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2026:DHC:10424-DB

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

% ***Judgment Reserved on: 07.09.2026***
Judgment Delivered on: 25.11.2026
Judgment Uploaded on: 25.11.2026

 # CNR No. DLHC010323952023

+ W.P.(C) 11009/2023 & CM APPL. 42708/2023

COMMISSIONER OF POLICE DELHI .....Petitioner
Through: Mr. Amit Tiwari, CGSC, Ms. Ayushi Srivastava, Mr. Arpan Narwal, Mr. Kushagra Malik and Mr. Ujjwal Tyagi Advs.

versus

H S SAINI AND ANR .....Respondents
Through: Respondent No.1 in person.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J

1. The present petition arises out of the order dated 13.04.2023 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter, the "tribunal") in O.A. 3820/2018 titled as *H.S. Saini v. Union of India & Anr.*, whereby the O.A. filed by the respondent no.1 herein was allowed and the penalty order dated 24.01.2018 was set aside.

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2. The facts giving rise to the present writ petition are that the respondent no.1 was working as Inspector in Delhi Police. He was entrusted with the investigation of the case FIR No. 144/2003 registered at P.S. Khajuri Khas from 18.05.2003 to 05.02.2004.

3. After about five months, a complaint dated 26.07.2004 was made to the Joint CP, Vigilance Department, Police Head Quarter, on behalf of the complainant in FIR No. 144/2003 wherein allegations of bias were made against the respondent no.1.

4. The Vigilance Department stated in its report that the allegations against respondent no.1 could not be substantiated, and the complaint appeared to stem from personal dissatisfaction against him. Despite the findings in the vigilance report, FIR No. 387/2005 at P.S. Bhajanpura was registered on 15.09.2005 against him alleging offences under Sections 193/196/120B IPC.

5. The detailed allegations made in the FIR No. 387/2005 registered against the respondent are not relevant for the purpose of deciding the present writ petition, suffice it to note that the allegations, *inter alia*, included deliberately misdirecting the investigation *qua* FIR No. 144/2003; favouring the accused out of the way during the investigation of the said FIR; and framing incorrect record.

6. The police after completion of investigation *qua* FIR No. 387/2005 registered against the respondent no.1, filed a cancellation report.

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However, against such cancellation report, a protest petition was filed on behalf of the complainant.

7. The learned Chief Metropolitan Magistrate, North-East, Delhi *vide* her order dated 17.09.2013 dismissed the protest petition filed on behalf of the complainant and accepted the cancellation report filed by the police. The operative part of the said order reads thus:

> *"25. On the basis of the foregoing discussion, it is manifest that nothing has surfaced against the accused from the investigation and the intention as essential ingredient for constituting the offences U/s. 191/192/193 IPC cannot be imputed upon him in any manner. The inevitable conclusion is that the cancellation report filed by the police deserves to be accepted.*
>
> *26. Accordingly, the Cancellation Report filed by the police is hereby accepted and the objection petition filed on behalf of complainant stands dismissed."*

8. In the meanwhile, the respondent no.1 had retired from service on 31.07.2008, on attaining the age of superannuation. Incidentally, on the day of his retirement, on the same set of allegations, witnesses, documents etc. as in the FIR No. 387/2005, a departmental proceeding was also initiated against the respondent.

9. The Enquiry Officer *vide* his report dated 03.05.2012 held that the charges stand proved against the respondent no.1. The Disciplinary Authority agreed with the Enquiry Report and a copy of the same was forwarded to the respondent for making a representation, if any. The respondent submitted his representation.

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10. The Disciplinary Authority after considering the Enquiry Report, respondent no.1's representation and all other records of the case came to a tentative conclusion that proven charges against the respondent are grave and decided to impose a penalty of suitable cut in pension on the respondent.

11. At this stage, the case was referred to the Union Public Service Commission (hereinafter, "UPSC") for seeking its statutory advice *vide* letter dated 24.10.2016 and the UPSC tendered its advice dated 19.09.2017 recommending withholding of 20% of the monthly pension otherwise admissible to the respondent no.1 for a period of five years.

12. A copy of the UPSC advice was delivered to the respondent for giving him the final opportunity to submit his representation against the said advice so that the same may be taken into consideration before passing the final order. In response to the UPSC advice, the respondent no.1 submitted a representation.

13. Thereafter, the Disciplinary Authority passed the order dated 24.01.2018 imposing a penalty of withholding of 20% of the monthly pension otherwise admissible to the respondent for a period of five years. Insofar as gratuity admissible to the respondent is concerned, the same was directed to be released, if not otherwise required in any other case. The relevant extract of the penalty order dated 24.01.2018 is extracted hereinbelow:

> *"3. Shri M.N. Tiwari/DCP, the enquiry officer, submitted his findings concluding therein that "Charges of bad*

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investigation, helping accused in a property matter stand proved". Tentatively, agreeing with the findings of the enquiry officer, copy of the said findings was served upon the charged officer vide no. 7351/HAP/Sec. dated 30.05.2012 against his proper receipt. He submitted his representation in response to the findings of the E.O. However, since Shri H.S. Saini, Inspr. (Retd.) No. D-1/326 (PIS No. 16690060 had already retired, the case was referred to this Ministry for final decision in the DE as per the provisions of Rule 9 of CCS (Pension) Rules, 1972.

4. And whereas, the case was referred to USPC for their advice under Rule 9 of CCS (Pension) Rules, 1972 and the UPSC after considering the case in detail, advised for withholding of 20% (twenty percent) of the monthly pension otherwise admissible to the CO, Shri H.S. Saini for a period of 5 (five) years. The gratuity admissible to him, if not otherwise required in any other case, may be released.

5. And whereas, a copy of advice of UPSC was delivered to Shri H.S. Saini for giving final opportunity to represent on the advice of UPSC so that the same may be taken into consideration before passing final order in the aforesaid Departmental Inquiry case.

6. ***And whereas, Shri H.S. Saini submitted a representation in response to the advice of the UPSC. His representation has been examined and is found devoid of merits. He did not put forth any cogent plea in his defense which could mitigate the grave charges levelled against him.*** *Further, comments of the disciplinary authority were obtained on his representation. The disciplinary authority rebutted all the pleas advanced by Shri H.S. Saini. The competent authority has carefully gone through the record, advice of the UPSC representation of the charged officer and the comments of the disciplinary authority on the representation of the charged officer.*

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> *7. Now therefore, after considering the evidence on record and facts and circumstances of case, the President by virtue of power vested under Rule 9 of CCS (Pension) Rules, 1972 has decided to accept the advice of UPSC and to impose a penalty of withholding of 20% (twenty percent) of the monthly pension otherwise admissible to the CO, Shri H.S. Saini, Inspr. (Retd. No. D-I/326 (PIS No. 16690060) for a period of 5 (five) years.* ***The gratuity admissible to him, if not otherwise required in any other case, may be released****."*
>
> (emphasis supplied)

14. The aforesaid penalty order dated 24.01.2018 was assailed by the respondent by filing an OA No. 3820/2018 before the Central Administrative Tribunal (CAT), Principal Bench, New Delhi. The learned Tribunal, *vide* its impugned order dated 13.04.2023, set aside the penalty order and awarded consequential benefits i.e. restoration of respondent's pension, arrears thereof with interest as admissible to GPF.

15. The learned Tribunal predicated its decision mainly on the following grounds:

(i) If there is an acquittal in a criminal case, the disciplinary proceedings cannot be held as laid down in Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1950 [hereinafter referred to as "the Rules"] and the order of penalty needs to be re-visited. Reliance was placed on the decision of the Larger Bench of the learned Tribunal in ***Sukhdev Singh and Anr. v. Govt. of NCT of Delhi and Ors.***

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(ii) The penalty order dated 24.01.2018 records that the representation of the respondent against UPSC's advice has been examined and is found devoid of merit. However, none of the grounds raised by the respondent were dealt with by the Disciplinary Authority.

(iii) The penalty order records that further comments of the Disciplinary Authority were obtained on the representation of the respondent, but admittedly, such comments were not supplied to the respondent. Thus, it was held that the penalty order is in violation of the principles of natural justice.

16. The learned Tribunal then observed that it would have remitted the matter to the competent authority with liberty to pass a fresh order, but keeping in view the provisions of Rule 12 of the Rules, the authoritative pronouncement of the larger bench of the Tribunal in ***Sukhdev Singh*** (supra) and the fact that the respondent had attained the age of 75 years and had already suffered in the aforesaid criminal case as well as in departmental proceedings, it is putting the matter to quietus.

17. The relevant extract from the impugned order is set out herein below for the ease of reference:

> *"10.* ***In Sukhdev Singh (supra), the Larger Bench of this Tribunal has authoritatively held that there is no bar, express or implied in the Rules of 1980 for holding simultaneous criminal and departmental proceedings. However, if in the criminal case acquittal is such that***

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departmental proceedings cannot be held for the reasons as mentioned in Rule 12, the order of penalty shall be re-visited. *The judicial verdict would have precedence over decision in departmental proceedings and the subordinate rank would be restored to his status with consequential relief.*

11. Learned counsel for the applicant has also placed reliance on subsequent orders/judgments of this Tribunal in OA No.3873/2018, titled Dilbagh Singh vs. Govt. of NCTD and others, decided on 23.9.2029 and OA No.3496/2015, titled Constable Vijay Pal vs. Govt. of NCTD and others, decided on 10.1.2023, wherein the judgment of the Larger Bench of this Tribunal in Sukhdev Singh (supra) has been followed. ***We further find that the impugned order dated 24.1.2018 records article of charges, submission of inquiry report, supply of the inquiry report and UPSC advice to the applicant and in last but one Paragraph, i.e., in para 6, it is recorded that his representation has been examined and is found devoid of merit. This Clearly indicates that none of the grounds raised by the applicant has been dealt with by the authority concerned.*** *In the said paragraph, it is also recorded that further comments of the Disciplinary Authority was obtained on representation of the applicant. However, it is admitted case that such comments have not been supplied to the applicant. Moreover, when the impugned order is stated to have been by the Disciplinary Authority of the President, it is vague as to from which authority comments have been obtained and taken into consideration while passing the order of penalty. Thus, the impugned order is found to be cryptic and in violation of principles of natural justice.*

12. ***In view of the aforesaid, the impugned order dated 24.1.2018 deserves to be set aside. The same is accordingly set aside. We would have remitted the matter to the competent authority with liberty to pass fresh order.***

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> ***However, keeping in view the provisions of Rule 12 of the Rules ibid with authoritative pronouncement of the Larger a Bench of this Tribunal in Sukhdev Singh (supra) and further that the applicant has attained the age of 75 years (approximately) and who appears to have suffered already in the aforesaid case FIR as well as in departmental proceeding, we are of the view that the matter deserves to be put to quietus and it is ordered accordingly.*** *The applicant shall be entitled for all consequential benefits, i.e., restoration of his pension, arrears thereof with interest as admissible to GPF. The aforesaid exercise shall be completed as expeditiously as possible and in any case within eight weeks of receipt of a copy of this Order.*
>
> *13. The present OA is allowed in the aforesaid terms. However, in the facts and circumstances, there shall be no order as to costs."*
>
> (emphasis supplied)

18. Mr. Amit Tiwari, learned CGSC appearing on behalf of the petitioner made the following submissions:

(i) the criminal action and the departmental action are two entirely different proceedings. Merely because an FIR was lodged against the respondent no.1 and a cancellation report was accepted by the learned Magistrate Court, the petitioner was not debarred from initiating departmental proceedings against the respondent no.1.

(ii) the Rule 12 of the Rules has been misconstrued by the learned Tribunal, inasmuch as the said rule contemplates acquittal by a criminal court as a pre-condition for not

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proceeding against the charged officer departmentally on the same charge. The respondent no.1, however, was not acquitted, rather, a cancellation report was filed by the police, which will not attract the applicability of Rule 12.

(iii) the interference in the order of the Disciplinary Authority is warranted only when the enquiry is *ex facie* arbitrary, the findings are not based on admissible evidence and there is violation of the principles of natural justice. He submits that there is no non-compliance of the principles of natural justice. Respondent no.1 was furnished with the enquiry report with liberty to make representation and the same was considered by the Disciplinary Authority while passing the penalty order.

(iv) the interest awarded by the learned Tribunal is contrary to Rule 68 of the Central Civil Services (Pension) Rules, 2021. Under the said Rule, the interest is payable only where the delay is attributable to the administrative lapses on part of the department. However, in the present case, the delay is due to the pendency of the departmental and consequential proceedings.

19. *Per contra*, respondent no.1, who appeared in person, made the following submissions:

(i) the departmental proceedings against him could not have continued in view of Rule 12 of the Rules after the cancellation report filed by the police in FIR No. 387/2005

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had been accepted by the learned Chief Metropolitan Magistrate *vide* her order dated 17.09.2013.

(ii) there was an inordinate delay in concluding the departmental proceedings. The allegations pertained to the year 2003-04, but the departmental proceedings commenced only on the day of his retirement i.e. 31.07.2008. The Enquiry Officer was changed on as many as five occasions and it took nearly ten years for the departmental proceedings to culminate in the final penalty order dated 24.01.2018. The delay is not attributable to him and was solely because of administrative lapses at the end of the petitioner, which vitiates the entire proceedings.

(iii) there is gross violation of the principles of natural justice, inasmuch as the representation made by him against the advice of the UPSC was neither dealt with, nor any finding was recorded by the Disciplinary Authority in respect of the grounds urged in the representation.

(iv) the allegations of bad investigation and favoring the accused in FIR No. 144/2003 against him had been given credence only because of the complaint filed by Ms. Brinda Karat. However, he never got an opportunity to cross-examine Ms. Karat on account of her not being called as a witness despite her name being in the list. This constitutes violation of the principles of natural justice.

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20. We have heard Mr. Tiwari, learned CGSC for the petitioner as well as Mr. H.S. Saini, the respondent no.1 appearing in person and have perused the record.

21. The learned Tribunal, while allowing the Original Application filed by respondent no.1, has extended the benefit of Rule 12 of the Rules observing that if in the criminal case, there is an acquittal, then the departmental proceedings cannot be held, and the order of penalty needs to be revisited.

22. In view of the fact that the learned Tribunal has based its decision, *inter alia*, on Rule 12 of the Rules, and both sides have also made their respective submissions premised on the said Rule, it would be apposite to advert to the said rule, which is set out hereinbelow for the ease of reference:

> ***"12. Action following judicial acquittal.***
> ***When a police officer has been <u>tried and acquitted by a criminal court</u>, 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*

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> *(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."*
>
> (emphasis supplied)

23. A perusal of the Rule 12 makes it amply clear that it contemplates that in case the police officer has been first tried, and then acquitted by the criminal Court, he shall not be punished departmentally on the same charge.

24. In the present case, the police/investigating agency, after investigation of the case FIR No. 387/2005, filed a cancellation report, against which a protest petition was also filed before the learned Chief Metropolitan Magistrate, North-East, Delhi. Eventually, the cancellation report filed by the police was accepted and the protest petition filed on behalf of the complainant was dismissed by the learned CMM *vide* her order dated 17.09.2013. Clearly, it is not a case where the respondent no.1 was tried and acquitted by the trial Court.

25. Rule 12 does not contemplate the filing of a cancellation report by the police as one of the pre-conditions for not punishing the police officer departmentally. By no stretch of imagination, does a "cancellation report" tantamount to an "acquittal".

26. In terms of Section 173 CrPC, as applicable at the relevant time, the investigating agency submits the cancellation report to the Magistrate when investigation does not disclose sufficient evidence or reasonable grounds to prosecute an accused person, however, it is for the Magistrate to accept the

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cancellation/closure report, or to take cognizance of the offence complained of by a judicial order, in terms of Section 190(1)(b) CrPC.

27. Even after the cancellation/closure report has been submitted and is accepted, it is permissible for the investigating agency to carry out further investigation in the case. In fact, there is no bar against conducting further investigation under Section 173(8) CrPC after final report of cancellation/closure has been submitted and accepted. In other words, the cancellation/closure report does not finally exonerate the accused.

28. The concept of cancellation/closure report has been explained by the Hon'ble Supreme Court in ***State Through Central Bureau of Investigation v. Hemendhra Reddy & Anr., (2023) 16 SCC 779*** in the following terms:

> ***"84.*** *Thus, a conspectus of the aforesaid decisions of this Court rendered in cases where final reports (closure reports) had already been submitted and accepted makes the position of law very clear that even after the final report is laid before the Magistrate and is accepted, it is permissible for the investigating agency to carry out further investigation in the case. In other words, there is no bar against conducting further investigation under Section 173(8)CrPC after the final report submitted under Section 173(2)CrPC has been accepted. It is also evident, that prior to carrying out a further investigation under Section 173(8)CrPC, it is not necessary for the Magistrate to review or recall the order accepting the final report.*
>
> ***85.*** *We may summarise our final conclusion as under:*
>
> ***85.1. Even after the final report is laid before the Magistrate and is accepted, it is permissible for the investigating agency to carry out further investigation in the case. In other words, there is no bar against***

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> ***conducting further investigation under Section 173(8)CrPC after the final report submitted under Section 173(2)CrPC has been accepted.***
>
> ***85.2.*** *Prior to carrying out further investigation under Section 173(8)CrPC it is not necessary that the order accepting the final report should be reviewed, recalled or quashed.*
>
> ***85.3. Further investigation is merely a continuation of the earlier investigation, hence it cannot be said that the accused are being subjected to investigation twice over. Moreover, investigation cannot be put on a par with prosecution and punishment so as to fall within the ambit of clause (2) of Article 20 of the Constitution. The principle of double jeopardy would, therefore, not be applicable to further investigation.***
>
> ***85.4.*** *There is nothing in CrPC to suggest that the court is obliged to hear the accused while considering an application for further investigation under Section 173(8) CrPC."*
>
> (emphasis supplied)

29. Whereas an order of acquittal is recorded when on the conclusion of the trial, the Court does not find any evidence to establish that the accused has committed the offence. Section 232 CrPC defines the term "acquittal" as under:

> *"**232. Acquittal**.- If after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the judge shall record an order of acquittal."*

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30. Clearly, a cancellation/closure is not the same as an acquittal. The acquittal results after the accused has been tried and upon examination of the prosecution evidence, the Court does not find any evidence to hold the accused person guilty of having committed the offence. The accused once acquitted cannot be prosecuted again in view of the constitutional mandate in clause (2) of Article 20 of the Constitution.

31. On the other hand, there is no bar against conducting further investigation even after the cancellation/closure report has been accepted. Further investigation is merely a continuation of the earlier investigation, hence it cannot be said that the accused is being subjected to investigation twice over, so as to trigger the principle of double jeopardy.

32. Reference in this regard may also be had to the decision of a co-ordinate bench of this Court in ***Dayanand & Anr. v. Commissioner of Police & Ors., 2001 SCC OnLine Del 885***. In the said decision, the Court was confronted with the question as to whether the order of discharge under Section 227 could be equated with an order of "acquittal" so as to extend the benefit of Rule 12 of the Rules to the police officer, who had been discharged by the Trial Court of an offence of gangrape. The Court held that the order of discharge cannot be equated with that of acquittal and Rule 12 shall not be applicable to the said case. The relevant extract from the said decision reads as under:

> *"5.* ***Moreover, an "order of discharge" could by no definition be equated with an order of acquittal" in a criminal case and treated synonymous. The two have different connotations and stand poles apart involving two***

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different stages in a criminal prosecution. The order of discharge covers a pre-trial stage wherein criminal Court considers record and documents submitted by prosecution to find out whether there was any sufficient ground of proceeding against the accused and putting him on trial. "Acquittal" on the contrary covers the post trial stage and is ordered on the conclusion of a trial upon prosecution failure to prove the charge relieving the accused in the process of that charge. *This distinction is brought out in Ss. 227 and 232 of Cr. P.C. itself. The two provisions are reproduced hereunder for facility of appreciation of their distinguishing features:*

> *227. Discharge.— If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf the Judge considers that there is not sufficient ground for proceeding against the accused and record his reasons for so doing.*
>
> *232. Acquittal.— If after taking the evidence for the prosecution, examining the acused and hearing the prosecution and defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal.*

6. *A plain reading of the two sections shows that the first confers a pre-trial protection on the accused enabling him to obtain a discharge to save him from undergoing a full-fledged trial. Such order of discharge is passed upon consideration of record and documents by prosecution and after hearing it and the accused to find out whether a sufficient ground exists to put him on trial. No evidence is recorded or considered nor any standard of proof demanded for the purpose. "Acquittal" on the other hand*

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takes place after taking prosecution evidence and after examining accused and hearing prosecution and when Court finds no evidence to substantiate the charge. It may as well be that both terminate the prosecution and absolve the accused of the charge but each has its own purpose/object/scope and features and, therefore, one cannot be treated synonymous with the other. ***Rule 12 envisages both trial and acquittal as an aftermath of order of discharge and provides that if a delinquent police official was tried and acquitted, he shall not be punished departmentally on the same charge subject to certain conditions. It surely does not cover an order of discharge and it would be doing violence to its definition to equate it with an order of acquittal or to treat it so within the parameters of this rule. The Tribunal had, therefore rightly held it inapplicable to the case and we see no scope to take any contrary view in the matter.***

xxxx *xxxx* *xxxx*

8. ***We accordingly hold that order of discharge in a criminal case does not amount to an order of acquittal and that provisions of Rule 12 which could have the consequence of barring a punishment to the delinquent employees on the same charge subject to satisfying the requirements of this rule****."*

(emphasis supplied)

33. The learned Tribunal overlooked the distinction between an acquittal and the filing of cancellation/closure report. As in the present case, the respondent no.1 was neither tried nor acquitted by the criminal court, therefore, Rule 12 of the Rules would not apply, and resultantly, no benefit

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of acceptance of cancellation/closure report could be extended to the respondent no.1.

34. Next, it was argued by the Respondent no. 1 that his representation made in response to the advice of UPSC has not been examined and no finding on the same has been returned. The learned Tribunal has also recorded a finding that none of the grounds raised by the respondent no.1 in his representation made against the advice of the UPSC, have been dealt with by the disciplinary authority.

35. To appreciate the above submission, it would be apposite to examine Rule 15 of Central Civil Services (Classification, Control and Appeal) Rules, 1965, and the same is set out hereinbelow, for the ease of reference:

> ***"15. Action on inquiry report***
>
> *xxx* *xxx* *xxx*
>
> *(2) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.*
>
> *(3) (a) In every case where it is necessary to consult the Commission, the Disciplinary Authority shall forward or cause to be forwarded to the Commission for its advice:*

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(i) a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge; and

(ii) comments of Disciplinary Authority on the representation of the Government servant on the Inquiry report and disagreement note, if any and all the case records of the inquiry proceedings.

(b) The Disciplinary Authority shall forward or cause to be forwarded a copy of the advice of the Commission received under clause (a) to the Government servant, who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, on the advice of the Commission.

(4) ***The Disciplinary Authority shall consider the representation under sub-rule (2) and/or clause (b) of subrule (3) if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (5) and (6).***"

(emphasis supplied)

36. As can be seen from the above quoted provision, a copy of the advice tendered by the UPSC is required to be forwarded to the charged officer thus, affording him an opportunity to make a written representation or submission against the advice of the Commission to the Disciplinary Authority. Once such a representation is made, Rule 15(4) makes it obligatory upon the Disciplinary Authority to "consider" the said representation and "record its findings" before proceeding further in the matter.

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37. The obligation cast to "consider" is not a mere empty formality and it implies application of mind. The said sub-rule further mandates recording of findings on the grounds taken in the representation.

38. Reference in this regard may also be had to the decision of a co-ordinate bench of this Court in ***Nasimuddin Ansari v. Union of India & Ors. 2023 SCC OnLine Del 4623***, which also dealt with the scope and import of Rule 15(4) of the Rules. In the said case, the inquiry officer, in his report, had concluded that the charges were not proved. The Disciplinary Authority, however, recorded its dissent. The disagreement note, along with the enquiry report, was given to the delinquent officer to submit a representation, if any, who submitted his representation refuting all the allegations imputed on him. The disciplinary authority, however, held the charged officer to be guilty and imposed the penalty. However, no findings were recorded by the disciplinary authority, as required by Rule 15(4) of the CCS(CCA) Rules, 1965, on the representation made by the petitioner therein against the tentative disagreement note, while passing the order imposing the penalty. On this ground as well, the order imposing penalty was held to be arbitrary. The relevant extract from the said decision reads as under:

> *"76. A Representation was submitted by the petitioner in response to the Tentative Disagreement Note to the findings of the Inquiry Officer.* ***Rule 15(4) CCS (CCA) Rules 1965 mandates the Disciplinary Authority to address the contents of the representation made by the government servant against a Tentative Disagreement Note before passing its disciplinary order.*** *The Rule reads as under:*

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"(4) The Disciplinary Authority shall consider the representation under sub rule (2) and/or clause (b) of subrule (3), if any, submitted by the Government servant and record its findings before proceedings further in the matter as specified in sub-rules (5) and (6)."

77. The Representation of the petitioner was considered as reflected in the Disciplinary Order dated 26.10.2017. Pertinently, no findings have been recorded by the Disciplinary Authority as required under Rule 15(4) of the CCS (CCA) Rules, 1965 on the Representation made by the petitioner against the Tentative Disagreement Note while passing the Disciplinary Order imposing the penalty. It has not cited any independent reasons while holding that the Charge under Article II stands proved but has mechanically accepted the reasons cited in the Tentative Disagreement Note dated 11.07.2017. *An extract of the Disciplinary Order dated 26.10.2017 is reproduced as under:*

"6. And whereas Md. Nasimuddin Ansari, EE (E&M) submitted his representation dated 09.08.2017, in which he stated that the 13 answer sheet which are stated to be wrongly evaluated, were actually not evaluated by him. Further, the Presiding Officer of the recruitment Board bears more responsibility than 1st Member of the Board. He has also raised question on the charges of awarding of marks against wrong answer to 5 candidates and pleaded that 10 in his examination has held charges not proved against him. ***And whereas the representation was carefully analysed by the Disciplinary Authority and it has been held that the charge under Article II stands proved****."*

78. It can be observed that the reasons cited in the Disciplinary Order are not only devoid of any evidence but

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is also in non-consideration of the evidence led by the petitioner and his Representation.

79. Based on the above analysis, it can be concluded that Disciplinary Order dated 26.10.2017 is based on no evidence and therefore not sustainable. We find that despite the reasoned conclusion of the charges "not proved", the Disciplinary Authority in its adamancy, ignored the findings and gave its Disagreement Note based purely on absurd justification and specious reasoning of visual inspection. This conduct of the respondents can not only be held to be a desperate attempt to somehow pin the blame on some officer, but is in complete violation of due process. ***We therefore, are compelled to conclude in the light of the aforesaid discussion, that the Disagreement Note followed by the Disciplinary Order dated 26.10.2017 imposing major penalty is absolutely arbitrary as it is based on no evidence."***

(emphasis supplied)

39. In the present case, the penalty order dated 24.01.2018 simply says that respondent no.1 submitted his representation in response to the advice of the UPSC and the same has been examined and is found devoid of merits. The Disciplinary Authority has not considered the submissions of respondent no.1 made in his representation, nor any reasons or findings have been recorded in that behalf. To that extent, the penalty order of the Disciplinary Authority dated 24.01.2018 suffers from non-application of mind and is bad in law for not recording any reasons or finding on the representation of Respondent no.1, which is in contravention of Rule 15(4) of the CCS(CCA) Rules, 1965.

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40. We are, therefore, in agreement with the opinion of the learned Tribunal that the penalty order dated 24.01.2018 deserves to be set aside.

41. Under ordinary circumstances, the learned Tribunal, after having setting aside the penalty order on the ground of the same being non-speaking, ought to have remitted the matter to the disciplinary authority for passing a fresh order. However, the learned Tribunal refrained from adopting the said course having regard to the peculiar facts of the present case, *inter alia*, the fact that respondent no.1 was aged nearly 75 years at the time of passing the impugned order, who appears to have suffered already in view of FIR No.387/2005, registered against him, as well as the departmental proceedings initiated against him.

42. Accordingly, the learned Tribunal decided to put a quietus to the issue and ordered the release of the consequential benefits to respondent no.1 i.e. restoration of his pension, arrears thereof with interest as admissible to GPF.

43. Therefore, what needs to be examined is whether the learned Tribunal is justified in adopting the above approach. It was argued by Respondent no.1 that the learned Tribunal was correct in its approach as there was inordinate delay on part of the disciplinary authority, both in initiating as well as concluding the disciplinary proceedings.

44. At this stage, it would be profitable to refer to the legal position on the aspect as to whether the delinquent employee has any right that the disciplinary proceedings against him are initiated without any undue delay, and once initiated, the same are ought to be concluded expeditiously.

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45. In ***State of A.P. v. N. Radhakishan, (1998) 4 SCC 154,*** the Hon'ble Supreme Court, while considering similar factual scenario, observed that delay causes prejudice to the charged officer unless it can be shown that he is the one to be blamed for the same or there is proper explanation for the delay in conducting the disciplinary proceedings. However, ultimately, it is for the Court to balance these diverse considerations. In the said decision, it was held as under:

> ***"19.*** *It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay.* ***The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee.*** *It is the basic principle of administrative justice that an officer entrusted with a*

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particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. ***Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations****."*

(emphasis supplied)

46. The Bombay High Court, in ***Bhupendra Pal Singh v. Union of India & Ors., 2021 SCC OnLine Bom 6073***, was confronted with the question as to whether the disciplinary proceedings initiated against the petitioner therein stood nullified on the ground of delay as well as subsequent acquittal in judicial proceedings. The Court examined the entire case law on the aspect of delay and summarized the principles in the following terms:

"32. *The principles that can be culled out from the aforesaid decisions may be summarized as below:*

a. It would always be desirable to initiate disciplinary proceedings immediately after the alleged misconduct is detected but if charge-sheet is issued after a considerable length of time has passed since such detection, it would be unfair to the charged officer to proceed against him on the basis of stale charges*.*

b. Disciplinary proceedings may not be interdicted at the stage of charge-sheet and should be allowed to proceed according to the relevant rules since a charge-sheet does not affect any legal right of the delinquent unless, of course,

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it suffers from an invalidity that strikes at the root of the proceedings.

c. If there is delay in initiation of disciplinary proceedings by drawing up charges against the delinquent and such proceedings are challenged, the disciplinary authority is under an obligation to explain the reasons for the delay; and, depending upon the worth of such reasons, the Court may proceed to decide one way or the other.

d. There cannot be any exact measurement of the length of delay by reference to years to fall into the category of 'too long a delay', and what would amount to the same has to be decided depending upon the facts of a given case.

e. Should the delay be found to be too long and unexplained, that would definitely have a bearing on the seriousness of the disciplinary authority to pursue the charges against the charged officer and the Court may, in a fit and proper case, quash the proceedings because prejudice to the officer in such case would be writ large on the face of it.

f. Even if, in a given case, the delay is satisfactorily explained, the charge-sheet could still be quashed if the charged officer proves to the satisfaction of the Court that he would be severely prejudiced if the proceedings were allowed to continue, a fortiori, lending credence to the claim of unfair treatment.

g. For the mistakes committed by the department in the procedure for initiating disciplinary proceedings, the charged officer should not be made to suffer.

h. Delay in initiation of disciplinary proceedings per se may not be a vitiating factor, if the charges are grave and in such case the gravity of the charges together with the factors, for and against the continuation of the

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proceedings, need to be balanced before arriving at a just conclusion."

(emphasis supplied)

47. Now testing the facts of the present case against the aforesaid expositions, we note that the allegations pertaining to which the respondent no.1 was proceeded against departmentally concerns the period between 18.05.2003 to 05.02.2004 when the investigation of case FIR No.144/2003 registered at P.S. Khajuri Khas was entrusted to him as an investigating officer.

48. About five months thereafter, a complaint dated 26.07.2004 led to a vigilance inquiry against respondent no.1, which culminated into a report wherein it was observed that the allegations against respondent no.1 could not be substantiated. Despite that, FIR No.387/2005 came to be registered against respondent no.1 on 15.09.2005.

49. Thereafter, respondent no.1 retired on attaining the age of superannuation on 31.07.2008. On the same day, the disciplinary proceedings were initiated against him. The Enquiry Officers were changed on as many as five occasions and it was the sixth Enquiry Officer who finally submitted the enquiry report dated 03.05.2012.

50. Even though the Enquiry Officer's report was submitted on 03.05.2012, but the Disciplinary Authority sought the statutory advice of the Commission only on 24.10.2016 i.e. after a period of nearly four years and five months. The reference was made to the UPSC on 25.04.2017 and

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UPSC's advice was received on 19.09.2017. Thereafter, the penalty order was passed by the disciplinary authority on 24.01.2018.

51. In the meanwhile, the criminal proceedings which were initiated against respondent no.1 with the registration of FIR No.387/2005 also culminated into a cancellation report, which came to be finally accepted by the learned Chief Metropolitan Magistrate *vide* her order dated 17.09.2013.

52. Clearly, there was a delay of more than four years in the initiation of the disciplinary proceedings. Then, it took nearly four years for the enquiry to conclude and culminate into an enquiry report. Thereafter, almost four years and five months were taken by the Disciplinary Authority to seek the UPSC's advice, which was rendered in a period of five months, and then it took four more months to pass the penalty order.

53. Besides the delay of four years in initiation of disciplinary proceedings, it has taken nearly a decade to conclude the disciplinary proceedings from the date of its initiation. There is no explanation, whatsoever, offered by the Disciplinary Authority for such inordinate delay nor it is the case of the petitioner that the respondent no.1 is to be blamed for such delay.

54. In the given circumstances, the inordinate and unexplained delay on the part of the disciplinary authority, in our view, has caused prejudice to respondent no.1. The respondent no.1 has also suffered because since his retirement i.e. on 31.07.2008 till the passing of penalty order on 24.01.2018, the gratuity payable to him was not released. Eventually, vide penalty order dated 24.01.2018, the gratuity admissible to the respondent

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was ordered to be released, and that too, without any interest. Indubitably, the respondent no.1 has been put to financial loss due to non-payment of interest.

55. The respondent no.1 in his written submissions has prayed for the payment of interest on the gratuity released to him after a decade, but since the learned Tribunal did not grant the said relief to him, and there is no writ petition filed by the respondent no.1 assailing the impugned order, we are not inclined to grant the said relief to him.

56. But at the same time, having regard to the inordinate delay in the commencement, as well as the conclusion of the disciplinary proceedings, the financial loss already suffered by the respondent no.1 on account of withholding of gratuity for a decade, the nature of charges, and the long pendency of litigation before the learned Tribunal, as well as before this Court, we are of the view that the decision of the learned Tribunal to put the matter to quietus, does not call for any interference.

57. As regards Mr. Tiwari's submission that interest on the arrears of pension withheld pursuant to the penalty order dated 24.01.2018, ought not to have been awarded since there was no administrative lapse on part of the department and the delay occurred as the departmental proceedings were pending, suffice it to reiterate that there is no material on record to suggest that respondent no.1 was in any manner responsible for the delay in conclusion of the disciplinary proceedings, nor any justification has been given by the petitioner for such inordinate delay. Thus, no interference with the learned Tribunal's order is warranted on the aspect of interest as well.

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58. The writ petition is accordingly dismissed and the stay order dated 13.04.2023 is vacated.

59. Pending applications, if any, are disposed of accordingly.

60. The petitioner is directed to comply with the order of the learned Tribunal within a period of three months from today.

VIKAS MAHAJAN
(JUDGE)

PRATHIBA M. SINGH
(JUDGE)

NOVEMBER 25, 2026
jg/sj