Appeal) Rules, 1980 were not attracted in this case and since ASI Karan Singh and Constable Subhash Chand were acquitted in criminal case, therefore, they could not have been punished departmentally.

20. We do not find any jurisdictional error in the impugned order.

21. Dismissed.

A.K. PATHAK, J

MADAN B. LOKUR, J

SEPTEMBER 23, 2009

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