

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
#10.

+ W.P.(C) 2761/2010

Date of Decision: 27.09.2010

RAMDHAN Petitioner
Through: Mr.K.C.Mittal, Adv. with
Mr.Tarunesh Kumar, Advs.
VERSUS

DELHI JAL BOARD Respondent
Through: Mr.Nishakant Pandey, Adv.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

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

: **MOOL CHAND GARG, J.(Oral)**

1. The petitioner was appointed as Beldar with the Municipal Corporation of Delhi on daily wages. Later on, he was given a temporary status as that of Beldar. On 11.08.1996 body of Sh.Rakesh Kumar, who was working as Khalasi with Jal Board, was found hanging at the electric pole, near Village Gopal Pur along with 3 page note written in Hindi. The suicide note revealed that the deceased Sh.Rakesh Kumar had given ₹72,000/- to Sh.Sanjay Gupta, AD (P&M) to engage 24 fresh persons on regular muster roll. Out of 24 persons, 18 persons were sponsored by the petitioner for which ₹54,000/- had been given to Sh.Sanjay Gupta. For remaining persons ₹18,000/- were also reportedly to be given to Sh.Sanjay Gupta. It also revealed that since Sh.Sanjay Gupta failed to keep his words and had showed his inability to engage the persons and also refused to return the money, Rakesh Kumar committed suicide.

2. In the meanwhile, the petitioner after having passed the departmental test was appointed as LDC with the Municipal Corporation of Delhi. Later on, the petitioner was proceeded departmentally for having committed misdemeanor for violating Rule

3(1)(i) & (ii) of CCS (Conduct) Rules, 1964 in the year 1997. He was served with a memorandum and the following charge was leveled against him:-

“STATEMENT OF ARTICLES OF CHARGE FRAMED
AGAINST SHRI RAM DHAN SINGH S/O SHRI JAI PAL
SINGH, LDC, C/O EE(C) Dr.-SHAHDARA-II

That the said Shri Ram Dhan Singh while working as Beldar in the office of EE(E&M) Wazirabad during the year 1996 failed to maintain integrity and acted in a manner unbecoming of Municipal servant inasmuch as he collected the money and accepted illegal gratification from the job seekers for getting them engaged on muster roll in DWS & SD Undertaking.

He has, thereby, Contravened Rule 3(1)(i) & (ii) of CCS(Conduct) Rules, 1964 as amended from time to time and made applicable to the employees of Delhi Water Supply and Sewage Disposal Undertaking.

(Rakesh Mohan)
Addl. Commissioner(W).”

3. The statement of imputations of misconduct in support of articles of charge framed against the petitioner is as under:-

“STATEMENT OF IMPUTATIONS OF MISCONDUCT IN
SUPPORT OF ARTICLES OF CHARGE FRAMED
AGAINST SHRI RAM DHAN S/O SHRI JAI PAL SINGH,
LDC, C/O EE(C) Dr., SHAHDARA-II.

Shri Ram Dhan Singh while working as Beldar in the office of EE(E&M) Wazirabad, during the year 1996 committed the following acts of omission and commission:

1. That Shri Ram Dhan Singh collected ₹54,000/- from some job seekers and had given to Late Shri Rakesh Kumar, Khalasi for onward transmission to Shri Sanjay Gupta, the then AD(P&M) for illegal act of engaging the persons including his son and nephew on muster-roll. The said amount was given by him in two installments i.e. ₹12,000/- on 10.06.1996 and balance

of ₹42,000/- on or before 18.06.1996. Thus, Shri Ram Dhan Singh lured the dupes for engaging fresh candidates on Muster-roll and accepted illegal gratification from them. This is a serious misconduct on his part.

From the foregoing, it is evident that Shri Ram Dhan Singh has failed to maintain integrity and acted in a manner unbecoming of Municipal Servant. He has, thereby, contravened Rule 3(1)(i) & (ii) of CCS (Conduct) Rules, 1964 as amended from time to time and made applicable to the employees of Delhi Water Supply & Sewage Disposal Undertaking.”

4. The charges leveled against the petitioner were denied by him. It was also stated by him that his statement before Sh.B.P. Pandey, Vigilance Officer, was not voluntary and that the said statement was procured under threat and pressure. After the reply to the memorandum of charges given by the petitioner was not found satisfactory, a regular departmental enquiry was initiated against the petitioner. Sh.D.D.Lohani was appointed as Inquiry Officer. During the course of enquiry, Sh.D.D.Lohani on the basis of three documents marked as Ex.S1, Ex.S2 and Ex.S3 as also on the basis of the statement of Sh.Sangam Tewari who appeared as DW-1 held the petitioner guilty of the charges leveled against him. However, it will be appropriate to take note of the paragraph 10 of the enquiry report which goes to show that the charge of collection of money by the petitioner was not substantiated. Paragraph 10 is reproduced hereunder:-

“10. The case on behalf of Disciplinary Authority entirely depends on the suicidal note of Sh. Rakesh Kumar (Ex.S-1) and the statement of C.O. before vigilance vide Ex.S-2. The C.O. has gone back from his statement Ex.S-2 vide Ex.S-3 to some extent but the facts given therein broadly tally with the facts given in the suicidal note. Some of the names of the prospective candidates given by the C.O. in his statement Ex.S-2 tally with the name given by DW-1. The evidence given by DW-1 also broadly tallies with the statement of the C.O. and suicidal note. Even DW-1 has stated that the

money given with the consent of the C.O. and his guarantee that the deceased will not run away with the money in case the work is not done. It has also come on record through suicidal note (Ex.S-1) that the C.O. had gone to Sh. Sanjay Gupta for collecting the appointment letters. DW-1 has also suggested that the C.O. acted as a guarantor and vouchsafed the credulity of the deceased before money was passed to him. It is also on record that the C.O. was fully aware of the purpose for which the money was given and that too on his guarantee. In the result it is substantiated against the C.O. that he abetted the illegal collection of money by the deceased for ensuring them employment on muster-roll. The allegation that C.O. collected money is not substantiated. The charge substantiated against the C.O. is that he was actively associated in luring and duping the public/candidates for illegal passing of money to the deceased. To this extent only, the charge is substantiated against the C.O.”

5. The Disciplinary Authority supplied a copy of enquiry report to the petitioner. Against the said enquiry report, the petitioner made a representation dated 1.10.2000, yet the Disciplinary Authority vide order dated 1.12.2000 held the petitioner guilty of the charges leveled against him and dismissed him from service. The order passed by the Disciplinary Authority reads as under:-

“OFFICE OF THE MEMBER (ADMINISTRATION)
DELHI JAL BOARD, GOVT. OF NCT OF DELHI
VARUNALAYA PHASE-II: JHANDEWALAN, NEW DELHI

ORDER

Sh.Ram Dhan Singh s/o Sh.Jai Pal Singh while working as LDC was issued a charge sheet vide memo No.WSU/Vig./Disp/Major/947/C-96/4572 dated 06.11.97 for major penalty. He submitted his reply in response to the said charge-sheet.

In brief, the charge against Sh.Ram Dhan Singh is that he has collected the money from some job seekers and gave the so collected money to Late Sh.Rakesh Kumar, Khallasi for onward transmission to A.D.(P&M) for

illegal act of engaging persons including his son and nephew, on M/Roll and thus, the C.O. lured and duped some persons for illegal engagement on M/roll.

Considering the gravity of the charge against Sh.Ram Dhan Singh, a regular departmental inquiry was conducted by Sh.D.D.Lohani, E.O. The Inquiry Officer while submitting his report concluded that the charge is proved against Sh.Ram Dhan Singh. A copy of the inquiry report was also supplied to him for inviting his comments. Sh.Ram Dhan Singh submitted his representation in response to the inquiry report.

I, M.P.Tyagi, Member(Adminsitration) have perused the charge against the C.O., inquiry report of the Inquiry Officer, reply of Sh.Ram Dhan Singh in response to the inquiry report and other documents on record. Sh.Ram Dhan Singh had admitted the charge of collecting money for the aforesaid nefarious act. The charge stand proved in the inquiry also. The contention of the C.O. that the inquiry report is accepted and the penalty of "Dismissal from service which would be disqualification for future appointment in Govt. service" is imposed upon Sh.Ram Dhan Singh, LDC.

Sd/-
(M.P.Tyagi)
Member(Administration)

Sh.Ram Dhan Singh
LDC,
C/oEE (C) Dr.IX."

6. The petitioner filed an appeal against the aforesaid order but the same was also rejected without any reasons.

7. Aggrieved of the orders passed by the Disciplinary Authority and the Appellate Authority, the petitioner contending that the Inquiry Officer, in fact, exonerated him of the charges leveled against him and thus, there was no occasion for the Disciplinary Authority to have passed the punishment of dismissal, filed a writ petition before this Court which was transferred to the Central Administrative Tribunal and was registered as TA No. 410/2009, which has been disposed of by the Tribunal vide order dated 14.12.2009 impugned

before us, whereby the Tribunal upheld the order passed by the Disciplinary Authority and has not interfered with the punishment awarded to the petitioner, rather the Tribunal has made the following observations-

“11. We find from the Inquiry Report that suicide note given by Shri Rakesh has clearly implicated the Applicant as one of the conduits for transaction between the job seekers and Rakesh Kumar/Gupta. The said suicide note also reveals that the deceased had given Rs.72,000 to Shri Sanjay Gupta, ED (P&M) to engage 24 persons on regular Muster Roll, out of which 18 were sponsored by the Applicant for which Rs.51,000 had been given to Shri Sanjay Gupta. For the remaining 6 persons, it is stated that Rs.18,000 were also reportedly given to Shri Sanjay Gupta. Shri Rakesh Kumar in his suicide note informed that since Shri Gupta did not keep up his words he had to commit suicide. The Applicant knew Shri Rakesh Kumar for over 20 years and it is clearly evidenced that he has been the conduit in the illegal practice of engaging regular Muster Roll persons in lieu of money that was transacted between the parties. The evidence has been brought out that the Applicant has been in constant touch with Shri Sanjay Gupta during the period when the incident took place. Though the Applicant indicates that his confessional statement was taken by the Vigilance Officer to the effect that he had collected Rs.54,000/- from some candidates which he gave to Shri Rakesh Kumar as a consideration for engaging his own nephew and 17 other persons on Muster Roll, he has not been in a position to convince us as to in what manner he was pressurized to give such a statement and why did not he object subsequently to the statement to the competent authorities. The Inquiry Officer after analyzing the evidence in the report, very clearly brought out the fact about the Applicants involvement and appropriately came to the conclusion that the Applicant had committed the misconduct as stated in the statement of imputation in the charge memo. We have also examined the issue of proportionality of punishment in case of the Applicant and find that for the serious and grave misconduct of corrupt practices, luring and duping gullible persons for

illegal engagement in muster roll through Rakesh Kumar which is certainly reprehensible and illegal misconduct which need to be visited with major penalty. From the angle of proportionality of punishment, we find that the dismissal from service of Delhi Jal Board has been rightly inflicted upon him by the competent Disciplinary Authority. While doing so, proper prescribed procedure has been followed and there has been no violation of the principles of natural justice. Even the Appellate Authority's order is very clear and to the point. The Appellate Authority has taken into account the appeal filed by the Applicant and the facts of the case and has appropriately rejected the appeal."

8. Before us, the learned counsel appearing for the petitioner, with respect to the charges leveled against the petitioner, has submitted that the petitioner was also prosecuted by the Government of NCT of Delhi vide FIR No. 381/1996 under Section 420/306/506 IPC. However, the said case when came up for trial before the learned Additional Sessions Judge, the said case was dismissed by the learned Additional Sessions Judge and in that case even the suicide note alleged to have been left by late Sh.Rakesh Kumar was not found true. It is submitted that the reliance placed by the Inquiry Officer on the suicide note Ex.S1 is misplaced inasmuch as nothing has been brought on record either before the court of Additional Sessions Judge or before the Inquiry Officer that the suicide note was executed by late Sh.Rakesh Kumar. It is also submitted that in view of the statement of DW-1 Sangam Tewari, who has very categorically stated that the petitioner never received any money from him or from any other person for the purpose of duping or luring anyone with an assurance to get him job, the charges leveled against the petitioner had not been proved. It is further submitted that once there is no evidence against the petitioner either of collecting any money or of abetting illegal collection of money by the deceased for ensuring employment on muster roll, the report of the Inquiry Officer could not have been used against the petitioner. In case the Disciplinary Authority wanted to rely upon the report of the Inquiry Officer to hold the petitioner guilty of the charges leveled against him, a disagreement note ought to have

been served upon the petitioner, which has also not been done in this case and, therefore, the procedure adopted by the Disciplinary Authority was contrary to the law as laid down by the Apex Court in the case of Yoginath D.Bagde Vs. UOI & Ors., 1999 (7) SCC 739 and therefore, the proceedings need to be set aside.

9. It may be observed here that the Additional Sessions Judge, who has reproduced the suicide note relied upon by the Department for the purpose of fastening liability upon the petitioner, has observed as under:-

“15. In the present case, the prosecution has not collected any evidence whatsoever to show that the accused goaded, urged, provoked, incited or encouraged the deceased to commit suicide or neither directly nor indirectly or that the accused persons facilitated or intended to facilitate the commission of suicide by the deceased. There is nothing whatsoever on record to show that the accused persons in any way “intentionally” aided the commission of crime. See Sri Ram Vs. State of U.P. AIR 1975 SC 175. There is no complicity on the part of the accused persons at any time prior to the actual commission of the offence. They have not taken any steps in the transaction of the deceased committing suicide. In fact, it is not the case of the prosecution that when the deceased allegedly committed suicide, the accused persons were present at the place of accident. There is no material, direct or indirect to show that the accused persons or any of them either instigated or conspired or aided the deceased in committing the suicide at that time. ON the material available no offence punishable under Section 306/34 IPC is made out against the accused persons.

16. I may point out that it is even doubtful if at all the deceased committed suicide. The manner of hanging on the electric pole as seen in the photographs filed on record show that both the hands of the deceased were tied behind. Both the legs were also found tied together. Piece of cloth was gagged in the mouth over which another ligature was tied over. This position of the hanging dead body with hands and legs tied and cloth piece gagged in the mouth tied with another

ligature over it, is not possible by suicide. That is why, the doctor conducting the post mortem on the dead body observed that the death was due to ante mortem hanging and homicidal death could not be excluded. It clearly seems to be a case of homicidal hanging and not suicide. The entire approach of investigation is towards suicide on the basis of the suicide note without finding out the circumstances in which said note could have been written. The possibility of the deceased being compelled to write such a note cannot be excluded. The investigation is perfunctory. The IO took it to be the end of all of his duty to arrest accused Ram Dhan (petitioner) and his son on the basis of suicide note when the note does not indicate in any manner there complicity in the matter. At the most the deceased may not have been able to face accused Ram Dhan (petitioner) for the job of employing 18 of his boys could not be achieved by the deceased though amount of ₹54,000/- had been taken from Ram Dhan (petitioner). However, Ram Dhan (petitioner) can be held responsible is not at all understandable. The IO seems to have converted the case of murder into the case of suicide. He has not taken the care expected to him. It is completely defective investigation. Such investigation does not instill confidence in the public mind. Such investigation also does not do justice to the deceased and his family. It is unfortunate that no investigation worth the name has been carried out in this case.

17. Be that it may, the fact remains that the prosecution has failed to show that the accused persons have in any way instigated the commission of suicide by the deceased or have committed any other offence.”

10. Even though the order of the Additional Sessions Judge may not be of relevance for the purpose of disposing of the issues before us in this case, but the fact remains that the observations made by the Additional Sessions Judge cast serious doubt about the theory of the Department that a suicide note was left by late Sh.Rakesh Kumar, which is the only evidence relied upon by the Department against the petitioner even though no handwriting expert was called as witness to prove that it was a note written by late Sh.Rakesh Kumar. Moreover,

it also suggests that even the allegation of receiving any money has not been established before the Additional Sessions Judge. Needless to say that such evidence has also not been brought before the Inquiry Officer. In fact, the statement made by DW-1 Sh.Sangam Tewari establishes that the petitioner had not collected any money from any person for duping or luring with an assurance that he would arrange service for them.

11. Another strange circumstance which also goes in favour of the petitioner is that while serious allegations against Sanjay Gupta were also made in the so-called suicide note, who is the kingpin of the entire show, the Department has not even cared to prosecute the said Sanjay Gupta, who only would have been the beneficiary of money, if any, collected by the petitioner rather they have made the petitioner an escape goat in the entire show being a very low paid employee, who was only a Beldar at the relevant time.

12. It is submitted by Sh.K.C.Mittal, the learned counsel appearing for the petitioner, that the petitioner has already completed 56 years of age and has now left with very small time before his retirement. He had a long service and in fact, he is out of service for a period of more than 7 years. It is submitted that the Department while dismissing the services of the petitioner have not taken note of all the hardships which have been caused to the petitioner even though no cogent evidence has come on record against him to prove that it is the petitioner who was really guilty of the charges leveled against him. He also submitted that even if the petitioner do not get back wages but if he is reinstated in service with continuity of service at least he will retire at the age of 60 years and may be entitled to claim his retiral benefits which would go a long way to take care of his miseries.

13. Taking into account all the facts noted hereinabove, suffice would it be to state that there is no evidence that late Shri Rakesh Kumar committed suicide due to any act attributable to the petitioner. The evidence shows that at the relevant time the petitioner was working as a beldar, the lowest post in the department. Assuming there was a racket as alleged, the linchpin thereof Sanjay Gupta

working as Additional Director (P&M) against whom no departmental proceedings have been taken. The penalty imposed is even otherwise discriminatory. We note that the penalty imposed is of dismissal from service. The petitioner has been without job since 01.12.2000 and the concession made by the learned counsel for the petitioner that back wages may be denied is sufficient penalty inasmuch as the petitioner stands deprived of wages for 8 years and 9 months as a consequence of our order passed today quashing the penalty imposed, but without any back wages to be paid.

14. We dispose of the writ petition quashing the penalty imposed upon the petitioner and direct the petitioner to be reinstated in service. He would not be paid any back wages.

15. No costs.

MOOL CHAND GARG, J

PRADEEP NANDRAJOG, J

SEPTEMBER 27 2010

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