

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

+ **W.P. (Civil) No.18511 of 2004**

% ***Date of Decision: 21.02.2011***

Pratap Singh Petitioner

Through Mr.R.S.Rana & Pt.Sama Singh,
Advocates.

Versus

Union of India & Ors. Respondents

Through Mr.Keshav Dayal, Sr.Advocate with
Mr.Anurag Kasana, Advocate for
respondent No.1.

Mr.V.K.Tandon, Mr.Manish Chauhan
& Mr.Sanjay Singh, Advocates for
respondent Nos.3 to 5.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MS. JUSTICE VEENA BIRBAL

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioner who had been an Assistant Commissioner of Police and who superannuated on 30th June, 1997 has challenged the order dated 10th February, 2004 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A.No.1855 of 2003, titled as

‘Sh.Pratap Singh v. Union of India & Ors.’ upholding the punishment imposed on the petitioner by order dated 21st May, 2003 of 50% cut in his pension on permanent basis and forfeiture of 50% of his admissible gratuity.

2. Brief facts to comprehend the controversies are that the petitioner while working as SHO Police Station Subzi Mandi during August, 1980 had committed gross misconduct as he failed to take timely action in respect of the illegal detention of Sh.Laxman Singh @ Hanuman S/o Sh. Hubba Singh by the police personnel at the Police Post, Andha Mughal under the jurisdiction of his Police Station, although the illegal detention was in his knowledge. The said person Sh.Laxman Singh @ Hanuman died in police custody and the petitioner in order to cover up the lapses of the police personnel was also instrumental in showing it as a case of suicide and consequently, he showed lack of devotion to duty and indulged in conduct that was unbecoming a Government servant and thereby violated the provisions of Rule 3 of CCS (Conduct) Rules, 1964. The petitioner was therefore, served with a charge sheet and he was asked to submit his reply.

3. The petitioner denied the charges made against him and consequently, an enquiry was conducted. In his report, the enquiry officer held that the charge related to lack of devotion to duty was substantially established though to a degree less than that of his Police Post Incharge, who was primarily responsible in the said case, where

the deceased had died under the police custody.

4. The Disciplinary Authority however, disagreed with the findings of the enquiry officer. The note of disagreement was served on the petitioner. Reply by the petitioner was considered and thereafter the Disciplinary Authority after obtaining the advice of the UPSC and after considering the same came to the conclusion that the misconduct attributable to the petitioner was of a grave nature and therefore, penalty of 50% cut in his pension on permanent basis and forfeiture of 50% of his admissible gratuity was imposed by order dated 21st May, 2003.

5. On account of the custodial death of Sh.Laxman Singh @ Hanuman, an F.I.R. No.764 of 1980, PS Subzi Mandi, was also registered under Section 307 of IPC, which was converted into Section 302 of IPC on his death. Permission under Section 197 of the Criminal Procedure Code was sought for prosecution against the petitioner, and the than SI Ram Kishan, which was however, declined on the ground that there was no evidence against them. After the investigation, the challan was filed and the name of the petitioner was put in Column-II of the charge sheet framed under Section 173 of the Criminal Procedure Code. The other police personnel who were responsible for the custodial death of Sh.Laxman Singh @ Hanuman were convicted of offence under Section 302 read with Section 34 of IPC. While convicting the other police personnel, the Additional Sessions Judge in para 21 of the

judgment had indicted the petitioner. The observations made in para 21 of the Judgment are as under:

“Lastly I cannot exercise any constraints in saying that the role of SHO concerned police station, the Chauki In charge and the persons who had recorded the mentioned daily diary has remained quite disgusting and highly unfair.”

6. Subsequently a joint departmental proceeding was initiated against SI Ram Kishan, HC Ram Dhari and Ex HC Ram Niwas, and on conclusion of the proceedings the Disciplinary Authority was pleased to award punishment against all the three defaulters. Departmental Enquiry under Rule 14 of the CCS(CCA) Rules 1965 was also concluded against the petitioner. During the pendency of the enquiry proceedings, the petitioner had reached the age of superannuation on 30th June, 1997 and therefore, the said proceedings continued under Rule 9(2) (a) of the C.C.S (Pension) Rules 1972. Provisional pension was sanctioned to the petitioner vide Order dated PAO-II/Pen/14(6)/97/3917. After the punishment order dated 21st May, 2003 was passed, a copy of the same was supplied to the petitioner on 11th June, 2003. On 26th July, 2003 a copy of the advice of UPSC was also given to the petitioner.

7. The punishment imposed on the petitioner was challenged by him by filing an original application being O.A.No.1855 of 2003,

titled as 'Sh.Pratap Singh v. Union of India & Ors.', which has been dismissed by order dated 10th February, 2004 which is challenged by the petitioner inter-alia on the following grounds that the Chief Secretary could not be the Disciplinary Authority as under the relevant rules, it is the Additional Commissioner of Police who would be the Disciplinary Authority of an Inspector in police and that the order dated 21st May, 2003 was passed in violation of the proviso (b)(ii) of Sub Rule (2) of Rule 9 of CCS (Pension) Rules. According to the petitioner, a departmental enquiry initiated before retirement must come to an end on retirement. It was also urged that no resort can be taken to Rule 9 (2) of CCS (Pension) Rules, which is applicable to the departmental proceedings involving misappropriation of Government money or material or any other misconduct associated with misappropriation of such money or store. According to the petitioner, the said provision cannot be made applicable to all departmental enquiries involving misconduct of other nature. The petitioner also asserted that since no criminal action was taken against him except including his name in Column-II, therefore, in the facts and circumstances, no punishment could have been imposed upon him. It is also asserted that since the petitioner was promoted from the rank of Inspector to Assistant Commissioner of Police, therefore, there is a semblance of condonation of his misconduct and in the circumstances, the punishment awarded

could not be imposed and in any case it is disproportionate to his alleged misconduct.

8. The petitioner further submitted that his case is of no evidence as out of 14 prosecution witnesses, the enquiry officer had examined only 5 witnesses and no reasons have been disclosed for not examining the other witnesses. It is contended that the incident of the death of Sh.Laxman Singh @ Hanuman had taken place in Quarter No.4 of erstwhile Police Post, Andha Mughal, which was situated at a distance of about 4 km. from the police station Subzi Mandi and the accused Head Constable and Constable were under the control of SI Ram Kishan, the then In charge of Police Post, Andha Mughal, therefore, penalty awarded to the petitioner is misconceived.

9. The petition was contested by the respondents contending inter-alia, that the petitioner was appointed to the Ex-cadre post of Assistant Commissioner of Police by Lieutenant Governor, Delhi on officiating basis w.e.f. 27th May, 1986 and he continued in that capacity till regular appointment to Grade-II of the erstwhile Delhi and Andaman & Nicobar Islands Police Service (DANIPS) w.e.f. 6th April, 1992. In terms of Rule 14 (4) of the Delhi Police (Punishment & Appeal) Rules, 1980 read with entry at serial No.29 of Part-II of the Schedule of CCS(CCA) Rules, 1965, the Chief Secretary, Government of NCT of Delhi was competent to institute the

departmental proceedings against the applicant under Rule 14 of the said Rules. As per rule 14(4) of the Delhi Police (Punishment & Appeal) Rules, 1980 the disciplinary action is to be initiated by the competent authority under whose disciplinary control the police officer concerned is working at the time it is decided to initiate disciplinary action and not at the time of misconduct committed by delinquent. The petitioner was proceeded under Rule 14 of the CCS(CCA) Rules, 1965 by Memorandum No.F.7/46/95/DOV/3138 dated 23rd May, 1997. Hence under Rule 14 (4) of the DP(P&A) Rules the competent authority to initiate the disciplinary proceedings was the Chief Secretary, as at the time the petitioner was serving in the Delhi Administration

10. The respondents also contended that the deceased Sh.Laxman Singh @ Hanuman who had expired on 6th August, 1980, but who had given a dying declaration before his death, had revealed that on the night of 1st August, 1980 he was lifted by a police team consisting of Constables Om Prakash, Vijay Singh and Tyagi from the Railway Station, Subzi Mandi and taken to the Police Post, Andha Mughal where he was tortured in order to extract information about some stolen property. On 5th August, 1980 when he was taking meals at the police station, police personnel poured kerosene oil on him from the stove lying nearby and set him on fire. The deceased, Sh.Laxman Singh @ Hanuman

was in illegal detention till 5th August, 1980 and the illegal detention was in the knowledge of Inspector Sh.Pratap Singh/petitioner as Sh.Jagdish Tytler, the then Member of Parliament had phoned him regarding the release of the deceased and the parents of deceased Sh.Laxman Singh had also met the petitioner with a petition on 4th August, 1980 which was marked by him to the Police Post In charge, Andha Mughal, however, he failed to take any timely action against the illegal detention. Emphasis was also laid on the registration of the false FIR No.763/80, under Section 309 of IPC to save the police personnel responsible for setting Sh.Laxman Singh @ Hanuman on fire and thus, the petitioner indulged in shielding the culprits. A reference was also made to the fact that, against the order of the Sessions Judge observing about the adverse conduct of the petitioner, no revision or any other proceeding was filed by the petitioner.

11. Regarding the issue of retirement raised by the petitioner, it was contended that after his retirement on 30th June, 1997 on attaining the age of superannuation, the proceedings were deemed to have continued under Rule 9 (2) (a) of the CCS (Pension) Rules, 1972.

12. The Tribunal has held that the Central Civil Services (Classification, Control & Appeal) Rules, 1965 Schedule Part II clearly stipulates that the Chief Secretary would be the competent authority to

impose the penalties in case of a member of a service, Delhi and Andaman & Nicobar Islands Police Service Grade II and who is serving under Delhi Administration. Since at the relevant time, that is when the disciplinary proceedings were contemplated, the petitioner was in the Delhi and Andaman & Nicobar Islands Police Service Grade II and was serving under the Delhi Administration therefore, Secretary, Delhi Administration was competent to take up the matter with respect to the penalties. The plea of the petitioner that when the alleged misconduct was committed he was an Inspector and so the competent authority was the Additional Commissioner of Police was repelled in view of the Rule 14(4) of the Delhi Police (Punishment & Appeal) Rules, 1980 which categorically stipulates that disciplinary action shall be initiated by the competent authority under whose disciplinary control the police officer concerned is working at the time it is decided to initiate the disciplinary action.

13. The plea of the petitioner that the disciplinary proceedings were barred under Section 140 of the Delhi Police Act, 1978 was also rejected on the ground that the said section pertains to barring of suits and prosecutions and not of departmental proceedings. The other plea of the petitioner that the copy of the UPSC advice was not given to him was rejected on the ground that the order dated 21st May, 2003 clearly stipulates that the order of the UPSC letter was enclosed. In any case it was noticed that at the relevant time there was no claim made on behalf

of the petitioner that the copy of the advice had not been given to him and that prejudice had been caused on account of alleged not giving of the copy of the UPSC advice.

14. Before the Tribunal the petitioner had also contended that out of 14 witnesses only 5 witnesses were examined and, therefore, there was very little evidence against the petitioner. The Tribunal has noted that it is not the number of witnesses which would be material but the evidence which is against the petitioner. Testimonies by even a few witnesses could be sufficient and material. It was observed by the Tribunal that the scope of judicial review is limited and the finding has to be arrived at on the basis of preponderance of probabilities. The petitioner could have challenged the findings of the disciplinary authority had there been no evidence or had there been any other perversity. The Tribunal has relied on the finding of the enquiry officers which are as under:-

“In this inquiry five witnesses have been examined. Shri Jagdish Tytler (PW1) recalls that on 4th August, 1980 Shri Sher Singh accompanied by his parents and some other persons, accompanied to him that his brother Hanuman (the deceased victim) was taken by police post Subzi Mandi (Andha Mughal Police post) and that he telephoned the station House Officer to look into the matter. During the cross examination he said that in the court he had stated that he telephoned to SHO Andha Mughal and that he did not remember now whether it was the C.O. present here or some other persons. Shri Gurbachan Lal (PW2) was posted Inspector Crime Branch in 1980 but he had retired before the chargesheet in this case was put up in the court. His testimony is, therefore, of no use in this case. Shri Sher Singh s/o Shri Hubba Singh r/o Gali Peerji Subzi Mandi,

Delhi is the elder brother of the deceased Shri Lakshman alias Hanuman. He has stated that on 1.8.1980 Head Constable Narender Kumar, Head Constable Om Prakash, and Constable Vijay Kumar, along with a few others not in uniform came to his house near the railway station Subzi Mandi and apprehended his brother Lakshman Singh and took him to the police post Andha Mughal. He learnt of it when he came home at about 5 p.m. or 5.30 p.m. First, they contacted Sub Inspector Ram Kishan, were shouted at, and then approached Shri Jagdish Tytler, Member of Parliament. Next day, again they were chased away. Then they made an application in the court of M.S.Rohilla, a Metropolitan Magistrate obtained some order which they took to police station Subzi Mandi where SHO was not present. On 3rd August, 1980 they again went to P.S. Subzi Mandi and the SHO was not available again. On 4th August, 1980 they again met Shri Jagdish Tytler who in their presence telephoned the SHO of police Station Subzi Mandi and told him to release his brother if there was no case made out against him. After the telephone they again went to the police station where the SHO was not against available. During the cross examination he admitted that his brother Lakshman Singh, the deceased was arrested even earlier in connection with a quarrel with his fairly and a neighbour.

From all these testimonies, it appears that the C.O. came to know of this detention only on 4.8.1980. In fact, he has already admitted that, on 4.8.80, he did meet a few persons on the gate of his police station, who gave him an application which he marked to the police post Incharge for a report. The police post Incharge informed that Shri Lakshman Singh had been arrested the same day i.e. 4th August, 1980 and had confessed having committed a few robberies on the Railway Track and in the ridge area. The C.O.'s lapse lies, therefore, in the fact that he did not show enough interest in the application so as to reach the police post Andha Mughal then and there, and verify, himself, the facts and circumstances of the detention of the deceased. He simply believed the version given by police post Incharge, and did nothing about it till it was too late."

15. These pleas which were raised before the Tribunal were repelled, and consequently the original application filed by the petitioner against the order of the disciplinary authority dated 21st May, 2003 whereby 50% cut in pension on permanent basis and forfeiture of 50% of admissible gratuity had been imposed, was dismissed.

16. We have heard the learned counsel for the parties and have also perused the record which was before the Tribunal. The learned counsel for the petitioner has reiterated the pleas which were raised before the Tribunal. The learned counsel has again contended that since on the date of the alleged incident the Additional Commissioner of Police was to be the competent authority for taking the disciplinary action, as the petitioner was an Inspector at that time, therefore, the disciplinary proceedings are vitiated. This plea of the petitioner cannot be accepted as in terms of Rule 14(4) of the Delhi Police (Punishment & Appeal) Rules, 1980, the disciplinary proceedings are to be initiated by the competent authority at the time disciplinary proceedings are proposed. It cannot be disputed that after 1986 the petitioner was in Delhi and Andaman & Nicobar Islands Police Service Grade II and the competent authority to impose penalties was the Chief Secretary of Delhi Administration. Since the petitioner was in DANIPS service under the Delhi Administration, therefore, Additional Commissioner of Police could not be the competent authority and under the Central Civil Services (Classification, Control and Appeal) Rules, 1965 Schedule Part

II at entry serial no. 29, the Chief Secretary, Delhi Administration was the competent authority and thus the plea on behalf of the petitioner is liable to be rejected that the disciplinary proceedings were not initiated by an incompetent authority.

17. Regarding the proportionality of the punishment imposed on the petitioner, it is apparent that the petitioner not only did not take the prompt action to release an innocent person which resulted into his death under police custody, the attempt was also made by the petitioner to color it as a suicide. The action of the petitioner is to be construed as a gross misconduct and inculpability of the petitioner cannot be watered down by any of the pleas now raised on behalf of the petitioner. The deceased Laxman Singh had been brutally murdered as the police personnel in the police post had poured kerosene oil on him and had burnt him. This fact was within the knowledge of the petitioner, still he tried to cover up the case as that of a suicide. The fact of illegal detention of the deceased was also in the knowledge of the petitioner who was SHO, Subzi Mandi at that time, as Sh.Jagdish Tytler the then member of Parliament had phoned him for releasing the deceased Sh.Laxman Singh and even the parents of Sh.Laxman Singh had met him with a petition, a day earlier that is on 4th August, 1980 which was marked to the Incharge, Police Post Andha Mughal. In the facts and circumstances there are no cogent grounds have been made out before this Court which will absolve the misconduct of the

petitioner in any manner. The action on the part of the petitioner not only resulted in the loss of an innocent life but he also attempted to shield the culprits who have been convicted under Section 302 read with Section 34 of Indian Penal Code in the criminal case against them. The conduct of the petitioner cannot be justified on any account and consequently the penalty of withholding 50% of his pension on permanent basis and forfeiture of 50% of his admissible gratuity cannot be termed in any manner as disproportionate to the misconduct attributable to him. This plea of the petitioner is also to be rejected in view of the facts and circumstances.

18. The learned counsel for the petitioner has also raised the similar plea as raised before the Tribunal that he was not given the copy of the advice rendered by the UPSC. The learned counsel is however, unable to demonstrate and show that this plea was raised by the petitioner at the relevant time as has been observed by the Tribunal. Rather the order dated 21st May, 2003 categorically stipulated in paragraph 5 that the copy of the UPSC letter was enclosed. In the circumstances the learned counsel for the petitioner has not been able to show any illegality in the order of the Tribunal in this regard and consequently this plea of the petitioner is also to be repelled.

19. Regarding whether there was evidence sufficient for implicating the petitioner, it is apparent that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India is not to re-

appreciate the evidence and what is to be seen instead is whether reasonable opportunity was given to the petitioner before imposing punishment upon him. Whether there is sufficient evidence or not is not to be decided on the basis of number of witnesses examined by the department. The department had examined five witnesses which included Sh. Jagdish Tytler the then Member of Parliament who deposed that on 4th August, 1980 Sh. Sher Singh accompanied by his parents and other persons had complained to him that his brother, the deceased was picked up by the police personnel of police post Subzi Mandi and, therefore, he had telephoned the Station House Officer, petitioner to look into the matter. This has also been established that the parents of the deceased had met him and had handed over a written complaint which was marked to the Incharge, Police Post, Andha Mughal. In the circumstances, on the basis of preponderance of probabilities the inevitable inference is that the petitioner had the knowledge about the detention of the deceased. On behalf of the petitioner nothing substantial has been shown as to what action had been taken by him. The involvement of the petitioner is writ large with the death of the deceased. Instead of getting the matter investigated, an attempt was made to hush up the matter by registering a case as if it was that of suicide. From the testimonies of other witnesses also it is inevitable to infer that the case against the petitioner is not of no evidence. In the circumstances, the plea that out of 14 only 5 witnesses were examined is of no consequences and does not absolve the

petitioner of his misconduct nor on the basis of this plea, it can be held that the order of the Tribunal is not sustainable or suffers from such illegality or irregularity which would require interference or correction by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

20. Consequently, in the facts and circumstances the learned counsel for the petitioner has not been able to make out any grounds on the basis of which it can be inferred that the order of the Tribunal dated 10th February, 2004 in O.A No.1855/2003 suffers from any illegality or irregularity or perversity which would require interference by this Court in exercise of its writ jurisdiction. No other pleas and points have been raised by the counsel for the petitioner except those which have been discussed hereinbefore. Therefore, there are no grounds to interfere with the order of the Tribunal dated 10th February, 2004 in O.A No.1855/2003 titled Pratap Singh v. Union of India and ors. Therefore, the writ petition is dismissed and the parties are left to bear their own cost.

ANIL KUMAR, J.

February 21, 2011.
'vk'

VEENA BIRBAL, J.