

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

% Judgment Reserved On: 31st August, 2010
Judgment Delivered On: 7th September, 2010

+ **W.P.(C) NO.8678/2009**

GOVT OF NCT OF DELHI & ORS. Petitioners
Through: Mr.Rajiv Nanda, Advocate for
GNCTD

versus

HC RAM KUMAR Respondent
Through: Mr.Anil Singal, Advocate

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?

PRADEEP NANDRAJOG, J.

1. HC Ram Kumar and Ct.Sunil were charge sheeted; the charge being that Deepak, an under-trial prisoner, escaped from the judicial lock-up on 14.5.2004 after he was produced in Court at about 1:15 PM and brought back to the lock-up. It was alleged against Ct.Sunil Kumar that the under-trial prisoner was entrusted to him, to be taken from the lock-up and brought back after being produced in Court. It was alleged against HC Ram Kumar that he was in-charge of the lock-up and was negligent in performing his duties and as a result whereof the under-trial prisoner managed to escape.

2. The inquiry report was submitted after witnesses were examined and record was perused. It was found that Ct.Sunil Kumar had brought back the under-trial prisoner after

he was produced in Court and had handed over his custody to HC Ram Kumar. A finding was returned that thereafter HC Ram Kumar made an entry in the relevant register recording that the under-trial prisoner was returned at the lock-up and that the prisoner escaped thereafter.

3. Thus, acquitting Sunil Kumar, the Inquiry Officer indicted HC Ram Kumar.

4. Considering the report of the Inquiry Officer and also the response of HC Ram Kumar thereto, the Disciplinary Authority levied penalty of forfeiture of 2 years approved service for a temporary period of 2 years, which was upheld by the Appellate Authority. HC Ram Kumar filed OA No.279/2006 which has been allowed vide impugned order dated 14.1.2009. The penalty has been quashed.

5. Reasons which can be culled out from the impugned order dated 14.1.2009, in returning a verdict favourable to HC Ram Kumar, is that the regular departmental inquiry was preceeded by a fact finding search inquiry in which verdict of guilt returned was against Sunil Kumar and qua HC Ram Kumar it was observed that the lapse committed by him was of callously making entry of return of the under-trial prisoner who had escaped from the custody of Constable Sunil Kumar. The Tribunal has held that though nothing prevented the Inquiry Officer from returning a different finding vis-à-vis the finding returned at the preliminary inquiry, but for said finding good and cogent reasons, supported with evidence, had to be brought on record. The Tribunal found none. Secondly, the Tribunal has found a contradiction in the inquiry report where at one stage a finding was returned that the under-trial prisoner had not been brought back to the

lock-up; but thereafter findings have been returned that he was brought back to the lock-up. Thus, the Tribunal has found it to be a case of contradictory finding. Lastly, the Tribunal has found it to be strange that co-delinquent Ct.Sunil has been exonerated whereas HC Ram Kumar has been found guilty.

6. It is not clear whether the Tribunal has struck down the penalty on ground discussed in para 7 of the impugned order, being that, whether the proceedings were vitiated on account of the disciplinary authority not considering whether it was a case to launch criminal prosecution or take departmental action, a decision required to be taken under Rule 29 (3) of the Delhi Police (Punishment and Appeal) Rules, 1980. But, we would treat the finding in para 7 as against the department.

7. We deal with the observations in para 7 of the impugned order. It reads as under:-

“7. This is a case in which there is a divergence between the findings in the preliminary searching inquiry and the regular disciplinary inquiry. The searching inquiry had established the main responsibility for the escape of the UTP in question from Police custody on Constable Sunil Kumar, though no evidence of complicity or mala fide intention had been found. Simultaneously negligence on the part of the applicant for his failure as incharge Gaddi Guard staff to ensure physical verification of the UTPs before making entries in the relevant records and thereby detecting non availability of the missing UTP at that point only was also highlighted. As the preliminary enquiry had not completed absolved the applicant, the decision for initiating the DE against him as well cannot be prima facie faulted. However, the contention about non-observance of prescribed stipulations under Delhi Police (Punishment and Appeal) Rule 29(3) by way of a reasoned decision for initiating disciplinary enquiry and not a criminal

prosecution with the approval of the Additional Commissioner of Police has not been countenanced factually in the counter reply.”

8. In response, we may only state that Rule 29 (3) of the Delhi Police (Punishment and Appeal) Rules 1980 requires an application of mind by the Additional Commissioner of Police whether it would be advisable to initiate proceeding before a Criminal Court or initiate departmental action on the basis of preliminary fact finding report. In the instant case, we see no scope to initiate any criminal proceedings for the reason the gravamen of the allegations brings out a case of negligence and not the commission of a penal offence. Indeed, the Tribunal has not brought out as to which penal offence would be committed with respect to the misdemeanour alleged against the respondent.

9. Thus, we hold that on account of what has been observed by the Tribunal in para 7 of the impugned decision, nothing can be held against the department.

10. Dealing with the other issues, it may be highlighted that the purpose of a preliminary fact finding inquiry is to ascertain the facts and thereafter place the same before the Disciplinary Authority to consider whether the matter requires a further probe with the delinquent officers participating in the further inquiry, so that if found guilty, appropriate action can be taken against the erring officers. It is known to the persons in the legal field that findings returned at preliminary inquiries are always tentative and are never treated as final. In the instant case, it needs to be highlighted that even during the preliminary inquiry, and indeed during the regular departmental inquiry, whereas Ct.Sunil took the stand that he had lodged the under-trial prisoner at the Court lock-up after

producing him in Court, HC Ram Kumar took the stand that due to inadvertence he entered the name of the under-trial prisoner in the register as being brought back after being produced from the Court; he alleged that as a matter of fact the under-trial prisoner had escaped from the custody of Ct.Sunil enroute from the Court to the lock-up.

11. At the preliminary inquiry, the report submitted was consistent with the stand taken by HC Ram Kumar. That is the reason why Ct.Sunil was charge sheeted for letting the prisoner escape and HC Ram Kumar was charged with facilitating the escape by making wrong entries in the register.

12. At the regular inquiry, it transpired that Ct.Sunil was correct and HC Ram Kumar was wrong. It was proved that the prisoner had been brought back and the warrant of production signed by the Court staff was handed over to HC Ram Kumar who then made the relevant entry in the Rojnamcha register pertaining to the arrival entry and received the warrant. It was established that the under-trial prisoner escaped thereafter.

13. The Inquiry Officer noted that the relevant entry in the Rojnamcha register pertaining to the return of the under-trial prisoner is at serial No.35. HC Harbir Singh Guard of the jail van L-2 deposed that the under-trial prisoner was found missing when the under-trial prisoners were being transferred from the lock-up in the Court premises to the van. SI Ved Prakash established that after production in Court, when the under-trial prisoner is brought back, an entry is made in the register by the Gaddi Guard, who on the date of the incident was HC Ram Kumar.

14. It is no doubt true that at one stage, while drawing the conclusion, the Inquiry Officer has written that the under-trial prisoner was not brought back to the Court lock-up but has later on found and retuned findings, with reference to the record, that the prisoner was brought back and his return was duly entered in the register of 'Dakhila Kharj'. The warrant was received. The prisoner escaped thereafter.

15. It is a case of the Inquiry Officer being a little lax in returning the written findings, but on an overall reading of the report and the supporting evidence, we find that there is overwhelming documentary evidence to establish that the under-trial prisoner was brought back to the lock-up in the Court premises. Entry was made to said effect. Production warrant issued by the Court containing an endorsement of the Court staff that the under-trial was produced in Court was returned by Ct.Sunil when he brought back the under-trial prisoner. In view of the documentary evidence, the inescapable conclusion is that the prisoner escaped from the lock-up in the Court premises.

16. The findings returned by the Tribunal are totally contrary to the evidence on record.

17. Assuming that the prisoner escaped from the custody of Ct.Sunil. Then what would stand proved against HC Ram Kumar is of making entries casually in the register without ensuring the return of under-trial prisoner; thereby facilitating his escape. Even said finding of guilt is blameworthy enough to visit HC Ram Kumar with the penalty which has been imposed upon him.

18. On the issue of discrimination between HC Ram Kumar and Ct.Sunil; on the findings returned by the Inquiry

Officer that it stands proved that Ct.Sunil brought back the under-trial prisoner, we see no scope for any basis to exist on which it can be alleged, much less sustained, that HC Ram Kumar has been discriminated against. That apart, assuming if Ct.Sunil has been wrongly let off, that would not mean that HC Ram Kumar has also to be let off. Our reason being that there can never be equality in the negative. Two wrongs do not make up a right.

19. To conclude, against HC Ram Kumar, we hold that as held by the Inquiry Officer, and for which finding there is good evidence, it stands proved that the under-trial prisoner escaped after he was brought back and lodged in the lockup. It stands proved that the prisoner's escape was detected when all under-trials were being transferred into the jail van for being taken back to the Tihar Jail.

20. Assuming that there is no evidence to prove that the under-trial prisoner escaped from the lock-up, but there is sufficient evidence; in fact this is the admission of HC Ram Kumar, that he entered return of the under-trial prisoner in the judicial lock-up and thus, in any case, he facilitated the escape of the prisoner whose non-presence would have been detected much earlier and not when the prisoners were being head counted when they were made to sit in the jail van for being transported back to Tihar Jail.

21. Thus under any circumstances, and whatever may be the alternatives we may consider vis-à-vis HC Ram Kumar, we see no scope to let him off. Of course, if it is proved that the prisoner escaped from his custody the indictment would be more severe. If it is proved that he made negligent entries and on account whereof the escape of the prisoner got

detected late, the misdemeanour would be of lesser magnitude. But, for both, the penalty imposed which has no futuristic effect or impact can hardly be called or classified or labeled as disproportionate.

22. The writ petition is allowed. Impugned judgment and order dated 14.1.2009 is set aside. O A No.279/2006 is dismissed. Penalty imposed is restored.

23. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

SEPTEMBER 07, 2010
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