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

\+ W.P.(C) 12533/2024 & CM APPL. 52124/2024

GOVT OF NCT OF DELHI AND ORS .....Petitioners

Through: Ms. Rupali Bandhopadhyaya, CGSC with Mr. Abhijeet Kumar and Mr. Sourabh, Advs.

versus

SATYAPAL SINGH YADAV .....Respondent

Through:

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

JUDGMENT (ORAL)

% 28.01.2025

C. HARI SHANKAR, J.

1. FIR 562/2014 was registered against the respondent who, at that time, was working as Constable in the Delhi Police, on 29 September 2014 at PS Mukherjee Nagar, under Section 354 of the Indian Penal Code 1860[1]. The FIR was based on a complaint made by one Ms. G[2]. G complained that the respondent had, on 2 June 2014, sexually assaulted her while she was taking a walk and that another girl S[3] also levelled the same allegation.

[1] IPC
[2] The name of the complainant has been withheld
[3] The name of the complainant has been withheld

2. Criminal proceedings were initiated against the respondent, before the learned Metropolitan Magistrate[4], following the lodging of the aforesaid FIR. The criminal proceedings concluded with the acquittal of the respondent by the learned MM on 13 November 2014. Paras 7 and 8 of the judgment of the learned MM read thus:

> "7. Perusal of entire evidence reveals that complainant/victims friend of the complainant, neighbour of complainant as well as other eye witnesses has not supported the case of the prosecution and categorically denied that accused committed any offending act with the victim/complainant. In such kind of cases, evidence of the complainant/victim is the best available evidence and the case can be proved beyond reasonable doubts on the basis of testimony of said witness only.
>
> 8. In the fact and circumstances, case of prosecution is not supported by the key witnesses i.e., the victim, her friend, and neighbour as they have deposed nothing incriminating against the accused and complainant herself denied the presence of the accused at the place of incident. Upon the testimony of the key witnesses offence has not been proved and accused cannot be held guilty. Accordingly accused namely Satypal Singh Yadav stands acquitted for the offence U/s 354 IPC. However his surety bonds remain extended till 6 months from today U/s 437 A Cr.P.C. File be consigned to record room after necessary compliance."

3. Prior to the aforesaid judgment of the learned MM, disciplinary proceedings were initiated against the respondent, by the petitioner, on 14 July 2014, under the Delhi Police (Punishment and Appeal) Rules 1980[5]. A comparison of the FIR dated 3 June 2014 and the order dated 14 July 2014 initiating criminal proceedings against the respondent under the DPPAR reveals that the allegations against the respondent in the Order dated 14 July 2014, initiating disciplinary proceedings against him, were the same as the allegations which

[4] "the learned MM", hereinafter
[5] "the DPPAR" hereinafter

formed subject of FIR dated 3 June 2014, in respect of which he had been acquitted by the learned MM, albeit after the institution of disciplinary proceedings on 14 July 2014.

4. An Inquiry Officer[6] was appointed, to inquire into the charges against the respondent in the disciplinary proceedings. The IO, in his report dated 15 September 2014, held that the allegations against the respondent stood proved.

5. Following this, the Deputy Commissioner of Police[7], as the Disciplinary Authority[8], penalised the respondent with permanent forfeiture of four years' approved service and proportionate reduction in pay, *vide* order dated 9 March 2015. Additionally, the period during which the respondent had remained under suspension was directed to be treated as *dies non*. A statutory appeal, preferred thereagainst, was also dismissed on 17 July 2015.

6. After unsuccessfully approaching the petitioner in that regard, the respondent instituted OA 3656/2015[9], before the Central Administrative Tribunal[10], seeking quashing of the order dated 14 July 2014 whereby disciplinary proceedings were initiated against him, the findings of the IO dated 15 September 2014, the order of punishment dated 9 March 2015 and the appellate order dated 17 July 2015.

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[6] IO
[7] DCP
[8] DA
[9] **Satyapal Singh Yadav v GNCTD & Ors**

7. By judgment dated 2 February 2024, the Tribunal has allowed the respondent's OA, relying on Rule 12 of the DPPAR which, admittedly, is applicable in such cases. The Tribunal has held that the case of the respondent did not fall within any one of the five circumstances envisaged in clauses (a), (b), (c), (d) and (e) of Rule 12[11], in which case alone the respondent could be departmentally punished on the charge which formed subject matter of criminal proceedings in which he was acquitted. The Tribunal has, therefore, quashed the order dated 14 July 2014, the findings of the IO dated 15 September 2014 and the orders of the DA and Appellate Authority dated 9 March 2015 and 17 July 2015 respectively and has directed restoration of the respondent to his original position with consequential benefits.

8. Aggrieved thereby, the Govt. Of NCT of Delhi and the Delhi Police has approached this Court by means of the present writ petition.

9. We have heard Ms. Rupali Bandhopadhyaya, learned CGSC for the petitioners.

10. The respondent remained unrepresented.

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[10] "the Tribunal" hereinafter

[11] **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

11. While the burden of the song of the Delhi Police, before the Tribunal, was largely attuned to clause (a) in Rule 12 of the DPPAR, Ms. Rupali Bandhopadhyaya placed greater reliance on clause (b). She has, in this context, drawn our attention to the following paragraph from the punishment order dated 9 March 2015 issued by the DCP:

> "From the above discussion and testimonies of PWs, it has been established that the delinquent Constable had indulged himself in a shameful act under the influence of alcohol. Rule 3 of CCS (Conduct) Rules, 1964 discloses that a police officer will not do any such act which is unbecoming of a police officer even while he was not on duty but the delinquent Constable has done a mischievous act and found in violation of this rule also However, the Hon'ble Court has acquitted the delinquent Constable vide judgement dated 13.11.2014 on the grounds that the case of prosecution is not supported by the key witnesses i.e. the victim, her friend and neighbour as they have deposed nothing incriminating against the delinquent Constable and complainant herself denied the presence of the delinquent at the place of incident. *Though, the victims and other witnesses have become hostile during trial of the case* but during DE proceedings the charge levelled against the delinquent Constable has been proved because the PCR calls and statement of G upon which the case was registered and statement of other victim S recorded u/s 161 Cr.PC clearly goes to prove that the delinquent Constable has committed the misdeed. The criminal proceedings and proceedings in departmental enquiry are quite distinct and different. In criminal proceedings, sufficient proof is required to frame the charge, whereas in the departmental proceedings, the preponderance of probability is sufficient to prove the guilt of an erring official. The delinquent Constable misbehaved with two girls under the influence of liquor, which is not expected from the member of disciplined force. Hence, I am of the considered view that the enquiry officer has rightly hold the delinquent guilty of the charge for which he cannot be pardoned and deserves penalty indeed for his gross misdeed.
>
> Therefore, keeping in view of above discussion and overall facts and circumstances of the case in its totality and agreeing with the findings of the Enquiry Officer, I, Vikramjit Singh, Dy.

(e) additional evidence for departmental proceedings is available.

> Commissioner of Police, Outer District, Delhi, do hereby award the punishment of forfeiture of four (04) years approved service permanently to Constable Satyapal Singh Yadav, No. 2991/OD, entailing proportionate reduction in his pay. He is hereby re-instated from suspension with immediate effect and his suspension period from 03.06.2014 to the date of issue of this order is decided as period "Not Spent on Duty". Besides, his acquittal was examined under Rule 12 of Delhi Police (Punishment & Appeal) Rules, 1980 and observed that the delinquent Constable has been *acquitted due to hostility of the complainant and key witnesses.* Hence, he is being awarded the above punishment for his misdeed duly proved during DE proceedings. However, on acquittal, the name of Constable Satyapal Singh Yadav, No. 2991/OD is deleted from the list of police personnel facing criminal cases."
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> (Emphasis supplied)

Ms. Bandhopadhyaya submits that the observation of the DCP that the respondent had been acquitted only because the witnesses against him had turned hostile suffices to satisfy the requirement of clause (b) in Rule 12 of the DPPAR.

12. We find ourselves unable to agree.

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, 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***[12], 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 judgement of the learned MM or in the punishment

[12] **(1975) 3 SCC 851**

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.

19. The DCP, in the present, has, therefore, obviously failed to appreciate the distinction between a finding that the witness had turned hostile and a finding that the witness had been won over.

20. We are in agreement with the finding of the learned Tribunal that, in fact, there is no observation by the DCP in his punishment order dated 9 March 2015 that the acquittal of the respondent in the criminal proceedings following FIR dated 3 June 2014 was because he had won over the witnesses who had earlier deposed against him.

21. While arriving at this finding, we have kept in mind the limited scope of our jurisdiction under Article 226 of the Constitution of India. We are not sitting in appeal over the judgment of the Tribunal. It is not permissible for us, therefore, to overturn the judgment of the Tribunal merely on the ground that another possible, or even more appropriate, inference can be drawn, from the facts, than that drawn by the Tribunal. Our jurisdiction, over the Tribunal, is that of *certiorari.* The limits of *certiorari* jurisdiction stand classically delineated in the following passage, from ***Syed Yakoob v K.S. Radhakrishnan***[13]:

> "7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. *A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard, to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings*. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible

[13] **AIR 1964 SC 477**

and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. *What can be corrected by a writ has to be an error of law; it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari*. In our opinion, it neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and

upon the nature and scope of the legal provision which is alleged to have been misconducted or contravened."

(Emphasis supplied)

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

[14] **2024 SCC OnLine Del 8862**

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".
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> 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.
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> 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".
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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

[15] **183 (2011) DLT 226**
[16] **2019 SCC OnLine Del 7563**
[17] **2023 SCC OnLine Del 2189**
[18] **(2024) 1 SCC 175**

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.*

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JANUARY 28, 2025/*AS/dsn*

Click here to check corrigendum, if any