

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

+ **WP(C) No.2458/2011**

% **Date of Decision: 29.08.2011**

Govt. of NCT of Delhi & Ors. Petitioners

Through Mr. Tarun Diwan, Advocate

Versus

Laxmi Narain Meena Respondent

Through Nemo

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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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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1. The petitioners, Govt. of NCT of Delhi through the Commissioner of Police, Delhi & Ors., have challenged the order dated 11th August, 2010 in OA No. 2458/2009 passed by the Central Administrative Tribunal, Principal Bench in the matter titled as 'Laxmi Narain Meena v. Govt. of NCT of Delhi' setting aside the punishment order dated 7th April, 1999 and the appellate order dated 22nd October, 1999 as well as order dated 28th May, 2001 in the review application. The Tribunal held

that the respondent is entitled to all consequential benefits in accordance with rules, subsequent to the acquittal of the respondent in the criminal case filed against him, being case No. 88/2003 titled as 'State v. Laxmi Narain Meena', as in the said matter by order dated 24th April, 2008 it was held that the prosecution had failed to prove the charges against the respondent, thereby, acquitting the respondent by giving him the benefit of doubt.

2. Brief facts to comprehend the disputes between the parties are that one Sh. Sanjay Sharma s/o Sh. Late Uma Kant Sharma, resident of HN. 4278, Jogiwar, Chandni Chowk, Delhi was in the habit of filing false complaints against the innocent residents of the locality. Consequently, Sh. Sanjay Sharma, was summoned by the SHO, Chandni Chowk, to inquire into his most recent complaint. However, Sh. Sanjay Sharma allegedly did not turn up to join the inquiry. It was alleged that on 5th October, 1997, while the SHO was out of the station, the respondent, who is residing with Sh. Sanjay Sharma in his father-in-law's property being No. 404, Haider Kuli, Chandni Chowk, Delhi, came to the Police Station, Chandni Chowk, on behalf of Sh. Sanjay Sharma. The allegation was also made against the respondent that he had rudely replied on enquiring the purpose for his visit that he had come to see the SHO, Chandni Chowk, in order to know the reason why his friend Sh. Sanjay Sharma was being called to the Police Station. It was further alleged that he forcibly snatched the Daily Diary Register

from the duty officer on 11th August, 1997 and also misbehaved and threatened SI Ranbir Singh with dire consequences. Therefore, a departmental inquiry was recommended against him. The departmental inquiry was conducted against the respondent and the Inquiry Officer had held him guilty of the charges framed against him. The Disciplinary Authority, after going through the report of the inquiry officer, had passed the punishment order of forfeiture of one year of approved service on a permanent basis and also ordered the reduction of pay of the respondent from Rs.6,200/- per month to Rs. 6,025/- per month for a period of one year. It was also held that the respondent could not earn increment of pay during the period of reduction and that the reduction would have the effect of constraints on his future increment of pay. An appeal was filed against the said order which was dismissed on 22nd October, 1999 and a review application filed by the respondent was also dismissed on 28th May, 2001. A criminal case on the same allegations was also initiated against the respondent under Sections 189/500/506(1) of IPC r/w Section 60 (a)/122/65/119/ 91/93/97 of the Delhi Police Act in Case No. 88/2003. The respondent had pleaded not guilty and the case was tried on merits. The Metropolitan Magistrate, on perusing the testimonies of PW-1, PW-2, PW-3, PW-4 and PW-8, held that it is apparent that none of the witnesses are public witnesses and that even though they had deposed that the respondent had used abusive language, complete reliance on their testimonies is not prudent since all of the witnesses are sub-ordinate to the

complainant. The Magistrate also took cognizance of the fact that the SI Surrender, Additional SHO, who was the complainant in the case, should not have investigated the matter himself, which creates a doubt as to whether the investigation against the respondent had been carried out fairly by him or not. On perusal of the entire testimonies recorded before the Criminal Court, it was held that the prosecution had failed to prove the charges against the respondents under the Indian Penal Code as well as under Delhi Police Act, and, therefore, the respondent was acquitted by giving him the benefit of doubt.

3. Pursuant to the acquittal of the respondent, since the prosecution had failed to make out the case against the respondent, by order dated 2nd September, 2008, the Dy. Commissioner of Police, Special Cell, who was the Disciplinary Authority at that time, had held that no further departmental action is required to be taken against the respondent. The order dated 2nd September, 2008, passed under Rule 12 of Delhi Police (Punishment and Appeal) Rules 1980 reads as under:-

“Consequent upon the judgment dated 24.4.2008 in a kalandara prepared vide DD No. 9-A dated 5.10.1997 u/s 189/500/506 (1) IPC, 60(a)/122/65/119/91/93/97 D.P. Act P.S. Chandni Chowk, Delhi passed by the Learned Court of Shri Jagdish Kumar, M.M., Delhi, the case of SI (Exe.) Laxmi Narain No. D/3214 (PIS No. 28770579) has been carefully considered and examined under rule 12 of Delhi Police (Punishment & Appeal) Rules, 1980 **in the overall facts and circumstances of the case and it has been decided that no further departmental action is warranted against him.**”

4. The petitioners, in the circumstances, did not invoke any of the exceptions carved out in Rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980 for continuing the departmental proceeding and implementing the punishment orders dated 7th April, 1999 and order dated 22nd October, 1999 dismissing the appeal against the punishment imposed on the respondent.

5. Despite the order dated 2nd September, 2008 passed by the petitioner under Rule 12 of Delhi Police (P&A) Rules, 1980, the punishment awarded by order dated 7th April, 1999 was still sought to be implemented. Therefore, a representation was filed by the respondent which was rejected by the petitioners, entailing the filing of an original application being O.A. no. 2458/2009 by the respondent before the Central Administrative Tribunal. Before the Tribunal, the respondent categorically contended that since the petitioners themselves had passed the order under Rule 12 of Delhi Police (P&A) Rules, 1980 holding that no further departmental action is warranted against the respondent, the punishment order passed earlier could not be implemented. The respondent also contended that as per the said Rules, simultaneous proceedings could not be initiated against the respondent on the same set of facts. In any case, after acquittal in the criminal case, since the order dated 2nd September, 2008 was passed under Rule 12, without invoking any exception as contemplated under

the said rule the punishment could not be imposed upon the respondent even if the punishment order dated 7th April, 1999 was passed prior to the acquittal of the respondent on 24th April, 2008 in the criminal case. It was also contended that the order dated 2nd September, 2008 passed by the petitioners under Rule 12 of Delhi Police (P&A) Rules, 1980 has neither been challenged nor can be negated in any manner nor can it be ignored on any grounds as it was passed by the Competent Authority, which was the disciplinary authority at that time.

6. Before the Tribunal, it was contended on behalf of the petitioners that though the order dated 2nd September, 2008 was passed by the then Competent Authority holding that no further departmental action is warranted, however, the respondent had approached the Police Headquarter for the grant of first financial up-gradation under ACP Scheme w.e.f. 21st November, 2003. The Police Headquarter, by communication dated 5th January, 2009, had directed the respondent to first approach the Disciplinary Authority to get the said order of punishment dated 7th April, 1999 set aside and after getting the same set aside, he could approach the Police Headquarter for the review of his ACP Scheme. The respondent had filed a representation dated 23rd March, 2009, which was, however, rejected by order dated 17th June, 2009 on the ground that he had availed all the remedies under the provisions of Delhi Police (P&A) Rules, 1980 and therefore, there was no

provision for review of the punishment order by the Disciplinary/Appellate Authority. While passing the order dated 17th June, 2009, the order dated 2nd September, 2008 by the Disciplinary Authority that no further departmental action is warranted against him was not considered as no reasons were given for not following the order dated 2nd September, 2008 which was also passed by a competent Disciplinary Authority.

7. The Tribunal considered the pleas and contentions of the parties and held that in view of the order passed by the Disciplinary Authority, dated 2nd September, 2008, pursuant to the acquittal of the respondent in the criminal proceedings by order dated 24th April, 2008, the punishment order dated 7th April, 1999 was not warranted and, in any case, stood overruled and therefore, there was no requirement to get the punishment order reviewed by the Disciplinary Authority as it had already been held that no further departmental action was warranted against the respondent. It was further observed that the order dated 2nd September, 2008, passed under Rule 12 of Delhi Police (P&A) Rules, 1980 was passed by the competent Disciplinary Authority and therefore, the plea of the petitioners that the respondent was liable to approach the Disciplinary Authority to get the punishment order set aside was also held to be without any basis.

8. The Tribunal relied on the decision of the coordinate benches and thus, allowed the original application and set aside the punishment order dated 7th April, 1999, the appellate order dated 22nd October, 1999 as well as the order passed while rejecting the review on 28th May, 2001 in view of the subsequent Disciplinary Authority's order dated 2nd September, 2008 passed under Rule 12 of Delhi Police (P&A) Rules, 1980. The plea of the petitioner that the Original Application filed by the respondent was barred by limitation was also rejected in view of the fact that the cause of action accrued only after the Disciplinary Authority had passed the order dated 2nd September, 2008 under Rule 12 of Delhi Police (P&A) Rules, 1980 and therefore, the respondent had approached the Tribunal within the stipulated period of limitation.

9. The order of the Tribunal is challenged by the petitioners contending primarily that the judgments relied on by the Tribunal are not applicable to the facts and circumstances of the case, as in some of the cases the punishment orders pursuant to the disciplinary proceedings were passed after the acquittal of the charged officer in the criminal proceedings. Relying on Rule 12, it was contended that the said Rule contemplates that when a police officer has been tried and acquitted he should not be punished departmentally on the same charge and on the same set of facts, if he has not already been punished by the Disciplinary Authority. It was contended that since in the case of the respondent he had already been punished by the

Disciplinary Authority, consequently, the rigor of Rule 12 would not have any application, as the acquittal of the respondent in the criminal case was later on by order dated 24th April, 2008.

10. This Court has heard the learned counsel for the petitioners in detail. The learned counsel has failed to explain and satisfy as to why the order dated 2nd September, 2008, passed under Rule 12 of Delhi Police (Punishment and Appeal) Rules 1980 cannot be given effect to holding that no further departmental action is warranted against the respondent. This is not disputed that the order dated 2nd September, 2008 is passed by the Disciplinary Authority of the respondent. If the Disciplinary Authority has later on applied Rule 12 and has held that no further action is warranted and has not taken shelter under any of the exceptions to Rule 12 of Delhi Police (P&A) Rules, 1980, the petitioners cannot contend that the punishment order is to be given effect to and the departmental action is warranted. The learned counsel for the petitioner is unable to show any ground on the basis of which it can be held that the order dated 2nd September, 2008 passed by the Disciplinary Authority is illegal, irregular or invalid. Rather, no plea has even been taken that the order dated 2nd September, 2008 passed by the Disciplinary Authority was without jurisdiction or that the Disciplinary Authority was not competent to pass such an order.

11. The decision of the High Court in CWP No. 2371/2004, Joginder Singh v. GNCTD decided on 27th July, 2010 is also distinguishable as no orders under Rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980 were passed in those cases holding that on account of acquittal of the charged officer no further departmental action was warranted against the charged officer, whereas in the case of the respondent a specific order has been passed by the competent disciplinary authority of the petitioners holding that no further departmental action was warranted against the respondent.

12. The plea of the learned counsel for the petitioner that the benefit of Rule 12 of the Delhi Police (P&A) Rules, 1980 cannot be given to the respondent because he was merely acquitted by being given the benefit of doubt, is also not sustainable because the Disciplinary Authority while passing the order under Rule 12 of the said Rules have not invoked any of the exceptions to the said Rule. In any case, the acquittal of the respondent by the Criminal Court by order dated 24th August, 2008, after perusing the testimonies of all the witnesses cannot be termed to be a technical acquittal so as to attract Rule 12 (a) of Delhi Police (P&A) Rules, 1980. The acquittal of the respondent was not on technical grounds as the charge was enquired into and the evidence led was considered and found to be insufficient to convict the respondent. The learned counsel for the petitioner cannot be allowed to contend contrary to the order passed by the petitioners themselves, wherein no

exception under Rule 12 was invoked. The learned counsel for the petitioners has not raised any other ground for impugning the order of the Tribunal nor has he relied on any precedents in support of his pleas and contentions.

13. For the foregoing reasons, there are no grounds to interfere with the orders of the Tribunal as there is no such illegality or irregularity or any such perversity, which will entail any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

14. The writ petition is, therefore, dismissed. All the pending applications are also disposed of.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

August 29, 2011.
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