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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: July 22, 2011

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W.P.(C) 10865/2009

CHHAGAN LAL Petitioner
Through: Mr.D.N.Sharma, Advocate

versus

UNION OF INDIA & ORS. Respondents
Through: Ms.Barkha Babbar, Advocate with
Mr.Deepak Agarwal, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SUNIL GAUR

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. (Oral)

1. On 13.7.2011, during arguments, we had deferred hearing to enable learned counsel for the respondents to obtain instructions whether respondents are prepared to recall the order dismissing petitioner from service and suspend him till trial is completed at the Court of Sessions in respect of stated offences committed by the petitioner. It was noted that the petitioner was charged of having indulged in rioting and being a member of an unlawful assembly. Death of a person had occurred. Charge sheet filed at the Court of Sessions against various persons, names petitioner as a co-accused. Offences

charged of are under Section 147/ 148/ 149/ 337/ 395/ 436/ 452/ 302/ 429 IPC and Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act 1989.

2. The reason for our tentative view was obvious. Extreme complex questions of fact and law were arising for consideration. The stated offence was not alleged to have been committed by the petitioner in relation to his duties.

3. Learned counsel for the respondents says that she has been instructed to inform the Court that the department is not prepared to withdraw the order dismissing petitioner from service.

4. Charge against the petitioner at the departmental inquiry reads as under:-

Report has been received that Force No.834290127-H.C./G.D. (suspended) Chhagan Lal, C.I.S.F. Unit-B.T.P.S. Badarpur, New Delhi, Case No.8/2001 has been filed at local Police Station Narhauli Distt.Mathura (U.P.), under section 147, 148, 149, 337, 395, 436, 452, 302, 429 I.P.C. and 3(2)(5) of SC/ST Act, implicating him in serious criminal case. Head Constable/GD Chhagan Lal, is not only a member of disciplined Force, but also a Govt. servant. In the capacity of a Govt. servant, it was desired of him not to act in a manner, which may not be suitable to a Govt. servant. However, Sh.Chhagan Lal, Head Constable has failed to prove his worth to the expectations. Therefore, this charge."

5. Suffice would it be to state that as read, the charge alleged against the petitioner is of his being implicated in a serious case and since he is a member of a disciplined force, his being implicated in a serious criminal case has resulted in his

not proving his worth up to the expectations of a Government servant.

6. We highlight that the charge against the petitioner, as framed, does not warrant an inquiry into whether petitioner has actually committed the offences.

7. List of witnesses annexed with the charge memo reads as under:-

“1. Sh.Ram Prasad S/o Sh.Kheti Ram Jatav, R/o Vill.-Datiya, P.S.-Harhauli, Distt.Mathura (U.P.).

2. Sh.Rajendra S/o Sh.Dori Lal, R/o Vill.-Datiya, P.S.Narhauli, Distt.Mathura (U.P.).

3. Sh.Vijendra S/o Sh.Pooran, R/o Vill.-Datiya, P.S.-Narhauli, Distt.Mathura (U.P.).

4. Sh.Hoti S/o Sh.Mangi, R/o Vill.-Datiya, P.S.-Narhauli, Distt.Mathura (U.P.)

5. Sh.Jeevan S/o Sh.Bhoop Singh, R/o Vill.-Datiya, P.S.-Narhauli, Distt.Mathura (U.P.).

6. Sh.Rodhan Singh S/o Sh.Sumeri, R/o Vill.-Datiya, P.S.-Narhauli, Distt.Mathura (U.P.).

7. Sh.Hori Lal S/o Sh.Hoti, R/o Vill.-Datiya, P.S.-Narhauli, Distt.Mathura (U.P.).

8. Sh.Suraj Mal S/o Sh.Mangal Singh, R/o Vill.-Datiya, P.S.-Narhauli, Distt.Mathura (U.P.).

9. Any other witnesses, who is important in Departmental Inquiry.”

8. The evidence led during the inquiry is as if the petitioner was on trial and indeed we find that during inquiry

witnesses have deposed as if at a criminal trial.

9. The conclusion arrived at by the Inquiry Officer reads as under:-

"The said Prosecution Witnesses (PW-1, PW-2, PW-4, PW-6, PW-7, CW-1, DW-1, DW-2, DW-3, DW-4, DW-5, DW-6 and DW-8), statements and the documents furnished by them, evidence, the statements of Defence witnesses and after reply going into the statement of charged employee, I have received the come again, that on 23.01.2001, the charged employee at 0700 hrs. the charged employee F.No.834290127 H.C.(GD) Chhagan Lal (under suspension) went to his village-Datiya, Post-Khamni, P.S.-Highway (Narhauli), Distt.Mathura (U.P.) and with 23 others member duly arrived reached for constructing boundary on Panchayat Ghar land and despite forbidding Ram Prasad Jatav, Village-Datiya, P.S.-Highway (Narhauli) Distt.Mathura, begun firing wherein (1) Rajendra S/o Dori Lal (2) Vijendra S/o Pooran (3) Hoti S/o Mangi (4) Jeevan S/o Bhoop Singh (5) Rodhan Singh S/o Sh.Sumeri (6) Surajmal S/o Mangal Singh (7) Hori Lal S/o Hoti, were injured and set fire to their houses and took away their house hold articles. In the fire a girl-Guria, aged about 6 months, and some goats were burnt. In regard to this happening Head Constable Chhagan Lal (suspended) a Crime Case No.8/2001 dt. 23.1.2001 time 0700 hrs. in the morning under Section 147, 148, 149, 337, 395, 436, 452, 302, 429 I.P.C. and 3(2) 5 of SC/ST Act was registered through FIR.

Therefore, F.No.8345290127-H.C./G.D. (suspended) Chhagan Lal, C.I.S.F. Unit-B.T.P.S., Badarpur, as per charge Memo. No.V15014/CISF/Samudi/Anu/Major-7/2007-118 dated 08.08.2007, charged on him – Report has been received. That F.No.834290127 – H.C./G.D. (suspended) Chhagan Lal, C.I.S.F. Unit – B.T.P.S., Badarpur, in Crime Case No.8/2001, the local Police Station Narhauli, Distt. Mathura (U.P.), under

Section 147, 148, 149, 337, 395, 436, 452, 302, 429 I.P.C. and 3(2) 5 of SC/ST Act was registered in a serious crime. Head Constable/G.D. Chhagan Lal, is not only a member of disciplined force, but also a Govt. servant. Being a Govt. servant, it was expected of him no to act in a manner which may be disgraceful for a Govt. servant. However, Sh.Chhagan Lal, has been unsuccessful in proving himself to these expectation. Which is proved on this basis of concequency of probabilities.”

10. The conclusion shows that the Inquiry Officer has opined upon the guilt of the petitioner.

11. It is no doubt true that notwithstanding a criminal case pending against the Government servant, it is permissible to subject him to a disciplinary inquiry, but where complicated questions of fact and law arise for consideration and especially where the offence stated to have been committed is a very serious offence it would always be advisable that the trial takes place before the Competent Court.

12. At a criminal trial for the offence of murder, the accused would be entitled to a lawyer of his choice and if he cannot engage one, a lawyer has to be provided at State expense. The reason is obvious. A trial is an adversarial adjudicatory process and to measure up to be an adversarial trial it must be that the standard of the defence meets the standard of the prosecution. For the offence of murder, the charge sheet must contain all material on which the prosecution relies. Statements of witnesses recorded during investigation have to be supplied to the accused, who gets an opportunity to cross-examine the witnesses of the prosecution in the context of

their previous statements.

13. The record of the inquiry shows that the previous statements recorded by the police during investigation were not supplied to the petitioner. He had no lawyer to defend him at the inquiry for the reason the service rules of the respondent do not permit lawyer's representation at the domestic inquiry.

14. It may be true that the alleged offence stated to have been committed by the petitioner is serious and this may warrant the petitioner not to move around in his dress, but this can be achieved by suspending the petitioner.

15. For the reason the indictment of the petitioner has been returned on merits by the Inquiry Officer but the charge sheet, as led, indicts him for being named as an accused; we highlight that if the charge is that the petitioner was named as an accused, that would be no ground to dismiss him from service for the reason merely because somebody is named as an accused would not warrant his dismissal from service. If the charge is understood to mean, and as indeed has been so understood, that the indictment was that the petitioner has committed the alleged offences, we hold that an inquiry pertaining to said offences, which are serious offences, could not be at a domestic inquiry and had to be at a regular criminal trial. We note that the criminal trial is still on.

16. Accordingly we set aside the order dismissing petitioner from service and direct that petitioner be reinstated in service. It would be open to the competent authority to suspend the petitioner till the trial before the Court of Sessions is

completed. We leave it open to the competent authority to pass necessary orders in respect of the manner in which the period post petitioner being dismissed from service till he is reinstated has to be reckoned. We highlight that the respondent had suspended the petitioner and when the order levying penalty of dismissal from service was inflicted petitioner was under suspension.

17. Writ petition stands disposed of directing as aforenoted in para 16.

18. No costs.

PRADEEP NANDRAJOG, J.

SUNIL GAUR, J.

JULY 22, 2011
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