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

+ W.P.(C) 15691/2023& CM APPL. 62945/2023

COMMISSIONER OF POLICE AND ANRPetitioners

Through: Mr. Farman Ali, SPC with
Ms. Laavanya Kaushik, GP and Ms. Usha
Jamnal, Advs.

versus

SHRI SHAJI SVRespondent

Through: Ms. Esha Mazumdar and
Mr. Setu Niket, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT(ORAL)

10.02.2025

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AJAY DIGPAUL, J.

FACTUAL BACKGROUND

1. The respondent, while working as a Constable in Delhi Police, was assigned picket duty at the residence of Mr. Sajjan Kumar, Member of Parliament, on 19.05.1994.

2. On the same day, at 03:40 p.m., the respondent proceeded to Hindu Rao Hospital for medical treatment. However, he neither reported back to the police post nor sent any intimation until 09:00 p.m., and was accordingly marked absent on 19.05.1994.



3. During the intervening night of 19.05.1994, a complaint was lodged by one Mr. Ram Babu Mishra at PS Sultanpuri, alleging a burglary attempt at his residence. The complainant identified the respondent herein, his neighbour, who allegedly attempted to flee but left behind his purse, identity card, and driving license, which were subsequently handed over to the Investigating Officer. An FIR bearing No. 250/1994 was registered against the respondent under Sections 457, 380, and 511 of the Indian Penal Code, 1860 ('IPC').

4. Pursuant to the registration of the FIR, the respondent was placed under suspension w.e.f. 19.05.1994, and a Departmental Enquiry was initiated against him under provisions of Delhi Police (Punishment & Appeal) Rules, 1980 *vide* office order dated 01.11.1994.

5. An Inquiry Officer¹ was appointed, to inquire into the charges against the respondent in the disciplinary proceedings. The IO, in his report, held that the allegations against the respondent stood proved. However, as per officer order dated 28.07.1995, the disciplinary proceedings were kept in abeyance until the disposal of the criminal case.

6. Subsequently, upon receipt of instructions from the Police Headquarters *vide* communication dated 28.05.1998, the Departmental Enquiry was re-opened on 30.07.1998. The IO, upon reconsideration of the available material, held the Respondent guilty of the charges.

¹ "the IO", hereinafter



7. Agreeing with the finding of the IO, a copy of the findings was duly served upon the Respondent, affording him an opportunity to submit a representation against the same within a stipulated period of 15 days.

8. The respondent accordingly submitted his written reply in response to the findings of the IO. The primary defence raised by the respondent in his reply was that he was undergoing medical treatment on the relevant date and that DD No. 10, dated 19.05.1994, recorded his hospitalisation.

9. The Disciplinary Authority, upon due consideration, found that the respondent had failed to effectively contest the two principal allegations against him, namely, unauthorised entry into the premises of the complainant and wilful absence from duty. While the respondent contended that he had sought medical treatment, the records established that he neither resumed duty post-treatment nor intimated his superiors regarding his absence. Mere entry in the records concerning his hospital visit did not absolve him of the misconduct attributed to him.

10. On the basis of the aforementioned findings, the Disciplinary Authority arrived at the conclusion that the respondent had wilfully absented himself from duty at the residence of a protected person and had unlawfully entered the premises of the complainant on the specified date.

11. Accordingly, the Disciplinary Authority imposed the penalty of dismissal from service vide order dated 16.02.1999.



12. The respondent preferred an appeal before the Joint Commissioner of Police against the dismissal order, which was rejected on 21.09.1999, with an observation that upon disposal of the criminal case, he could seek reconsideration.

13. The respondent challenged the dismissal order before the Central Administrative Tribunal² by filing OA No. 1775/2000, which was dismissed vide order dated 31.01.2003.

14. Aggrieved, the respondent approached the Hon'ble High Court of Delhi in W.P.(C) No. 2028/2004, which was also dismissed vide order dated 06.04.2004 as no cogent evidence was produced by the respondent to support his claims.

15. The respondent was convicted in FIR No. 250/1994 and sentenced to one year of imprisonment with a fine ₹4,000/- vide judgment dated 26.03.2010 and 06.04.2010, respectively.

16. The respondent challenged the conviction before the appellate court, where he was acquitted vide judgment dated 07.01.2011, giving him the benefit of doubt. The operative part of the judgment of the learned ASJ reads thus:

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“In view of my said discussion, the appellant is entitled to benefit of doubt on the said account and I hereby accept the appeal and the impugned orders dated 26.03.2020 convicting the appellant/accused for the offence and order dated 06.04.2010 sentencing the appellant to undergo RI for one year along with fine of Rs.4,000/- are hereby set aside and the appellant is acquitted of

² “the Tribunal”, hereinafter



the charge u/s 456 IPC. The PB and SB of the appellant are hereby discharged. Trial Court Record be sent back with one copy of this appellate order forthwith. The appeal file be consigned to the Record Room.”

17. Following his acquittal, the respondent submitted a representation on 12.10.2011, seeking reinstatement. The Joint Commissioner of Police, being the Appellate Authority, upon reconsideration, found the penalty of dismissal harsh and reinstated the Respondent with the penalty of forfeiture of four years of service, vide order dated 13.02.2012.

18. Dissatisfied, the respondent challenged the order dated 13.02.2012 before Tribunal in OA No. 3543/2012, which was partly allowed vide order dated 16.07.2016, directing the Appellate Authority to reconsider the matter in terms of Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980, with the following observations:

“ xxx xxx xxx xxx

13. As is evident from the record that, while rejecting the first statutory appeal, the applicant was given liberty to file representation after the decision in the criminal case for reconsideration of his case. In pursuance thereof, he filed the representation (Annexure A-5), along with the copy of judgment of acquittal in criminal case before the AA. The AA appears to have partly accepted the judgment of acquittal of the criminal court while setting aside the punishment of dismissal awarded to the applicant by the DA vide order (Annexure A-2). But at the same time, a fresh penalty of reduction of 4 years of approved service was imposed on the applicant, without any rhyme or reason and on speculative grounds. Neither the medical prescription slips were considered nor any reason was assigned for awarding the punishment of forfeiture of 4 years approved for absence of just one day from duty ignoring the explanation of the applicant for the absence.



14. *In this context, Rule 12 of D.P. Rules postulates as under:-*

“12. Action following judicial acquittal - When a police officer has been tried and acquitted by a criminal court, he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not unless:-

(a) the criminal charge has failed on technical grounds, or

(b) in the opinion of the court, or on the Deputy Commissioner of Police the prosecution witnesses have been won over; or

(c) the court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned; or

(d) the evidence cited in the criminal case 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. ”

15. *Therefore, the AA is obliged to consider the applicability and effect of the judgment of acquittal (Annexure A-4), in terms of Rule 12 ibid. The AA, however, can ignore its import on account of some exceptions contained in clauses (a) to (e) of Rule 12 ibid. The AA cannot partially accept the judgment of acquittal for setting aside the initial punishment of dismissal from service awarded by the DA vide (Annexure A-2) order nor can ignore the import of the judgment of acquittal for imposing a fresh penalty of forfeiture of 4 years approved service permanently, on speculative and untenable grounds. The AA was required either to accept or reject the judgment of acquittal in toto and not otherwise in terms of Rule 12 of D.P. Rules. Hence, the impugned order cannot legally be sustained.*

16. *No other point, worth consideration, has been urged or pressed by learned counsel for the parties.*

17. *In the light of the aforesaid reasons and without commenting further anything on merit, lest it prejudice the case of either side during the course of subsequent hearing by the AA, the OA is partly allowed. The impugned order dated 13.02.2012 (Annexure A-1), is hereby set aside. The case is remitted back to the AA for considering the matter afresh in the light of aforesaid observations, and to pass an appropriate order in terms of Rule 12 and in accordance with law, within a period of 2 months from the*



date of receipt of a copy of this order.

18. *The parties are left to bear their own costs.”*

19. The Appellate Authority, upon reconsideration, upheld the dismissal vide order dated 06.10.2016.

20. Dissatisfied with the said order dated 06.10.2016, the Respondent filed a Contempt Petition (CP No. 563/2016), alleging non-compliance with Tribunal’s order. The Tribunal, vide order dated 15.05.2017 observed that the effect of Rule 12 had not been examined, as directed by the Tribunal.

21. Thereafter, the Appellate Authority passed a fresh order on 03.02.2017, reiterating the rejection of the appeal and justifying the dismissal under clauses (b) and (c) of Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980.

22. The respondent filed OA No. 2011/2017 before the Tribunal, challenging the order dated 03.02.2017, contending that his acquittal did not fall within the exceptions provided under Rule 12.

23. The Tribunal, vide impugned order dated 18.08.2023, allowed the OA, holding that the dismissal was unsustainable as the respondent’s acquittal did not attract any of the exceptions under Rule 12. The Tribunal’s order reads thus:

“16. Therefore, we find that the penalty of dismissal from service imposed upon him vide impugned order is disproportionate, more so when the applicant’s case does not fall within the five exceptions under Rule 12 which could have enabled the respondents to punish him departmentally on the charges against him in the criminal



case.

17. We are conscious our limitation and recognize that the Tribunal or courts normally should not interfere with the penalty imposed, as this is the sole discretion and prerogative of the relevant disciplinary and appellate authority but at the same time if such a penalty is contrary to the facts and circumstance, as reflected in the first order of the appellate authority, it is incumbent upon us to interfere. Therefore, the impugned order is set aside and we remit the matter back to the said authority with a clear direction to review the entire disciplinary proceedings against the applicant and take a decision afresh in the matter with the condition that if they decide to impose a fresh penalty upon the applicant, they shall be at liberty to impose any penalty other than the penalty of dismissal or removal from service. The said direction shall be complied with within a period of 8 weeks from the date of receipt of a certified copy of this order. The applicant will be entitled to all consequential benefits, if the circumstances so arise, in accordance with law.

18. The O.A. stands disposed of in the aforesaid terms.

19. There shall be no orders as to costs.”

24. Aggrieved by the said order, the present appeal has been preferred by the appellants.

25. Keeping in view the judgments in *Govt. of NCT of Delhi v Satyapal Singh Yadav*³ and *Delhi Police v Krishan Kumar*⁴ which hold that acquittal on benefit of doubt cannot be treated as an acquittal on technical grounds or any one of the categories of acquittals under Clauses A to E of Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980.

26. Relevant paras of *Satyapal Singh Yadav* are reproduced hereinbelow:



“22. *The Tribunal has not regarded the observation, by the DCP, in the punishment order dated 9 March 2015 to the effect that the acquittal of the respondent was because witnesses had turned hostile, as equivalent to the expression of opinion that the witnesses had been won over by the respondent. We do not feel that the said view suffers from any inherent jurisdictional infirmity or patent error of law or fact, as would justify inference under Article 226 of the Constitution of India.*

23. *We, therefore, find no reason to upset the view of the Tribunal that the present case does not fall within clause (b) of Rule 12 of the DPPAR.*

24. *Though Ms. Bandhopadhyaya did not argue cause (a) of Rule 12, we deem it necessary to pen a word in that regard, as the said clause was invoked before the Tribunal, and the bulk of the impugned judgment devotes itself to the applicability of the said clause. Clause (a) of Rule 12 envisages acquittal of the charged police officer on technical grounds as one of the circumstances in which disciplinary proceedings against her, or him, could sustain, even if based on the same charges. On this aspect, the legal position is no longer res integra. This Court has, recently, examined the position in this regard in its judgment in *Delhi Police v. Krishan Kumar*¹⁴, in which, after noting the earlier decisions on the point in *George N.S. v. Commissioner of Police*¹⁵, *Ex Ct. (CRPF) Prem Kumar Singh v. UOI*¹⁶ and *Additional Commissioner of Police Security v. Dinesh Kumar*¹⁷, we have held thus:*

“30. There is, therefore, a clear and discernible difference between acquittal on benefit of doubt and acquittal on technical grounds. A finding that the charge against the accused has not been proved, whether by returning a positive finding of innocence or even - as in many cases - by terming the acquittal to be by granting “benefit of doubt”, is ipso facto not an acquittal “on technical grounds”.

31. *We may also refer in this context on the judgment of the Supreme Court in *Ram Lal v. State of Rajasthan*¹⁸ in which Courts were cautioned against being swept away by the use of the words “benefit of doubt” in the operative portion of the judgment of acquittal by the Criminal Court and were advised to examine the judgment of acquittal holistically to determine for themselves as to whether the acquittal was actually on benefit of doubt or honourable.*

³ 2025 SCC OnLine Del 452

⁴ 2024 SCC OnLine Del 8862



32. *That aspect may not, however, specifically arise in the present case, as the protocol regarding the effect of acquittal in criminal proceedings on disciplinary proceedings as contained in Rule 12 (a) of the DPPAR, is distinct and different. Where there is a statutory provision dealing with such an exigency, the Court has to be guided by the statute. The question of whether acquittal was honourable, or on benefit of doubt, is not a circumstance envisaged in any of the clauses of Rule 12 of the DPPAR. Rule 12 (a) does not use the expression “honourable” or “benefit of doubt”. Instead, it uses the expression, “on technical grounds”.*

33. *To repeat, there is a clear qualitative difference between an acquittal on technical grounds and an acquittal on benefit of doubt. An acquittal on technical grounds is an acquittal on the ground of nonfulfillment of some technical parameters or requirements, such as, for example, the need for obtaining sanction before launch of prosecution. Acquittal after appreciation of evidence, even if it is facially termed as acquittal on benefit of doubt is not an acquittal on “technical grounds”. The decision in Prem Kumar Singh amply underscores this legal position.”*

25. *The acquittal of the respondent by the learned MM was not, therefore, an acquittal on “technical grounds” within the meaning of clause (a) of Rule 12 of the DPPAR. As already noted, Ms. Bandopadhyaya, too, did not labour this point.*

26. *In our view, therefore, neither clause (a) nor clause (b) of Rule 12 of the DPPAR applies in the present case. None of the other clauses, obviously, apply.*

27. *We, therefore, are in agreement with the judgment of the Tribunal, which set aside the disciplinary proceedings against the respondent ab initio and granted consequential relief to him.*

28. *We, therefore, find no reason to interfere with the impugned judgment which is upheld in its entirety.*

29. *The writ petition is dismissed in limine.”*

27. Relevant paras of **Krishan Kumar** are reproduced hereinbelow:

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33. *To repeat, there is a clear qualitative difference between an acquittal on technical grounds and an acquittal on benefit of doubt. An acquittal on technical grounds is an acquittal on the ground of nonfulfillment of some technical parameters or requirements, such as, for example, the need for obtaining sanction before launch of prosecution. Acquittal after appreciation of evidence, even if it is facially termed as acquittal on benefit of doubt is not an acquittal on “technical grounds”. The decision in Prem Kumar Singh amply underscores this legal position.*

34. *In the present case, a perusal of the judgment dated 25 October 2016 of the learned Special Judge, which allowed the respondent's appeal and acquitted him of the charges against him, the relevant paragraphs of which stand reproduced supra, clearly indicates that the acquittal of the respondent could not be said to be on “technical grounds” but was on a holistic appreciation of the evidence available. The learned Special Judge has held that the evidence was insufficient to prove the charges against the respondent. This, therefore, could not be regarded as acquittal on “technical grounds”.*

35. *Clause (a) of Rule 12 of the DPPAR, therefore, does not apply.*



36. *None of the other clauses, obviously, applies, and Mr. Acharya has also not chosen to rely on any of the said clauses.*

37. *We, therefore, are in agreement with the Tribunal in its decision that, as (i) the respondent stands acquitted of the criminal charges against him, (ii) the dismissal of the respondent from service was consequent on disciplinary proceedings predicated on the very same allegations and (iii) the acquittal of the respondent cannot be regarded as an acquittal on “technical grounds”, the respondent was, by operation of Rule 12 of the DPPAR, entitled to reinstatement in service with consequential benefits.*

38. *Resultantly, we find no error in the impugned judgment of the Tribunal, which is upheld in its entirety.*

39. *The writ petition is accordingly dismissed with no orders as to costs.”*

28. We find no cause to interfere with the impugned judgment of the Tribunal, which is accordingly affirmed in its entirety.

29. The writ petition is dismissed.

AJAY DIGPAUL, J.

C.HARI SHANKAR, J.

FEBRUARY 10, 2025/sk

Click here to check corrigendum, if any