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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 1696/2011

Decision : 7th December, 2011

GNCT OF DELHI AND ORS

..... Petitioner

Through : Mr. Bhupesh Narula, Adv.

versus

RAMESH KUMAR

..... Respondent

Through : Mr. V.K.Rao, Sr. Adv. with
Mr. Ayushya Kumar, Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE J.R. MIDHA

Gita Mittal, J(Oral)

1. The present writ petition assails the judgment dated 25th May, 2010 passed by the principal bench of the Central Administrative Tribunal in OA No.2109/2009 entitled Ramesh Kumar vs. Government of NCT of Delhi & Ors.

2. To the extent necessary, the facts giving rise to the present petition are briefly noticed hereafter.

The petitioner had been appointed as a Constable with the Delhi Police in which position he was working when on 30th April, 1993 he was

implicated in FIR No.142/93 under Section 323/341/34 IPC for intentionally chasing, detaining and beating a Sikh gentleman attached as a Wireless Operator to a political leader as part of the protection afforded to him. It is an admitted position that on the same set of facts, the respondent was placed under suspension and on 3rd May, 1993 a departmental inquiry was initiated against the petitioner.

After conducting the inquiry, an inquiry report dated 15th September, 1993 was submitted by the inquiry officer.

3. It is not disputed before us that by an order passed on 28th October, 1993, the departmental proceedings were kept in abeyance from this stage till conclusion of the criminal case arising from the above noted criminal complaint. On 4th March, 1994, the respondent's suspension was also revoked. The name of the respondent however continued to be retained on the doubtful integrity list maintained by the petitioners.

4. Pursuant to directions dated 7th July, 1998, the disciplinary proceedings against the respondent were reopened. A copy of the inquiry report dated 15th September, 1993 was duly furnished to the respondent. The respondent was also served with a show cause notice dated 22nd July, 1998 to show cause as to why should the period of suspension not be treated as period not spent on duty. The respondent participated in these proceedings and submitted a representation dated 11th August, 1998 against the findings of the inquiry officer.

5. After considering the entire material placed before it, the disciplinary authority passed an order dated 23rd October, 1998 imposing the penalty of forfeiture of two years approved service permanently entailing a proportionate reduction in the respondent's pay by two stages from

Rs.3575/- to Rs.3425/- per month in the time scale for a period of two years. It may be noted that by an order dated 26th July, 1999, the petitioner also continued the name of the respondent in a secret list of doubtful integrity with effect from 3rd May, 1993 for a period of two years.

6. The respondents on 27th November, 1999 assailed the above order by way of the statutory appeal which was rejected by an order passed on 19th August, 1999 by the appellate authority.

7. The petitioner accepted the orders passed against him and raised no challenge thereto.

8. It appears that almost after a decade thereafter, by a judgment dated 12th March, 2008, the prosecution against the respondent resulted in a judgment of acquittal on the ground that the prosecution failed to prove the case against the respondent beyond the reasonable doubt.

9. The respondent now commenced his agitation against the orders of the penalty imposed in the disciplinary proceedings. For the first time since being punished, he made a representation on 4th June, 2008 to the Commissioner of Police against the orders dated 23rd October, 1998 and 19th August, 1999 passed by the disciplinary and appellate authorities respectively. He thereafter issued a reminder on 22nd October, 2008 seeking consideration of his representation. The respondent's representation was returned by the order dated 30th March, 2009 as not maintainable. It is noteworthy that in this regard, reliance was placed on the instructions of the police headquarters dated 28th May, 2001.

10. The respondent claims that he has received copy of the order dated 30th March, 2009 only on 2nd July, 2009. In this background, the respondent took steps invoking jurisdiction of the Central Administrative

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Tribunal by filing OA No.2109/2009 on 13th July, 2009 seeking a declaration that the order dated 12th March, 2008 ; orders of punishment dated 23rd October, 1998 and the appellate order dated 19th August, 1999 were illegal and invalid.

11. The petitioner contested these proceedings. However, by the judgment dated 25th May, 2010, the Central Administrative Tribunal was pleased to allow the challenge by the respondent and has set aside the impugned orders placing reliance on Rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980 granting liberty to the disciplinary authority to examine the judgment of the trial court and to take a final decision as per the judgment of the trial court within a period of three months from the date of receipt of the order.

12. We have heard learned counsel for the parties at length. Apart from the several other grounds of challenge raised by the petitioner, we find that the present writ petition can be disposed of on the primary ground pressed on behalf of the petitioner which is premised on the statutory bar of limitation to a challenge which could be raised in the Central Administrative Tribunal Act, 1985. This objection was urged before the tribunal as well.

13. Mr. V.K. Rao, learned senior counsel for the respondent contends that the cause of action to challenge the disciplinary proceedings against the respondent in fact arose in his favour only on 12th March, 2008 when the respondent was acquitted in the criminal trial.

14. We find that the Tribunal has placed reliance on Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 to adjudicate upon this objection. This delegated legislation would guide adjudication on the issue

under consideration. In this behalf, the provision of Rule 12 deserves to be extracted in extenso and the same reads as follows :-

“12, 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 suspension 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 or departmental proceedings is available.”

15. A bare reading of the rule 12 would show that the rule would come into play after a police officer has been tried and acquitted by the criminal court.

16. Application of Rule 12 of the case in hand would show that sub-rule (a) of Rule 12 of the said Rules confers discretion on the authority to consider whether the criminal charge has failed on technical grounds. In the case in hand, the respondent stands acquitted on the ground that the prosecution failed to prove the charge beyond reasonable doubt.

17. Mr. Bhupesh Narula, learned counsel for the petitioner has drawn our attention to the pronouncement of this court reported at *100 (2002) DLT 385 Government of NCT of Delhi & Ors. vs. Rajpal Singh* wherein this very rule arose for consideration and the court ruled as

follows:-

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"18. Even assuming that Rule 12 as afore-mentioned, is attracted, Clause (a) thereof makes out an exception as regards applicability of the Rule in a case where the criminal charge has failed on technical grounds.

19. Furthermore, it is well settled that the standard of proof in a criminal case and domestic enquiry is different.

20. A departmental proceeding is also maintainable where additional evidence for departmental proceedings is available.

21. The learned Tribunal, unfortunately, has not considered this aspect of the matter in its impugned judgment. It is now a well-settled principle of law that while interpreting a Rule, the basic principles of law should be borne in mind. The effect of the departmental proceedings on an acquittal made in a criminal charge fell for consideration before the apex court in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr., MANU/SC/0225/1999 : (1999)ILLJ1094SC . The apex court in the said decision upon taking into consideration a large number of its earlier decisions, held:

"13. As we shall presently see, there is a consensus of judicial opinion amongst the High Courts whose decisions we do not intend to refer in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas.

Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the Disciplinary Authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in the those proceedings is also different than that required in a criminal case. While in the

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departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubts. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance.

22. Rule 12 of the said Rules should also be interpreted having regard to the aforementioned dicta of the Apex Court.

23. Furthermore, even assuming that two interpretations are possible, it is now well known that the interpretation which would give effect to the object and purport of the Act should be favored by taking recourse to the doctrine of purposive construction. So construed, we are of the opinion that Rule 12 would not be attracted when an order of punishment had already been imposed before the judgment of acquittal was rendered in favor of the respondent.”

(Emphasis supplied)

18. It is trite that mere commencement of criminal proceedings would not interdict departmental proceedings and it is open to the disciplinary authority to proceed against a person in disciplinary action even though the criminal case is pending. It is equally well settled that this dictum rests on the principle that the proof in the two proceedings is different and that other factors including enforcement of discipline or investigation of the level of integrity of the delinquent etc may be final.

19. Rule 12 extracted above enables the authority to examine as to whether the criminal prosecution failed on technical ground. It is also a settled rule of service jurisprudence that it is open to a disciplinary authority to take a view different from that taken by the criminal court in a criminal prosecution which position is unassailable.

20. The contention of the respondent that the cause of action for

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challenging the action of the petitioner arose only upon his acquittal by the court is misconceived. The petitioner accepted the resumption of the disciplinary proceedings, imposition as well as the implementation of the punishment. The respondent did not challenge any of the above. In the present case a period of almost ten years has elapsed between the completion of the departmental action against the respondent. The petitioner's acquittal was for the reason that the prosecution failed to prove the charge beyond reasonable doubt, whereas the disciplinary authority proceeded on the evidence and material placed before him.

21. In the above circumstances, the cause of action for filing the proceedings before the Central Administrative Tribunal arose on 23rd October, 1998 when the penalty was imposed on the petitioner and then again on 19th August, 1999 when his statutory appeal was rejected. No other statutory remedy was available to the petitioner. In this background, if the respondent was aggrieved by the action of the petitioner in continuing with the disciplinary proceedings against him despite pendency of the criminal case, cause of action on this ground accrued in favour of the respondent on 7th July, 1998 when the disciplinary proceedings were continued and the inquiry report was furnished to him.

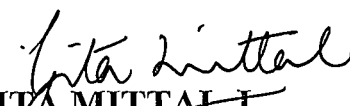
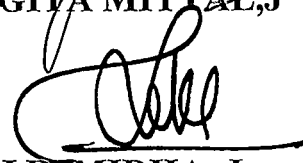
22. We find that section 21 of the Administrative Tribunals Act, 1985, prescribes that a person aggrieved by an order is required to challenge the same before the tribunal within one year from the date of final order has been made. In the event that a person made an appeal or representation as detailed in sub-section 2(b) of Section 20, then the person aggrieved is entitled to make a petition within a period of six months without final order

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having been made. In the instant case, it is not disputed that the statutory appeal filed by the petitioner was also rejected as back as on 19th August, 1999. No right to make any further representation/petition was available under the statute. In this background, the petition filed by the petitioner almost a decade thereafter was hopelessly barred by limitation.

23. For these reasons, we are of the view that the judgment dated 25th May, 2010 is legally unsustainable and is hereby set aside and quashed.

24. At this stage, Mr. V.K. Rao, learned senior counsel for the respondent submits that the name of the petitioner was placed on the doubtful integrity list. The respondent has however not informed the petitioner of the reasons or the circumstances in which he was so placed. It is pointed out that the respondent had also made a prayer in this regard before the Central Administrative Tribunal. It is directed that in case the name of the respondent is still being maintained on the doubtful integrity list by the petitioners, the respondent shall be at liberty to make a representation to the petitioner in this regard who shall consider the same and make appropriate orders in accordance with law.

In case, the respondent is still aggrieved by any order passed by the petitioners, it shall be open to the respondent to assail the same by way of appropriate proceedings.


GITA MITTAL, J

J.R. MIDHA, J

DECEMBER 07, 2011

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