

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (Crl.) No. 1004/2008

Judgment delivered on: October 12, 2009

Gajraj Singh Petitioner
Through: Ms. Pradeep Gupta, Advocate

versus

Govt. of NCT of Delhi Respondent
Through: Mr. Saleem Ahmad, APP for
State.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. Oral:

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- 1 . The present writ petition has been filed under Article 226/227

of the Constitution of India r/w Section 482 Cr.P.C. seeking issuance of appropriate writ quashing the impugned order dated 16.07.2008 passed by Ld. Metropolitan Magistrate. in FIR No. 182/2008 registered at P.S. I.P. Estate and impugned order dated 17.07.2008 in DD No. 6-A recorded at P.S. I.P. Estate; impugned order dated 18.07.2008 passed by Ld. Metropolitan Magistrate in FIR No. 188/2008 registered at P.S. I.P. Estate and directions against Ld. Metropolitan Magistrate not to issue directions in exercise of his judicial functions for initiation of departmental proceedings against the petitioner.

2 . The brief facts of the case relevant for deciding the present petition are as under

 The Petitioner is performing the duties as S.H.O., IP Estate, New Delhi for the last more than 1 yr 9 months and is aggrieved due to passing of various different judicial orders in different cases under investigation or investigated, which are the subject matter of jurisdiction of concerned Metropolitan Magistrate of Police Station, IP Estate, New Delhi. As per the petitioner all the impugned orders which are being challenged here under Article 226 of the Constitution of India relate to altogether different disputes i.e. dispute between third party and the State and the Petitioner is performing his official duty along with his other

colleagues like Head Constable etc.

Aggrieved by the impugned orders the petitioner has filed the present Writ Petition.

3 . Pursuant to the directions given by this Court Commissioner of Police has filed an affidavit. In the affidavit filed by the Commissioner of Police it has been stated as follows:-

“I, Y.S. Dadwal, as Commissioner of Police, GNCT of Delhi, New Delhi do hereby solemnly affirm and declare as follows:-

1 . That I am designated as Commissioner of Police, GNCT of Delhi, and am well aware to the facts of the case stated herein on the basis of official record and am competent to swear this affidavit.

2 . That on 06.05.09 this Hon’ble High Court was pleased to direct the Commissioner of Police “to file the personal affidavit as to what action was brought to his notice with respect to the conduct of the petitioner by the concerned police officials who were immediate superiors and what action was taken in the matter which are subject matter of the present writ petition.” Now it is most respectfully submitted before this Hon’ble Court:

1 . That after the order passed by Sh. Pulastya Pramachala, Ld. M.M., Tis Hazari Courts, Delhi in case being DD No.6-A U/s 103 dated 06.03.08 Delhi Police Act, P.S. I.P. Estate, the DCPC(Central) had issued the Show Cause Notice vide No. 6038/HAP/AC-I/C dated 25.08.08 for censure to the petitioner herein i.e. Gajratj Singh, the then SHO, P.S. I.P. Estate. **(Copy of the Show Cause Notice is annexed herewith and marked as Annexure-R-1).**

2 . That after hearing the petitioner and going through the reply submitted by him, DCP/Central had

awarded the punishment of censure vide No.XVI/74/07/6221/HAP/AC-I/C, dated 03/09/08 to the petitioner Gajraj Singh. (Copy of the Censure order is annexed herewith and marked as Annexure-R-2).

3. That in compliance of the court order dated 16/07/2008 in case FIR No. 182/08, P.S. I.P. Estate and other dated 17/07/08 in DD No.6-A U/s 103 DP Act, dated 06.03.08 an entry was made in the service book of Inspector Gajraj Singh on 03/09/08. A compliance report has also been filed in the concerned court of Sh. Pulastya Pramachala, M.M. Tis Hazari Court on 06/09/08 in this respect. **(Copy of the same are annexed herewith and marked as Annexure-R-3 & R-4).**

4. That as per the order dated 18/07/08 in case FIR No. 188/08 U/s 379 IPC P.S. I.P. Estate, an explanation of Inspector Gajraj Singh and H.C. Ravinder Kumar, No. 441/C was called by DCP/Central vide his office No. XVI/08/6057/HAP/AC-I/C dated 27.08.08 that they were found not cautious towards performing their official duties. On 22/01/09, a recorded warning was issued to HC Ravindr Kumar, No. 441/C vide order No.E/103/08/512-514/HAP/AC-I/C dated 27.08.08 that they were found not cautious towards performing their official duties. On 22/01/09, a recorded warning was issued to HC Ravinder Kumar, No.441/C vide order No.E/103/08/512-514/HAP/AC-I/C. However, in the mean time Inspt. Gajraj Singh was transferred to IGI Airport. Accordingly, the file of his explanation was sent to DCP/IGI Airport for taking further necessary action. A report in this respect was filed in the court of Sh. Pulastya Pramachala, Ld. M.M., Tis Hazari Court on 02/09/08. It is respectfully submitted that no further actions in this regard were taken as the aforesaid order was stayed by this Hon'ble Court vide its order dated 04/09/08. **(Copy of explanation and copy of warning are annexed herewith and marked as Annexure-R-5, R-6 and R-7 respectively)**

It is submitted respectfully, that the deponent is duty bound to obey any further order of this Hon'ble Court.

Sd/-

Deponent”

4 . Mr. Pradeep Gupta, counsel appearing for the petitioner submits that the disciplinary action has been taken by the police because of the directions given by the Magistrate in the impugned orders dated 16th July, 2008 in FIR No. 182/2008, 17.7.2008 in DD No. 6A and order dated 18.7.2008 in FIR No. 188/08. Contention of the counsel for the petitioner is that no opportunity of hearing has been afforded to the petitioner before directing the said disciplinary action by the Magistrate against the petitioner. Counsel further submits that by passing the said orders the concerned Magistrate has acted as Disciplinary Authority over the petitioner. Contention of the counsel for the petitioner is that even the alleged lapse was not on the part of the petitioner, but was on the part of the other subordinate officials, but without hearing the petitioner disciplinary action has been recommended by the Magistrate against the petitioner. Counsel for the petitioner submits that an empty formality has been fulfilled by the department by serving a show cause notice and by calling a reply from the petitioner but infact the Disciplinary Authority has simply followed the mandate of the Court orders. In support of his arguments counsel appearing for the petitioner placed reliance on

the judgment of the Apex Court reported in **State of W.B. and Ors vs Babu Chakraborty (2004) 12 SCC 201.**

5 . I have heard learned counsel for the parties at considerable length.

6 . The orders dated 16.7.2008, 17.7.2008 and 18.7.2008 were passed by the same Magistrate when it was found by the Magistrate that the present petitioner has not been conducting himself properly by not registering an FIR despite having received complaint disclosing commission of cognizable offence. The Magistrate has referred to various orders passed by the Court in the impugned order dated 16.7.2008 and taking the act of the petitioner as an act of misconduct and defiance of the Court's orders, directed the learned Commissioner to make an entry in his service book as he had committed illegality by not registering an FIR despite being duty bound to register it and also in defiance of the directions given by the said Court. In the order dated 18th July, 2008 the Court found that the SHO has given wrong information in the FIR at Sr.No. 3(b) stating that information was received on 17.7.2008 at 15:30 hrs, which act of the petitioner was taken to be of making a false entry in the records without any fear or concern. The said act of the petitioner was again taken to be an illegal action and, therefore, it was directed that the department should

see whether they find such instances suitable to take departmental or penal action against the petitioner because all these actions are being committed by the petitioner under the colour and duty of SHO. In the order dated 16.7.2008 also directions were given to the Commissioner of Police to record the observations passed by the Court in the service-e book of the petitioner. Acting on the said directions the departmental actions were initiated by the concerned Disciplinary Authority of the petitioner after giving due opportunity to the petitioner. In compliance of the order dated 16.7.2008 adverse entry was recorded in the service book of the petitioner on 3.9.2008. In compliance of order dated 18.7.2008 after holding necessary inquiry a recorded warning was issued to Head Constable Ravinder Kumar while the present petitioner was transferred to IGI Airport. No further action was taken against the petitioner since the aforesaid order was directed to be stayed by this Court vide order dated 4.9.2008. Perusal of the aforesaid orders passed by the concerned Magistrate does show that the petitioner failed to discharge his duties not only in registering the FIR on the incident of theft reported to him but also the fact that he has not been complying with the directions given to him from time to time. Without expressing any view on the merits of the matter, I am of

the view that the concerned Court should not have acted as a Disciplinary Authority and would have given necessary directions to the concerned Disciplinary Authority to take suitable action against the petitioner if he was found to have acted improperly while discharging his duties as a public servant/police official or failed to implement the orders of the Court in due discharge of his duties. I, therefore, do not appreciate all those directions given by the concerned Magistrate in the impugned orders directing his censure or to record adverse entry in his service book for defiance of the Court orders. For any defiance of the court order the Court should have invoked its contempt jurisdiction and so far as misconduct was concerned the directions could have been given to the Disciplinary Authority to hold necessary inquiry to initiate disciplinary action if the same was so warranted.

7 . It is well settled principle that disciplinary proceedings against a delinquent employee and the punishment imposed on him are executive functions and it is not appropriate for the courts to encroach upon the functions of another organ of the state and the courts must exercise judicial restraint in this regard. Court if in the exercise of its judicial function comes across that a public officer has committed any lapse or error then in given fact situation the court can certainly pass necessary order giving

recommendations to the employer or the disciplinary authority for taking suitable action against such errant officials.

8 . Reliance can be place on the case of **B.C. Chaturvedi v. Union of India AIR 1996 SC 484** wherein

“It was held that the disciplinary authority is the sole judge”. The court cannot interfere with the conclusions of the disciplinary authority. Courts may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing mode of inquiry or where the conclusion of finding reached by disciplinary authority is based on no evidence, but it is not for the courts including the tribunal to interfere with the exercise of discretion by the disciplinary authority.

While discharging judicial function, courts cannot usurp the powers of the Disciplinary Authority to direct a punitive action against the unscrupulous employee.

10 . I also find myself in agreement with the counsel for the petitioner that the Disciplinary Authority has primarily acted under the dictates of the Court order and in any case under the influence of the Court orders in passing certain directions and in doing so the principles of natural justice have been violated.

11 . Taking into consideration the aforesaid circumstances, I direct the Commissioner of Police to initiate fresh departmental proceedings against the petitioner being totally uninfluenced with the directions given by the learned Magistrate vide orders dated 16.7.2008, 17.7.2008 and 18.7.2008. In any case, it is made clear that except where the Magistrate has given the directions for recording the adverse entry in the service book of the petitioner or for his censure, the concerned disciplinary authority can take note of the other observations made by the Magistrate highlighting his misconduct and defiance on his part.

With the above directions, the impugned orders dated 16.7.2008, 17.7.2008 and 18.7.2008 directing the censure of the petitioner and recording adverse entry in the service book is hereby set aside.

October 12, 2009

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KAILASH GAMBHIR,J