

UNREPORTABLE

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ WP (C) No. 4403 OF 2007

% *Reserved on : May 11, 2009*
Pronounced on : July 03, 2009

Union of India & Anr. Petitioner

through : Ms. Jyoti Singh, Advocate

VERSUS

Birpal Singh Respondent

through : Mr. G.P. Thareja with
Mr. Jay Thareja, Advocates

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE SURESH KAIT

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The respondent herein, while working as Inspector, Special Investigation Unit (SIU) in Central Bureau of Investigation, was served with a major penalty charge sheet vide Memo No. 237/11/1/2001-sie III on the allegation that while discharging his duties in the capacity of *Mal Khana* In-Charge SIU of CBI during the period 30.12.1997 to 21.1.1999 failed to maintain absolute integrity and devotion to duty as case property in case No. 7/A/91-SIU-VIII consisting of Rs.2,00,000/- in the form of three packets of Rs.500/- denomination each consisting of 100 GC and 5 packets of Rs.100/-

containing 100 GC was substituted with different currency notes of the same denomination while the case property was stored in *Mal Khana*. The Competent Authority had directed inquiry to be held as per the Delhi Special Police Establishment (Subordinate Ranks) (Discipline and Appeal) Rules, 1961. The circumstances under which this charge sheet came to be served upon the respondent can be traced in the following manner:

2. RC/7/A/91-SIU/VIII/New Delhi was registered in Special Investigation Unit – VIII of CBI against one Shri Prithi Singh, Inspector of Police, SHO, IG Airport, New Delhi u/s 7 of the Prevention of Corruption Act, on a complaint dated 26.9.1991 for demanding a bribe of rupees two lakhs. One Afrik Singh had produced a sum of rupees two lakhs consisting of three packets of Rs.500/- denomination and 5 packets of Rs.100/- denominations, to be used by the trap team, as had been authorized. The formalities of entering number of notes, etc. had been carried out, and Prithi Singh had been apprehended while accepting the bribe, comprising of the notes pre-marked. The notes thereafter were arranged to be kept in a polythene bag, which was sealed in an envelope and the members of the raiding party had signed the envelope. This envelope had been duly handed over to the then Inspector In-Charge of *Mal Khana* by the Deputy Supdt. of Police as part of the case property and duly registered. It was remaining there for quite some years and the bag had been handed over to the succeeding officers on 29.03.1995 and 01.01.1997. On 01.01.1997, Shri D.V. Mitharwal, Inspector had assumed charge over

the properties. The charge was laid against the erring officer Prithi Singh on 27.9.1996. Trial proceeded thereafter. Afrik Singh when examined had been declared hostile on 26.9.1997 and his cross examination had been deferred to 20.12.1997. Inspector Shri Mitharwal, and the Head Constable Ram Chander had produced the envelope containing the bribe amount before the Special Judge, Tis Hazari, Delhi, on that date. It was opened in the court and content was duly identified by PW Shri Afrik Singh to be the same as produced by him before the DSP and as recovered at the spot from the accused and sealed in his presence on 27.9.1991.

3. In unsealed condition it was returned to Inspector Mithrwal. The case was adjourned to 20.01.1998 for further evidence. In the interregnum, the respondent had assumed charge of the station from Mithrwal. On 20.01.1998, it is stated that the respondent had handed over the case property to Head Constable Ram Chander and they had proceeded to Tis Hazari. It was produced in the court and the summoned witness had identified the case property to be a seized property on the date of trap. The case was adjourned to 02.07.1998, and again on 14.07.1998 and on both the dates, the said property was carried by the team. The next witness, who had turned hostile on 14.07.1998, stated that he was not able to identify the property as the same, which was used for the trap. On the next date of hearing, i.e. on 26.11.1998, and while the case was in progress, the counsel for the accused had brought to the notice of the Court that the notes produced by the delinquent official were not the same

which were mentioned in the annexure. On examining the notes, the Court had found that they were not really the same as relied on. Treating it as a serious matter a disciplinary action was proposed. The allegation was that the original trapped money stood substituted.

4. Article of charges was framed in the following terms :-

“Shri Birpal Singh while posted as Inspector, CBI/SIU.VIII/New Delhi and discharging his duties in the capacity of a public servant as Incharge Malkhana in the Special Investigation Unit-VIII of CBI, during the period 30.12.1997 to 21.01.1999, failed to maintain absolute integrity and devotion to duty inasmuch as case property in case RC-07/A/91-SIU.VIII, New Delhi against Shri Prithi Singh, Inspector, Delhi Police, consisting of Rs.2 lacs in the form of three packets of Rs.500/- denomination each consisting of 100 GC notes and five packets of Rs.100/- denomination each containing of 100 GC notes, was substituted with different currency notes of the same denomination while the case property was stored in the Malkhana.

That through the aforesaid acts of omission and commission, Shri Birpal Singh, Inspector, conducted himself in a manner which is unbecoming of a public servant and thereby contravened the provisions of Rule 3(1)(i) & 3(1)(ii) of CCS Conduct Rules, 1964.”

5. As is clear from the charge levelled against the respondent herein, it attributes negligence on the part of the respondent inasmuch as it is not alleged that the respondent had changed the seized currency notes and substituted with different currency notes of the same denominations when the case property was stored in the *Mal Khana*. Charge against him, which was proved, was that the aforesaid substitution of the currency notes, i.e. the case property, had taken place during the period of his posting as the *Mal Khana* In-Charge. In fact, the charge, as originally levelled against the respondent in the

charge sheet, was that he himself or in collusion with other officials of SIU was instrumental in substituting the currency notes. This charge, however, was not proved against the respondent in the inquiry as per the Inquiry Report, which finding was accepted by the Disciplinary Authority as well.

6. In this backdrop, the main contention of the respondent before the Tribunal was that the allegation of negligence was not there at all in the charge sheet and, therefore, the findings of the Inquiry Officer were not sustainable on this ground alone. He had also challenged the inquiry proceedings on the ground that they were held in violation of the statutory rules. Another submission was that, in any case, for such negligence, the punishment of compulsory retirement did not commensurate with the alleged laches, more so when the respondent had unblemished long service record of 28 years. We may also mention at this stage that the respondent was criminally prosecuted as well on the same charge, which was the subject matter of the charge sheet, but those criminal proceedings ended in acquittal. In any case, the Tribunal was not influenced by this fact because of the reason that the disciplinary proceedings could be initiated in appropriate cases even when the criminal case results in acquittal.
7. We may point out at this stage that the Tribunal was conscious of its limitation while dealing with the matters relating to disciplinary action and has categorically observed that a judicial review is mostly

concerned with the sustainability and propriety of the decision making process rather than the ultimate decision which the executive in its discretion has given. It, however, pointed out that when it was alleged that the findings had been entered into ignoring the charges that had been levelled, if such an error had escaped the notice of the Disciplinary Authority or the Appellate/Revisional Authority, corrective measures might be relevant. Likewise, the Court was competent to examine the quantum of punishment on the principles of proportionality.

Having this limitation in mind, the Tribunal proceeded to examine the contention raised by the respondent challenging the inquiry proceedings. It noted that the Inquiry Officer had come to the following conclusion on the basis of material on record :-

- “1) On the basis of evidence brought on record, it has been proved that the substitution of the GC notes of Rs.2 lacs, which was the case property of RC-07(A)/91-SIU.VIII, had taken place during the period of posting of Shri Birpal Singh (CO) as Inspector, Incharge Malkhana of SIU.VIII.
- 2) However, it has not been conclusively proved that the CO himself or he in collusion with other officials of SIU.VIII and/or the accused in RC-07(A)/91-SIU.VIII, was instrumental in substituting the GC notes.
- 3) It may be mentioned that Shri Ram Chander, who was posted as Head Constable in Malkhana of SIU.VIII during the relevant time, has remained absent from the office since January, 1999 presumably apprehending action against him in the case relating to substitution of the GC notes in RC-07(A)/91-SIU.VIII.”

8. It was, thus, clear that a categorical finding of the Inquiry Officer, which was accepted by the Disciplinary Authority also, was that the substitution of the currency notes had not been done with the

connivance of the respondent. Only on the ground that such substitution had taken place during the period of posting of the respondent, finding of negligence against him was returned. The Tribunal found this without any evidence and the inference drawn to this effect was not tenable. In this behalf, it was noted that one Shri Ram Chander, who was posted as Head Constable in *Mal Khana* had remained absent from the office from January 1999 when the crime was registered and he was not traceable thereafter. It was also conceded at the Bar that the whereabouts of the said person are not known even at present and on the presumption that he is not alive, as his whereabouts are not known for more than 7 years, his legal representatives have started getting retiral benefits on his account.

9. In this background, it was noted by the Tribunal that only on the basis of assumption that the bundle of notes had changed after the respondent had assumed duties on 30.12.1997, charge against the respondent was held proved, which fact was not borne on record, inasmuch as, even according to the prosecution the bundle of notes had been opened on 20.12.1997 in the presence of the Judge and on that occasion the property had been identified. On 30.12.1997, when the respondent had assumed charge over the station, he had accepted the notes with reference to the quantum alone, which had no protection or seal. It was also noted that handing over and taking over charge took place over a period of four days and unless there was a specific requirement, it could not have been possible or accepted from him to verify the number of about 900 currency

notes. On this premise, the Tribunal opined that there was no evidence or basis for presuming that the act of changing the currency notes happened after the assumption of charge by the respondent and, therefore, the respondent was negligent. Discussion in this behalf, as contained in the impugned judgment, goes as under :-

“16. Only by taking strict view, it may be possible for anybody this Tribunal to come to a finding that there was an amount of negligence, which was actionable. The Inquiry Officer had recorded finding that the substitution had taken place, after the officer assumed office on 29.12.1997 for, them alone circumstances would have had serious innotations. For this purpose, evidently, he had relied on the evidence of shri Manmohan Singh, Officer, Punjab and Sind Bank. And this is a solitary piece of evidence. The Inquiry Officer might be correct when he points out that there was no substitution as on 21.12.1997, when they were in a sealed envelope. It was opened on the said date before the court and verification had been carried out at that time and they tallied with the numbers noted in pre-trap memorandum. However, it is nobody's case that they were sealed thereafter. The applicant had assumed office and responsibility on 29.12.1997. He received the notes only as bundles. The Inquiry Officer has come to an assumption that despite the above circumstances, there might not have been tampering. Manmohan Singh deposed when he was examined on 21.01.1998, that they were found as unchanged.

17. The alleged negligence and the seriousness thing, we could point out, would have had impact on the culpability depending on the time the tampering might have been carried out. If it had been done between 20th and 29th December, when it was in the custody of Mithrawal, it definitely has a mitigating element. On the other hand, if it was not having the regime of the applicant, it becomes more serious.

18. For this purpose, a serious examination of the deposition of Manmohan Singh become necessary. A copy of the deposition had been made available to us. In the chief examination he had spoken about the presence of substituted notes. But in the cross examination pointed questions were put to him and the answers given by him are sufficient to indicate that his claims could not be endorsed, if we examine the circumstances critically. He says that he had not examined the notes, but the prosecutor had held out them in random. The currency notes were not given to him, and more importantly pre memorandum traps were not also given for him to satisfy himself of the situation. We have to agree with the counsel for the applicant that such description of incidents, which took place in 1998, in a criminal trial, recital in a domestic enquiry is

too feeble for laying foundation for a finding of guilt. Therefore, it is not possible to pinpoint when the substitution took place, whether it was before 29.12.1997, or thereafter. Simultaneously, the conduct of Ram Chander is there. He was the person, admittedly holding the note bundle, as per records, always, and he has vanished. Therefore, all contentions lead to a conclusion that the role of the applicant in the fiasco was meager, if not nil. The lapses committed by him were not sufficient for him to be dubbed as deadwood.

19. The conclusion could be arrived at in that in the matter of substitution of notes, the part played by the applicant is debatable. A suspicion can take no place of proof. At most, what can be said, therefore, against the applicant was that while accepting the charge of office, he had not been careful enough, to ascertain the number of the currency notes, and in this Department, we are of the view that a gross negligence as alleged could not have been possible to be found. The occasion for mischief occurred on 20.12.1997 itself when the officer in-Charge of Malkhana had occasion to open the bundle breaking the seal. He had responsibility to seal them back, before taking it to the store room. An open packet of notes, therefore, would have been accepted by other officer on a belief that what was relevant was only the sum total of the amount and he was not required to satisfy himself of the further details”.

10. The Tribunal also pointed out that the Appellate Authority was conscious of the aforesaid aspects and, therefore, it had reservation about the quantum of punishment. However, it was a halfhearted approach to give benefit of lessening the punishment only and that too by reducing it from removal to compulsory retirement, which in any case snatches the respondent of his job even when the main allegation of conspiracy was not proved; there was no reliable evidence to hold him guilty of negligence; and there was at least something on record to indicate that tampering might have taken place between 20th and 29th December 1997, i.e. before the respondent took charge on 30.12.1997.

11. When we examine the matter in the aforesaid perspective, it is difficult to accept the challenge laid to this judgment by the petitioner. The whole endeavour on the part of learned counsel for the petitioner was to show that the Tribunal had exceeded its jurisdiction by going into the facts and appreciating the evidence of its own, which was not the domain of the Tribunal. Ms. Jyoti Singh, learned counsel for the petitioner, argued in this behalf that there was some evidence to indicate guilt of the respondent and even if two views were possible, it was not for the court to substitute its view in place of the one taken by the Disciplinary Authority.
12. There cannot be any quarrel about this proposition of law. However, we are of the opinion that the Tribunal, in the instant case, has not exceeded its power and was well within the permissible limits while analyzing the case to come to the conclusion that it was a case of '*No Evidence*' to implicate the respondent.
13. To recapitulate, position in this behalf can be summed up as under :-
- (a) Though the main charge (although not specifically enumerated in the charge sheet) was that the respondent was instrumental in substituting the seized currency notes, this has not been proved against the respondent.
 - (b) As per the Inquiry Report, the respondent is guilty of negligence because the substitution of the currency notes happened after he assumed the charge on 30.12.1997.
- However, it is found that there was no credible evidence to

prove this. On the contrary, material on record indicates the such a substitution between 20th and 29th December 2007 when it was in the custody of Mitharwal. This is definitely a mitigating circumstance.

(c) Shri Ram Chander, who was working as Head Constable in the *Mal Khana*, started absenting since January 1999 and his whereabouts are not known till date. This factor also goes on to indicate that it may be his handiwork.

14. In a matter like this, in any case, punishment of compulsory retirement was shockingly disproportionate keeping in view that the respondent had rendered 28 years of unblemished service. Moreover, when his involvement in the substitution of currency notes had been ruled out by the Department itself and there were serious doubts that such act took place after he assumed the charge, the principles of proportionality require that there should be an element of compensation also when there is prescription of penalties, as held by the Apex Court in *Dev Singh v. PTDC & Anr.*, JT 2003 (7) SC 509.

15. Further, the accused persons in the criminal case, wherein the substitution of the aforementioned currency notes had taken place, have been convicted by the Trial Court under the Prevention of Corruption Act. Therefore, the substitution has not affected the outcome of the said criminal case and the prosecution has not been prejudiced in any manner.

16. In the aforesaid perspective, we feel that it is not a fit case to interfere with the directions of the Tribunal whereby the Tribunal has tried to balance the equities in denying the full back wages for the intervening period and also directing that he should not be entitled to any promotion which he might have lost in the meantime as the break in service was condoned only for the purpose of regularizing his pay on reinstatement and for the purpose of retiral benefits.
17. We, accordingly, dismiss this writ petition and direct the petitioner to implement the direction of the Tribunal within one month from today. The respondent shall also be entitled to costs of these proceedings, which are quantified at Rs.10,000/-.

(A.K. SIKRI)
JUDGE

(SURESH KAIT)
JUDGE

July 03, 2009
nsk