

CASE NO.:
Appeal (civil) 7488 of 2004

PETITIONER:
Commissioner of Police, New Delhi

RESPONDENT:
Narender Singh

DATE OF JUDGMENT: 05/04/2006

BENCH:
S.B. Sinha & P.P. Naolekar

JUDGMENT:
J U D G M E N T

S.B. Sinha, J :

The respondent was enrolled as a Constable in the Delhi Police on or about 01.08.1994. A First Information Report was lodged against him on 30.10.1995 for commission of an offence under Section 308/34 of the Indian Penal Code. He was arrested in connection therewith on 30.10.1995. He remained in judicial custody for a period of 15 days. A departmental proceeding was initiated against him in relation to the same incident.

He filed an original application before the Central Administrative Tribunal (for short, 'the Tribunal') for stay of the said proceeding till disposal of the criminal case. By an order dated 23.07.1996, the said original application was disposed of by the Tribunal upon issuing some directions.

In the meantime, two revolvers and one pistol were found from the Vijay Ghat Armoury. Two persons who were accused therein, inter alia, made confessions stating that the respondent had committed theft of the said two revolvers and pistol. The respondent on the basis of said confessional statements was arrested on 05.09.1997. While in police custody he also made a confession as regards his involvement in the said offence. He also led the investigating team to the room of the Vijay Ghat Armoury and pointed out the place wherefrom, he while working as a Sentry on the night of 22/23.06.1997, committed theft of two revolvers and one pistol with some of his colleagues. An identification memo. was prepared therefor wherein one Inspector Bhalle Ram was a witness. In view of the fact that apart from confession of the accused, there was no other material on records, the respondent was discharged from the criminal case by an order dated 01.08.2001. He was in the meantime dismissed from service without holding any enquiry in terms of the proviso appended to clause (2) of Article 311 of the Constitution of India, by an order dated 09.09.1997. A departmental appeal preferred thereagainst by him was dismissed by an order dated 09.02.1998. The validity of the said order was questioned by the respondent by filing an application before the Tribunal. The Tribunal allowed the said application by an order dated 08.08.2001 holding that the Appellant failed to establish sufficient grounds for dismissing the respondent from service without holding any disciplinary proceeding. A review petition filed thereagainst was also dismissed by the Tribunal on 31.12.2001. A writ petition filed by the Appellant was also dismissed by the High Court on 03.04.2002.

The Tribunal as also the High Court in their respective judgments opined that the appellant could not have taken recourse to clause (b) of the proviso appended to clause (2) of Article 311 of the Constitution of India. Pursuant to or in furtherance of the said judgments and orders, a regular disciplinary proceeding was instituted. On 01.05.2002, a charge-sheet was drawn up against the Respondent which reads as under :

"I, Insp. Ajit Singh charge you Const. Narender Singh No.730/DA that on 04.9.97, Harvinder Singh S/o Shri Surat Singh R/o Praladpur Gharoli, P.S. Kharkhoda, Sonapat and Deepak S/o Shri reghbir Singh R/o Ghoge, P.S. Narela, Delhi were arrested in case FIR No.371/97 u/s 186, 307, 353 IPC Sec. 27 Arms Act. P.S. Narela, Delhi. Both the accused made confessions regarding the supply of arms by Const. Narender Singh No.612/DAP, 730/DAP posted at CP Vijay Ghat on this you Const. Narender Singh were arrested by special staff North Distt. On 5.9.97 u/s 41.1 Cr. P.C. and were produced before Court on 6.9.97. Two days PC remand was also obtained by Crime Branch in case FIR No.717/97 u/s 409, 380, 457 IPC P.S. Kotwali in which two revolvers and one pistol were stolen from Kot of CPR Vijayghat/1st Bn.

On interrogation you Const. Narender Singh 730/DAP confessed that while you were at CPR Vijay Ghat you had committed theft of two revolvers and pistol from the kot on intervening night 22/23.6.97 along with Raju, Jasvinder Jassu and Dhannu after stealing keys of Kot from the pillow of Const. Narender Singh (Kot munshi).

The above act on your part amounts to grave misconduct and unbecoming of a police officer which renders you liable to be dealt under the provisions of Delhi Police (Punishment and Appeal) Rules, 1987."

On or about 16.05.2002, in the said departmental proceeding, the respondent was found guilty and by an order dated 22.07.2002, he was dismissed from service by the Disciplinary Authority, stating :

"I have gone through the record and facts of the file, enquiry report submitted by the E.O., defence taken by the delinquent Const. Minutely and meticulously. The charges in a disciplinary action are based on preponderance of evidence that does not exclude confession made to the police and such confessions need not be necessarily supported by recovery of material fact as enumerated in the Indian Evidence Act. In agreement of conclusion by the E.O. I find that charges are proved against the delinquent officer, if is allowed to continue in the department like Police, he not only will damage the department by his criminal activities he will also tarnish image of the police department. Therefore, I Manoj Kumar Lal, Deputy Commissioner of Police Ist Bn. DAP on being satisfied that charges on the basis of proof available on the record are proved against the def. Const. and are of such nature that calls for major departmental punishment, I award Const. Narender Singh, NO. 730/DAP punishment of dismissal from the service with immediate effect. His suspension period from 30.10.2001 to date of issue of this order shall be treated as not spent on duty for all intents and purposes."

An appeal filed thereagainst by the respondent was dismissed by the appellate authority by an order dated 29.05.2003.

An original application was filed by the respondent before the Tribunal. The Tribunal in terms of an order dated 24.02.2004 set aside the

said order of dismissal, holding :

"14. Inspector Bhalke Ram had stated that he was posted as Inspector CPR/Vijay Ghat. The applicant had made a Nisandehi in Kot and disclosed that on the intervening night of 22/23.6.1997 had stolen the fire arms.

15. Inspector Tej Pal Singh, PW-12 had further appeared and testified that he had investigated the matter. During the investigation, the applicant had taken him to Vijay Ghat where Nisandehi was prepared on his instance which is exhibit PW-8/A. It is on the strength of the Nisandehi that the respondents have concluded that this is an admission made by the applicant about the said theft.

16. We deem it necessary to mention that even if such a confession is made during the course of investigation. It may not be relevant before a Court of law but there is no such embargo to read the same to departmental enquiry. Since the said statement made did not relate to any recovery, the learned Additional Sessions Judge has discharged the applicant."

The Tribunal allowed the original application. The writ petition filed thereagainst was dismissed by the High Court in limine.

Mr. Vikas Singh, the learned Additional Solicitor General appearing on behalf of the appellant, would submit that the Tribunal and consequently the High Court committed a manifest error in arriving at the aforementioned findings inasmuch the embargo contained in Section 25 of the Evidence Act and Section 162 of the Code of Criminal Procedure are not applicable in the departmental proceedings. It was submitted that the Tribunal further committed an error in opining that the confession of the respondent herein being Ex.8/A had not been proved.

Our attention was furthermore drawn to the order of the disciplinary authority as also the appellate authority with a view to show that the confession of the respondent had received due application of mind.

Mr. M.N. Krishnamani, the learned Senior Counsel appearing on behalf of the respondent, on the other hand, would submit that even in a disciplinary proceeding the provisions contained in Section 26 of the Evidence Act would be attracted as such confessions in police custody are ordinarily extracted by force. Even if the provisions of Section 26 of the Evidence Act, the learned counsel would submit, per se are not applicable, the principles analogous thereto would be applicable even in departmental proceedings. It was furthermore submitted that in view of the fact that the respondent was discharged from the criminal case, having regard to the provisions contained in Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1987 (hereinafter referred to as 'the 1987 Rules'), the order of punishment was not sustainable.

It is not in dispute that the standard of proof required in recording a finding of conviction in a criminal case and in a departmental proceeding are distinct and different. Whereas in a criminal case, it is essential to prove a charge beyond all reasonable doubt, in a departmental proceeding preponderance of probability would serve the purpose. [See Kamaladevi Agarwal v. State of W.B. and Others, (2002) 1 SCC 555]

It is now well-settled by reason of a catena of decisions of this Court that if an employee has been acquitted of a criminal charge, the same by itself would not be a ground not to initiate a departmental proceeding against

him or to drop the same in the event an order of acquittal is passed.

In Manager, Reserve Bank of India, Bangalore v. S. Mani and Others [(2005) 5 SCC 100], this Court held :

"It is trite that a judgment of acquittal passed in favour of the employees by giving benefit of doubt per se would not be binding upon the employer\005"

[See Bank of India and Another v. Degala Suryanarayana (1999) 5 SCC 762; Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corporation Ltd., Haldia and Others (2005) 7 SCC 764]

The Tribunal had proceeded to record its findings only on two counts, namely, (i) confession made by the respondent was not admissible in evidence; and (ii) the said confession has not been proved.

The confession admittedly was made by the respondent while in police custody. In the identification memo, it was recorded :

"Farad identification Memo place of occurrence in the presence of witnesses accused Narender Singh alias Nanda S/o Joginder Singh R/o D-8, Type-II Ind New Police Line, Kingsway Camp, New Delhi under police custody by himself voluntarily by walking ahead in the vicinity of CDR/Vijay Ghat Armoury 1st by DAP entered in the place covered by boundary walls surrounding through Iron gate entered in the place of Armoury Room shown the place and told that on 22/23.6.97 (identified) at about 2 am to 05 am he was on sentry duty and during his duty alongwith other colleagues named Jaswinder, Jaswant alias Jassu, Dhanraj @ Dhannu and Raja Singh @ Raju committed theft of two revolvers and one pistol. This identification memo was prepared then and there."

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 Bhalle 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 Narender 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. Narender. The Memo is exhibit PW-8/A."

In the cross-examination, he was asked only four questions which together with answers rendered thereto, as recorded by the Enquiry Officer are reproduced hereinbelow :

"Q. No. 1 : Has the exhibit PW-8A any date written by Inspr. Tej Pal Singh ?

Ans. The signature of Inspr. Tej Pal Singh is there.

Q. No.2 Is there any date on his exhibit below the signature of Narender Singh ?

Ans. No.

Q. No.3 Has Inspr. Tej Pal Singh recovered any weapon from Const. Narender on that day ?

Ans. The weapon was not recovered in his presence but IO told that the weapons have already been recovered.

Q. No.4 Do you know that court decided the case on merits ?

Ans. Yes."

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.

It may be noticed that no question was, furthermore, put to the said witness to show that the question put to the said witness was as regard the purported missing of the date below the signature of the Inspector Tej Pal Singh but it was not suggested that the said document is a forged or fabricated one. The order of discharge was passed by the Chief Judicial Magistrate after four years from the date of institution of the case. The respondent had not retracted from the said confession. He did not make any complaint to the higher authorities that the same was extracted from him by force or undue influence.

The correctness or otherwise of the statement contained in Ex. PW-8/A has also not been disputed. The Tribunal, therefore, was not correct in its view that the confession made by the respondent herein had not been proved in accordance with law. So far as the evidentiary value of the said confession is concerned, we may notice that Section 25 of the Evidence Act and Section 162 of the Code of Criminal Procedure provides for an embargo as regard admissibility of a confession in a criminal trial. The said provisions have per se no application in a departmental proceeding. Section 25 of the Indian Evidence Act and Section 162 (c) of the Code of Criminal read thus :

"25. Confession to police officer not to be proved.- No confession made to a police officer, shall be proved as against a person accused of any offence."

162. Statements to police not to be signed : Use of statements in evidence.-(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made\005"

"Offence" has been defined in Section 2(n) of the Code to mean :

"(n). "offence" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under Section 20 of the Cattle-trespass Act, 1871 (1 of 1871)."

The said definition would apply, thus, both to Section 25 of the Evidence Act and Section 162 of the Code of Criminal Procedure.

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.

In Kuldip Singh v. State of Punjab and Others [(1996) 10 SCC 659], this Court held :

"10. Now coming to the main contention of the learned counsel for the appellant, it is true that a confession or admission of guilt made by a person accused of an offence before, or while in the custody of, a police officer is not admissible in a court of law according to Sections 25 and 26 of the Evidence Act, 1872 but it is equally well settled that these rules of evidence do not apply to departmental enquiries\005"

It is now well-settled that the provisions of the Evidence Act are not applicable in a departmental proceeding. [See Depot Manager, A.P. State Road Transport Corporation v. Mohd. Yousuf Miya and Others (1997) 2 SCC 699; Lalit Popli v. Canara Bank and Others \026 (2003) 3 SCC 583; and N. Rajarathinam v. State of T.N. and Another \026 (1996) 10 SCC 371].

In State of Andhra Pradesh and Others v. Chitra Venkata Rao [(1975) 2 SCC 557], this Court held :

"The High Court was not correct in holding that the domestic enquiry before the Tribunal was the same as prosecution in a criminal case."

It was further held :

"The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence

may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226."

[See also State of Haryana and Another v. Rattan Singh (1977) 2 SCC 491]

The submission of Mr. Krishnamani that there lies a distinction between the provisions of Section 25 and Section 26 of the Evidence Act, in this behalf, may although be correct but the same is not of much significance for the purpose of this case.

Section 26 also speaks about confession by an accused while in custody of police. Sections 25 and 26 of the Evidence Act although seek to achieve the same purpose but they operate in somewhat two different fields. Section 25 raises an embargo as regard proof of confession before a police officer. The same need not be in police custody; whereas Section 26 raises a bar as regard admissibility of such confession, if made by an accused in the custody of a police officer although such a confession might have been made before a person who is not a police officer.

The policy underlying behind Sections 25 and 26 is to make it a substantive rule of law that confessions whenever and wherever made to the police, or while in the custody of the police to any person whomsoever unless made in the immediate presence of a magistrate, shall be presumed to have been obtained under the circumstances mentioned in Section 24 and, therefore, inadmissible, except so far as is provided by Section 27 of the Act.

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.

Reliance placed by Mr. Krishnamani to Rule 12 of the 1987 Rules is misplaced. The said Rule applies in a case where a person was tried and discharged. The respondent herein was not tried and acquitted by a criminal court and, thus the said provision would not apply.

For the reasons aforementioned, the impugned judgments of the Tribunal and the High Court cannot be sustained, which are set aside accordingly. The appeal is, thus, allowed. No costs.