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

+ **W.P.(C) 15272/2023 & CM APPL. 61170/2023**

GOVT OF NCT OF DELHI AND ORSPetitioners
Through: Mr. Farman Ali, SPC with
Ms. Laavanya Kaushik, GP and Ms. Usha
Jammal, Adv.

versus

VISHAMBAR DAYALRespondent
Through:

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% **06.02.2025**

C. HARI SHANKAR, J.

1. The respondent was appointed as Constable in the Delhi Police in 1990. On the allegation that he had submitted a certificate to the effect that he belonged to the "Meena" caste, whereas he belonged to the "Thakur" caste, disciplinary proceedings were instituted against him vide office order dated 30 May 1994.

2. In the said proceedings, an Inquiry Officer was appointed, who found the charges to have been proved against the respondent. Consequent thereon, the respondent was dismissed from service by order dated 26 February 1999 passed by the Deputy Commissioner of



Police¹.

3. An appeal, preferred against the said order, was also dismissed by the Appellate Authority on 15 November 2012.

4. In the meanwhile, criminal proceedings were also instituted against the respondent, on the same allegation and based on the same evidence.

5. The said proceedings culminated in judgment dated 31 January 2012, passed by the learned Metropolitan Magistrate², Delhi.

6. A reading of the judgment of the learned MM discloses that the case of the prosecution failed because the prosecution was unable to cite any witnesses to support its case against the respondent. We may reproduce, for ready reference, the concluding paragraphs from the judgement of the learned MM, thus:

“9. The prosecution in this case has examined three witnesses PW3 Murari Lal Gupta, PW6 Surajbhan and PW7 Joravar Singh, but none of them can link the accused with the commission of the offence. PW1 A.K. Singh, DCP, 3rd BTN never appeared to complete his testimony after his examination was deferred. Complainant Prem Pal Singh has never appeared in the witness box in court to depose in this case. Time and again his summons were sent, but there is consistent report to the effect that he is untraceable. He was even ordered to be served through DCP/NW, but the report remained the same.

Further, as per statement of PW6 Suraj Pal, Kumher and Bharatpur are two separate Tehsils and the Caste Certificate No.

¹ “DCP”, hereinafter

² “MM”, hereinafter



10/6 dated 18/05/1980 was issued from Tehsil Kumher and PW8 IO SI Devender Kumar had never visited Tehsil Kumher. PW8 deposed in his examination that on 20/10/1994 he alongwith constable Ashok went to District Bharatpur, SDM Office but in his cross examination by Ld. Defence counsel he stated that neither he met with DM or SDM of Bharatpur nor the statement of DM or SDM/Bharatpur was recorded regarding issuance of caste certificate in question. PW8 deposed that he went to Bharatpur, SDM office, alongwith PW4 constable Ashok, however there is no proof about his going to Bharatpur. PW4 constable Ashok did not mention in his testimony about his visiting alongwith PW8 to Bharatpur, SDM Office. PW3 Murari Lal, PW6 Suraj Lal and PW7 Joravar Singh have not even mentioned in their testimony regarding meeting of any police officials of Delhi Police in the office of SDM/Bharatpur, Rajasthan.

10. In these circumstances, the prosecution has miserably failed to prove its case against the accused. Hence, I hereby acquit the accused of the charge U/s. 471 IPC. He is on bail. His bail bond shall remain bound for another six months U/s. 437-A CrPC. File be consigned to record room.”

7. In these circumstances, the respondent approached the Central Administrative Tribunal³ by way of OA 100/4128/2012 in ***Constable Vishamber Dayal v GNCTD and Ors.*** praying that the order dismissing him from service be quashed and set aside and that he be reinstated.

8. The Tribunal disposed of the said OA by judgment dated 1 September 2016, in the following terms.

“32. In the light of the aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of hearing before the Appellate Authority, the OA is partly allowed. The impugned order dated 04.06.2014 (Annexure A-2) passed by the AA is set aside. The case is remitted back to the Appellate Authority to reconsider the matter afresh in view of the applicability and effect of judgment

³ “the Tribunal”, hereinafter



of acquittal dated 09.08.2012 (Annexure A-9) passed by the Criminal Court, Delhi and other indicated relevant factors in terms of Rule 12 of D.P. Rules and then to pass an appropriate speaking and reasoned order on the applicant's statutory appeal in view of the aforesaid observations and in accordance with law, within a period of 3 months from the date of receipt of a certified copy of this order. However, the parties are left to bear their own costs.

Needless to mention that since the matter has been decided mainly on the ground of applicability of Rule 12 of D.P. Rules, so in case the applicant still remains aggrieved by the order of the Appellate Authority, he would be at liberty to challenge the impugned orders on all the grounds, as pleaded by him in the present OA, by filing a fresh OA, in accordance with law and subject to all just exceptions."

9. Purportedly in compliance with the directions contained in the aforesaid judgment, the Joint Commissioner of Police⁴ once again reiterated the decision to award the punishment of dismissal from service on the respondent, by order dated 3 February 2017.

10. The following paragraphs, from the said decision, merit reproduction:

"Aggrieved by the decision of disciplinary authority as well as appellate authority, the appellant had filed OA No. 4128/2012 in the Hon'ble the Central Administrative Tribunal. The Hon'ble Tribunal vide its order dated 02.09.2016 has partly allowed the O.A. by setting aside the order of the appellate authority dated 15.11.2012 and remitted back the matter to the appellate authority to reconsider the matter afresh in view of the applicability and effect of judgment of acquittal dated 31.01.2012 passed by the Hon'ble court and other indicated relevant factors in terms of Rule 12 of Delhi Police Rules and then to pass an appropriate speaking and reasoned order on the applicant's statutory appeal.

Ex. Constable Vishamber Dayal, No. 1152/W appeared in OR on 03.01.2017 before the undersigned and stated that he made sincere efforts to procure fresh caste certificate from his native

⁴ "Joint CP", hereinafter



village Bhawanpura, Teh. Roopwas, Distt. Bharatpur, Rajasthan but could not get the same. He submitted a letter head dated 22.12.2016 issued by the village Sarpanch Bimlesh in which the Sarpanch had specifically denied to provide fresh caste certificate to the appellant in the absence of any document i.e. Ration Card, I. Card, Aadhar card etc.

In this case, the appellant was dealt with departmentally parallel to the criminal case. The Hon'ble Supreme Court of India in the case of **Capt. M. Paul Anthony Vs Bharat Gold Mines. Ltd.**⁵ has specifically issued directions to deal with cases where departmental proceedings and criminal case are based on identical set of facts. As per the judgment, departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously. The judgment further elaborates that if the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty, his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest. The Hon'ble Apex Court further noted that the standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are distinct and different. Besides the objectives in the criminal proceedings and disciplinary proceedings are altogether distinct and different.

In the instant case, for the sake of natural justice and to know to genuineness of the claim of the appellant that he belongs to Schedule Tribe "Meena", I have personally deputed a responsible officer to verify the claim of the appellant from the concerned authorities and from his native village. As per letter No. Misc./PA/8811/2016 dated 07.12.2016, Sh. Shiv Charan Meena, Upkhand Adhikari, Bharatpur, Rajasthan has specifically narrated that in the absence of old record the matter has been got enquired into through halka Patwari which revealed that the appellant Vishamber Dayal S/o Sh. Bhim Sen who had residing about 35 years before in village Mehraval belongs to Meena caste which categorize in Scheduled Tribe. Sarpanch Bhawan Pura Bimlesh vide her letter head dated 07.12.2016 has narrated that in the year 1984 the father of the appellant came to Village and started living in the village and in the year 1994-95 he went away to some unknown place and his present whereabouts are not known. Patwari Bhawan Pura vide his report dated 06.12.2016 has also narrated that the appellant has been residing in the village 20/21

⁵ AIR 1999 SC 1416



years before and at present he is not residing in the village. Tehsildar Roopvas vide his letter dated 07.12.2016 seconded the report of patwari. The enquiry officer also enquired the issue from villagers but nobody could verify the facts however they deposed that the appellant belonged to Meena caste.

On perusal of the above reports it could not be ascertained in a specified way that the appellant belongs to Meena caste and for the sake of natural justice as well to find out the genuineness of the caste of the appellant the undersigned again deputed a responsible officer to seek a fresh report from D.M. Bharatpur regarding the caste certificate of the appellant. The Additional District Collector, (Bharatpur) vide letter No. Judi./VR/2016/14 dated 11.01.2017 intimated that the caste certificate has been got verified from BDO, Bharatpur and Tehsildar Roopvas and enclosed both the reports specified that the appellant Vishamber Dayal S/o Shri Bhim Sen belongs to Meena caste.

There is no reason for the outcome of the one affecting the others because the ingredients of delinquency/misconduct in criminal prosecution and departmental proceedings as well as the quantum of proof required in both cases are not identical. In criminal cases the proof required for conviction has to be beyond all reasonable doubts whereas in departmental proceedings evidence is based upon the preponderance of probability is sufficient for holding the charge to have been proved. In the instant case PWs examined during departmental proceedings have sufficiently proved the charge against the appellant.

I have examined the judgment of acquittal dated 31.01.2012 passed by the Hon'ble Court at length in the light of Rule-12 of Delhi Police (P&A) Rules. As per the judgment, either the prosecution witnesses could not appear before the Hon'ble Court or their testimony was not up to the mark. The prosecution witnesses did not affirm that the caste certificate provided by the appellant was forged or otherwise. None of the witnesses from Tehsil deposed and the IO also never visited Tehsil Kumher. The appellant got acquittal due to non-appearances of material witnesses and the prosecution could not prove its case.

Besides for the sake of natural justice as well as for my own satisfaction, I deputed responsible officers twice to get a factual report from the native place of the appellant. The appellant was also directed to submit fresh caste certificate, if any, which can establish his claim.

After conducting discreet enquiries, the reports submitted



by the enquiry officers deputed for this purpose as well reports of the Addl. DM, SDM, Tehsildar, Sarpanch, Patwari and other villagers, it has been found to be based upon hearsay and does not confer any documentary/clinching evidence i.e. S.T. certificate (caste certificate) issued to blood relative from paternal side with regard to the caste of the appellant that he belonged to Meena caste. As such the undersigned is not satisfied with the verbal submission of the appellant that he belongs to Meena caste. The claim of the appellant that he should be reinstated with consequential benefits because of his technical acquittal in the criminal case cannot be accepted. The simple plea of the appellant does not hold water that he belongs to Meena caste. Further, in spite of the directions, he miserably failed to provide, fresh caste certificate with regard to him belonging to Meena caste till day.

In view of the above discussion, I am of the considered view that the punishment awarded by the disciplinary authority is commensurate to the misconduct of the appellant and I find no reason to deviate with the punishment order under appeal.

Let the appellant be informed accordingly.

Sd/-
(DEPENDRA PATHAK)
JOINT COMMISSIONER OF POLICE,
SOUTH-WESTERN RANGE, DELHI"

11. Aggrieved by the aforesaid order, the respondent re-approached the Tribunal by way of OA 690/2017, which stands allowed by the Tribunal by judgment dated 31 July 2023, aggrieved by which the respondents before the Tribunal have approached this Court under Article 226 of the Constitution of India.

12. We have heard Ms. Laavanya Kaushik, learned Counsel for the petitioner, at length.

13. Though the Tribunal has also gone into the merits of the case against the respondent, we are of the opinion that the judgment of the



Tribunal is liable to be affirmed on a bare reading of Rule 12⁶ of the Delhi Police (Punishment & Appeal) Rules⁷, 1980. This provision is in a sense a provision *sui generis* – the logic of which, in some respects, befuddles us – which applies only to the Delhi Police. It completely proscribes departmental proceedings against a police officer who has been criminally tried for the same misconduct and who has been acquitted in the criminal proceedings. The rigour of this proscription is relaxed only if one or more of the exigencies, envisaged in clauses (a) to (c) of Rule 12 of the DPPAR, apply.

14. At a bare reading, clauses (c), (d) and (e) do not apply.

15. Ms. Kaushik has predicated the case essentially on clause (b). She submits that the prosecution's case had failed because the prosecution witnesses had turned hostile. She points that one of the PWs, namely PW-6, was, in fact, declared hostile by the learned MM.

16. We have reproduced the relevant paragraphs from the judgment dated 31 January 2012 of the learned MM in the criminal proceedings against the respondent. There is not even an observation, by the learned MM that the prosecution witnesses had been won over by the respondent.

⁶ 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.



17. We have, in a recent decision in *GNCTD v Satyapal Singh Yadav*⁸, noted that there is a difference between a prosecution witness being declared hostile and a prosecution witness being won over. Winning over of a prosecution witness is a positive act on the part of the accused. It can be engineered in a variety of ways, by inducement, by threat and the like. The mere fact that a prosecution witness may not, during trial, have adhered to the statement earlier given by him does not, *ipso facto*, indicate that he had necessarily been won over by the accused. It may equally be true that the prosecution witness's earlier statement was not correct and that he decided later to tell the truth.

18. We may, for ready reference, reproduce the following paragraphs from our decision in *Satyapal Singh Yadav*:

“13. Clause (b) of Rule 12 of the DPPAR applies only where the acquittal of the police officer concerned, in criminal proceedings, is because the witnesses against him *have been won over*. A hostile witness is defined, in P Ramanatha Aiyar's Advanced Law Lexicon, thus:

“**Hostile witness.** The witness who makes statements adverse to the party calling and examining him, and who may, with the permission of the Court, be cross-examined by that party. A witness who, when giving evidence, conducts himself in a manner hostile to the party calling him, such that the party calling him may, by leave of the presiding judge, cross-examine him as if he were a witness for the other side. A witness is not hostile merely because he gives evidence unfavourably to the party calling him.”

14. A witness may turn hostile for a variety of reasons, and it cannot be presumed that hostility of the witness is, in every case,

⁷ “DPPAR”, hereinafter

⁸ 2025 SCC OnLine Del



because he has been won over by the opposite party. Winning over of a witness is a positive act committed by the party who has won over the witness. In *Shankar v State of UP*⁹, the Supreme Court held that the accused, in that case, had won over the witnesses, in the sense that the witnesses were not prepared to give evidence in the case for fear of their lives or otherwise. It is only, therefore, where the witness is unprepared to tender evidence or to support the case of the party who summons him into the witness box because of some overt or covert act committed by the opposite party, by threat, inducement or the like that the witness can be said to have been won over.

15. Witnesses may, turn hostile *because they have been won over* by the accused, or for any other reason. Clause (b) of Rule 12 of the DPPAR would apply where *the witnesses turn hostile because they have been won over by the accused charged officer. It is not sufficient, therefore, for the Court, or the DCP, to hold, or opine, that the acquittal of the officer was because the witnesses turned hostile. The Court, or the DCP, must go a step further and hold, additionally, that the hostility of the witnesses was because the officer had won them over.*

16. This crucial latter requirement is not satisfied in the present case, either in the judgment of the learned MM or in the punishment order issued by the DCP.

17. It may not be necessary, for the purposes of the limited scope of this decision, to delve in detail into the degree of material which is required to be present in order for an inference, that a witness has been won over by the opposite party, to be drawn. What is clear in law, however, is that clause (b) of Rule 12 of the DPPAR requires a observation or a finding by the DCP, or the criminal court, that the acquittal of the charged police officer in the criminal proceeding was because he had won over the witness. A finding, or at least an observation, of such a positive misdemeanour having been committed by the police official, must figure in the opinion of the DCP.

18. A mere reference to witnesses having turned hostile does not, therefore, *ipso facto* or *ipso jure* lead to an inexorable inference that the witnesses had necessarily been won over by the charged police officer.

⁹ (1975) 3 SCC 851



19. There is no observation or finding, either by the learned MM or by the learned DCP, or by the learned Joint CP in the order dated 3 February 2017, that the respondent had won over the prosecution witnesses.

20. As such, in our view, clause (b) of Rule 12 of the DPPAR would not apply.

21. Though Ms. Kaushik did not press clause (a) of Rule 12 into service, we may note that the position of law, with respect to this clause, is also well-settled. We may advert to our judgment in *Delhi Police v Krishan Kumar*¹⁰ in which we have examined the earlier existing law in that regard. This Court has clearly held that an acquittal on benefit of doubt is not an acquittal on technical grounds. Where there is an acquittal on the merits of the matter, irrespective of whether it is an acquittal following a positive finding or innocence or an acquittal because the prosecution has been unable to prove his case, it cannot be treated as an acquittal on technical grounds. An acquittal on technical grounds would partake, for example, of a case in which the prosecution had failed to obtain the requisite sanction before prosecuting. Where the merits of the matter had been examined by the Trial Court, and the accused has been acquitted, whether it is on benefit of doubt or following a positive finding of innocence, the acquittal does not remain an acquittal on technical grounds.

22. As such, the case of the respondent does not fall within clause

¹⁰ 2024 SCC OnLine Del 8862



(a) or clause (b) of Rule 12 of the DPPAR.

23. In that view of the matter, we find no reason to interfere with the impugned judgment passed by the Tribunal which stands upheld in its entirety.

24. The writ petition is, accordingly, dismissed with no orders as to costs.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

FEBRUARY 6, 2025/AS

Click here to check corrigendum, if any