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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 06.03.2023

Judgment delivered on: 17.04.2023

+ **W.P.(C) 4241/2003 & CM APPL. 7278/2003**

ADDL.COMMISSIONER OF POLICE SECURITY Petitioner

Through: Mr. Naushad Ahmad Khan, ASC for
GNCTD.

versus

DINESH KUMAR & ANR. Respondents

Through: Ms.Tanya Agarwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. Petitioner {Additional Commissioner of Police (Security)} by way of present writ petition, challenges order dated March 13, 2003 passed by the Central Administrative Tribunal (hereinafter referred to as the Tribunal) in O.A. No.2909/2002 whereby the Tribunal held that the acquittal of the respondent No.1 in Case No.82/1997 (relating to FIR No.718/1997, under Sections 20/29 NDPS Act) vide judgment dated February 15, 2002 cannot be held to be on 'technical grounds' but is substantially on merits of the case and in the circumstances it would not be proper for the Disciplinary Authority to proceed on identical facts and on the same charge so as to come to a different finding in the departmental proceedings. The OA was accordingly allowed quashing the order dated October 11, 2002 passed by

Additional Deputy Commissioner of Police (Security) directing the conduct of DE proceedings under Rule 16 of Delhi Police (Punishment and Appeal) Rules, 1980.

2. In brief, respondent No.1 (Constable Dinesh Kumar) along with Sanjay Giri was apprehended on July 01, 1997 about 5:40 pm by SI Ramesh Kumar and Head Constable Mahender Singh, on the basis of secret information during checking of vehicles at lower Subhash Marg, Red Fort, Delhi. The scooter was being driven by respondent No.1 Dinesh Kumar, who tried to accelerate the speed of the scooter but Head Constable Mahender Singh managed to hold the stepney of the scooter.

After completing requisite formalities under NDPS Act, recovery of one Kg. of Charas was effected from the possession of Sanjay Giri, who was sitting on the pillion seat behind respondent No.1. An FIR No. 718/1997, under Sections 20/29/61/85 NDPS Act dated July 01, 1997, PS: Kotwali, North District, Delhi was accordingly registered and both the accused were formally arrested. The scooter involved in transportation was also seized and found to be stolen.

3. Respondent No.1 was dismissed from service invoking Article 311(2)(b) of the Constitution of India for the aforesaid misconduct vide order dated July 07, 1997. However, since respondent No.1 was acquitted vide judgment dated February 15, 2002 by Shri V. P. Vaish, the then ASJ, Delhi, in criminal proceedings extending the benefit of doubt, an appeal was preferred by him before Addl. C.P./Security, New Delhi. Accepting the appeal preferred by respondent No.1, the Appellate Authority vide order

dated August 12, 2002 held that provision under Article 311(2)(b) of the Constitution of India was not attracted in the case, as there is no proof of any complaint etc. to show that prosecution witnesses were threatened by respondent No.1 and thus the shortcut method applied by the Disciplinary Authority was not justified. In view of the judgment of acquittal passed by learned ASJ, the order of dismissal of respondent No.1 passed by the competent authority was set aside by the Appellate Authority vide aforesaid order dated August 12, 2002. The Appellate Authority also held that in the facts and circumstances of the case, it would be open to the Disciplinary Authority to proceed in the matter under Rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980, if attracted in this case. Also, the period from the 'date of dismissal order' till passing of the order by the appellate authority was directed to be treated as 'period not spent on duty' but may be counted towards the qualifying service. Further, the period from the date of issue of the order to the date of joining of duty may be treated as leave of the kind due.

4. Pursuant to order dated August 12, 2002 passed by the appellate authority, the matter was examined under Rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980 by Additional Deputy Commissioner of Police (Security) and it was observed vide order dated October 11, 2002 that criminal charge failed against respondent No.1 on technical grounds as the benefit of doubt had been extended vide judgment dated February 15, 2002 by learned ASJ only on account of difference in quantity of sample sent to CFSL and on the point of search as required under Section 50 of NDPS Act. Accordingly, respondent No.1 was directed to be dealt departmentally

by adopting the provisions under Rule 16 of Delhi Police (Punishment and Appeal) Rules, 1980. The proceedings were further entrusted to Inspector Prem Chand Jha for conducting the D.E. on day to day basis and submit the findings within three months.

5. Aggrieved against order passed by the Appellate Authority dated August 12, 2002 and order dated October 11, 2002 of the Disciplinary Authority initiating disciplinary proceedings, respondent No. 1 preferred O.A. No. 2909/2002 before the Tribunal. The said O.A. was allowed by the Tribunal vide order dated March 13, 2003 in following terms:

“12. In the result, for the reasons given above, the OA is allowed to the extent that the impugned order dated 11.10.2002 is quashed and set aside. Similarly, that part of the appellate authority’s order dated 12.8.2002 impugned by the applicant with regard to the treatment of the intervening period, from the date of dismissal to the date of his reinstatement, is also quashed and set aside.

13. In the circumstances of the case, the case is remitted to the competent authority to pass appropriate orders with regard to the intervening period in accordance with rules. This shall be done within a period of two months from the date of receipt of a copy of this order, with intimation to the applicant.

No order as to costs.”

6. The aforesaid order dated March 13, 2003 passed by the Tribunal has been challenged by the petitioner/Addl. Commissioner of Police *inter alia* amongst other grounds and it is contended that acquittal of respondent No. 1 vide judgment dated February 15, 2002 was not substantially on merits of the case but on ‘technical grounds’. Relying upon Rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980, it is also submitted that the Tribunal wrongly held that it would not be proper for the Disciplinary Authority to

proceed on identical facts on the same charge so as to come to a different finding in the departmental proceedings.

It is urged that the impugned order dated March 13, 2003 passed by the Tribunal is erroneous and contrary to the principles of law since learned Additional Sessions Judge vide judgment dated February 15, 2002 extended the benefit of doubt to the respondent No. 1. Further, Rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980 provides that when a Police Officer has been tried and acquitted by the criminal Court, he can be punished departmentally on the same charge if the criminal charge fails on technical grounds. It is also pointed out that learned Additional Sessions Judge acquitted respondent No. 1 since the weight of the samples forwarded to CFSL for examination was found to be 116.98 gms instead of 100 gms which was allegedly seized by the Investigating Officer. It is also urged that the benefit was also extended to respondent No. 1 on the ground that the offer of search was given to the accused since the word 'GO' was referred instead of the words 'Gazetted Officer' for purpose of compliance under Section 50 of the NDPS Act. It is contended that the Tribunal misinterpreted the judgment of the learned Additional Sessions Judge dated February 15, 2002 in holding that the acquittal of the accused was substantially on merits of the case. It was also contended that the Appellate Authority correctly treated the period from date of dismissal from service till reinstatement in service, 'as period not spent on duty'.

7. On the other hand, learned counsel for respondent No. 1 supported the order passed by the Tribunal. It was urged that the Appellate Authority

illegally gave liberty to the Disciplinary Authority to proceed under Rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980, since the Respondent No. 1 was acquitted vide judgment dated February 15, 2002 on merits. It was vehemently contended that the difference in weight of sample forwarded to CFSL for examination cannot be treated as a 'technical ground' as it could not be presumed that the sample seized was the same as forwarded to CFSL. It was also urged that the charges/allegations before the criminal Court as well as departmental proceedings are on the identical facts and the witnesses as well as the evidence in both the cases are common. In nutshell, it is submitted that the case of the department regarding recovery of charas cannot stand the scrutiny of law when the identity of seized narcotic substance allegedly recovered from Sanjay Giri has not been proved in criminal proceedings. It is also vehemently argued that on the same facts the Disciplinary Authority cannot be permitted to sit in judgment over the findings of learned Additional Sessions Judge.

8. The issue for consideration is whether the disciplinary proceedings can be held against respondent No.1 on the same charge on identical facts in accordance with Rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980 treating the acquittal of respondent No.1 vide judgment dated February 15, 2002 by learned ASJ, on 'technical grounds'.

9. In the aforesaid context, the reasons accorded by the Tribunal in paragraph Nos. 8 to 13 holding that the acquittal in the present proceedings could not be considered on technical grounds, may be reproduced for reference:

“8. We have carefully read the order passed by the learned Addl. Sessions Judge, New Delhi. In the order dated 15.2.2002, he has come to conclusion that as a result of the discussion in the foregoing paragraphs, the prosecution has failed to prove its case beyond doubt. The benefit of doubt was given to the accused and he was acquitted. The paragraphs 30 and 31 of the order, the learned Additional Sessions Judge has referred specifically to the question of the weight of the charas which was recovered and the quantity which was sent to the representative sample to CFSL, Chandigarh, in which an increase in weight was noted. At the end of Paragraph 31 of the order, the learned judge had come to the conclusion that "there is nothing on record to show as to how the weight of the same sent to and received by CFSL Chandigarh had increased. The same creates doubt as to the genuineness of sample sent for chemical analysis to CFSL, Chandigarh". It has also been mentioned that it is settled principle of law that the provisions of the NDPS are so stringent that it casts a duty on the prosecution to rule out any possibility of tampering of the seal and false implications of the accused. After considering certain relevant judgements on the subject, including another point raised in the case regarding the offer of search as required under Section 50 of the NDPS Act, the learned judge came to the conclusion that the accused has to be acquitted on the grounds, mentioned above.

9. In the background of the judgement of the learned Additional Sessions Judge in his order dated 15.2.2002, the reasoning given by the disciplinary authority in his order dated 11.12.2002, namely, (i) regarding the difference in the quantity of sample sent to CFSL, Chandigarh and (ii) offer of search, as required by section 50 of NDPS Act as merely on technical grounds on which the criminal charge had failed cannot be accepted. In this regard, the judgements relied upon by the learned counsel for the applicant, namely, Kundal Lai Vs The Delhi Administration, Delhi and Ors. (1997(1)SLR 133), Kamal Singh Vs Govt. of NCT of Delhi through the Chief Secretary and Ors. (OA 1214/2003 (PB) decided on 22.12.2000. 22.2.2000 and Ramesh Chander Vs R.S. Gahlewat (1992 (1) AISLJ 484), copies placed on record are relevant and support his contentions.

10. Rule 12 of the Rule provide inter-alia 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 the different charge upon the evidence cited in the criminal case, whether actually led or not, unless when the criminal case, whether actually led or not, unless when the criminal charge has failed on technical grounds. We do not refer to the other clauses under this Rule as those have not been relied on by the respondents themselves, as seen from the impugned order dated 11.10.2002, which refers only to the fact that according to them the criminal charge

levelled against the applicant in case No.82/1997 has failed on "technical grounds". This shows that only the provision of Rule 12(a) of the Rules have been referred to by the respondents in the impugned order passed by the disciplinary authority and not the other grounds.

11. In the above facts and circumstances of the case, we find that the acquittal of the applicant/accused in case No.82/1997 by order dated 15.2.2002 cannot be held to be on "technical grounds", which is substantially on the merits of the case. In the circumstances, it will not be proper for the disciplinary authority to proceed on identical facts and on the same charge, so as to come to the different finding in the Departmental proceedings as stated in the impugned order dated 11.10.2002.

12. In the result, for the reasons given above, the OA is allowed to the extent that the impugned order dated 11.10.2002 is quashed and set aside. Similarly, that part of the appellate authority's order dated 12.8.2002 impugned by the applicant with regard to the treatment of the intervening period, from the date of dismissal to the date of his reinstatement, is also quashed and set aside.

13. In the circumstances of the case, the case is remitted to the competent authority to pass appropriate orders with regard to the intervening period in accordance with rules. This shall be done within a period of two months from the date of receipt of a copy of this order, with intimation to the applicant.

No order as to costs."

10. It may be observed that there is a fundamental difference in departmental proceedings and criminal proceedings initiated against a delinquent employee. In departmental proceedings, a delinquent employee may be held guilty on the basis of preponderance of probability, while in criminal proceedings conducted before the Court, the prosecution is required to prove its case beyond reasonable doubt. As such, a judgment of acquittal passed in favour of the employee by giving benefit of doubt in criminal proceedings, *per se* is not binding in the departmental enquiry proceedings.

In a large number of cases, it has been held that departmental proceedings and criminal proceedings initiated on FIR are entirely different and merely because the delinquent employee may have been acquitted in criminal proceedings, it may not *ipse dixit* result in reinstatement in service, if the delinquent employee has been held guilty in departmental proceedings.

11. Reverting back to the facts of the case, it is pertinent to observe that the Appellate Authority vide order dated August 12, 2002 rightly set aside the dismissal orders passed against respondent No.1 invoking Article 311(2)(b) of the Constitution of India by the Disciplinary Authority, since the reasons recorded for dispensing with the enquiry were not found to be justified. More so, since there was nothing on record to indicate if the witnesses could be terrorized or would not be forthcoming against the accused during the course of departmental proceedings, as the prosecution case was totally based upon the evidence of the police witnesses, who even otherwise deposed during the course of criminal proceedings.

It may further be observed that while passing the aforesaid order dated August 12, 2002, it was left open to the Disciplinary Authority to proceed in the matter under Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 if the same is attracted. Apparently, no finding was given by the Appellate Authority that the criminal charge failed on technical grounds. The matter was left open for examination by the Disciplinary Authority. We are of the considered opinion that the order dated August 12, 2002 passed by the Appellate Authority to aforesaid extent appears to be within four corners of law, since despite settled legal position, Article 311(2)(b) of the

Constitution was wrongly invoked by the competent authority, dismissing the respondent No.1.

12. Vide order dated October 11, 2002 passed by Additional Commissioner of Police (Security), the matter was further examined in the light of liberty granted vide order dated August 12, 2002 by the Appellate Authority with reference to Rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980. Respondent No.1 thereby has been again directed to be dealt departmentally holding that the criminal charge under Section 20/29 of NDPS Act failed on technical grounds. However, the copy of charge-sheet in respect of the Articles of Charge framed thereafter against respondent No.1 has not been placed on record.

13. In the aforesaid background, it may now be appropriate to refer to Rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980, which provides 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-*

(a) the criminal 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 disclose 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.”

It is pertinent to note that clause (a) of Rule 12 which is relevant to the facts under consideration enables the Disciplinary Authority to initiate the disciplinary proceedings upon the evidence cited in criminal case despite the fact that the police officer has been tried and acquitted by Criminal Court, in case the criminal charge has failed on ‘technical grounds’.

14. While appreciating the principle enunciated in Rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980, the settled principle of issue estoppel needs to be kept in perspective that where an issue of fact has been tried by the competent court on a former occasion and a finding has been reached in favour of an accused, such a finding would constitute an estoppel or *res judicata* against the prosecution not as a bar to the trial and conviction of the accused for a different or distinct offence but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offence which may be permitted by law as held in *Masud Khan vs. State of Uttar Pradesh*, 1973 SCC (Cri) 1084.

15. The fulcrum of the criminal proceedings in the present case rests on the factum of recovery of Charas from the possession of co-accused Sanjay Giri while respondent No.1 is alleged to be driving the said scooter. Respondent No.1 stands charged with aid of Section 29 of NDPS Act which deals with abetment or conspiracy to commit an offence.

Admittedly, the benefit of doubt was extended by the learned Trial Court acquitting the petitioner, considering the fact that sample of the Charas forwarded for examination to CFSL was found to be 116.98 gms. though the

sample obtained during investigation was 100 gms. Also, the benefit of non-compliance of Section 50 of the NDPS Act was extended.

16. However, it is imperative to notice that in the cases of recovery of contraband under NDPS Act, the proceedings relating to seizure and sampling of contraband are crucial in nature, since the offences under NDPS Act attract stringent punishment. The onus lies on the prosecution to prove that the sample of the contraband seized during investigation proceedings is the same which was forwarded to CFSL for examination and there is no tampering of the same. Considerable weight is placed while appreciating evidence upon the process adopted for sampling during investigation and any unexplained discrepancy in the weight of the sample seized during investigation when compared with the quantity of the sample produced for examination at CFSL *per se* leads to an adverse inference against the prosecution unless suitably explained. Viewed from the aforesaid perspective, since no explanation appears to have come on record in the criminal proceedings, the same led to the acquittal of the accused. In the facts and circumstances, it may be difficult to reach a conclusion that the acquittal was solely on 'technical grounds' as contended by learned counsel for the petitioner.

We are of the considered view that proceedings against respondent No.1 on the same charge based upon the evidence cited in the criminal case shall not be permissible in law. However, it may be reiterated that despite the acquittal, the disciplinary proceedings can be initiated against respondent No.1 with regard to any other misconduct, if committed, except for the

offence under Section 20/29 of the NDPS Act, in respect of which the judgment of acquittal stands passed in favour of respondent No.1.

During the course of proceedings, it has also been informed by learned counsel for respondent No.1 that he has been reinstated pursuant to orders passed by the Appellate Authority in 2002 and since stands promoted.

For the foregoing reasons, we agree with the findings of the Tribunal that the acquittal could not be considered on technical grounds and is to be substantially treated on the merits of the case. Also, we do not find any grounds to interfere with the directions passed by the learned Tribunal remitting the case to the competent authority for passing appropriate orders with regard to the treatment of the intervening period from the date of dismissal to the date of reinstatement of respondent No.1.

The writ petition is accordingly dismissed. Pending applications, if any, also stand disposed of.

No order as to costs.

(ANOOP KUMAR MENDIRATTA)
JUDGE

(V. KAMESWAR RAO)
JUDGE

APRIL 17, 2023/A/R/sd