IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: July 24, 2023

\+ W.P.(C) 186/2021, CM APPL. 535/2021

GOVT OF NCT OF DLEHI & ORS. ..... Petitioners
Through: Mrs. Avnish Ahlawat, SC with Ms. Tania Ahlawat, Mr. Nitesh Kumar Singh, Ms. Palak Rohmetra, Ms. Laavanya Kaushik and Ms. Aliza Alam, Advs. for GNCTD

versus

NIHAL SINGH & ORS. ..... Respondents
Through: Dr. Manish Aggarwal & Ms. Namrata Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed by the Govt. of NCT of Delhi and its functionaries, viz. Commissioner of Police / Deputy Commissioner of Police ('petitioners', herein), challenging the order dated January 23, 2020 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in Original Application No.3291/2014 ('OA', for short) which was filed by four persons i.e., the respondents herein, whereby the Tribunal has partly allowed the OA by modifying the punishment imposed against the respondents, to

one of forfeiture of five years of approved service on temporary basis and not on permanent basis. It further directed that the resultant benefits shall be worked out for the respondents but they shall not be paid any arrears of wages upto date of the impugned order.

2. The facts as noted from the record are, the respondent Nos.1 and 4 are Constables and the respondent Nos.2 and 3 are Head Constables, in the Delhi Police. Disciplinary proceedings were initiated against them, by issuing charge memo dated September 19, 2007. The allegation against them was that they were part of a police party, to escort one Sakil alias Kalia, an under trial prisoner, lodged in Tihar Jail, for production in a Court at Patiala, Punjab, through Dadar Express Train, on June 29, 2007. It was also alleged that, on account of the negligence on the part of the respondents, the under trial prisoner escaped from the toilet of the train by removing the glass pane. The charge further revealed that Sakil was a dreaded criminal, who was facing the charges of murder, burglary, extortion, robbery and commissions of acts under Arms Act and though, he had notorious history, despite that, the respondents did not exhibit required amount of care and caution resulting in his escape from their custody.

3. The explanation given by the respondents was not found favour with the Competent Authority. The Competent Authority, accordingly, initiated a departmental inquiry. The charge levelled against the respondents stood proved. The Disciplinary Authority passed an order dated September 03, 2008, imposing the punishment of forfeiture of ten years of approved service of the respondents, on permanent basis.

4. In the appeal filed by the respondents, the Appellate Authority passed an order dated October 16, 2009, reducing the punishment to the one, of forfeiture of approved service of five years, on permanent basis.

5. Against the order passed by the Appellate Authority, the respondents filed OAs in the year 2010, challenging the order of punishment, as modified by the Appellate Authority. The OAs were dismissed by the Tribunal, on March 19, 2011. It is also stated that a criminal case was instituted against the respondents on the same charge and they were acquitted by the Trial Court, through judgment dated May 26, 2012. It is further noted that the appeal preferred by the State was also dismissed by the Sessions Judge on July 11, 2013.

6. It is in this background, the respondents submitted representation dated May 02, 2013 to the Disciplinary Authority, with a request to revoke the punishment, imposed against them. According to the respondents, the allegations contained in the criminal case on the one hand, and the disciplinary proceedings on the other, were the same and, in view of the judgment of the Full Bench of the Tribunal in ***Sukhdev Singh and Anr. v. GNCTD & Ors***. *in* ***OA No.2816/2008*** dated ***February 18, 2011***, the petitioners were under an obligation to recall the punishment, once the respondents were found to be acquitted in the criminal case.

7. It may be stated here that the Disciplinary Authority vide order dated December 16, 2013, refused to modify the order of punishment and rejected the representation of the respondents. It is this order which has been challenged by the respondents in the second round of

litigation before the Tribunal wherein the impugned order has been passed.

8. The case of the respondents before the Tribunal was primarily the same as was pleaded by them in their representation that the criminal court has acquitted them for the same charge, as was framed in the departmental proceedings and as such the Disciplinary Authority is required to revisit the punishment in view of the mandate of the Full Bench of the Tribunal in ***Sukhdev Singh and Anr.(supra)*** .

9. The petitioners herein had opposed the OA. However, the Tribunal decided the OA in favour of the respondents herein, by stating in paragraphs 11 to 14, as under:

> *"11. Learned counsel for the applicants has placed before us, a copy of the order dated 26.12.2019, passed by the Deputy Commissioner of Delhi Police. There also, a punishment imposed against the police officials assumed finality, with the dismissal of the OA filed challenging the order of punishment. However, on discharge of the officials in the criminal case, the DA has set aside the punishment and the period of suspension, was treated, as the one, spent on duty. For all practical purposes, the effect of punishment was completely wiped out.*
>
> *12. Two options are open to us. The first is to set aside the impugned order and to remand the matter to the DA for fresh consideration and disposal. The second is, to take the entire gamut of the case into account, and to give a quietus to it. The proceedings started way back in the year 2007. Several rounds of litigation in respect of disciplinary proceedings as well as the criminal proceedings have taken place. The Appellate Authority has already extended the same benefit to the applicants by slashing the punishment imposed by the DA, to half. The criminal, who escaped while on journey is said to have been apprehended within two days and that he was killed*

> *in an encounter thereafter. In a case of almost similar nature, the DA has revoked the punishment imposed earlier, solely on the basis of the discharge of the employee, in the criminal case.*
> *13. We are of the view that, ends of justice would be met, in case the punishment imposed against the applicants is treated as one on temporary basis and not permanent basis. When we indicated this, learned counsel for the applicants consulted his clients and did not express any reservations about it.*
> *14. We, therefore, partly allow the OA, setting aside the impugned order and directing that the punishment imposed against the applicants, shall stand modified to the one of forfeiture of five years of approved service on temporary basis and not on permanent basis. The resultant benefits shall be worked out for the applicants, but they shall not be entitled to be paid any arrears of wages upto date of this order. The exercise shall be completed within two months from the date of receipt of a copy of this order. There shall be no order as to costs."*

10. The submission of Mrs. Avnish Ahlawat, learned Standing Counsel appearing for the petitioners is that the punishment order passed the Disciplinary Authority, having been modified by the Appellate Authority and also the same having been subsequently upheld by the Tribunal on March 29, 2011, the Tribunal could not have, again, allowed the respondents to re-agitate the matter in a fresh OA.

11. That apart, it is her submission that the Tribunal has wrongly stepped into the shoes of Disciplinary Authority without appreciating the fact that after acquittal, the Competent Authority had examined the judgment passed by Trial/Criminal Court under Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980, ('Rules of 1980', for

short). According to her, the impugned order dated January 23, 2020, therefore, is uncalled for.

12. In support of her submissions, she has relied upon the judgment of the Supreme Court in the case of ***State of Karnataka and Another. v. N. Gangaraj, (2020) 3 SCC 423,*** wherein according to her, the Disciplinary Authority therein had agreed with findings of the Inquiry Officer whereby the respondent therein was found guilty and a dismissal order was passed as a punishment. However, the concerned Tribunal had set aside the order of punishment and High Court of Karnataka, in appeal, affirmed the findings arrived at by the Tribunal. It is her case that in such circumstances, the Supreme Court, held that once the evidence had been accepted by the Disciplinary Authority, the Trial Court or the High Court could not have interfered with the findings of fact recorded, by re-appreciating evidence as if they were appellate authority and thereby allowed the appeal.

13. She submits that the Tribunal did not consider the fact that after acquittal in the criminal case and in compliance of the directions of the Special Commissioner of Delhi, Armed Police, Delhi, to examine the judgment dated May 26, 2012, passed in the afore-said case, the Disciplinary Authority, carefully examined the aforesaid judgment and also gone through the joint representation submitted by the respondents herein and found that the criminal charge against them had failed on technical grounds and thus, the acquittal of the respondents cannot be termed as an honorable acquittal, which falls within the ambit of exception (a) of Rule 12 of the Rules of 1980.

14. In fact, it is her submission that the Disciplinary Authority vide

its order dated November 5, 2012, decided that the reduced / modified punishment already inflicted upon the respondents in the appeal, was justified. She has also relied upon the judgments of the Supreme Court in the cases of ***B.C. Chaturvedi v. Union of India & Ors., AIR 1996 SC 484*** and ***Union of India and Others v. P.Gunasekaran, 2015 (2) SCC 610***, to contend that the Tribual or the High Court, should not act as an appellate authority in the disciplinary proceedings by re-appreciating the evidence adduced before the enquiry officer. So, it is her case that in light of the afore-said judgments, the present petition needs to be allowed and the impugned order should be set aside.

15. On the other hand, Dr. Manish Aggarwal, learned counsel appearing for the respondents would justify the impugned order passed by the Tribunal. According to him, in light of the facts governing this case, the Tribunal is justified in converting the punishment of forfeiture of five years of approved service on permanent basis to the one on temporary basis.

16. In this regard, he has drawn our attention to paragraph 12 of the impugned order, wherein the Tribunal, has also noted the facts that the proceedings had started against the respondents way back in the year 2007; several rounds of litigation in respect of disciplinary proceedings as well as the criminal proceedings have taken place; the Appellate Authority has also reduced the penalty from forfeiture of ten years of approved service on permanent basis to five years, though on permanent basis. According to him, the Tribunal has also considered the fact that the then under trial prisoner, Sakil alias Kalia, was apprehended within two days and was killed in an encounter,

subsequently. So, in that sense, the Tribunal has made the punishment as temporary, the same is justifiable, otherwise, if the punishment remained as permanent, it would mean that five years shall be written off from the service record of the respondents, resulting in drastic consequence.

17. Having heard the learned counsel for the parties, the issue which falls for consideration is whether the Tribunal was justified in modifying the punishment imposed on the respondents herein. We have already reproduced paragraph 12 of the impugned order, whereby the Tribunal modified the punishment imposed on the respondents. The Rules of 1980, vide Rule 12, contemplates the action ought to be taken by the Competent Authority, when a criminal Court acquits a Police Officer, honourably. According to Rule 12, a police officer, having been tried and acquitted by a criminal court, cannot 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 (as one of the exceptions state), the criminal charge has failed on technical grounds. The Rule 12 of the Rules of 1980 is reproduced for ready reference:

> *"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 discloses 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."

18. Before we deal with the order of the Tribunal varying the punishment imposed upon the respondents, it is necessary to deal with the submission of Mrs. Avnish Ahlawat that the respondents, having challenged the punishment order of forfeiture of five years of approved service on permanent basis in the earlier round of litigation vide OA Nos.1769/2010, 2546/2010, 895/2010 and 2536/2010 and the same having been dismissed, they could not have filed a fresh OA, in which the impugned order has been passed. This submission of Mrs. Ahlawat though looks appealing on a first blush but on consideration of fact which has come on record that it was on the asking of the Special Commissioner of Police, Armed Force, that the Competent Authority has considered the representation made by the respondents for setting aside of the punishment by the Competent Authority, the submission becomes unsustainable.

19. In other words, if it is the decision of the petitioners themselves to consider the acquittal of the respondents in the criminal case on the aspect of punishment imposed by the Competent Authority and reject the representation, surely, such a decision is open to judicial review and the respondents have, accordingly, challenged the rejection of their representation for recalling the punishment by filing a fresh

OA. It is held that, to that extent, the OA was maintainable. Therefore, this plea of Mrs. Avnish Ahlawat is liable to be rejected.

20. Insofar as the reliance placed by Mrs. Avnish Ahlawat on Rule 12 of the Rules of 1980 is concerned, it is to be seen whether the acquittal of the respondents was on a technical ground or it was an honourable acquittal. In this regard, it is necessary to highlight the following findings of the criminal court acquitting the respondents herein:-

> *"15. It is .... illegible.....from one above discussion that prosecution has failed to produce any incriminating evidence to prove the commission of offence punishable under section 223 of Indian Penal Code beyond .... illegible.. used beyond reasonable doubt.*
> *16. In view of the above discussion, by extending benefit of doubt, the accused are hereby acquitted of the charge leveled against them under section 223 of Indian Penal code. The accused are on bail. Therefore, bail bond stand discharged. File be consigned to record room after due compliance."*

21. It is clearly discernable from the aforesaid findings of the criminal court that the prosecution had failed to produce any incriminating evidence to prove the commission of offence punishable under Section 223 of the Indian Penal Code, 1860, beyond reasonable doubt.

22. Having said that it is necessary at this stage to highlight the judgment of the Supreme Court in the case of ***Deputy Inspector General of Police and Anr. v. S. Samuthiram, (2013) 1 SCC 598,*** wherein the Supreme Court, had the occasion to decipher the

expression 'honourable acquittal' in the following manner:

> *"24. The meaning of the expression 'honourable acquittal' came up for consideration before this Court in RBI v. Bhopal Singh Panchal [(1994) 1 SCC 541 : 1994 SCC (L&S) 594 : (1994) 26 ATC 619] .* ***In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions 'honourable acquittal', 'acquitted of blame', 'fully exonerated' are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression 'honourably acquitted'. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted****."*
>
> (emphasis supplied)

23. From the above, it is noted that the Supreme Court, clearly held that when an accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted. In the present case also, there is a clear conclusion of the criminal court that the prosecution has failed to produce any incriminating evidence to prove the commission of offence punishable under Section 223 of the Indian Penal Code, 1860, against the respondents herein.

24. No doubt, the Tribunal did not consider the issue from the above perspective or from the perspective of Rule 12 of the Rules of

1980, but in any case, since this Court is considering the writ petition, we have also considered the case (which is filed by the employer and not the employees) from the perspective of the law laid down by the Supreme Court in ***Deputy Inspector General of Police and Anr. (supra)***, and also under Rule 12 of the Rules of 1980.

25. Suffice to state, Mrs. Avnish Ahlawat in support of her submissions has heavily relied upon the judgment of the Supreme Court in the case of ***N. Ganagaraj (supra)***. With due respect, the said judgment has no applicability in the facts of this case. The said judgment is clearly distinguishable, inasmuch as, in the said judgment, the respondent therein, who was dismissed from service pursuant to a departmental inquiry, had challenged the punishment order before the Karnataka Administrative Tribunal. The Tribunal, set aside the order of punishment by holding that the criminal Court on the same set of facts had not placed reliance on the deposition of the witnesses, therefore, it was not proper on the part of the disciplinary authority to rely on such evidence to come to the conclusion that though the respondent has demanded an amount of ₹40,000/- and he settled for ₹20,000/-. The Tribunal further did not agree with the findings of the inquiry officer or the disciplinary authority that the charges have been proved as there is no charge on record of receipt of ₹20,000/-. The Tribunal further held that the water in which the hands of the respondent were washed, turned pink due to the ink of the pen, as deposed by PW-3 Balaraju in his statement. The High Court found that similar evidence was not accepted in criminal trial and that there were discrepancies in the evidence of the witnesses, which made it

unreliable.

26. In other words, in the said case, the order of punishment was interfered with by the Tribunal which was affirmed by the High Court. The Supreme Court held that such interference by the Tribunal in the order of punishment passed by the disciplinary authority suffered from a patent error, inasmuch as, the power of judicial review is confined to the decision-making process, thus, once the Disciplinary Authority agreed with the findings of the Inquiry Officer and passed an order of punishment and the appeal thereof, has been dismissed, then the Tribunal and the High Court could not have interfered with the findings of fact recorded by re-appreciating the evidence as the Courts are not the Appellate Authority. It is pertinent to state here that the aforesaid finding of the Supreme Court was arrived at, by relying upon the judgments, in the cases of ***B.C. Chaturvedi (supra)*** and ***P. Gunasekaran (supra)***. Therefore, these judgments shall also be of no avail for Mrs. Avnish Ahlawat.

27. Suffice to state, the said judgments are also distinguishable on facts, inasmuch as, in the case in hand, the Tribunal did not comment upon the evidence which had been relied upon by the Disciplinary Authority / Appellate Authority, in holding that the charge against the respondents has been proved. The Tribunal, in this case, has simply reduced the punishment from forfeiture of approved service of 5 years on permanent basis to one on temporary basis. In that sense, the Tribunal has on proportionality interfered with the punishment imposed upon the respondents and not on findings as was done by the Tribunal and the High Court in the case of ***N. Gangaraj (supra)***.

28. It is also a settled law that the proportionality of the punishment can be made a subject matter of judicial review. The Tribunal has in paragraph 12 noted that it had two options. The first was to set aside the order passed by the appellate authority and to remand the matter back to the Disciplinary Authority for its fresh consideration and disposal and second was to take the entire gamut of the case into account, and to give a quietus to it. While stating so, the Tribunal had also considered the aspect that the charges were framed and the proceedings were initiated against the respondents, way back in the year 2007. Several rounds of litigation in respect of disciplinary proceedings as well as the criminal proceedings have been initiated against them / by them. The Appellate Authority has already extended the same benefit to the respondents by slashing the punishment imposed by the Disciplinary Authority, to half. The criminal, who escaped while on journey is said to have been apprehended within two days and was killed in an encounter thereafter.

29. Suffice to state, though, the Tribunal has not considered the nature of finding of the criminal court but this Court, having noted the nature of finding of the criminal court that the prosecution has failed to produce any incriminating evidence to prove the commission of offence punishable under Section 223 of the Indian Penal Code, 1860 and has acquitted the respondents, is of the view that in the peculiar facts of this case, i.e., when 15 years have elapsed since the initiation of the disciplinary proceedings against the respondents, the impugned order passed by the Tribunal need not be interfered with.

30. The writ petition is dismissed. There shall be no order as to

costs.

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As we have dismissed the writ petition, the interim order passed on January 8, 2021, whereby the impugned order was stayed, stands vacated. Hence, the application is dismissed as such.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J.

JULY 24, 2023*/aky*