

\$~15.

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

+ **WRIT PETITION(CIVIL) No. 9877/2015**

%

Date of decision: 19th April, 2016

RAJ KUMAR

..... Petitioner

Through Mr. Sourabh Ahuja, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through Mr. A.S. Singh, Advocate for Mr. R.V. Sinha, Advocate for respondent No. 1.

Ms. Astha Nigam, Advocate for Mr. Naushad Ahmed Khan, ASC (Civil) for GNCTD-respondent Nos. 2 and 3.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL):

Raj Kumar, the petitioner by this writ petition, assails order dated 30th August, 2013, whereby his OA No. 2638/2013 has been dismissed. Another prayer made in this writ petition is for quashing of the order dated 31st July, 2012 rejecting his representation.

2. The petitioner was put under suspension on 11th January, 1991. He was removed from service vide order dated 3rd July, 1992 on the allegation

that he had committed gross misconduct unbecoming of a Government servant in violation of Rule 3 (i) (ii) (iii) of the CCS (Conduct) Rules, 1964. In the night intervening between 9th and 10th January, 1991, the petitioner though detailed for duty from 2 A.M. to 6 A.M., was marked absent in PPG (Security) Lines, R.P. Bhawan, New Delhi. It was learnt that at about 7.30 P.M. on 9th January, 1991, the petitioner was present on Baba Kharak Singh Marg with a girl. One Ravinder Singh travelling in Car No. DEB-8561 had stopped to enquire the shortest way to Palam Colony. The petitioner had then stated that he too was to go to Palam Colony, and he, the girl and one Constable Rajinder Singh sat in the car. On the way, the petitioner and two others, asserting that they were officers from the Crime Branch had threatened and warned Ravinder Singh of false implication in a criminal case. The girl travelling with them would make a statement against Ravinder Singh. Money was demanded and Ravinder Singh was compelled to pay Rs.700/-.

3. Ravinder Singh had made a complaint, pursuant to which FIR No. 17/1991 under Sections 419/420/384 of the Indian Penal Code, 1860, was registered at Police Station Mandir Marg and the petitioner was arrested.

4. In the departmental proceedings, evidence and material was led to prove the charges. The disciplinary authority upon consideration held that the charge was established, the conduct of the petitioner had brought disrepute to the force and showed abuse of power. The order of removal

dated 3rd July, 1992 was passed observing that it was undesirable to retain the petitioner in the police force. This order holds that mere pendency of the criminal case would not bar or prevent the disciplinary authority from taking a decision in the said proceedings.

5. The petitioner had filed OA No. 1244/1992 for keeping the departmental enquiry in abeyance till final decision in the criminal case. Interim stay was not granted and the disciplinary proceedings had continued. Consequently, the disciplinary authority had passed the order of removal dated 3rd July, 1992.

6. The order of removal dated 3rd July, 1992 was confirmed in appeal by the Additional Commissioner of Police vide order dated 17th November, 1992. The said order affirmed that the disciplinary proceedings need not have awaited the final outcome of the criminal trial. There was no need to keep the disciplinary proceedings in abeyance pending the criminal case. The petitioner being a member of the police force was duty bound to protect citizens from crime, but to the contrary, the petitioner had exhibited moral in-turpitude and his conduct of cheating a citizen had blighted the image of the force. The Appellate order examines and considers the defence evidence in the form of three defence witnesses and rejects the submission contesting the findings on merit.

7. The petitioner had then preferred OA No. 2463/1993 challenging the order of removal passed by the disciplinary authority and affirmed by the

appellate authority. This OA was disposed of vide order dated 15th March,

1994. Paragraphs 2 to 4 of the said order read as under:-

“2. A notice was issued to the respondents who contested the application taking a number of grounds contending that there is no bar for simultaneously initiating the departmental inquiry proceedings against an official who is involved in a criminal case. The respondents have also taken a plea that due permission was also obtained from the competent authority before initiating departmental proceedings against the applicant.

3. When we commenced the hearing of the case, the learned counsel for the applicant made a request that he may be allowed to withdraw this application and that after the decision of the criminal court he wants to press the matter in case he is exonerated and acquitted by the criminal court. His apprehension is that if ultimately he is acquitted by the criminal court and thereafter he makes a representation to the respondents, they may reject it on the ground that the matter has already been considered departmentally even by the appellate authority. He therefore wants to secure his rights to assail any final order on his representation which he intends to make, and if so advised, wants to file after the decision of the criminal case. The learned counsel for the respondents has no objection to it.

4. In view of this the present application is disposed of as withdrawn with the liberty to the applicant that he can make a representation, if so advised, to the respondents after his acquittal from the criminal case and thereafter appeal for final order subject to the law. The application is therefore disposed of as withdrawn with no order as to costs.”

Paragraph 2 of the aforesaid order clearly records that the respondent, i.e., the Delhi Police had contested the said application on a number of grounds,

including the ground that there was no bar to simultaneous initiation and decision in departmental inquiry proceedings and criminal prosecution. The petitioner instead of contesting the said position had sought liberty to withdraw the Original Application stating that he would make a representation, if so advised, on being acquitted in the criminal case or succeeding in appeal. The operative portion of the order dated 15th March, 1994 merely records that the Original Application was disposed of as withdrawn with no order as to costs. The earlier portion of paragraph 4 of the said order merely records the contention of the petitioner.

8. We have already noted above that another police officer, Constable Rajinder Singh was present with the petitioner in the car. Rajinder Singh had faced departmental inquiry and was dismissed from service. The appellate authority had dismissed his appeal. However, in OA No. 755/2007 vide order dated 17th March, 2003, an order of remand was passed quashing the order of the appellate authority. This was for the reason that the appellate authority had taken extraneous matters into consideration.

9. In the case of Constable Rajinder Singh, the appellate authority, namely, Additional Commissioner of Police vide order dated 19th August, 2003 observed that the appellant therein, i.e., Constable Rajinder Singh had not played an active role in cheating, but was an associate of the present petitioner, i.e., Constable Raj Kumar, who was the main or

principal culprit. Constable Rajinder Kumar had failed to check and warn Constable Raj Kumar to not get involved in illegal activities. The appellate authority observed that Constable Rajinder Kumar should have left the place or should have asked Constable Raj Kumar to not indulge in illegal activities. Constable Rajinder Singh had failed on the said account. The appellate authority, recording the aforesaid reasons reduced the penalty of dismissal, to punishment of forfeiture of approved service temporarily for a period of one year, entailing subsequent reduction of pay. As recorded above, this order was passed on 19th August, 2003.

10. Earlier thereto, the criminal trial vide judgment dated 3rd December, 1998, had ended in the acquittal of the petitioner and Constable Rajinder Kumar. The acquittal judgment records that the prosecution had not led admissible ocular evidence and thus, the prosecution assertions had remained unproved. Ravinder Singh had initially appeared as a prosecution witness and had supported the prosecution case. He had identified the petitioner and the co-accused, but his examination was deferred and thereafter this witness was not produced. Thus, the acquittal of the present petitioner was not on merits, and was on account of the fact that the prosecution was unable to produce Ravinder Singh (PW-1) after the initial examination. At the time of initial examination, PW-1 had identified the present petitioner.

11. In view of the aforesaid factual backdrop, we do not think the

petitioner can take advantage of his statement when OA No. 2463/1993 was disposed of as withdrawn on 15th March, 1994. The order of acquittal in the present case would not in any manner help or assist the petitioner. The petitioner himself had not pressed OA No. 2463/1993, which was disposed of as withdrawn. Paragraphs 3 and 4 of the said order reproduce the statement of counsel for the petitioner. These are not observations of the tribunal. Evidence recorded and lead in the departmental proceedings was not erased and undone by the order of acquittal.

12. There is another reason why the present writ petition should be dismissed. The petitioner had filed a revision petition before the Commissioner of Police sometime in the month of April, 1999. Additionally, in the intervening period, the petitioner had filed OA No. 2742/1999, which was disposed of in terms of order dated 28th April, 2000 with a direction to the Commissioner of Police to dispose of the petitioner's representation expeditiously. The representation was rejected by the Commissioner of Police vide order dated 12th July, 2000. The petitioner had thereafter filed OA No. 87/2001, which was dismissed in terms of order dated 10th December, 2002. OA Nos. 2742/1999 and 87/2001 were filed after acquittal of the petitioner in the criminal case. The petitioner has not filed on record a copy of the order dated 10th December, 2002 by which OA No. 87/2001 was dismissed. This order was not filed before the tribunal in the OA No. 2638/2013. After about two

years, the petitioner had filed Review Application No. 6/2004 in OA No. 87/2001, relying upon the order of the appellate authority dated 19th August, 2003 passed in the case of Constable Rajinder Singh. The Review Application was dismissed by a detailed order dated 29th March, 2006. This order which is on record holds that the subsequent decision of the appellate authority in the case of a Constable Rajinder Singh, would not constitute a valid and good ground for the tribunal to review their earlier order. The order of the appellate authority in the case of Constable Rajinder Singh was an administrative order. Further, the appellate authority in the case of Constable Rajinder Singh had distinguished the case and misconduct of the petitioner viz. that of Constable Rajinder Singh and had found mitigating circumstances in the later case.

15. The order dated 10th December, 2002 dismissing OA No. 87/2001 was not challenged by way of a writ petition and has attained finality. The order in the Review Application No. 6/2004 dated 29th March, 2006 has also attained finality.

16. In view of the aforesaid circumstances, we do not think that OA No. 2638/2013 was maintainable and, therefore, the same has been rightly dismissed by the tribunal vide order dated 30th August, 2013 on the ground that the petitioner had been re-agitating the same issues again and again. Besides, the petitioner had not disclosed full and complete facts and filed relevant orders on record before the tribunal in OA No. 2683/2013.

17. Learned counsel for the petitioner relies on *State of Uttar Pradesh and Others versus Raj Pal Singh*, (2010) 5 SCC 783 to submit that when charges subject matter of the disciplinary proceedings and criminal prosecution were identical and relating to one incident, the delinquent should not be treated differently in the award of punishment as this would result in discrimination. The said judgment refers to decisions in *B.C. Chaturvedi versus Union of India*, (1995) 6 SCC 749 and *Secretary to Government, Home Department versus Srivaikundathan*, (1998) 9 SCC 553 and holds that the ratio of the later decisions would ordinarily apply. In the facts of the present case, we do not think that the judgment in *Raj Pal Singh* case (supra) has any application for the reason that the challenge to the order of the revisionary authority had attained finality when OA No. 87/2001 was dismissed vide order dated 10th December, 2002. Subsequently, a review application was also filed but the same was dismissed by a detailed speaking order dated 29th March, 2006. These two orders were never challenged. These orders when unchallenged would bar any attempt to raise settled and decided aspects. We appreciate that to apply *res judicata* and constructive *res judicata*, earlier pleadings, orders, etc. should be on record and examined, but in the present factual matrix the petitioner admits and accepts facts. No attempt was made to explain and meet the earlier orders.

18. For the aforesaid reasons, the writ petition is dismissed. There will

be no order as to costs.

(SANJIV KHANNA)
JUDGE

(NAJMI WAZIRI)
JUDGE

APRIL 19, 2016
VKR/NA

