

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: March 30, 2011
Judgment Delivered on: April 04, 2011

+ WP(C) 5991/2010

KISHOR KUMAR Petitioner
Through: Mr.Karan Singh Bhati, Mr.Rajneesh
Bhaskar and Ms.Jyoti Upadhyay,
Advocates

versus

UOI & ORS. Respondents
Through: Mr.Ankur Chhibber, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

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. Vide memorandum dated 23.05.2009 the petitioner was served with a charge sheet consisting of 2 charges; the 3rd charge simply indicated to the petitioner that as per his service book, in the past, he was levied 1 major and 7 minor penalties which evidenced his being a habitual offender. It is apparent that the so-called 3rd charge was in fact an intimation to the petitioner that the Disciplinary Authority would be considering the past service record of the petitioner, should he

be found guilty of the first 2 charges listed against him. The 3 charges read as under:-

“Charge No.1

The wife of Force No.882160085 Constable Kishor Kumar P.T.P.S Panki (Uttar Pradesh) Smt.Tara Devi was found by the side of road in unconscious condition in front of gate No. at 15:00 hrs. On 04.04.2009 who had consumed poisonous substance who was taken to P.T.P.S. Panki Hospital by the common people and the members of Force. By the advice of doctor again admitted in Rajaram Hospital and constable Kishor Kumar was immediately informed. When Constable Kishor Kumar reached Rajaram Hospital then he started addressing and using un-parliamentary language and threatened to kill Assistant Commandant Sri Mani Ram and threatened to kill Assistant Commandant Sri Mani Ram and Inspector/Work S.P.Tripathi who were getting the treatment of his wife done. This act of Kishor Kumar is gross misbehavior, condemnable, unwanted and is indiscipline. Therefore, this charge.”

Charge No.2

“The wife of Force No.882160085 Constable Kishor Kumar P.T.P.S Panki (Uttar Pradesh) Smt.Tara Devi was found by the side of road in unconscious condition in front of gate No. at 15:00 hrs. On 04.04.2009 who had consumed poisonous substance who was taken to P.T.P.S Panki Hospital by the common people and the members of Force. Due to humanity, sympathy and belongingness’ Inspector/Work S.P.Tripathi reached to Rajaram Hospital after taking ₹5,000/- on credit so that the treatment of wife of Kishor Kumar could be done very nicely. After receiving the information as soon Constable Kishor Kumar reached in the premise of Rajaram Hospital, without any reason and under a planned manner misbehaves with Assistant Commandant and Inspector, used un-parliamentary language and created nuisance in public place

which tarnished the image of Force. This act of Kishor Kumar is gross misbehavior, condemnable, unwanted and is indiscipline. Therefore, the charge.”

Charge No.3

According to the service book and documents of Force No.882160085 Constable Kishor Kumar C.I.S.F Unit P.T.P.S Panki (Uttar Pradesh), during his service he has been awarded under C.I.S.F Rule, 01 major punishment and 07 minor punishments for the various indiscipline behaviors. Thus, Force No.882160085 Constable Kishor Kumar is habitual of dereliction in duty, irresponsibility, misbehavior and gross indiscipline. Therefore, this charge.”

2. The petitioner submitted his reply on 6.6.2009 and in our opinion it would be appropriate if the defence taken by the petitioner is noted inasmuch as it would help focusing upon the rival viewpoints debated at the bar during hearing of the writ petition.

3. Not denying that on 4.4.2009 his wife was admitted at P.T.P.S.Panki Hospital and thereafter at Raja Ram Hospital, the petitioner denied having used any un-parliamentary language or having threatened to kill Asst.Commandant Sh.Mani Ram and Insp. (Works) S.P.Tripathi at the hospital. He denied creating nuisance in a public place which tarnished the image of the force. He stated that his wife had consumed some poisonous substance and since her life was in danger, the petitioner's attention was completely devoted on saving the life of his wife. With reference to the list of witnesses through whose mouth the department intended to prove the charges, petitioner stated that it was unexplainable as to why no public person i.e. a doctor, a nurse or an employee of the hospital

was cited as a witness. Therefrom, petitioner sought to urge that it was apparently a case of no evidence against him. Petitioner took a technical plea of the charge being vague inasmuch as the so-called un-parliamentary words stated to have been used by him were not specified in the charge. It may be highlighted that the petitioner did not deny that on 4.4.2009 Asstt.Commandant Sh.Mani Ram and Insp. (Works) Sh.S.P.Tripathi visited the hospital.

4. Insp.(Works) Begraj was detailed as the Inquiry Officer who commenced recording evidence in presence of the petitioner and since he got transferred Insp.(Works) C.M.Shukla replaced him as the Inquiry Officer.

5. 10 prosecution witnesses were examined to prove the charges against the petitioner and 1 court witness was examined by the Inquiry Officer for the purpose of proving the 3rd charge i.e. the charge pertaining to the character i.e. previous service record of the petitioner.

6. HC(Fire) N.Dhawas PW-1 deposed that on 4.4.2009 at 15:00 hours while on his way to gate No.2 he saw a crowd standing near the road adjacent to gate No.2, watching a lady lying on the road. On reaching the spot he realized that the woman lying unconscious was the wife of the petitioner. After removing the lady to P.T.P.S.Hospital with the help of other persons he returned to gate No.2 where he reported the incident to Assistant Sub-Insp.Kadam Singh and returned back to the hospital. At P.T.P.S.Hospital he was informed that the lady was to be taken to Raja Ram Hospital for further treatment and thus he took her to Raja Ram Hospital with the help of Ct.Darshan Kumar PW-3 whom he picked up from gate

No.2 on his way. That Asst.Commandant Mani Ram PW-8 and Insp.(Works) S.P.Tripathi PW-9 also arrived at the hospital. That soon thereafter the petitioner arrived at the hospital and without making any enquiries about the incident, the petitioner started shouting about his wife being brought to the hospital and hurled abuses. That when the persons present at the hospital tried to calm him down, he started abusing the Asst.Commandant Mani Ram (PW-8) and Insp.(Works) S.P.Tripathi (PW-9) and threatened to kill them. That the petitioner continued to shout and use un-parliamentary language and that seeing the situation get out of control he i.e. PW-1 and other officers returned to the unit lines.

7. HC(Fire) Avtar Singh PW-2 deposed that on 04.04.2009 he accompanied PW-1 and took petitioner's wife to the P.T.P.S hospital and corroborated PW-1 in regards to the events thereafter. He additionally stated that the petitioner threatened to kill Asst.Commandant Mani Ram (PW-8) and Insp.(Works) S.P.Tripathi (PW-9) and said that tonight will be their last night. That to stop the petitioner from shouting, he was taken to the emergency ward to see his wife.

8. Ct.(Works) Darshan Kumar, PW-3 deposed that on 04.04.2009 he accompanied PW-1 and PW-2 when they took petitioner's wife to Raja Ram Hospital where she was referred for further treatment by the P.T.P.S. Hospital and that on the way information regarding the same was given to Sub-Inspector(Works) Rajkumar (PW-4) over the phone. He corroborated PW-1 and PW-2 in regards to the events that followed. He additionally stated that apart from Asstt.Commandant Mani Ram (PW-8) and Insp. (Works)

S.P.Tripathi (PW-9), amongst the force personnel who reached the hospital there was Sub Inspector Rajkumar (PW-4), HC Yogendra Singh (PW-7), HC (DCPO) Beant Singh (PW-5) and Lady Ct. Sheetal Shepre (PW-10). That petitioner on reaching the hospital without enquiry started shouting in high pitch as to how his wife who was sleeping with him in the house reached the hospital. That petitioner hurled abuses at Asstt. Commandant Mani Ram (PW-8) and Insp. (Work) S.P.Tripathi (PW-9) and threatened to kill them by saying that today is their last day. That since the situation was not coming under control and petitioner continued to shout using un-parliamentary language. He i.e. PW-3 along with other officers returned to the unit lines.

9. Asstt.Sub-Inspector(Works) Rajkumar PW-4, deposed that on 04.04.09 at 15:15 hours he received information over the telephone from Ct.Darshan Kumar (PW-3) that the wife of the petitioner was found lying unconscious on the road outside the plant he conveyed the said information to HC(DCPO) Beant Singh (PW-5) with a request to take a jeep to the hospital but before the jeep could leave he received another message from Ct.Darshan Kumar that the lady was being removed to Raja Ram Hospital and therefore along with HC Beant Singh, HC Joginder Singh, Ct.Shital Shepra (PW-10) he reached Raja Ram Hospital from where he gave information over the telephone to Asstt.Cmdt.Mani Ram and Insp.(Works) S.P.Tripathi who arrived at Raja Ram Hospital. He deposed further facts as stated by PW-1, PW-2 and PW-3 as to what happened at the hospital when said two officers reached.

10. HC Beant Singh PW-5 and HC Kapur Singh PW-6 corroborated PW-4. HC Yogender Singh PW-7 corroborated PW-4 of going to the hospital but gave no further testimony stating that he was not present when the petitioner reached the hospital.

11. Asstt. Commandant Mani Ram (PW-8) and Insp. (Work) S.P.Tripathi (PW-9) deposed that on receiving information about the petitioner's wife being hospitalized they took ₹5000 from the canteen and reached Raja Ram Hospital. That the petitioner on reaching the hospital, without making any enquiry started hurling abuses and shouted about his wife being brought to the hospital. When the force personnel tried to calm him down, the petitioner started abusing PW-8 and PW-9 and threatened to kill them for conspiring against him.

12. Lady Ct.Sheetal Shepre PW-10 corroborated PW-4 in regard to her role assigned by him i.e PW-4 and deposed that soon after seeing the condition of the patient she had gone back to the lines and had thus not witnessed petitioner's conduct.

13. Asstt.Sub-Insp.(Clerk) K.P.Rao CW-1 produced a document Ex.1 consisting of a list of punishments awarded to petitioner throughout his service.

14. Relevant would it be to note that the petitioner was given full opportunity to cross-examine all the witnesses and nothing was shown to us with reference to the cross-examination conducted which would discredit the said witnesses. It is thus apparent that there is sufficient evidence to indict the petitioner.

15. During inquiry the petitioner produced a letter written by a doctor from Raja Ram Hospital as per which no such incident as alleged had taken place in the hospital but expressed his inability to produce the doctor concerned as a witness to prove the letter stating that the doctor concerned i.e. Dr.Vinay Verma cannot come i.e. would not appear before the Inquiry Officer.

16. The Inquiry Officer submitted a report dated 19.10.2009 holding petitioner guilty of the charges. Supplying a copy of the inquiry report to the petitioner for his response and considering the same the Disciplinary Authority inflicted the penalty of removal from service vide order dated 27.10.2009 against which appeal filed by the petitioner was rejected vide order dated 8.2.2010. The petitioner filed, what he claims to be a second appeal as pleaded in the writ petition, which was treated as a revision petition, as pleaded in the counter affidavit filed; which revision petition was dismissed vide order dated 13.7.2010. We note that as pleaded by the petitioner in the writ petition he claims that his second appeal i.e. the revision petition was not decided, but with the counter affidavit filed, copy of the order dated 13.7.2010 has been annexed and notwithstanding petitioner not having amended the writ petition to challenge the same, cutting through the technicalities of procedural law, we considered arguments with reference to, as if, even the revisional order is under challenge.

17. The first and foremost contention urged by learned counsel for the petitioner was that the charges pertained to stated acts committed by the petitioner in Raja Ram Hospital

i.e. a public place and for the reason no independent witness was examined it has to be held that the indictment is contrived.

18. We are not dealing with a criminal trial where the penalty could attract a sentence of imprisonment and thus the principle of law that where independent public witnesses are available their non-association in the investigation may taint the purity of the investigation is not applicable in the instant case because the instant case pertains to a domestic inquiry.

19. Conscious of the fact that the plea of not examining hospital staff or a public person would not cut much ice unless the petitioner could show a motive for Asst. Commandant Mani Ram and Insp. (Works) S.P.Tripathi to falsely implicate the petitioner, an attempt has been made to show that the two had a motive to do so.

20. It is pleaded in para 4(iv) of the writ petition that the petitioner and his wife were going through a tough time and because of false rumours pertaining to illicit relationship of his wife with senior officers, petitioner was mentally upset and was under heavy stress. From these vague and inchoate pleadings, where nothing specific is alleged against Asst. Commandant Mani Ram and Insp.(Works) S.P.Tripathi, learned counsel for the petitioner sought to urge that the senior officers were Asst. Commandant Mani Ram and Insp. (Works) S.P.Tripathi. Needless to state the respondents have denied that there were any rumours pertaining to petitioner's wife having illicit relationship with any or more than one senior officer of the petitioner.

21. Admittedly, petitioner never made any complaint in writing or otherwise to any superior officer that defamatory rumours were being spread about his wife of having illicit relationship with senior officers. The petitioner has not even specifically pleaded that the rumours pertaining to illicit relationship of his wife linked her to Asst. Commandant Mani Ram and/or Insp. (Works) S.P.Tripathi. Thus, the plea of mala fide, being weak, inchoate and without any material particulars is rejected.

22. We have briefly noted hereinabove the testimony of the 10 witnesses examined during inquiry and suffice would it be to state that their testimony leaves hardly any scope for a debate on the indictment held proved.

23. Reverting back once again to the plea of malice, with reference to the evidence led, it is apparent that all the senior officers and the colleagues of the petitioner rallied around him to save his wife who had consumed poison i.e. had attempted a suicide. Asst. Commandant Mani Ram and Insp. (Works) S.P.Tripathi even took the trouble of borrowing ₹5,000/- from the Unit canteen when they learnt that petitioner's wife had to be taken to a private hospital i.e. Raja Ram Hospital as their instinct rightly told them that the management of the private hospital may require some money to be deposited. The manner in which the colleagues and the senior officers of the petitioner have rallied around him at the hour of crises totally demolishes the feeble theory of mala fide sought to be spun by the petitioner.

24. The next plea urged was that the Inquiry Officer, the Disciplinary Authority, the Appellate Authority and the

Revisional Authority have unjustifiably not considered the letter produced by the petitioner and as written by Dr.Vinay Verma of Raja Ram Hospital, contents whereof negated any incident taking place at Raja Ram Hospital, as alleged against the petitioner.

25. We have noted hereinabove that while producing the letter before the Inquiry Officer the petitioner stated that Dr.Vinay Verma had refused to appear before the Inquiry Officer. Now, the letter had to be proved through the testimony of its author, who was available. Dr.Vinay Verma refusing to appear before the Inquiry Officer is indicative of his lack of courage to depose and support the contents of his letter. Alternatively, who knows, whether at all the letter was at all written by Dr.Vinay Verma.

26. That apart, we have already concluded hereinabove that there is no motive for Asst. Commandant Mani Ram and Insp. (Works) S.P.Tripathi to contrive a version against the petitioner and it would be hard to believe that the colleagues of the petitioner, who have corroborated the said two persons, would join in a contrived action against the petitioner.

27. The last plea urged was that the incident itself establishes a severe stress and trauma under which the petitioner had his mental faculties disabled. It was urged that admittedly, the wife of the petitioner had consumed poison and had nearly succeeded in her mission to commit suicide. As a husband, it would be a natural reaction for the petitioner to lose his composure. Counsel submitted that, if not rumours that his wife was having illicit relationship with senior officers, there had to be something, which unfortunately had not

surfaced, which was troubling the mind of the petitioner and that something had to do with something in the Unit concerned for only this circumstance would explain the unnatural and unbecoming conduct of the petitioner. Counsel would urge that why should the petitioner use un-parliamentary language against his senior officers and utter utterances to kill them, when the senior officers had reached to not only comfort the petitioner but additionally extend a helping hand to him and his wife? Finding a possible answer to the aforementioned question, counsel concluded by submitting that it is obviously a case where the petitioner came under extreme mental stress, as indeed any husband would, whose wife attempts to commit suicide and in the backdrop of the possibility of there being a rumour mill working overtime in the Unit lines, may be a gossip or innuendos, concerning his wife and these gossips or innuendos became the inflammatory material and lit the fire in the mind of the petitioner when his wife attempted to commit suicide, and the resultant stress overtook the free thinking of the petitioner i.e. acted as a provocation to make him lose his cool and thus it has to be a case of the petitioner not being saddled with the liability of an intentional act, but saddled with the liability of not being able to control his emotions, thereby rendering the penalty disproportionate.

28. The argument is interesting and needs a discussion.

29. Killing of a man by a man under a grave provocation reduces the gravity of the offence from murder to that of culpable homicide not amounting to murder on the logic and the reasoning that the former is intentional i.e. the offending

act is linked to a positive state of mind to commit the act and the latter is not the result of a positive state of mind to commit the act, but is the result of a temporary loss of self control; not that the act complained of is not an offence, but the gravity thereof is lower.

30. Indeed, this distinction has not been kept in mind by the authorities concerned for the obvious reason nobody drew their attention to said distinction. Neither in the response to the report of the Inquiry Officer, nor in the appeal, nor in the revision has said point been raised.

31. An intentional and willful conduct is qualitatively different than an act of indiscretion and more so when the indiscretion is the result of a person being overwhelmed by circumstances beyond his control.

32. The facts of the case probablize that the petitioner was overwhelmed by circumstances beyond his control and in the moment of stress and distress when he saw his wife struggling for life, having consumed poison to take her life, losing self control, the petitioner went into a tirade and spoke all and sundry, little realizing that his ill conceived tirade was misdirected against those who had assembled as his sympathizer to not only console him but extend a helping hand to his wife who was struggling for her life.

33. It is true that in the past, the petitioner was levied 1 major and 7 minor penalties, but the nature thereof have not been brought out in either order or the pleadings before us. Whether any moral turpitude or insubordination was an element thereof is not known.

34. It is apparent that on the issue of the quantum of penalty to be levied, since the attention of the authorities was not drawn to the distinctive facts which emerged and as noted and opined by us in paras 29 to 32 above, which are certainly relevant on the issue of the quantum of penalty to be levied, and law being clear that where an authority misdirects itself in law or ignores a relevant fact or a relevant circumstance, the decision would be vitiated in law, the matter needs a remand for a consideration on the quantum of penalty to be levied upon the petitioner and for which we set aside the revisional order dated 13.7.2010 with a direction to the Revisional Authority to reconsider and re-decide the revision petition filed by the petitioner and while so doing to take into account paras 29 to 32 of the instant decision and in light thereof have a re-look at the attendant circumstances under which the petitioner committed the misdemeanour. Since the nature of the previous penalties with respect to the nature of the charge and the findings have not been shown to us and therefore we have not commented thereon, it would be permissible for the Revisional Authority to take the said penalties into consideration and with reference to the nature of the indictment in the past; giving reasons in support of the quantum of penalty levied, the Revisional Authority would levy an appropriate penalty. Needless to state the merits of the indictment need not be dealt with by the Disciplinary Authority i.e. the indiscretion of the petitioner would be treated as established and the only reasons required to be given by the Revisional Authority would pertain to the quantum of the punishment.

35. The Revisional Authority would pass a reasoned order on the quantum of penalty within 90 days of receipt of a certified copy of this order.

36. Petition stands disposed of in terms of paras 34 and 35 above.

37. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

APRIL 04, 2011
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