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

+ W.P.(C) 5969/2016

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Judgment dated 15.07.2016

PRAKASH SINGH

..... Petitioner

Through : Mr.Anuj Sharma, Adv.

versus

COMMISSIONER OF POLICE & ORS

..... Respondents

Through : Mr.Devesh Singh, Advs. for the respondents.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

CM APPL. 24588/2016

1. Exemption allowed subject to all just exceptions.
2. Application stands disposed of.

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3. Challenge in this writ petition is to the order dated 11.3.2016 passed by Central Administrative Tribunal (in short 'the Tribunal') in O.A.No.1825/2015, by which the OA filed by the petitioner herein was dismissed.
4. The necessary facts to be noticed for disposal of the present writ petition are that the petitioner initially joined as a Constable in the Delhi Police and thereafter he joined the Excise Department on deputation.
5. It is alleged that on 6.11.2006, an FIR was registered against the petitioner on a false and concocted charge of outraging the modesty of a woman under the influence of liquor, pursuant to which he was arrested. On 26.5.2010, disciplinary proceedings were initiated against the petitioner.

In the meanwhile, the petitioner requested the Inquiry Officer to keep the departmental proceedings in abeyance till the conclusion of the criminal trial, however, this request of the petitioner was not acceded to. The Inquiry Officer submitted his report on 31.3.2011 concluding that only the charge of 'consumption of liquor' stands proved against the petitioner.

6. As per the petitioner, the Inquiry Officer has reached to a wrongful conclusion as no charge of consumption of liquor was framed.
7. On 2.5.2011, the Disciplinary Authority while affirming the view taken by the Inquiry Officer imposed a major punishment of withholding of next increment temporarily for a period of one year. Meanwhile, the learned Metropolitan Magistrate, Mahila Courts, acquitted the petitioner of all the criminal charges vide order dated 26.11.2012. The petitioner thereafter preferred an appeal against the order of the Disciplinary Authority thereby imposing major punishment, however, the said appeal was dismissed by the Appellate Authority on 2.1.2014. Since the petitioner was denied promotion on 16.9.2014 in a DPC List-C-2014 on the ground of his being 'Unfit', he approached the Tribunal by filing O.A., which stands dismissed.
8. Learned counsel for the petitioner submits that the Tribunal has failed to take into account that the petitioner has been acquitted both, by the Inquiry Officer and by the Criminal Court, of the substantive charge, i.e. outraging the modesty of a woman, which was framed against him. Counsel further submits that in the absence of a specific charge having been framed against the petitioner, the Inquiry Officer, the Disciplinary Authority and the Tribunal have erred in holding him guilty and awarding him punishment of withholding of next increment for a period of one year.
9. Secondly, learned counsel for the petitioner submits that the respondents

and the Tribunal have failed to take into account Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980. It is contended that once the petitioner was acquitted by the criminal court of all the charges, he could not have been punished on the same charge or on a different charge by the Department. Counsel further submits that the Tribunal has failed to take into account that the petitioner did not consume liquor during his duty hours and he was found to be under the influence of liquor at the time of his arrest by which time he was not on duty.

10. Learned counsel for the petitioner has relied upon a decision rendered by the Supreme Court of India in the case of ***M.V. Bijlani v. Union of India And Others***, reported at (2006) 5 SCC 88, more particularly paras 14 and 23, in support of his contention that a definite charge would have been framed against the petitioner herein. Paras 14 and 23 read as under:

“14. From a perusal of the Enquiry Report, it appears to us that the disciplinary authorities proceeded on a wrong premise. The Appellant was principally charged for non-maintenance of ACE-8 Register. He was not charged for theft or misappropriation of 4000 kgs. of telegraph copper wire or misutilization thereof. If he was to be proceeded against for misutilisation or misappropriation of the said amount of copper wire, it was necessary for the disciplinary authority to frame appropriate charges in that behalf. Charges were said to have been framed after receipt of a report from CBI (Anti Corruption Bureau). It was, therefore, expected that definite charges of misutilization/misappropriation of copper wire by the Appellant would have been framed. The Appellant, therefore, should have been charged for defalcation or misutilisation of the stores he had handled if he was to be departmentally proceeded against on that basis. The second charge shows that he had merely failed to supervise the working of the line. There was no charge that he failed to account for the copper wire over which he had physical control.”

.....

23. Evidently, the evidences recorded by the Enquiry Officer and inferences drawn by him were not commensurate with the charges. If it was a case of misutilisation or misappropriation, the Appellant should have been told thereabout specifically. Such a serious charge could not have been enquired without framing appropriate charges. The charges are otherwise vague. We have noticed hereinbefore that the High Court also proceeded on the basis that the non-maintenance of diary amounted to misutilisation of copper wire.”

11. We have heard learned counsel for the petitioner and counsel for the respondents, who enters appearance on an advance copy. The following charge was framed against the petitioner:

“

CHARGE

I, Insp. R.S. Malik No.DI-31 charge you Ct.Parkash No.454/RTB now 5454/Dap that while posted in Excise Department, on deputation from Delhi Police you went to the house of one Smt.Darksha Parveen W/o Anwar Ahmad R/o G-9/69, Ratiya Marg, Sangam Vihar, New Delhi On 5-11-06 at 10:00 PM. You caught hold Darksha Parveen from back side and under the influence of liquor tried to molest her. Thus you outraged modesty of Smt.Darkash Parveen. On the statement of Smt.Darksha Parvene case F.I.R. No.1052/06 u/s 354 IPC was registered on 6.11.06 at Police Station Sangam Vihar in this regard and you were arrested on 6.11.06 in the case and charge sheet was filed against you on 25.5.2007 in the court.

The above act on your part amounts to gross misconduct, negligence and dereliction in discharge of your official duties and unbecoming of a police officer which renders you liable to be punished under the provision of Delhi Police (Punishment and Appeal) Rules 1980.

19/1/11
Inspr.R.S. Malik
E.O.
7th BN. DAP”

(Underline added)

12. A reading of the aforestated charge would leave no room for doubt that the charge was framed on the ground the petitioner had caught hold of Mrs.Darksha Parveen from backside under the influence of liquor and tried to molest her and his act amounted to gross misconduct, negligence and dereliction in discharge of official duties and unbecoming of a police officer.
13. It may be noticed that the learned trial court while passing the impugned judgment has observed that it is evident from the record that the petitioner was only charged sheeted by the Trial Magistrate for outraging the modesty of Mrs.Darksha Parveen under Section 354 IPC and for trespassing her house under Section 451 IPC vide Order dated 23.7.2009, but he was not charge sheeted or tried for an offence of consumption/influence of liquor for which the Inquiry Officer has held him guilty in the departmental proceedings, which means that allegation of under the influence of liquor in the Departmental Enquiry was entirely a different charge, which was never the subject matter in the criminal case for which the petitioner was punished on the basis of report of the Inquiry Officer by the Competent Authority vide order dated 2.5.2011.
14. It would also be worthwhile to mention that in the order dated 2.5.2011, the Disciplinary Authority had made an observation that the petitioner was heard in OR on 20.4.2011 and he admitted that he had consumed alcohol on that day but he was not on duty. Relevant portion of the order dated 2.5.2011 passed by Disciplinary Authority reads as under:

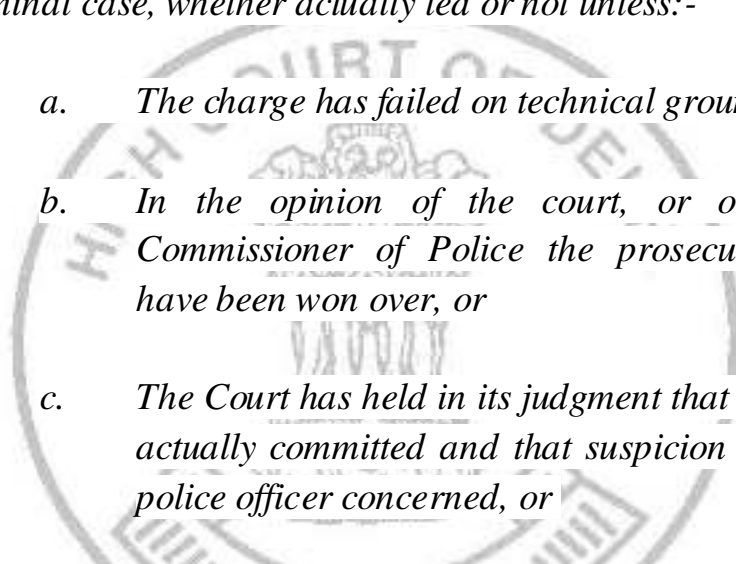
“Agreeing with the findings of the Enquiry Officer, a copy of the same was delivered to him on 02.04.2011 with the direction to submit his representation, if any, within 15 days vide this office UO No.2455/HAP-7th Bn.DAP, dated 31.03.2011. He submitted his representation on 13.04.2011 stating that ne never claimed to be a teetotaler and mere smell of alcohol in breath does not constitute a misconduct. This plea is not admitted MLC No.158201/06 (Ex.PW-4) conducted at AIIMS is very clear, according to which he consumed alcohol on that day. However, in the interest of equity, fair play and justice, he was heard on OR on 20.04.2011 where he admitted that he had consumed alcohol on that day but was not on duty. This plea is not admitted. In case he was not duty then why he visited the residence of Smt. Darkasha Parveen on that day at late hours in drunken state.”

15. Thus, the learned Tribunal was of the view that it was clearly mentioned in the charge sheet that the petitioner was under the influence of liquor at the relevant time. The petitioner was very well aware of this allegation of ‘under the influence of liquor’ from the very beginning during the course of enquiry. The Tribunal has also held that this fact was duly proved from the medical report. The Tribunal has also observed that the Inquiry Officer examined and relied upon relevant evidence including medical report and recorded the statement of the petitioner. Concurring with the findings of the Inquiry Officer, the competent authority has passed the impugned order of punishment. Additionally, no prejudice is shown to have been caused to the applicant in this connection. We find no reason to disagree with the observations and findings of the learned Tribunal.
16. Thus, the first submission of learned counsel for the petitioner that the Inquiry Officer erroneously held the petitioner guilty of the charge of ‘consumption of liquor on duty’ cannot be accepted.
17. As far as the second submission of counsel for the petitioner that departmental proceedings are vitiated in view of Rule 12 of Delhi Police

(Punishment And Appeal) Rules, 1980, is concerned, the same has very aptly been dealt with by the learned Tribunal. It would be useful to reproduce Rule 12 of Delhi Police (Punishment And Appeal) Rules, 1980, which reads as under:

"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:-

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- a. The 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. A perusal of Rule 12 suggests that a Police Officer cannot be departmentally punished on the same charge or on a different charge upon the evidence cited in the criminal case where the criminal charge has failed on technical grounds or in the opinion of the court or on the Deputy

Commissioner of Police that the prosecution witnesses have been won over and the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings, is available.

19. A bare perusal of the judgment dated 26.11.2012 rendered by the criminal court would reveal that the petitioner was not honourably acquitted but he was acquitted on the ground that the version of prosecution has not been able to stand scrutiny. The provisions contained in Rule 12 of relevant Rules cannot be applied in the present case as the charge under Sections 354 and 451 before the criminal court were entirely different than the allegation of under the influence of liquor for which the petitioner was punished. In other words, the charges before the criminal court were entirely different than the allegation in the departmental inquiry.
20. At this stage, it would be useful to reproduce the observations made by the learned Tribunal in paras 18 and 19 of the impugned judgment:

“18. Now, adverting to the next submission of learned counsel that since the applicant consumed the liquor while he was not on duty, so he cannot be held guilty for dereliction of duty under the influence of liquor. In this regard, it may be added here that even before the inquiry officer the applicant has admitted in so many words that he was on surveillance duty in the area where the house of Darkasha Parveen, wife of Anwar Ahmed existed and he took him to his house. Not only that, even in the main OA it has been specifically pleaded that he was present in the house of Darkasha Parveen, wife of Anwar Ahmed, to collect information, to keep surveillance in performance of his official duty. On the other hand, there is positive evidence on record that he has consumed liquor in the house of complainant while on duty. Even the time, date and place of occurrence has been admitted by the applicant. Therefore, this argument appears to be an afterthought, and cannot be accepted.

19. Sequally, the next argument of learned counsel that there was no evidence on record to prove the charge that the applicant

was under the influence of liquor again cannot be accepted. As indicated hereinabove, the EO recorded the findings of facts based on the evidence including medical evidence that the applicant was under the influence of liquor at the relevant time, date and place in the house of Darkasha Parveen wife of Anwar Ahmed which was rightly accepted by the competent authority, while passing punishment order.”

21. As far as the judgment relied upon in the case of **M.V. Bijlani** (supra) is concerned, in our view, the same is not applicable to the facts of the present case as reading of the Charge would show that the Charge with regard to consuming liquor was also framed in the composite charge and also in this case it cannot be said that the evidence recorded by the Inquiry Officer was not commensurate with the charges.
22. The impugned judgment rendered by the learned Tribunal is a well-reasoned judgment. The Tribunal has taken into consideration and dealt with all the grounds, which have been urged. Resultantly, we find no ground to entertain the present writ petition. Thus, there is no infirmity in the impugned judgment, which would require interference by this Court in proceedings under Article 226 of the Constitution of India. Accordingly, writ petition stands dismissed.

G.S.SISTANI, J

I.S. MEHTA, J

JULY 15, 2016

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