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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 26th September, 2017

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W.P.(C) 8635/2017

CT (EXE) NARENDER SINGH Petitioner

Through Mr. R.K Tarun with Mr. Rohit
Shukla, Advs.

versus

GOVT OF NCT OF DELHI Respondent

Through Mr. Ramesh Singh, Adv,
Standing Counsel (Civil),
GNCTD with Mr. Sandeepan
Pathak and Mr. Amiruddha
Deshmukh, Advs.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The Petitioner has preferred the present Writ Petition assailing the order dated 03.03.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.1655/2013, whereby the Tribunal has dismissed his OA. The Petitioner had filed the aforesaid Original Application challenging the order dated 09.09.2011 imposing the penalty of removal from service on him.

2. The Petitioner had joined Delhi Police as a Constable

(Exe) in the year 1987. While posted in the Crime Branch, he was involved in a criminal case FIR no.51/2009 u/s 382/482/411 IPC, P.S. Greater Kailash-I, New Delhi alongwith his associate Daya Shankar and upon investigation of the said case, it was found that he alongwith his associate had snatched a Honda CRV Car No. DL 3C BE 2055 from the area of Police Station Greater Kailash I, New Delhi from Driver Manjeet Kumar. Soon, thereafter, another FIR No.67/69 u/s 382/482/411/34 IPC was registered against the Petitioner in P.S Defence Colony. Pursuant to his disclosure statement made therein, the stolen car-involved in FIR No.51/2009, was recovered from his possession and he was arrested in the FIR No. 51/09, P.S Greater Kailash on 28.03.2009.

3. In these circumstances, the Petitioner was, upon his arrest, placed under deemed suspension w.e.f. 28.03.2009 and a departmental enquiry was initiated against him vide order dated 08.03.2011. The Petitioner was charged with committing grave misconduct and indulging in activities unbecoming of a police officer. The Enquiry Officer, after examining eight witnesses, the statement of defence of the Petitioner and other materials available on record, submitted his report dated 04.08.2011 holding the charges levelled against the Petitioner as proved.

4. The Petitioner submitted a representation against the enquiry report, in which he also requested that the Departmental Proceedings be kept in abeyance till the conclusion of the criminal proceedings pending against him. The Disciplinary

Authority, after considering all the materials on record and hearing the Petitioner, passed an order dated 09.09.2011 removing him from service. The Petitioner's statutory Appeal was also rejected by the Appellate Authority vide its order dated 30.03.2012.

5. It transpired that, subsequently, after his Departmental Appeal also stood dismissed, the offences in both the criminal cases i.e. FIR No.51/2009 P.S. Greater Kailash-I, New Delhi and FIR No.67/2009 P.S. Defence Colony, New Delhi were compounded.

6. We may note that the offences had been compounded upon compromises entered between the parties. The Petitioner was, accordingly, upon compounding of the offences, acquitted vide order dated 13.08.2012 passed by Metropolitan Magistrate in respect of FIR No.67/2009, and vide order dated 23.11.2013 passed in the National Lok Adalat in respect of FIR No.51/2009.

7. Upon his acquittal in respect of FIR No.67/2009, the Petitioner filed the aforesaid O.A before the Tribunal in March 2013, seeking quashing of the departmental proceedings initiated against him and the consequential order dated 09.09.2011 of his removal from service, as well as the appellate order dated 30.03.2012. During the pendency of the OA the Petitioner was, as noted hereinabove, also acquitted in the other FIR No.51/2009 as a consequence of compounding of the offences. Before the Tribunal, the Petitioner urged that there

was 'no evidence' to sustain the charges against him and also contended that he been wrongly removed from service despite his acquittal in both the criminal cases by way of compounding.

8. Opposing the Original Application, the Respondent had, in their Counter Reply, contended that the Petitioner had been held guilty of the charges in the departmental enquiry on the basis of the evidence led in the departmental enquiry and upon due appreciation of evidence by the Enquiry Officer. It was also contended before the Tribunal that the standard of proof required in a departmental enquiry is very different from a criminal trial, and the Petitioner's acquittal on compounding of the offences in the criminal cases would not effect the departmental proceedings in any manner.

9. The Tribunal, upon consideration of the materials on record and rival contentions of the parties, dismissed the OA by holding that the Enquiry Officer had correctly evaluated the evidence available on record. The Tribunal also held that the Petitioner's acquittal by the Criminal Court on basis of compromise and compounding would not wipe out his misconduct which was proved in the departmental enquiry.

10. Challenging the Tribunal's order by way of the present petition, the learned counsel for the Petitioner has urged before us that there was no admissible evidence in the enquiry to hold him guilty. He submits that the finding of guilt in the enquiry was based only on his disclosure statement before the Police, which was not admissible in evidence as the said statement was

given to a Police Officer. While drawing our attention to the statements of witnesses, he contends that since the independent witness whose car was allegedly snatched by the Petitioner had failed to identify him, he could not be held guilty merely on basis of his disclosure statement before the Police Officers.

11. The alternate submission of the learned counsel for the Petitioner is that once he was acquitted in both the criminal cases by way of compounding of the offences, he could not be held guilty in respect of the same charges in the departmental enquiry placing reliance on Section 320(8) of the Criminal Procedure Code, according to which compounding of an offence is to be treated as an acquittal. He contends that the Tribunal has erred in holding that despite his acquittal in the criminal case, his misconduct would not be wiped out. He places reliance on the decision of the Supreme Court in the ***Roop Singh Negi v. Punjab National Bank***(2009) 2 SCC 570 to contend that evidence collected during investigation by the Investigating Officer could not be treated to be evidence in the disciplinary proceedings.

12. Per contra, the learned counsel for the Respondent while supporting the Tribunal's order submits that there was sufficient evidence in the enquiry to hold the Petitioner guilty of the charge. He submits that the findings of the Enquiry Officer as well as the Disciplinary and Appellate Authority are based on a proper evaluation of the evidence and warrant no interference by the Court. Placing reliance on the decision of the Supreme

Court in the case of ***Commissioner of Police v. Narender Singh*** (2006) 4 SCC 265, he contends that since the provisions of Evidence Act are not applicable in a departmental enquiry, a confession before the Police Officer, though inadmissible in a criminal trial, is very much admissible in a departmental proceeding. Moreover, in the present case, confession made by the Petitioner before the Police led to recovery of the stolen vehicle and, therefore, the said fact was admissible in evidence, even in a criminal trial by virtue of Section 27 of the Evidence Act.

13. The learned counsel further submits that the disclosure statement of the Petitioner had been duly proved in the Enquiry by five witnesses, and there was no reason for the Enquiry Officer not to take the said relevant evidence into consideration, while arriving at his conclusions. He submits that the learned Tribunal was fully justified in holding that the Petitioners acquittal by way of compounding, did not amount to wiping out his misconduct in departmental proceedings. He has also placed reliance on a decision of a Co-ordinate Bench of this Court in the case of ***Ajay Kumar v. Gas Authority of India*** (2013) VII AD 385 in support of his plea that proceedings in a criminal case and departmental proceedings operate in entirely different fields. He submits that acquittal of an employee in criminal proceedings does not *ipso facto* absolve him from the liability under the disciplinary jurisdiction of the employer.

14. We have considered the rival contentions of the parties

and have perused the record.

15. The Petitioner has been removed from service after the charges against him were duly proved in the departmental enquiry. Before us, no challenge has been laid to the procedure followed by the Enquiry Officer, and it is also an undisputed fact that the enquiry was conducted in accordance with principles of natural justice. The findings of the Enquiry Officer are, however, being challenged on the ground that no independent evidence was led to prove the charges and the Petitioner has been held guilty only on basis of his disclosure statement made before the Police. The submission, thus, is that in terms of Sections 25 and 26 of the Evidence Act, the Petitioner's disclosure statements/confession to the Police Officer could not form the basis for holding him guilty in the departmental proceedings. The plea sought to be raised is that once the confession before a Police Officer is inadmissible in a criminal trial, the same could not be used as evidence against him in the departmental proceedings.

16. We are unable to accept this submission in the light of the settled legal position that the proceedings in a criminal case and departmental proceeding operate in entirely different fields. Consequentially, the standards of proof and evidence required in the two proceedings are very different. The degree of proof required in a criminal trial is very different from the appreciation of evidence required in departmental proceedings. While a penalty can be imposed on an employee on the basis of

“preponderance of probability” a conviction in a criminal trial is possible only when the guilt is proved beyond reasonable doubt. That apart, in the present case, the statement made by the Petitioner to the Police led to recovery of the stolen vehicle as well. Thus, the case would fall within the exception carved out by Section 27 of the Indian Evidence Act, to the normal rule contained in Sections 25 and 26 of the said Act.

17. We have also examined the Enquiry Report and find that the Enquiry Officer has held the charge against the Petitioner as proved only after due appreciation of evidence. Atleast four witnesses deposed about the Petitioner’s disclosure statement and recovery of the stolen car at his instance. In these circumstances, the Enquiry Officer was fully justified in holding the Petitioner guilty of the charges. We deem it appropriate to reproduce hereinbelow the appreciation of evidence done by the Enquiry Officer in his report:-

“Appreciation of Evidence”

PW1: HC Dhani Ram has proved EX/PW-1/A i.e. copy of FIR No.51/09, U/s 382/482/411/34 IPC PS G.K-1 and also proved DD No. 10A dated 23/3/09 i.e. EX/PW-1/B. DD No.10A is an information which was received in PS G.K-1 on 23/3/09 at 12.10 pm that Ct. Narender Singh has been arrested in case FIR No.67/09 U/s382/411/482/34 IPC PS Defence Colony and discloses that he had stolen Honda CRV car no. DL 3CBE 2055 which was extorted and a case vide FIR No.51/09 is registered at PS G.K-1. SI Anil Kumar has given this information.

PW-2: Ct. Satbir Singh of P.S. G.K-I has proved EX/PW-2/A which is a copy of Disclosure Statement of Ct. Narender Singh in case FIR No.51/09 P.S. G.K.-I. This witness has also proved EX/PW-2/B which is arrest memo of Ct. Narender Singh prepared in his presence. This Disclosure Statement has not been signed by Ct. Narender Singh as he "Refused to sign" which shows that the statement made was not voluntary in nature.

PW-3: HC Krishanan Lal has also proved the same Disclosure Statement and Arrest Memo of Ct. Narender Singh as both the documents were prepared in his presence by SI Laxmi Chand on 28/3/09 while investigating case FIR No.51/09.

PW-4: HC Sukhbinder Singh has proved EX/PW-4/A which is pointing out recovery and seizure memo of Honda CRV car with a forged number plate as because the document was prepared by SI Anil Kumar while investigating case FIR No.67/09 PS Defence Colony on 22/3/09 in his presence. The car stolen was recovered at the instance of Ct. Narender Singh.

PW-5: SI Laxmi Chand IO of case FIR No.51/09 P.S G.K.-I has also proved the arrest of Ct. Narender Singh and the Disclosure Statement made by Ct. Narender Singh before him and also identified Ct. Narender Singh as the same person present during D.E. proceedings in the office of the undersigned.

PW-6: Ct. Harish Kumar has proved through records that Ct. Narender Singh was posted in Crime Branch during the year 2009.

PW-7: SI Anil Kumar IO of case FIR No.67/09 P.S. Defence Colony has proved that he recovered the stolen car at the instance of Ct. Narender Singh and prepared recovery pointing out and seizure memo while investigating the aforementioned case he also identified Ct. Narender Singh present during the D.E. proceedings as the same person on whose instance he recovered the car. He also stated that Chargesheet in FIR No.67/09 P.S. Defence Colony is also filed in the court of law and present Ct. Narender Singh is one of the accused.

PW-8: Sh. Manjeet Kumar Gupta whose vehicle was extorted and a case FIR No.51/09 was registered I his complaint at P.S. G.K.-I while he was in his car in a parking area under the jurisdiction of P.S. G.K.I....”

18. In our view, once the disclosure statement and confession made to the Police Officer were duly proved in the departmental enquiry by a number of witnesses, the said disclosure statement and confession were very much admissible in the enquiry. Firstly, the strict provisions of the Evidence Act do not apply to a departmental enquiry. Thus, there is no question of applicability of Sections 25 and 26 of the Act to exclude confession made to Police Officer, from the ambit of departmental enquiries. Secondly, in the present case the said statement of the Petitioner made to a Police Officer led to recovery of the stolen vehicle, bringing the case within the exception carved out by Section 27 of the said Act.

We are fortified in our aforesaid conclusion by the decision of Supreme Court in case of **Narender Singh** (supra)

on which reliance has been placed by the learned counsel for the Respondent. It would be apt to reproduce aforesaid decision wherein the Supreme Court held as under:-

“17. A copy of the original confession was placed before us wherefrom it appears that a date was put below the signature of the officer who prepared the identification memo containing the confession of the Respondent. It is not in dispute that Inspector Bhalke Ram was one of the witnesses to the said document. He examined himself before the Enquiry Officer, wherein he categorically stated :

"He stated that in Dec.1997, he was posted as Inspr. CPR/Vijay Ghat. He cannot recollect the date at this time because the date on the Nisandehi is not visible but Inspr. Tej Pal Singh along with his staff of AATS. Crime Branch along with accused Narendra who is present today here came at Vijay Ghat. Accused had made a Nisandehi in Kot and disclosed that on the night between 22/23.6.97 at about 2 to 5 am he along with other accused had stolen 2 revolvers and 1 pistol. The memo was prepared and signed by him as well as others including Const. Narendra. The Memo is exhibit PW-8/A.

19. The fact that the respondent as an accused in the aforementioned case made a confession and had pointed out the place wherefrom he allegedly had stolen two revolvers and one pistol, has, thus, not been disputed.

23. The Tribunal as also the High Court were, therefore, not correct in arriving at the finding that the said confession was not admissible even in a departmental proceeding.

30. A confession would mean incriminating statement made to the police suggesting inference of the commission of the crime and it, therefore, is confined to the evidences to be adduced in a court of law. If the provisions of the Evidence Act are not attracted in a departmental proceeding, a fortiori Sections 25 and 26 shall not apply.”

19. We have also considered the decision of the Supreme Court in the case of **Roop Singh Negi** (supra) on which reliance has been placed by the Petitioner, but find that the same has no application to the facts of the present case. In the aforesaid case of **Roop Singh Negi** (supra) the confession made by the employee before the Police Officer, without being proved by any witness, had been made the basis of holding him guilty in the enquiry. It is in these circumstances that the enquiry proceedings were held to be vitiated by the Supreme Court. However, in the present case, the Petitioner’s disclosure statement and confession were duly proved in the enquiry by a number of witnesses. In view of this stark differences, the decision in the case of **Roop Singh Negi** (supra) cannot at all advance the Petitioner’s case.

20. We also do not find any merit in the submission of the Petitioner that since he stands acquitted in the criminal cases as per provision of Section 320(8) CrPC upon compounding of offences, he was also entitled to be discharged in the departmental enquiry. We are also unable to agree with the submission of the Petitioner that on compounding of his

offences he stood acquitted for all purposes. The term used in Section 320 (8) of CrPC is acquittal and not honorable acquittal.

21. It is even otherwise a well settled legal position that the standard of proof in criminal proceedings and departmental proceedings are extremely different. Both these proceedings operate in different spheres and have entirely different purposes. In our view, the standard of proof in a criminal trial and disciplinary proceedings being entirely different, acquittal by a criminal court, cannot debar any employer from taking action against its employee as per its Rules. Reference may also be made to decision of this Court in the case of **Ajay Kumar** (supra) on which reliance has been placed upon by the learned counsel for the Respondent. In the said decision this Court has in para 12 held as under:-

“12. It is settled law that proceedings in a criminal case and departmental proceedings operate in different fields. The disciplinary proceedings are concerned with ensuring that the employees conform to the rules of conduct which are prescribed by the employer and maintain discipline in relation to their employment. The disciplinary proceedings are to weed out persons who are considered unworthy of being a part of the employer organization. The criminal proceedings are with an object to punish the offender. The standards of proof and evidence required in the two proceedings are also different. The Supreme Court in the case of **Ajit Kumar Nag v. General** LPA No.521/2013 Page 6 of 12 Manager (P.J.), Indian Oil Corporation Ltd. Haldia & Ors., (2005) 7 SCC 764, held as under:-

“11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings - criminal and departmental - are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the

disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside.”

Even otherwise we are, therefore, unable to agree with the Petitioner’s submission that because of compounding of offences in the criminal case, his misconduct in the Departmental Enquiry also gets washed away.

22. In any event, since, we are of the view that acquittal in a criminal case does not necessary imply exoneration from charges in a disciplinary enquiry. We find no merit in the submission of the Petitioner that in view of his acquittal as per Section 320(8) CrPC, he was entitled to be discharged in the departmental proceedings also.

23. In these circumstances we find no infirmity in the Tribunal’s order. There is absolutely no merit in the present Petition and the same is dismissed with no order as to costs.

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REKHA PALLI, J

VIPIN SANGHI, J

SEPTEMBER 26, 2017

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