

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

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Judgment delivered on 23.01.2012

+ W.P.(C) 354/2012

DHARAMPAL SINGH

... Petitioner

versus

GOVT. OF NCT AND OTHERS

... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. Jyoti Singh, Sr. Advocate with Mr. Manjeet Singh & Mr. Amandeep Joshi
For the Respondent : Mr. Anjum Javed & Mr. Mirza Amir Baig

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

V.K.JAIN, J. (ORAL)

1. This Writ Petition is directed against the order dated 9.8.2011 passed by Central Administrative Tribunal, Principal Bench at Delhi (hereinafter referred to as the Tribunal) whereby OA No. 365/2011, filed by the petitioner was dismissed.
2. An incident of snatching took place in Green Park Extension on 1.2.2008. An FIR being FIR No.58/08 under Section 356/379 of Indian Penal Code was registered at PS Hauz Khas, with respect to the aforesaid incident. The petitioner was the Investigating Officer of the aforesaid case. On 28.3.2008, an information was received at PS Hauz Khas that 03 persons, who had been arrested under Section 41(1) of Cr.P.C., had made disclosures, in respect of the crime which was

the subject matter of FIR No.58/08 of the said police station. The petitioner was directed by SHO, PS Hauz Khas to apply for production warrant of the accused persons. Accordingly, the accused persons were summoned for 1.4.2008 in the Court of Metropolitan Magistrate, New Delhi through production warrant. It is alleged that the petitioner was instructed by SHO and Inspector (Law & Order) to move an application for interrogation of the accused and then interrogate them in detail, record their disclosure statements and move an application for their Test Identification Parade (TIP) so that after TIP, police custody remand of the accused could be obtained. It is also alleged that instead of doing so, the petitioner, after arresting the accused persons, moved an application for their discharge. Accordingly, all the 03 accused were released by the Court on his request.

3. The Inquiry Officer vide his report dated 1.9.2009 held the charge proved to the extent that the petitioner did not move an application for the judicial TIP of the accused persons and got them discharged on the same day. He also observed that the petitioner did not make any efforts to trace the stolen articles. The Disciplinary Authority, after considering the report of the Inquiry Officer and material on record concluded that the petitioner had failed to execute the directions given by his seniors and instead of seeking “production remand” of the accused persons, he moved an application for their discharge. It was also concluded by the Disciplinary Authority that the petitioner did not apply for judicial TIP, despite specific

instructions from the SHO. The Disciplinary Authority awarded punishment of withholding the next increment of the petitioner for a period of 02 years without cumulative effect. The appeal filed by the petitioner was rejected. The Appellate Authority observed that the petitioner had been instructed to move an application for TIP of the accused persons so that after conducting TIP police remand could be obtained but the petitioner moved an application of his own seeking their discharge. The Appellate Authority held that the petitioner did not comply with the lawful directions of a senior officer and spoiled the investigation with ulterior motives.

4. The learned Senior Counsel appearing for the petitioner has challenged the order of the Tribunal on the following grounds:

1. The Disciplinary Authority disagreed with the Inquiry Officer when he observed that the whole charge against the petitioner was proved but no copy of any disagreement note was provided to the petitioner, which, in turn, vitiated the decision taken by the Disciplinary Authority.
2. The petitioner being only an Assistant Sub-Inspector could not have applied for TIP of the accused persons, and
3. The Disciplinary Authority held that the petitioner had not applied for police remand of the accused persons in terms of the directions given to him by the SHO, though, in his deposition during inquiry, the SHO has clearly admitted that he had not instructed the petitioner to seek police remand of the accused persons.

5. Contentions No. 1 & 3 being interconnected can be conveniently dealt with together. The relevant extract from the summary of allegations served on the petitioner inter alia read as under:

On 28.03.2008 vide DD No.38-A PS Hauz Khas information was received from PP Saket, PS Malviya Nagar that three accused persons have been arrested u/s 41.1 CrPC vide DD No.23 PP Saket and they have disclosed of having committed the crime on 1.2.2008 at H-19, Green Park Extension, Delhi. Thus, ASI Dharam Pal, IO of the case was directed by SHO/Hauz Khas to apply for the production warrant of the accused. Accordingly, accused were summoned for 1.4.2008 in the Hon'ble Court of Ms. Ravinder Bedi, MM Patiala House Courts, Delhi through production warrant. ASI Dharam Pal No.2508/D, IO was also instructed by SHO & Inspector Law & Order to move an application for interrogation of accused in the court and then interrogate the accused in detail as well as record their disclosure statement. Besides, he should have moved an application for TIP of accused so that after conducting TIP, police custody remand of the accused could be obtained. But he did not do so. Besides, ASI Dharampal arrested all the three accused persons namely (1) Momin Ali S/o Jamaluddin R/o C-17, Raju Park, Devli Village, Delhi (2) Wasim Ahmed S/o Ahmed Ali R/o C-1/70, Raju Park, Delhi and (3) Sakir Khan S/o Budhan Khan R/o C-1/68, Raju Park, Devli Village, Delhi and surprisingly instead of interrogating the accused, proceeded further in the matter and moved an application in the Hon'ble Court directly at his own for the discharge of the accused persons. As such, all the three accused persons were released by the Hon'ble MM on the request of IO. This clearly shows that ASI Dharmapal No. 2508/D being the IO of the case, he did not comply with the lawful directions of his senior officers

and spoilt the investigation deliberately and got all the accused persons discharged with ulterior motive.

6. It would thus be seen that this was not the charge against the petitioner that he was instructed to seek police remand of the accused persons and he did not do so despite that instruction. The instruction alleged to be given to him was only to move an application for interrogation of the accused persons, interrogate them in detail and apply for their TIP, so that police custody remand could be obtained after TIP had been conducted. The Inquiry Officer did not hold the petitioner guilty of not seeking police remand of the accused persons. The next question which arises for consideration is as to whether the Disciplinary Authority held the petitioner guilty of not obtaining the police remand despite instructions given to him. The learned Counsel for the petitioner had drawn our attention to the following observations made in the order passed by the Disciplinary Authority:

.....Instead of asking for their production remand, he moved the application for discharge of the case.....

On a careful perusal of the whole of the order passed by the Disciplinary Authority we do not agree that the Disciplinary Authority had held the petitioner guilty of not seeking police remand of the accused persons. In para 01 of his order, the Disciplinary Authority stated that the charge against the petitioner was that he should have moved an application for TIP of the accused so that after TIP police custody remand of the accused could be obtained. Thus, the Disciplinary Authority

was aware of the fact that the charge against the petitioner was not of not seeking police remand of the accused persons, but was of not applying for their TIP so that police remand could be sought after TIP had been conducted. In para 04 of his order dated 27.1.2010, the Disciplinary Authority inter alia observed as under:

.....Tentatively agreeing with the findings of D.E., a copy of the same was delivered to him on 4.9.09.....

In para 05 of the order, Disciplinary Authority inter alia observed as under:

.....Instead of asking for their production remand, he moved the application for discharge of the case. No application for judicial TIP was even moved despite specific directions from the SHO. Nothing was done to even make sincere efforts to trace the stolen property.....

It appears to us that the expression “production remand” was being used by the Disciplinary Authority for the remand of the accused persons for the purpose of their production at the time of TIP. Obviously, no police remand could have been sought if TIP of the accused persons was sought to be got conducted. The TIP, after police remand would have been of no use to the Investigating Agency. Had the Disciplinary Authority used the expression “production remand” for the police remand of the accused persons, he would not have said that tentatively agreeing with the findings of the D.E., a copy of the same was delivered to the petitioner on 4.9.09 with the direction to submit his representation against the finding of the E.O. Neither was this a charge against the petitioner nor was it the finding of the

Disciplinary Authority that the petitioner had, despite instructions, failed to apply for the police remand of the accused persons. We, therefore, find no merit in the first and third contention of the learned Senior Counsel for the petitioner.

7. With reference to the contention that being only an Assistant Sub-Inspector the petitioner could not have sought TIP of the accused persons, the learned Senior Counsel for the petitioner drew out attention to Section 54A of Code of Criminal Procedure which inter alia provides that the Court may on the request of the Officer In-charge of a police station direct a person, arrested on the charge of committing an offence, to subject himself to identification. Since the petitioner had been instructed to apply for TIP of the accused persons and in view of the provisions contained in Section 54A of Code of Criminal Procedure, he of his own could not have made such a request, it was expected of him, at the time this direction was given, to request the SHO to prepare and sign an application requesting the Court to direct TIP of the accused persons. There is no evidence of the petitioner having adopted such a course of action. But, even if, this part of the charge is excluded from consideration, the fact remains that the petitioner, without any instructions to this effect, applied to the Magistrate seeking discharge of the accused persons. No such application could have been filed by the petitioner when he was under instructions to request the Court to hold TIP of the accused persons. Discharge of the accused persons could have been sought only if a TIP was to be held, the

witnesses were unable to identify the accused persons and during the course of investigation no other evidence, connecting the accused persons with the snatching which took place on 1.2.2008 were to be found. The petitioner, by getting the accused persons discharged, gave a *fait accompli* to his seniors since on account of discharge of the accused persons, the SHO was prevented from applying to the Magistrate, may be on a later date, for a direction for TIP of the accused persons. The fact that the petitioner got the accused persons discharged on the same date on which they were arrested clearly shows that no investigation was carried out by him, to gather evidence against the accused persons.

8. The settled proposition of law with respect to power of the Court to interfere with the finding recorded in a disciplinary proceeding is that the role of the Court is to ensure that the inquiry has been conducted in a fair and reasonable manner and the findings recorded by the Disciplinary Authority are based on some evidence. Neither the adequacy or otherwise of the evidence nor the reliability of the witnesses can be examined by the court, while hearing a challenge to the findings recorded in departmental inquiries. If the finding recorded by the Disciplinary Authority is based on some evidence and is not a finding which no reasonable person could, on the basis of the material available before him, have recorded, it is not permissible for the Court to interfere with the finding, even if more than one views are possible on the basis of the material which was available to the

Disciplinary Authority. Yet another ground on which the Court can interfere with the findings recorded in the inquiry proceedings is violation of principles of natural justice or a statutory rule or it is shown that the order passed by the Disciplinary Authority was actuated by mala fide or passed on extraneous considerations. In our opinion, seeking discharge of the accused persons was the gravamen of the charge against the petitioner and therefore it cannot be said that the finding recorded by the Disciplinary Authority was based on 'no evidence' or was a finding which no reasonable person, acting on the evidence obtained during inquiry, could have taken. The finding, therefore, cannot be said to be perverse or contrary to any law.

9. As regards the punishment awarded to the petitioner, no arguments have been advanced. In any case, it cannot be said that the punishment awarded to the petitioner was disproportionate to the charge established against him. We find no merit in the writ petition and the same is hereby dismissed without any order as to costs.

V.K.JAIN, J

BADAR DURREZ AHMED, J

JANUARY 23, 2012

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