

ORDER SHEET

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Bikash Bhavan, Salt Lake, Kolkata – 700 091.**

Present-

THE HON'BLE SAYEED AHMED BABA, OFFICIATING CHAIRPERSON AND ADMINISTRATIVE MEMBER,  
Case No. - OA 506 of 2023

NARESH SARKAR - Vs - THE STATE OF WEST BENGAL & OTHERS.

Serial No. and  
Date of order

For the Applicant : None.

07  
04.04.2024

For the State Respondents : Mr.Manujendra Narayan Roy  
Learned Advocate

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt.-II) dated 23<sup>rd</sup> November, 2022 issued in exercise of the powers conferred under Section 5 (6) of the Administrative Tribunals Act, 1985.

On consent of the learned counsels for the contesting parties, the case is taken up for consideration sitting singly.

Submitting on behalf of the applicant, Ms.A.Chakraborty, learned counsel draws attention to page 119 of this application. This page appears to be the Articles of charge framed against the applicant, Naresh Sarkar now under the suspension. The charges framed against him is quoted as under:

*“ That the said Naresh Sarkar, Excise Constable (now under suspension), was consciously present in the raid and played a conscious role in collusion with others in the matter of illicit possession, transportation and disposal of commercial quantity of narcotics drugs in the wake of recovery of ganja from the possession of the accused in connection with the NDPS case No. 136/2017 dated 06/09/2017 and was deliberately associated with this unlawful misreporting act, subsequently unduly siphoning off the articles and that such an act was completely unbecoming of a public servant.”*

Ms.Chakraborty submits that, as is evident from the above charge, the applicant was suspended for his alleged illicit possession,

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transportation and disposal of substantial quantity of narcotic drugs, as filed in the NDPS case No. 136/2017. She refers to page No. 121 which appears to be the list of documents for framing the Article of Charge against the applicant. It is mentioned as *“(1) Copy of the Charge Sheet submitted by the then Additional Excise Commissioner, Krishnanagar Excise Division, before the Special Court, Krishnanagar, Nadia with regard to the NDPS case No. 136/17 of Krishnanagar Excise Division.”*

Ms.Chakraborty lays emphasis on above two statements and submits that, as is clear from above, the charges against the applicant was for possession and transportation of narcotic drugs which was filed as a case by the respondent authority in the NDPS Court, being Case No. 136 of 2017. Now, attention is drawn to pages 1 of 55 onwards which appears to be the judgement of the Learned Judge Special Court, NDPS Act, Nadia, Krishnanagar. The relevant paras of the judgement in the internal page No. 50 of 55 and 52 of 55 are as under:

*“From the first seizure list regarding the recovery of ‘Ganja’ of 20 kg. it appears from the contents of the seizure list, PW-6 and PW-7 searched the accused Swapna Ghose and 20 kg ‘Ganja’ was recovered. They are constables of the Excise Department. But, from their evidence it is nowhere found that 180 kg to 200 kg of ‘Ganja’ was recovered. Rather it is established fact that PW-6 and PW-7 signed in the seizure list which they did not deny. So, it can be said that in their presence 20 kg ‘Ganja’ was recovered and there is no reason to disbelieve the said fact. PW-6 and PW-7 did not corroborate the prosecution case rather their evidence established the fact of recovery of 20 kg of ‘Ganja’ from the lady accused.*

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*Following are the loopholes or defects of the prosecution case:*

- 1. No seizure list is proved;*
- 2. There is no existence of seized contraband which alleged to be 180 Kg to 200 Kg of 'Ganja'; no contraband was seized from the possession of the accused persons except Swapna Ghose;*
- 3. Only on the basis of statement recorded under section 67 of NDPS Act, it is very risky to come to the conclusion that the accused persons are involved in the alleged offence; as it is not admissible in evidence;*
- 4. Place of recovery is not proved from the statement of the witnesses and the documents. It is found that PO is two different places - one is Durgapur More and another is Tentia village;*
- 5. There is no investigation whether the alleged contraband was disposed of or purchased by any person or whereabouts of the seized contraband. If there is no existence of seized contraband, no case can be attracted against the accused persons;*
- 6. Section 43, 50 and 57 of NDPS Act are not complied with;*
- 7. No independent witness has come to prove the prosecution case;*
- 8. PW-6 and PW-7, who are Excise Constables, are not corroborating the prosecution case and they were not declared hostile by prosecution;*
- 9. There is no iota of evidence before the Court whether 180 Kg to 200 Kg of 'Ganja' was siphoned or recovered;*
- 10. Id calls are not proved in connection with the present case;*

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11. *In view of the decision of the Hon'ble Apex Court the statement which was recorded under section 67 of NDPS Act is not admissible in law;*
12. *There are no corroborating evidence in support of the prosecution case;*
13. *Court cannot convict any person merely on the basis of suspicion or assumption or presumption;*
14. *There is no iota of evidence that before the recovery raid of the said contraband there is any meeting by and between the parties for siphoning the contraband articles; even during the trial the prosecution did not adduce any such evidence.*
15. *There is no evidence that the accused persons entered into conspiracy with other accused for committing the alleged offence."*

Attention is now finally drawn to page No. 55 in which the Learned Judge has passed the following order:

*" that the accused, 1. Swapna Ghose, 2. Samar Kumar Swarnakar, 3. Soumen Kumar Sadhukhan, 4. Madhusudan Ghosh, 5. Rabi Bhusan Pandey, 6. Tapas Bala, 7. Nayan Sarkar, 8. Naresh Sarkar, 9. Maharam Sk, 10. Amit Roy and 11. Krishna Gore, faced trial, are found not guilty of commission of offence punishable under Sections Under section 20(ii)(b)/29 of the Narcotic Drugs and Psychotropic Substance Act, 1985 read with section 8(c) of NDPS Act, as per the charge, so framed against them and, accordingly, they are acquitted from this case under Section 235(1) of the Cr.P.C. and be set at liberty*

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*to once, if not wanted to any other case.”*

Having drawn the attention of the Tribunal to the above foregoing paragraphs, Ms.Chakrbaorty submits that the sole basis relied upon by the respondents is the charge in the NDPS Case No. 136 of 2017 and the only document relied upon by the respondent authority does not exist as valid on this date. Since the applicant being earlier accused in this case has now been honourably acquitted by the competent court, therefore, no charge sheet framed against him in the disciplinary proceedings are valid and supported by any law.

Finally, Ms.Chakraborty submits that in view of such acquittal from the case in the NDPS court, the applicant had furnished a representation before the respondent authorities praying for revocation of the suspension order and reinstatement with payment of full back wages.

Submitting on behalf of the state authorities, Mr. Roy, learned counsel submits that though the applicant has been acquitted by the Ld. N.D.P.S. Court but the charges having similar charges is in force in the Disciplinary Proceedings. He relies on a judgement of the Hon'ble Supreme Court and submits that the charges against the applicant in the Disciplinary Proceedings will not be influenced by any order of the Ld. N.D.P.S. Court. In particular, he refers to relevant paragraph of the Judgement reported in 2022 SCC Online SC 1140 in the case of State of Rajasthan and Others Vs Phool Singh, which is as under :-

*“There should be no ambiguity in law on this subject. A departmental proceeding is different from a criminal proceeding. The fundamental difference between the two is that whereas in a*

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*departmental proceeding a delinquent employee can be held guilty on the basis of “preponderance of probabilities, in a criminal court the prosecution has to prove its case “beyond reasonable doubt”. In short, the difference between the two proceedings would lie in the nature of evidence and the degree of its scrutiny. The two forums therefore run at different levels. For this reason, the Court has consistently held that merely because a person has been acquitted in a criminal trial, he cannot be ipso facto reinstated in service”.*

Mr. Roy also refers to another judgement of Hon’ble Supreme Court reported in (2012) SCC 442 in the case of Divisional Controller, Karnataka State Road Transport Corporation Vs M.G. Vittal Rao which is as under :-

*“Even if a person stood acquitted by a criminal court, domestic enquiry can be held, the reason being that the standard of proof required in a domestic enquiry and that in a criminal case are altogether different. In a criminal case, standard of proof required is beyond doubt while in a domestic enquiry it is the preponderance of probabilities that constitutes the test to be applied.”*

Further, Mr. Roy also argues that such statement of Ms. Chakraorty is not in conformity with the law. As an instance, he submits that the Disciplinary Authorities had framed the charges and initiated the Disciplinary Proceedings well before passing of the order of the Ld. N.D.P.S. Court. Therefore, the Disciplinary Proceedings were not initiated after delivery of judgement of the N.D.P.S. Court which clearly establishes the fact that the Disciplinary Proceedings are a separate set of proceedings and different from the trial faced by the applicant in the Ld. N.D.P.S. Court. The charges framed against the applicant and order of

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suspension was in accordance with Rule 10 of W.B.S.(CCA) Rules 1971. Therefore, the question of revocation of suspension and setting aside the Disciplinary Proceedings does not arise on the plea that similar charges framed against the applicant in the N.D.P.S. Court were quashed and set aside. Concluding his submissions, Mr. Roy submits that the respondent authority has already moved the Hon'ble High Court challenging the order of the Ld. N.D.P.S. Court.

Ms. Chakraborty points out that NDPS Act is a Central Act under which the allegations against the applicant has been set aside and acquitted by the Ld. NDPS Act. Therefore, the very legality of the state authorities proceeding further against the applicant on the basis of a State rule is not sustainable. Therefore, such action on the part of the respondent authority is beyond his jurisdiction and in complete disregard for an order passed by the Ld. Judge under NDPS Act. Further, disagreeing with the submission of the respondent's side, Ms. Chakraborty submits that it is not the question whether the charges in both the Disciplinary Proceedings and NDPS Acts are same, similar or different. The main issue why such Disciplinary Proceedings cannot continue is for the fact that such Disciplinary Proceedings and suspension was completely based on the NDPS Case No. 136/2017 being adjudicated by the Ld. Judge of the NDPS Court. Therefore, there should not be any confusion or difference of opinion that such Disciplinary Proceedings initiated on the basis of NDPS Act, cannot continue once such case under NDPS Act has been set aside the Ld. NDPS Judge of a NDPS Court. Finally the judgements as relied by Mr. Roy are not relevant in this case for the reason that the factual matrix of both the cases are completely different. In view of above submissions, Ms. Chakraborty prays for a direction to the respondent authorities to

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revoke the suspension order of the applicant and allow him to resume his duties after setting aside the Disciplinary Proceedings.

After hearing the submissions of the learned counsels and on examination of the records in this application, the Tribunal has observed the followings:-

That the suspension and framing of charges for a Disciplinary Proceeding was entirely based on the NDPS Case No. 136 of 2017 dated 06.09.2017. The wordings of the Article of Charges against the applicant is so composed as to give the impression that the applicant's suspension was entirely due to his involvement as an accused in the NDPS Case. The Tribunal cannot ignore the direct relationship and reliability of such charges against the applicant with that of the NDPS case No. 136 of 2017. Although, Mr. Roy, learned counsel for the respondents had disagreed and tried to impress that such suspension and initiation of Disciplinary Proceeding were and are independent of a NDPS case, but facts speak otherwise. By relying on two judgements of the Hon'ble Supreme Court he argued that being acquitted by the Trial Court in a judgement delivered on 30<sup>th</sup> September, 2022 does not automatically vitiate the Disciplinary Proceedings. But on examination of these judgements, the Tribunal is of the opinion that such judgements were in a different context and facts and merits of both the cases differ substantially. The Tribunal is not inclined to agree that by relying on the Supreme Court judgements, the Disciplinary Proceedings in this case will continue to remain valid, even though the applicant as an accused in the NDPS case has been acquitted. The Tribunal would not have formed such an impression had the charges framed against the applicant in the Disciplinary Proceedings were differently worded and facts and circumstances of the two cases were different. It is accepted that mere



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acquittal from a trial court does not lead to dropping of the departmental proceedings but in this case, the Tribunal is not able to ignore the fact that the charges framed against the applicant were entirely based on the charges filed in the NDPS Court under NDPS Act. Therefore, it would not only be unjust and unfair but oppressive to allow the departmental proceedings to stand.

The very fact that the applicant has been acquitted of all the charges in the NDPS case and such case has been dismissed by the Learned NDPS Court, cannot be ignored by the Tribunal. By such acquittal, the charges framed in the Disciplinary Proceedings by the respondent authority is now untenable and quashable. Therefore, it is quashed and set aside. By force of the above order, the suspension and the charges levelled under the Article of charges stand vitiated against the applicant. Therefore, it directs the respondent authorities to revoke the suspension order and allow the applicant to resume his duties and treat the period of suspension as 'Spent on Duty'.

Application is disposed of.

**(SAYEED AHMED BABA)**  
OFFICIATING CHAIRPERSON AND MEMBER (A)

Skp.

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