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

Date of Decision:- 29.04.2019

+ W.P.(C) 4420/2019 & C.M.No.19680/2019

PAWAN KUMAR

..... Petitioner

Through Mr.Siddhartha Nanwal, Adv.

versus

COMMISSIONER OF POLICE & ORS

..... Respondent

Through Ms.Vibha Mahajan Seth, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present petition under Articles 226 and 227 of the Constitution of India assails order dated 27.09.2018 passed by the Principal Bench, Central Administration Tribunal, New Delhi ('Tribunal') in O.A. No. 2244/2013. By way of the impugned order, the Tribunal has dismissed the aforesaid original application, filed by the petitioner/applicant challenging his dismissal from service from the Delhi Police.

2. The petitioner was enlisted as a Constable in Delhi Police on 08.11.2005. Vide order dated 13.04.2011, a departmental enquiry was ordered to be held against him, on the allegations of outraging the modesty of a woman and remaining absent from duty. A FIR bearing no. 42/2011 u/s 354/34 of the IPC was also registered against the petitioner and two other police officers at P.S. Civil Lines ("FIR") on

the basis of the aforesaid allegation of outraging the modesty of a female Constable.

3. In the departmental inquiry held pursuant to the aforesaid order dated 13.04.2011, the petitioner was found guilty of the charges levelled against him. It is the petitioner's case that the departmental inquiry and the conclusions thereof are perverse inasmuch, as, the Inquiry Officer (IO) did not deal with the contentions submitted by him in his defence statement. He, therefore, made a written representation to the Disciplinary Authority, but to no avail, as he was dismissed from service vide order dated 28.08.2012 passed by the said Authority.

4. Against the order of dismissal from service, the petitioner preferred an appeal before the Appellate Authority on 25.09.2012. In turn, the Appellate Authority, vide its order dated 16.04.2013, upheld the punishment awarded to the petitioner by the Disciplinary Authority. It also emerges that, by way of a judgement dated 29.05.2018 passed by the learned Trial Court, the petitioner was acquitted in the criminal proceedings initiated against him for allegedly outraging the modesty of a female constable. It is in these circumstances that the petitioner filed the aforesaid OA before the Tribunal challenging his dismissal from service vide order dated 28.08.2012 passed by the Disciplinary Authority. The OA filed by the petitioner was dismissed by the Tribunal on 27.09.2018, aggrieved whereby the petitioner has approached this Court by filing the present petition.

5. Learned counsel for the petitioner states that while dismissing the OA, the Tribunal has overlooked the basic submission of the petitioner that he was entitled to parity with the other two persons, namely Ajeet Kumar and Raj Kumar, who were arraigned as accused persons in the same FIR for allegedly outraging the modesty of a fellow female police Constable. He contends that while the other two accused persons were merely penalized with forfeiture of five years of approved service with proportionate reduction in pay, the petitioner has been unfairly penalised, and that too without adhering to Rules 8(a) and 10 of the Delhi Police (Punishment and Appeal) Rules, 1980 ('Delhi Police Rules').

6. Learned counsel for the petitioner further contends that, even otherwise, the findings of the IO are perverse because he did not even consider the submissions of the petitioner in his defence statement. He states that the allegations of the complainant are completely false and that it was merely a case of the brush of the shoulders between the petitioner and the complainant, which was grossly exaggerated by the complainant to falsely implicate the petitioner and his friends who were returning from ISBT Kashmiri Gate after meeting some relatives.

7. Learned counsel for the petitioner further submits that once the petitioner stood acquitted in the criminal trial arising out of the aforesaid FIR, his dismissal from service was also violative of Rule 12 of the Delhi Police Rules as the said Rule mandates a bar to initiation or continuation of the departmental proceedings on a

charge/alleged misconduct in respect whereof the delinquent employee has been acquitted by the criminal court.

8. We have considered the submissions of the learned counsel for the petitioner but find ourselves unable to accept the same. We find that the petitioner has been held to be guilty of the charges of outraging the modesty of a woman, and remaining absent from duty by a duly constituted inquiry, where he was given due opportunity to cross-examine all the witnesses, including the complainant, who had, in no uncertain terms, stated the manner in which the petitioner had caught hold of her inappropriately. There is absolutely no reason to interfere with the well considered findings of the IO in the departmental inquiry or with the findings of the Disciplinary Authority and the Appellate Authority. Keeping in view the gravity of the allegations levelled against the petitioner of allegedly outraging the modesty of a woman Constable, who was on duty, the respondents' decision to hold the petitioner unfit to be retained in service cannot, in any manner, be termed as being violative of Rules 8(a) and 10 of the Delhi Police Rules.

9. We also find no merit in the petitioner's contention that in the light of his acquittal by the criminal court, the penalty of dismissal ought not to have been imposed on him as we find that in the trial, the petitioner was not given a clean acquittal. He had been acquitted by the criminal court only upon being granted the benefit of the doubt and, therefore, merely on the basis of this acquittal on technical grounds, there is absolutely no reason to tinker with the findings of the departmental inquiry holding the petitioner guilty. We find that in

the departmental proceedings, the complainant had specifically implicated the petitioner and had, at the time of cross-examination, duly stood her ground and, thus, it cannot be stated that the findings of the IO are perverse in any manner. The petitioner could not bring out any reason for his alleged false implication in such a serious charge by the complainant.

10. We are also of the view that reliance placed on Rule 12 of the Delhi Police Rules by the learned counsel for the petitioner is wholly misplaced, as the said rule can be invoked only when there has been a clean acquittal in a criminal trial on merits, in which case, there is a bar to initiation or continuation of the departmental proceedings on the same charge/alleged misconduct. In the present case, it is an admitted position that the petitioner has been acquitted in the criminal proceedings by being granted the benefit of the doubt. Reference may be made to a decision of this Court in **Bal Kishan v. Commissioner of Police & Ors.** WP(C) No. 3901/2019 dated 15.04.2019 wherein, while dealing with the aforesaid Rule 12 of the Delhi Police Rules, we had observed as under:-

“3. We do not find any merit in this submission of learned counsel for the petitioner. It is a well settled principle of law that the standard of proof required to establish a criminal charge is far higher than the standard of proof required to establish a charge in a departmental proceeding. In criminal proceedings, the charge has to be proved beyond all reasonable doubts, whereas, in departmental proceedings, the charge has to be proved by evaluating the evidence on the principle of preponderance of probabilities.

4. The purpose of Rule 12 is to bar departmental proceedings where the Police Officer has been charged and tried on a criminal charge arising from the same allegation of misconduct. Thus, for invocation of Rule 12, it would be necessary that the Court dealing with the criminal case has had the occasion to record and deal with all the evidence of the prosecution, as well as the defence of the accused, and its decision reflects upon the reasons for rejection of the charges against the accused. Pertinently, the exceptions carved out in clauses (a) to (e) of Rule 12 show that unless the acquittal of the police officer is clean and on merits, the same cannot be a bar to initiation or continuation of the departmental proceedings on the same charge/alleged misconduct.”

11. We also do not find any merit in the submissions of the learned counsel for the petitioner that he was entitled to parity with Ajeet Kumar and Raj Kumar. Firstly, no parity can be claimed in such matters as the penalty imposed on every delinquent employee depends on the facts peculiar to the charges against the said employee. Secondly, we also find that in the complaint leading to the departmental inquiry, it is the petitioner who has been attributed the main role in the incident of outraging the modesty of the complainant.

12. For the aforesaid reasons, we find no reason to interfere with the impugned order. The writ petition, being meritless, is dismissed alongwith pending application.

REKHA PALLI, J

VIPIN SANGHI, J

APRIL 29, 2019/sr