

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.623/2009**

% **Date of Decision: 25.05.2010**

Govt. of NCT of Delhi & Ors. Petitioners
Through Mr. Anjum Javed, Advocate

Versus

Jag Saran Respondent
Through Nemo

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner, Govt. of NCT of Delhi through Commissioner of Police and Ors. has challenged the order dated 22nd August, 2007 passed by the Central Administrative Tribunal, Principal Bench in OA 2225/2006 titled as HC Jag Saran Vs. Commissioner of Police and Ors., whereby the application of the respondent for quashing and setting aside the order of Disciplinary Authority dated 9th June, 2005 and the order of the Appellate authority dated 23rd June, 2006, imposing a penalty of forfeiture of five years of approved service permanently was allowed and the order of punishment dated 9th June, 2005 and the

Appellate Order dated 23rd June, 2006 were set aside and the respondent was held to be entitled for all consequential benefits including regularization of his period of suspension, as per Rules.

The relevant facts to comprehend the controversies between the parties are that FIR Nos. 1082/1997 and 1083/1997 were filed on 17th December, 1997 against the respondent, consequently the Disciplinary Inquiry under Delhi Police (Punishment and Appeal) Rules, 1980 was initiated on 15th April, 1999.

Since the allegations in the FIRs filed against the respondent were the same as the charges made against the respondent, the disciplinary inquiry was kept in abeyance by order dated 29th October, 1999 till the finalization of the criminal proceedings against the respondent.

The respondent was acquitted of criminal charges by the order of the Sessions Court dated 26th April, 2001 and 23rd July, 2001. After the acquittal of the respondent in the criminal cases, the decision was, however, taken by the petitioner to re-open the disciplinary inquiry on the ground that the respondent had been acquitted on account of prosecution witnesses turning hostile. After the enquiry the respondent was awarded punishment by order dated 3rd September, 2002 and an

appeal filed by him was also dismissed by order dated 19th February, 2003.

The respondent had challenged the punishment awarded to him by order dated 3rd September, 2002 and rejection of his appeal by order dated 19th February, 2003 by filing an original application No. 1296/2003, which was disposed of by order dated 14th January, 2004 quashing the order dated 3rd September, 2002 awarding the penalty and order dated 19th February, 2003 rejecting his appeal. However, the petitioners were given liberty to pass a fresh order in accordance with law and liberty was also given to the petitioner to grant consequential benefits, if any, if accrued to the respondent.

Pursuant to the order dated 14th January, 2004, a fresh order dated 9th June, 2005 was passed imposing a punishment of forfeiture of five years approved service permanently and treating his suspension period as 'not spent on duty'. The appeal filed against the order dated 9th June, 2005 was also dismissed on 23rd June, 2006, which was challenged by the petitioner by filing another OA 2225/2006.

Before the Tribunal, it was contended on behalf of the respondent that from the order dated 31st December, 2001 by the Sessions Court acquitting him from the criminal charges, it cannot be inferred that the witnesses had turned hostile on account of

respondent. Referring to Rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980, it was contended that by order dated 14th January, 2004 in OA 1296/2003, it was held by the Tribunal that opening of disciplinary inquiry was in violation of Rule 12 of the Rules of 1980. Since, the entire disciplinary proceedings were quashed by order dated 14th January, 2004 in OA 1296/2003, the only recourse left with the petitioner was to see whether fresh disciplinary inquiry could be initiated under any of the exceptions contemplated under Rule 12 of the Rules of 1980.

The plea of the respondents was contested by the petitioner contending, inter alia, that the acquittal of the respondent in the criminal cases was not purely on merits and consequently, under conditions as enumerated in Rule-12, the action could be taken against the respondent as he had won over the witnesses who had turned hostile.

After considering the pleas and contentions of the parties, the Tribunal considered whether by Order dated 14th January, 2004, only the punishment order was set aside or order dated 31st December, 2001 to re-open the Disciplinary Inquiry under Rule 12(b) was also set aside. It was noticed by the Tribunal that Rule 12(b) contemplates that if in the opinion of the Court or by the Dy. Commissioner of Police reaches the conclusion that the prosecution witnesses have been won over,

action could be taken despite acquittal of the delinquent in criminal proceedings.

After considering the facts and circumstances, the Tribunal held that by order dated 14th January, 2004 in OA 1296/2003, even the order dated 31st December, 2001 by which the disciplinary inquiry was re-opened, was quashed. The Tribunal also reached the conclusion about the quashing of order dated 31st December, 2001 on the basis of detailed appreciation of the order of the Tribunal dated 14th January, 2004. The Tribunal had noticed that by order dated 14th January, 2004 in OA 1296/2003 a clear finding had been given that if prosecution witnesses turn hostile, it does not mean that the accused/delinquent can be automatically held responsible for winning over the prosecution witnesses in terms of Rule 12(b) of Rules of 1980.

The Tribunal thus, came to the conclusion that the respondent having been acquitted by the Criminal Court, could not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal cases unless one of the five exceptions mentioned in Rule 12 is squarely applicable to the case. The Tribunal in para 24 of the order dated 22nd August, 2007, which is impugned before us, has categorically held that after re-opening the disciplinary inquiry in terms of Rule 12 (b) of Rules of 1980 and the Tribunal in the earlier petition giving a clear finding that the said provision was not applicable

to the facts and circumstances of the case, the petitioner could not turn around to argue that it was done on some other ground when the only ground on which the inquiry could be sustained could be under Rule 12(b) of the Rules of 1980. Para-24 of the order of the Tribunal is as under:-

24. Taking the totality of facts and circumstances of the case into consideration, we come to the inevitable conclusion that the impugned orders of the respondents are misconceived inasmuch as they are founded on misinterpretation of rule 12 (b) of Rules of 1980. The order of this Tribunal in OA No. 1296/2003 (supra) enjoined upon the respondents to proceed strictly within the four corners of Rule 12 of Rules of 1980. The applicant having been acquitted by the Criminal Court cannot be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal cases unless one of the five exceptions mentioned in Rule 12 *ibid.* is squarely applicable to the case. It is, therefore, not at issue, as mentioned in the impugned order dated 09.06.2005 (supra), whether the act of the applicant relating to the criminal cases was unbecoming of a police personnel or not. What is important, therefore, is the ground taken by the respondents in terms of the exceptions, mentioned in Rule 12 of Rules of 1980 and relied upon by the respondents, while initiating/continuing with disciplinary enquiry. After reopening the disciplinary enquiry, admittedly in terms of Rule 12 (b) of Rules of 1980 and upon this Tribunal, in OA No. 1296/2003 (supra) giving a clear finding that the said provision was not applicable to the facts and circumstances of the case, the respondents cannot now turn around to argue that it was done on some other ground, when the only ground on which the enquiry could be sustained has to be within the four corners of Rule 12 of the Rules of 1980. This conclusion is supported by a conjoint reading of Rules 11, 12 and 17 of the Rules of 1980.”

The learned counsel for the petitioner has raised the similar pleas, which were raised before the Tribunal. The learned counsel for the petitioner has not disputed that the order of the Tribunal dated 14th January, 2004, in OA 1296/2003 had become final. By the said order not only the earlier penalty order was set aside, but order dated 31st December, 2001, by which the disciplinary inquiry was re-opened, was also set aside. Thereafter, disciplinary proceedings could be initiated on some new grounds as contemplated under Rule 12 and not on the basis of which earlier disciplinary proceedings were initiated.

The learned counsel for the petitioner has not been able to refute that merely because the prosecution witnesses had turned hostile, the liability for turning the prosecution witnesses hostile could be saddled with the respondent in terms of Rule 12(b) of the Rules of 1980.

The learned counsel for the petitioner has also not been able to show whether the disciplinary proceedings were re-initiated after order dated 14th January, 2004 on some other new ground. The petitioners have failed to disclose as to what were the new grounds under which the disciplinary proceedings could be re-initiated and whether such grounds are sustainable within Rule 12(b) of the Rules of 1980. The

petitioner, in the facts and circumstances has failed to make out any case for initiation of disciplinary inquiry against the respondent.

In the circumstances, the petitioners have failed to make out any ground to interfere with the order of the Tribunal dated 22nd August, 2007 nor has been able to show any such illegality or irregularity, which will necessitate any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

Therefore, in the facts and circumstances, the writ petition is without any merit and it is, therefore, dismissed.

ANIL KUMAR, J.

MAY 25, 2010

‘rs’

MOOL CHAND GARG, J.