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

Reserved on: 10.12.2025
Pronounced on: 07.01.2026

\+ **W.P.(C) 263/2009**

DEPUTY COMMISSIONER OF POLICE .....Petitioner
Through: Mr.Syed Abdul Haseeb, CGSC
versus

EX. CONST. ARVIND KUMAR .....Respondent
Through: Mr.Sachin Chauhan and
Mr.Abhimanyu Baliyan, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE MADHU JAIN

J U D G M E N T

NAVIN CHAWLA, J.

1. This petition has been filed challenging the Order dated 23.07.2008 passed by the learned Tribunal in O.A. No. 1467/2007, titled ***Constable Arvind Kumar v. Govt. of NCT of Delhi & Ors.***, whereby the learned Tribunal allowed the O.A. filed by the respondent herein, with the following finding:

> *"15. The OA. therefore, succeeds. The impugned orders i.e. the order dated 29.07.2004, ordering the initiation of departmental enquiry, the findings of the enquiry officer and the orders of the disciplinary authority and appellate authority are quashed and set aside. The Applicant should be reinstated in service forthwith. He would be eligible for all consequential benefits from the date of his dismissal on 3.09.1996 under Article 311(2)(b) of the Constitution of India. We are giving this direction because in the judgement and order dated 19.11.2003, in*

OA No. 1033/2003 by which the order of the Respondents dismissing the Applicant invoking Article 311(2)(b) was quashed, consequential benefits had not been showed. The above directions should be complied with as expeditiously as possible and preferably within a period of three months from the date of receipt of a certified copy of this order. No costs."

FACTS OF THE CASE

2. Briefly stated, the facts in which the present petition arises are that the respondent was serving as a Constable in the Delhi Police. During the period 1994 to 1996, three FIRs came to be registered against him. The first being FIR No. 476/1994, registered at Police Station I.P. Estate, under Section 304A of the Indian Penal Code, 1860 (IPC) relating to the firing from his service revolver resulting in the unfortunate death of Constable Mohd. Rashid (1st FIR); the second being FIR No.682/1995, at Police Station Malviya Nagar, under Sections 452 and 323 of the IPC, alleging house trespass and simple hurt (2nd FIR); and the third being FIR No.21/1996, at Police Station Civil Lines, under Sections 420, 468 and 34 of the IPC, alleging cheating and forgery (3rd FIR).

3. Keeping in view the alleged involvement of the respondent in different criminal cases, the respondent was dismissed from service by the petitioner on 03.09.1996, by invoking Article 311(2)(b) of the Constitution of India.

4. The respondent challenged the same before the learned Tribunal by filing O.A. No. 1033/2003, titled ***Ex. Constable Arvind Kumar v. Union of India Through Secretary, Ministry of Home Affairs &***

***Ors.*.** The learned Tribunal, *vide* Order dated 19.11.2003, set aside the dismissal, but gave liberty to the petitioner to proceed against the respondent by initiating proper departmental proceedings.

5. Accordingly, departmental proceedings were initiated against the respondent on 29.07.2004.

6. The respondent had been acquitted in the criminal case concerning the 2nd FIR, on 01.04.2000. He again approached the learned Tribunal by way of O.A. No. 351/2005, titled ***Const. Arvind Kumar v. Govt. of NCTD through The Commissioner of Police & Ors.***, alleging, amongst other things, that the departmental proceedings could not continue against him in view of the said acquittal.

7. The learned Tribunal, *vide* its Order dated 20.05.2005, allowed the said O.A. in part, directing that the proceedings could not continue with respect to the case involving his acquittal.

8. Consequently, the departmental proceedings continued against the respondent on the following charges:

> *"i) I, Inspr. Darshan Singh, Addl. SHO/Jama Masjid, Central Distt. Delhi (Enquiry Officer) charge you Const. Arvind Kumar No. 1354/C (now 1583/c), that while you were posted at PS I.P. Estate on 28.11.1994, late Mohd. Rashid No. 1862/C was using official telephone in the Reporting Room of PS. He kept the telephone busy for quite sometime. The Duty Officer W/SI Shashi Bala, objecting to it asked the late Const. Mohd. Rashid No. 1662/C to stop using the telephone but said late Const, did not take note of it and continued using the telephone. W/SI Shashi Bala asked you Const. Arvind Kumar No. 1354/C on sentry duty to intervene, Const.*

Mohd. Rashid tried to push you Const. Arvind Kumar and caught hold SAF held by you and you tried to extricate your SAF and in this process it went off. The bullets hit Constable Mohd. Rashid in his neck and check injured C. Rashid was removed to LNPJ Hospital, where Doctor declared him brought dead. A case FIR No. 476/94 U/S 304-P was registered at PS I.P. Estate against you Const. Arvind Kumar No. 1354/C.

ii) I further charge you Const. Arvind Kumar No. 1354/C that while running under suspension in the year, 1996, you were supposed to present in Distt. lines, Central Distt. at PS Pahar Ganj but you left the Hdqrs. without taking permission from the competent authority and intercepted one Umesh Chander, entered in his car forcibly, brought him and driver of the car etc. to Trans Yamuna area near GTB Enclave and took away gold biscuits by cheating them. In this regard you were arrested in case FIR No. 21/96 U/S 420/468/34 IPC, P.S. Civil Lines.

iii) The above act on the part of you Const. Arvind Kumar No. 1354/c (now 1583/c) amounts to gross misconduct, negligence, carelessness and dereliction in discharge of your official duties and responsibilities which renders you liable for punishment under section 21 of the Delhi Police (Punishment and Appeal) Rules, 1980."

9. The Inquiry Officer held the charges against the respondent to be proved beyond any doubt. On the basis of the same, the Disciplinary Authority, *vide* its order dated 27.06.2005, imposed the punishment of 'dismissal from service' on the respondent. The appeal thereagainst filed by the respondent came to be rejected by the Appellate Authority on 02.11.2006.

10. The respondent was thereafter acquitted in the criminal case

concerning the 3nd FIR, on 15.02.2006.

11. The respondent then filed O.A. No. 1467/2007, praying for the following reliefs:

> *"(i) To set aside the order dated 29.07.2004 where by the DE is initiated against the applicant under rule 16 of Delhi police punishment and appeal rules 1980 and Order dated 27.06.2005 whereby the extreme of dismissal from service imposed upon the applicant and to further direct the respondents to reinstate the applicant in service with all consequential benefits and further to treat the period from 03.09.96 to 19.11.2003 as period spent on duty and to pay the applicant the pay and allowances for the entire period.*
> *(ii) Order dated 02.11.2006 whereby the appeal of the applicant has been rejected by the appellate authority.*
> *(iii) Finding of the inquiry officer whereby the charge has been proved without dealing with the evidence that has come on record.*
> *(iv) Any other relief which this Hon'ble court deems fit and proper may also be awarded to the applicant."*

12. The above O.A. has been allowed by the learned Tribunal with the directions, as quoted above.

13. Aggrieved of the same, the petitioner has filed the present petition.

SUBMISSIONS BY THE LEARNED COUNSEL FOR THE PETITIONER

14. The learned counsel for the petitioner contends that at the time of passing of the Impugned Order, the respondent was facing criminal trial with regard to the 1st FIR and that the learned Tribunal should have awaited the final outcome of the same. He highlights that in fact,

for the same incident, the respondent has now been convicted under Section 304A of the IPC by the Supreme Court *vide* its judgment in ***Arvind Kumar v. State of NCT, Delhi***, 2023 INSC 622.

15. With regard to the charge pertaining to the 3rd FIR, he submits that the learned Tribunal failed to appreciate that the respondent was acquitted in the criminal proceedings arising out of the same only on account of the witness having turned hostile and not on merits. He submits that the same falls under the exception to Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 ('Rules') and hence, there was no bar to the punishment imposed on the respondent on the basis of the departmental proceedings.

16. Placing reliance on the judgment of the Supreme Court in ***Union of India & Ors. v. P. Gunasekaran***, (2015) 2 SCC 610, the learned counsel submits that this Court cannot re-appreciate evidence or substitute its own view merely because another conclusion is possible.

17. He submits that the Impugned Order, being devoid of merit, deserves to be set aside.

SUBMISSIONS BY THE LEARNED COUNSEL FOR THE RESPONDENT

18. The learned counsel for the respondent submits that as far as the charge pertaining to the 1st FIR is concerned, the learned Tribunal had analysed the testimony of W/SI Shashi Bala, who clearly stated that the deceased constable had snatched the weapon from the respondent during a scuffle and the discharge of weapon was purely accidental.

He submits that the same was an accident occurring in the course of duty, lacking any element of intent or negligence so gross as to constitute misconduct. He submits that the subsequent conviction of the respondent by the Supreme Court in the criminal case has no bearing on the said finding. He highlights that the submission that the learned Tribunal should have awaited the outcome of the criminal case holds no water as the petitioner has itself proceeded with the departmental proceedings not awaiting the outcome of the same.

19. He submits that as far as the charge pertaining to the 3rd FIR is concerned, the respondent had been acquitted in the 3rd FIR by the Criminal Court on 15.02.2006. The Criminal Court had held that the complainant and other material witnesses failed to identify the respondent and that the prosecution failed to prove the case beyond reasonable doubt. He submits that departmental proceedings cannot continue with respect to a matter in which the respondent has been acquitted by a Criminal Court, as the department stands barred by Rule 12 of the Rules. He submits that irrespective, the same witnesses were also re-examined in the departmental inquiry and none of them supported the prosecution's version. The finding of guilt recorded by the inquiry officer was therefore, rightly described as perverse and unsupported by independent evidence in the Impugned Order. He submits that the charge was not made out from the record of the proceedings itself and therefore, it is not a case of re-appreciation of evidence.

20. He highlights that the learned Tribunal has correctly noted that both the disciplinary and appellate authorities had failed to assign any

reasons, and that the orders passed by them were non-speaking and mechanical.

21. The learned counsel for the respondent submits that, therefore, there is no infirmity in the Impugned Order passed by the learned Tribunal.

ANALYSIS AND FINDINGS

22. We have considered the submissions made by the learned counsels for the parties and have perused the record.

23. It is settled law that the Court should generally refrain from re-appreciating the evidence presented in the departmental proceedings. However, the Court may intervene in the departmental proceedings if the proceedings are found to be inconsistent with the established Rules or principles of natural justice or the finding is perverse and based on no evidence. To this effect, we quote from the judgment of the Supreme Court in ***P. Gunasekaran*** (supra) as under:

> ***"12.*** *..... In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:*
>
> *(a) the enquiry is held by a competent authority;*
>
> *(b) the enquiry is held according to the procedure prescribed in that behalf;*
>
> *(c) there is violation of the principles of natural justice in conducting the proceedings;*
>
> *(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*

> *(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
>
> *(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
>
> *(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
>
> *(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
>
> *(i) the finding of fact is based on no evidence."*

24. Having noted the above, we shall now deal with the challenge raised by the petitioner against the Impugned Order passed by the learned Tribunal.

25. In the present case, as far as the charge pertaining to the 1st FIR is concerned, the same relates to the unfortunate death of Constable Mohd. Rashid caused by an injury from the respondent's service weapon. The learned Tribunal, taking note of the findings from the Inquiry Report has highlighted that W/SI Shashi Bala, the senior officer of the respondent, in her testimony, admitted that she had asked the respondent to intervene with the late Constable who was using the police station's telephone for a long time. She has further stated that it was the late Constable who caught hold of the respondent's weapon and it went off when the respondent attempted to extricate it from his grip. The statements of the other witnesses in the departmental proceedings have also been cited by the learned Tribunal to come to a conclusion that from the departmental record itself, it can be made out that the incident was not an act of delinquency but merely

an accident in service, however, unfortunate it may be. We do not find any infirmity in the said finding.

26. While it is pertinent to note that the respondent has been subsequently convicted under Section 304A of the IPC for the same incident by the Supreme Court in ***Arvind Kumar v. NCT, Delhi***, (supra), this conviction, rendered fifteen years after the passing of the Impugned Order cannot automatically vitiate its findings. In the criminal trial, the respondent had been convicted under Section 302 of the IPC by both, the learned Sessions Court as also by the High Court. In appeal, however, the Supreme Court converted the conviction of the respondent to one under Section 304A of the IPC, observing therein that while the prosecution has failed to prove that respondent herein had either any intention of causing the death of the deceased or the intention of causing such bodily injury to the deceased which was likely to cause his death, there was evidence to show that the accident had occurred as the respondent herein had failed to keep the change lever of his Semi-Automatic Fire (SAF) weapon in a safety position and therefore, was guilty of gross negligence and a rash and negligent act leading to the death of the deceased. We quote the relevant findings of the Supreme Court as under:

> *"**19.** The prosecution has failed to prove that the appellant had either any intention of causing the death of the deceased or the intention of causing such bodily injury to the deceased which was likely to cause his death. Assuming that when the appellant approached the deceased to stop him from using the telephone, he was aware that the change lever was not in a safety position, it is not possible to attribute knowledge to him that by his*

> *failure to keep SAF in the safety position, he was likely to cause the death of the deceased. The knowledge of the possibility of the deceased who was himself a policeman pulling SAF carbine cannot be attributed to the appellant. In fact, the appellant could not have imagined that the deceased would do anything like this. Thus, by no stretch of the imagination, it is a case of culpable homicide as defined under Section 299 of IPC as the existence of none of the three ingredients incorporated therein was proved by the prosecution.*
>
> ***20.*** *However, there is a failure on the part of the appellant who was holding a sophisticated automatic weapon to ensure that the change lever was always kept in a safety position. This was the minimum care that he was expected to take while he approached the deceased. Thus, there is gross negligence on the part of the appellant which led to a loss of human life. Due to his rash and negligent act, the deceased lost his life. Therefore, the appellant is guilty of a lesser offence punishable under Section 304A of IPC for which the maximum sentence is imprisonment for two years. The appellant has undergone a sentence of more than eight years."*

27. For considering the relevance of the above conviction to the departmental proceedings in challenge, one must note the difference in the charges; while the conviction of the respondent in the criminal case is on a finding that due to his gross negligence and a rash and negligent act, the death of Constable Mohd. Rashid was caused, the charge in the departmental inquiry does not even attribute negligence, leave alone any misconduct on part of the respondent. It merely narrates the incident, without attributing misconduct or negligence on the respondent, and the registration of the FIR. In absence of any

allegation of misconduct or negligence in the happening of the incident, the respondent could not have been visited with any punishment.

28. As far as the submission of the learned counsel for the petitioner that the learned Tribunal should have awaited the outcome of the criminal proceedings against the respondent, the petitioner had itself proceeded with the departmental proceedings not awaiting the outcome of the criminal case. The learned Tribunal has come to its conclusion on the basis of the said proceedings. The petitioner is not precluded from initiating action against the respondent on account of his criminal conviction in accordance with law.

29. We, therefore, find no infirmity in the finding of the learned Tribunal as far as the charge based on the 1st FIR is concerned.

30. As regards the charge pertaining to the 3rd FIR, the same relates to cheating and forgery in connection with gold biscuits. In the departmental proceedings, none of the witnesses identified the respondent. In such circumstances, the finding of guilt recorded by the authorities was correctly categorized by the Impugned Order as unsustainable.

31. As far as the controversy regarding application of Rule 12 of the Rules on account of the acquittal of the respondent in the criminal case arising out of the same event is concerned, we find that the Impugned Order has arrived at its conclusion on the basis of the departmental proceedings relating to the said charge and finding that the same was based on no evidence. Hence, we need not delve into this issue any further. We quote the relevant finding of the Impugned

Order as below:

> *"14. In the case of charge regarding cheating of one Umesh Chander and divesting him of gold biscuits, there is no evidence regarding this in the disciplinary enquiry. As we have noted in paragraph 9 above, PW-2 Shri Rajendra Kumar Soni who was the first informant in the FIR relating to the cheating of Umesh Chander by the applicant, did not identify the Applicant before the enquiry officer. PW-6, Shri Umesh Chand Aggarwal who was allegedly cheated also failed to identify the Applicant. He has denied that he knew the Applicant.* ***We have noted the arguments of the learned counsel whether in view of the acquittal of the Applicant in the case of cheating (FIR 21/1996) it would bar disciplinary action against him in view of the exceptions under Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980. We need not go into this controversy at all. The disciplinary enquiry has been held. The person, who filed the FIR 21 /1996 and who is the complainant in this case as well as the person who was supposed to have been cheated, did not identify the Applicant during the course of departmental enquiry in the presence & of enquiry officer. Therefore, this is a case of no evidence against the Applicant in the departmental enquiry in so far as the charge relating to cheating of one Shri Umesh Chander and divesting him of gold biscuits is concerned. In so far as the death of Mohd. Rashid is concerned, as we have analysed the preceding paragraphs, it is not an act of delinquency. It is merely an accident of service, however, unfortunate it may be."***
>
> *(emphasis supplied)*

32. For the reasons stated hereinabove, we find no infirmity in the Impugned Order passed by the learned Tribunal.

33. Coming to the relief to which the respondent is entitled to, the

respondent stood convicted in the 1st FIR for the offence under Section 302 of the IPC, by the learned Sessions Court and also the High Court. He underwent a sentence of more than eight years. He now stands convicted under Section 304A of the IPC. The effect of his conviction shall have to be considered by the competent authority of the petitioner. In the Impugned Order, the learned Tribunal has also noted that in the Orders passed by the learned Tribunal in the earlier rounds of litigation, there was no direction to grant consequential benefits to the respondent. In fact, in the Order dated 19.11.2003, while granting leave to the petitioner to continue with the departmental inquiry, the learned Tribunal had also directed the suspension of the respondent to continue.

34. In view of the above, the final direction of the learned Tribunal, directing the reinstatement of the respondent and grant of all consequential benefits, cannot be sustained. Instead, the same is modified by directing that the petitioner shall take an informed decision on the reinstatement and the benefits to be granted to the respondent, taking into account his conviction, within a period of eight weeks from the date of this judgment.

35. The petition is disposed of in the above terms.

36. There shall be no orders as to costs.

NAVIN CHAWLA, J.

MADHU JAIN, J.

JANUARY 07, 2026/ik