

**Azad Singh vs.govt. Of Nct of Delhi & Ors.**

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**Court :** Delhi

**Decided On :** Oct-11-2017

**Appellant :** Azad Singh

**Respondent :** Govt. Of Nct of Delhi & Ors.

**Judgement :**

IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

11. 10.2017 \$~24. \* + % W.P.(C) 8939/2017 AZAD SINGH Through: Mr. Shanker Raju and Mr. Nilansh .....

... Petitioner

versus Gaur, Advs. GOVT. OF NCT OF DELHI & ORS Through: Mr. Satyakam, ASC for GNCTD. ....

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VIPIN SANGHI HON'BLE MS. JUSTICE REKHA PALLI VIPIN SANGHI, J (ORAL) 1. The petitioner has preferred the present writ petition to assail the order dated 15.09.2014 passed in O.A. No.749/2014, and the order dated 08.12.2016 passed in R.A. No.218/2014 preferred in the said Original Application before the Central Administrative Tribunal, Principal Bench, New Delhi. The Tribunal has dismissed the Original Application as well as the Review Application preferred by the

... Petitioner

- . The petitioner had preferred the said Original Application to assail his dismissal from service.
2. The petitioner was serving as Constable in Delhi Police, when a trap was laid by the Anti Corruption Branch on a complaint made against him for demanding illegal gratification. Consequently, he was trapped and caught W.P.(C) 8939/2017 Page 1 of 16 red-handed demanding, accepting and obtaining a bribe of Rs.3,000/- as illegal gratification from the complainant. Consequently, he was named as the accused in FIR No.41/2009 registered under the Prevention of Corruption Act. He was arrested and placed under suspension pending the criminal case.
3. The petitioner was charged with demanding bribe of Rs.7,000/-, which was settled for Rs.3,000/- in lieu of not harassing the brother of the complainant Mohd. Akhtar.
4. The respondents also initiated departmental proceedings against the petitioner on the basis of the said incident. The department examined six prosecution witnesses. The Enquiry Officer submitted his findings on 09.11.2012 to the Disciplinary Authority, concluding that the charge had been proved against the petitioner beyond any shadow of doubt.
5. The Disciplinary Authority agreed with the findings of the Enquiry Officer and, after granting an opportunity to the petitioner to make his representation, dismissed the petitioner from service by the penalty order dated 07.03.2013. The petitioner then preferred his departmental appeal before the Appellate Authority. During the pendency of the appeal, the petitioner was acquitted by the learned Special Judge, Tis Hazari Courts, Delhi in the aforesaid criminal prosecution by the judgment dated 19.07.2013. Consequently, the petitioner submitted his representation that since he had been acquitted in the criminal case, the departmental enquiry must also fail, and he was entitled to be reinstated with all consequential benefits. The Appellate Authority took into consideration the judgment of W.P.(C) 8939/2017 Page 2 of 16 acquittal passed in favour of the petitioner while passing the appellate order dated 29.01.2014. The Appellate Authority observed that the petitioner cannot be said to have been acquitted honourably by the learned Special Judge, ACB, Tis Hazari Courts, and that he had

been given the benefit of the doubt while acquitting him. He also observed that a criminal appeal was in the process of being filed by the State against the petitioners acquittal.

6. The petitioner then preferred the aforesaid O.A. before the tribunal. The contention of the petitioner was that his acquittal in the criminal trial was a complete acquittal on merits and, consequently, he was entitled to reinstatement in service with full back wages. He also relied upon Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 to submit that his case was covered by the said rule which provides that 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 ... ..

7. The petitioner contended that his case was not covered by clauses (a) to (e) of the said Rule, which carve out the exceptions in which the aforesaid rule was not applicable. The petitioner also placed reliance on a Full Bench decision of the tribunal in Sukhdev Singh & Anr. v. GNCTD & Ors. in O.A. No.2816/2008 decided on 18.02.2011, so as to contend that since, in the facts of the present case, the disciplinary inquiry and the consequential penalty order had preceded the petitioners acquittal in the criminal trial, the order of penalty required revisitation at the appellate stage, in view of the appellants subsequent acquittal during pendency of the departmental appeal. W.P.(C) 8939/2017 Page 3 of 16 8. The respondent contested the O.A. by claiming that the petitioners acquittal was not a clean acquittal, and the acquittal was a result of the giving of the benefit of doubt to the petitioner, since the prosecution witnesses had turned hostile. The respondent placed reliance on several decisions in this regard, including the following: i) State of West Bengal & Ors. vs Sankar Ghosh, (2014) 3 SCC610 ii) Deputy Inspector General Vs. S. Samuthiram (2013) 1 SCC598 iii) Commissioner of Police, New Delhi Vs Meher Singh (2013) 7 SCC685 iv) Commissioner of Police v. Raj Kumar in W.P. (C.) No.4304/2013 decided by Delhi High Court; and v) Ajit Kumar Nag v. General Manager v. General Manager (Pj), Indian Oil Corporation Ltd., Haldia & Ors., (2005) 7 SCC764 9. The respondent also placed reliance on Maharashtra State Board of Secondary Education v. K.S. Gandhi & Ors., 1991 (2)

SCC716 in support of the respondents plea that the strict rules of evidence, and the standard of proof envisaged in a criminal trial do not apply to departmental proceedings or domestic tribunals. The respondent contended that, thus, it could not be said that it was a case of no evidence.

10. The tribunal rejected the petitioners submissions. While doing so, the tribunal examined the judgment rendered by the learned Special Judge acquitting the petitioner in the criminal trial. In para 12.2 of the said W.P.(C) 8939/2017 Page 4 of 16 judgment, on the issue of the complainant turning hostile during his cross examination, it observed that he had turned around in his testimony after a gap of nine months of his examination-in-chief, which indicated that his subsequent testimony in court was influenced by some extraneous factors. In fact, the Trial Court discarded the cross examination of the complainant (PW-6) and relied upon the examination-in-chief of the said witness. Similarly, the panch/ shadow witness one Naresh Taank (PW-14), who was an employee of the Food and Supply Office of the Delhi Govt. had turned hostile. So also constable Arun Mathur (PW-13) had turned hostile.

11. The Trial Court also held that the recovery of the tainted currency notes from the petitioner had been established. Para 13.3 of the judgment of the Trial Court, relied upon by the tribunal, reads as follows: 13.3 Thus, I am of the considered opinion that prosecution case as regards demand of illegal gratification and handing over of illegal gratification by the complainant to the accused is not proved beyond reasonable doubt. Nevertheless, recovery of treated GC notes is established from his person. The question then arises, whether mere recovery of treated GC notes is sufficient to record conviction. Reliance has been placed by Sh.Yogesh Verma, Ld. defence counsel on the law laid down in Banarasi Das Vs. State of Haryana reported as AIR2010 Supreme Court 1589, where, in similar circumstances despite the recovery of bribe money the accused was afforded benefit of doubt and it was held that in absence of proof of demand and acceptance of bribe, the accused was entitled to acquittal. In Rakesh Kapoor Vs. State of Himachal reported as 2003 Vol.-1, Crimes 92 Supreme Court took similar view relying upon Banarasi Dasss case (supra). In C.M. Girish Babu Vs. CBI reported as 2009 SCC779 it was held as under:-

"W.P.(C) 8939/2017 Page 5 of 16 That mere recovery of money from the accused itself is not enough, in the absence of substantive evidence of demand and acceptance. 12. Consequently, the tribunal held that the case of the petitioner squarely fell in clauses (a) and (b) of Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980. The tribunal also observed that there was a distinction between a clean acquittal and acquittal premised on benefit of doubt, or on technical grounds, or witnesses turning hostile. In this regard, the tribunal referred to Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC679 The tribunal held that the decision of Full Bench in Sukhdev Singh (supra) had considered the issue of honourable and clean acquittal, whereas in the case of the petitioner, his acquittal was premised on benefit of doubt, hostile witnesses and on technical grounds. Consequently, the tribunal dismissed the O.A.

13. We may observe that the Criminal Leave Petition preferred before the High Court being CrI. L.P.No.89/2014 was not entertained by the Court, since it was filed belatedly and there was delay of 104 days. Consequently, the said leave petition was rejected on 31.01.2014.

14. The submission of Mr. Raju, learned counsel for the petitioner is that Rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980 has not been correctly applied by the Tribunal. The said Rule reads as follows:-

"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 W.P.(C) 8939/2017 Page 6 of 16 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 available."

for departmental proceedings is 15. Mr. Raju, submits that the Tribunal has observed that clauses (a) and (b) were applicable in the facts of the present case. He submits that the criminal charge has not failed against the petitioner on technical grounds, since it was not a case of lack of sanction under Section 19 of the Prevention of Corruption Act, or any such procedural infirmity. He further submits that no finding has been returned by the trial Court that the prosecution witnesses had been won over.

16. Mr. Raju submits that since, in the present case, the departmental enquiry was concluded and the order of the Disciplinary Authority was passed prior to the petitioners acquittal in the criminal trial, Rule 12 aforesaid should have been invoked at the appellate stage, which has not been done. The Appellate Authority has introduced the concept of an honourable acquittal, which is not covered under the exceptions to Rule 12. W.P.(C) 8939/2017 Page 7 of 16 17. Mr. Raju has also relied upon the observations made by the Full Bench of the Tribunal in Original Application No.2816/2008 decided on 18.02.2011 in Sukhdev Singh and Anr v. Government of NCT of Delhi & Ors., wherein the Tribunal has observed that judicial orders take precedence over an order passed in departmental proceedings and, thus, the judicial verdict has to be given effect. In such situations, the order passed in departmental proceedings shall have to be revisited and changed or modified and set as per the judicial verdict.

18. On the other hand, Mr. Satyakam, learned counsel for the respondents who appears on advance notice, supports the impugned order. He points out that in the present case the Trial Court had acquitted the petitioner only by giving him the benefit of doubt, on account of the fact that the complainant PW-6 and some of the official witnesses had turned hostile. He points out that the Trial Court, in fact, rejected the testimony of the complainant PW-6, insofar as he had not supported the case of prosecution during his cross- examination. The Trial Court, in para 12.2 of its decision, observed as follows:-

"12.2 The study of turn around in the testimony of complainant after a gap of nine months of his examination in chief indicates, that his subsequent testimony in court is influenced by some extraneous factors. As per law laid down in Khujji case

(supra) the testimony of witness in such cross examination can be ignored. Since the existence of Sahil is absolutely foreign to the prosecution case, the cross examination of complainant (PW6). I shall thus read and rely upon the examination in chief of this witness. I discard 19. Mr. Satyakam, further submits that the case of the petitioner is clearly W.P.(C) 8939/2017 Page 8 of 16 covered by clause (b) of Rule 12 since, not only in the opinion of the Court, but also in the opinion of the Deputy Commissioner of Police, the prosecution witnesses had been won over. He further points out that the recovery of the currency notes from the petitioner was established before the Trial Court. In the judgment, the trial Court observed as follows:-

"13.2 Another limb of the prosecution case, as regards recovery of the treated GC notes from the possession of the accused is sufficiently proved. Moin Akhtar (PW6) has deposed that on predetermined signal having been given by panch witness, raiding team reached the spot and nabbed the accused. On the instructions of raid officer, accused was searched by panch witness, which resulted in recovery of GC notes in the denomination Rs.500/- each. The serial numbers of the GC notes were matched with the serial numbers on raid report. Left hand wash of the accused turned pink indicating presence of phenolphthalein powder, which had been applied to the GC notes. This part of his testimony is corroborated by Inspector Virender Thakran (PW16) and also to some extent by Ct. Arun Mathur (PW13). Ct. Arun Mathur, however, differed from the aforesaid two witnesses on the limited aspect of the pocket of accused's pant from which money had been taken out. In my opinion, this part of Arun Mathur's testimony would not cause any dent to the prosecution case. Thus, recovery of GC notes, whose serial numbers matched with the numbers on raid report, from the person of accused and presence of phenolphthalein powder in his hand, establishes recovery of bribe money from the person of accused. (emphasis supplied) 20. We have considered the submissions of learned counsels, perused the record, including the impugned order, and the judgment rendered by the learned Special Judge (PC Act) dated 19.07.2013 and, in our considered view, there is absolutely no merit in the submissions of the petitioner. There is no infirmity in the impugned order and the same does not call for W.P.(C) 8939/2017 Page 9 of 16 interference in the facts & circumstances of the case.

21. The disciplinary action taken against the petitioner is premised on the disciplinary inquiry conducted against him, wherein six prosecution witnesses were produced by the respondent department. The said witnesses included the complainant, Moin Akhtar (PW-2), Narender Taank (PW-4) the shadow witness, and Constable Arun Mathur (PW-3), apart from other police witnesses from the ACB. Pertinently, they did not turn hostile during their cross-examination before the Inquiry Officer. The Inquiry Officer, upon appreciation of evidence, returned the finding holding the petitioner guilty of misconduct alleged against him, i.e. of demanding bribe of Rs.7,000/-; settling the same at Rs.3,000/- in lieu of not harassing the brother of the complainant; and accepting the amount of Rs.3,000/- as bribe from the complainant. It was found against him that he was trapped and caught red-handed while demanding, accepting & obtaining Rs.3,000/- as bribe in respect whereof FIR No.41/2009 under Sections PC Act, PS AC Branch was registered against him.

22. It is not the petitioners case that there was any infraction of any of the procedures, or that there was any violation of principles of natural justice which caused any prejudice to the petitioner in the conduct of the disciplinary proceedings. It is also not his case that it was a case of no evidence against the petitioner, or that the findings recorded against him in the disciplinary proceedings were perverse. No such argument has been advanced by Mr. Raju before us.

23. The only aspect urged by the petitioner is that the disciplinary action W.P.(C) 8939/2017 Page 10 of 16 taken against him was followed by his acquittal in the criminal trial and, thus, keeping in view the decision of the Full Bench of the Tribunal in Sukhdev Singh (supra), the respondents were obliged to take into consideration the petitioners acquittal and close the disciplinary proceedings against him. Since the departmental appeal of the petitioner was still pending, the Appellate Authority should have, on the basis of the petitioners acquittal in the criminal trial, closed the proceedings; reinstated the petitioner in service with full back wages and; with continuity of service. The submission of the petitioner is that his case is covered by the substantive part of Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 and that the Tribunal has erred in concluding that the same is covered by clauses (a) and (b) of the said Rule.

24. A perusal of the judgment rendered by the learned Special Judge acquitting the petitioner in the criminal trial shows that the complainant supported the case of the prosecution during his examination-in-chief. However, when he was cross-examined after a gap of nine months, he turned turtle. The Trial Court did not accept the statement of the complainant made in his cross-examination by observing that his subsequent testimony, i.e. during his cross-examination, is influenced by some extraneous factors. The Trial Court in paragraph 12.2 of the said decision, as extracted hereinabove, read and relied upon the examination-in-chief of the complainant PW-6. Pertinently, the Trial Court also held, as established, the factum of the recovery of the tainted notes from the petitioner. However, since the other prosecution witnesses, including the shadow witness PW-14 Narender Taank turned hostile, and a member of the raiding team Constable Arun Mathur W.P.(C) 8939/2017 Page 11 of 16 also turned hostile, by giving the petitioner the benefit of doubt, he was acquitted.

25. The submission of the petitioner that his case is not covered by any of the clauses of Rule 12 is completely misplaced. Pertinently, the Appellate Authority while passing the order dismissing the petitioners departmental appeal took into account the acquittal of the petitioner in the criminal trial. In his appellate order dated 29.01.2014, the Appellate Authority has observed as follows: ... .. Moreover, the appellant has not been acquitted honourably by the Honble Court of Sh. Narottam Kaushik, Special Judge (ACB), Tis Hazari Courts, Delhi as has been given benefit of doubt while acquitting the appellant. ... .. 26. The Court while acquitting the petitioner, clearly observed that the complainants subsequent testimony was influenced by some extraneous factors. This is another way of saying that he had been won over. A witness may be won over either by some monetary/ material inducement, or by exercise of pressure, or coercion, or undue influence. Moreover, in paragraph 16.2 of its judgment, the learned Special Judge expressly observed that the accused, i.e. the petitioner was entitled to benefit of doubt.

27. One of the rules incorporated in Rule 12 of the Delhi Police (Punishment and Appeal) Rules that the delinquent officer shall not be punished departmentally on the same charge, or on a different charge on the evidence cited in a criminal case,

when he has been tried and acquitted by a criminal Court, is founded primarily upon the principle that where the W.P.(C) 8939/2017 Page 12 of 16 conduct of the delinquent police officer has been examined threadbare on merits in a criminal trial, and he has been given a clean acquittal, he should not be subjected to departmental proceedings upon the evidence cited in the criminal case. The exceptions to Rule 12 as contained in clauses (a) to (c) recognise the fact that acquittal in a criminal trial may be founded upon, inter alia, adoption of higher standard of proof, i.e. proof of guilt beyond reasonable doubt, or on technicality. Apart from cases covered by clauses (d) and (e) of Rule 12, such acquittals, expressly, do not bar disciplinary proceedings premised on the same evidence which may be cited in a criminal case. Thus, where in a criminal trial the delinquent/ accused is acquitted by giving a clean chit to the accused for example, where his alibi is established to the hilt and is accepted by the Court, or the Trial Court returns a clear and definite finding of the accused being falsely implicated or framed, or returns a finding that it is a clear case of mistaken identity, to permit disciplinary proceedings against the accused on the basis of the same evidence which is cited in a criminal case, would be to put him to unnecessary and avoidable harassment.

28. Clause (c) of Rule 12, in our view, puts the matter beyond any doubt when it permits the holding of the disciplinary proceedings, even in respect of an acquitted delinquent police officer in a case where the commission of the offence is established and suspicion rests on the police officer concerned. Clause (c) of Rule 12 covers cases where the accused/ delinquent has been acquitted by giving him the benefit of the doubt i.e. even though there may be suspicion of his involvement, the charge is not established beyond reasonable doubt. In the present case, the suspicion W.P.(C) 8939/2017 Page 13 of 16 clearly rested on the petitioner, as noticed by the Trial Court in the judgment of acquittal dated 19.07.2013. Thus, the case of the petitioner was not only covered by clause (b), but also by clause (c) of Rule 12.

29. The observations made by the Full Bench of the Tribunal in Sukhdev Singh (supra) in paragraph 6, which are referred to by Mr. Raju, have to be read and understood in the aforesaid context. In paragraph 6 of the decision in Sukhdev

Singh (supra), the Tribunal, inter alia, observed: 6. ... .. In such a situation, as mentioned above, we are of the view that since a judicial order takes precedence over an order passed in departmental proceedings, it is the judicial verdict which has to be given effect, and, therefore, in that situation the order passed in departmental proceedings shall have to be re-visited and changed, modified or set at naught, as per the judicial verdict. ... .. 30. The aforesaid observations would be attracted, in our view, where the acquittal of the accused/ delinquent in the judicial proceedings is a clean or honourable acquittal, i.e. it is not one founded upon either technical grounds; or on account of the prosecution witness(es) being won over; or, on the basis of adoption of higher standard of proof which requires establishment of guilt beyond reasonable doubt.

31. We may also observe that the petitioner has been particularly lucky in getting away without conviction and sentence. On a reading of the judgment of the Trial Court dated 19.07.2013, we are of the view that in the face of the Trial Court having rejected the hostile testimony of the complainant during his cross examination, and the recovery of the tainted money from the petitioner having been established, the petitioner could have well been W.P.(C) 8939/2017 Page 14 of 16 convicted by the Trial Court. Just like the hostile testimony of the complainant was rejected, the Trial Court could well have adopted the same course of action in respect of the testimony of the shadow witness Narender Taank, PW-14, and another member of the raiding team Constable Arun Mathur, PW-13.

32. The petitioner also was lucky in getting away with the dismissal of the leave petition preferred by the State on the ground that the same was delayed by 104 days. The delay of 104 days was not inordinate. In leave petitions and appeals preferred by the State, there is no personal motivation of the officers concerned to ensure filing of the same within the limitation period. The accused- particularly when he belongs to the same department, may also exercise his influence and cause delay in filing of the leave petition. Such leave petitions are not anybody's baby. There is a lack of accountability in the system. One does not see heads rolling on account of delayed filing of leave petitions. Apart from this, there are also procedural rigmaroles, as the entire process of screening and vetting of the

judgment of the Trial Court is required to be undertaken at several stages, so that appeal/ leave petitions are preferred only in deserving cases. When the Rule of Law is pitted against a technical delay which itself is not inordinate, in our view, application for condonation of such delay should be considered sympathetically. Just as it is important not to punish an innocent person, it is equally important to establish and maintain the rule of law, by ensuring that the guilty are not let off on account of technical pleas. The aspect of delay should be examined in the light of the prejudice that same may have caused to the accused. Delay of a few months, in a case like the present, could not be said to have caused W.P.(C) 8939/2017 Page 15 of 16 any serious prejudice to the accused. In any event, the order of dismissal of the criminal leave petition against the petitioner has attained finality, and we say no more since we are not dealing with the order passed by the learned Single Judge whereby the Criminal Leave Petition was dismissed.

33. Mr. Raju has placed reliance on the judgment of a Division Bench of this Court in Commissioner of Police, Delhi Vs. H.C. Laxmi Chand, 2011 (185) DLT135 to submit that the Division Bench has held in this case that there is no presumption that a witness who has turned hostile, has been won over by the accused. This decision cannot be invoked in the facts of the present case for the reason, that while acquitting the petitioner, the Trial Court has itself observed that the complainant had turned hostile when he was cross-examined nine months after he had made his statement supporting the case of the prosecution, on account of being influenced by some extraneous factors. In fact, the Trial Court even rejected the hostile statement of the complainant PW-6. The same was not the position in H.C. Laxmi Chand (supra).

34. For all the aforesaid reasons, we are of the view that the impugned judgment does not call for interference and the present petition is, accordingly, dismissed. VIPIN SANGHI, J REKHA PALLI, J OCTOBER11 2017 gm/sr W.P.(C) 8939/2017 Page 16 of 16