

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment pronounced on: 14.12.2012

W.P.(C) 1313/2012

GOPAL SINGH

..... Petitioner

versus

THE COMMISSIONER OF POLICE & ORS

..... Respondents

WITH

W.P.(C) 3028/2012

KISHAN PAL SINGH

..... Petitioner

versus

THE COMMISSIONER OF POLICE & ORS

..... Respondents

AND

W.P.(C) 1465/2012

SURESH CHAND

..... Petitioner

versus

THE COMMISSIONER OF POLICE & ORS

..... Respondents

Advocates who appeared in these cases:

For the Petitioners

: Mr O.P. Khadaria in W.P.(C) 1313/2012

Mr Mohd Shah Nawaz Hasan in W.P.(C) 3028/2012

Mr K. Venkatraman in W.P.(C) 1465/2012

For the Respondent

: Ms Zubeda Begum in W.P.(C) 1313/2012

Ms Shariq Mohd for R-1 to R-3 in W.P.(C) 3028/2012

Mr Mohd Noorullah for Mr Anjum Javed in W.P.(C) 1465/2012

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. These three writ petitions, namely WP(C) 1313/2012, WP(C) 3028/2012 and WP(C) 1465/2012, emerge out of a common impugned order dated 23.12.2011, passed by the Central Administrative Tribunal, Principal Bench, New Delhi (Tribunal) whereby the Tribunal has upheld the penalty of dismissal from service inflicted upon the petitioners by the Commissioner of Police, the respondent herein. As these writ petitions arise out of a common factual matrix they are being disposed of by a common judgment.

2. For the sake of convenience, we are referring to facts of WP(C) 1313/2012 for the purpose of adjudicating the instant dispute. It is relevant to note that before the Tribunal there were four applicants. However, only three of them namely, Head Constable Gopal Singh, Constable Suresh Chand and Constable Kishan Pal Singh have assailed the order dated 23.12.2011, in the three writ petitions before us. In other words, Constable Rohtas Kumar has not filed any writ petition against the order of Tribunal as yet.

3. At the outset, it is relevant to refer to the order dated 05.03.2012 passed in WP (C) 1313/2012 which limits the scope of the present writ petitions to the proportionality of punishment imposed upon the petitioners.

The relevant portion of the said order is extracted below:-

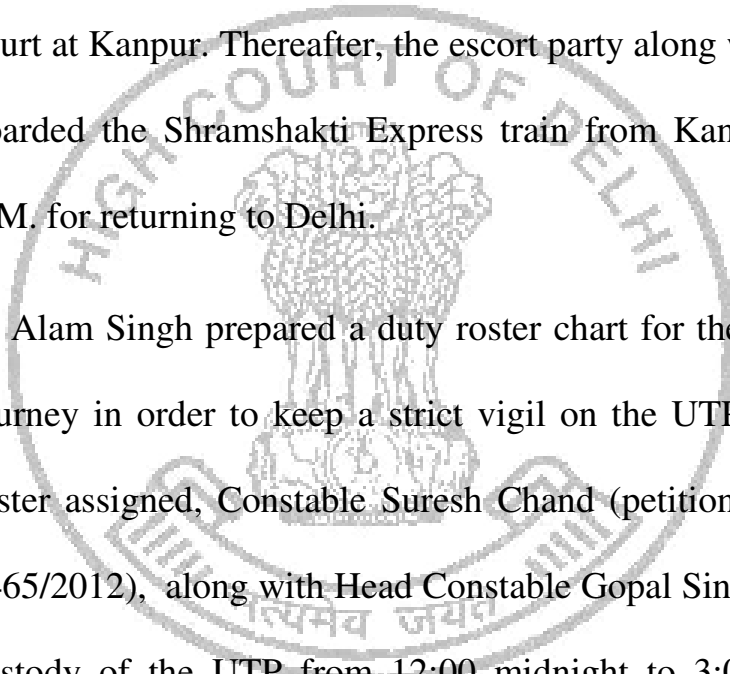
‘The learned counsel for the petitioner submits that he is limiting this writ petition to the question of proportionality. The learned counsel for the petitioner has placed before us a document, which is at page 126 of the paper book, to indicate that there were only four persons who have been dismissed from service on account of negligence leading to the escape of under-trial prisoners (UTP) during the period 2004 to 2011. He further submitted that all these persons are involved in the present case, which includes the petitioner herein. He submitted that in all cases, which are 53 in number, the punishment awarded was either forfeiture of service or withholding of increment.

Consequently, we are issuing notice in this matter limited to the question of quantum of punishment.....”

4. The facts necessary for disposal of the instant writ petitions are narrated below:-

- (i) The petitioner Head Constable Gopal Singh was a member of escort party comprising of Constable Suresh Chand (petitioner in WP(C) 1465/2012), Constable Kishan Pal Singh (petitioner in WP(C) 3028/2012) and Constable Rohtas Kumar headed by SI Alam Singh, No. D-2009, which was deputed to escort an

under-trial prisoner (hereinafter referred to as 'UTP') Mohd Imran @ Shiva lodged in Jail No.1, Central Jail, Tihar, New Delhi to the Court of ADJM, Kanpur and back to judicial custody. The appearance of the UTP before the said ADJM, Kanpur was fixed for 12.05.2008.

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- (ii) The escort party safely produced the UTP before the concerned court at Kanpur. Thereafter, the escort party along with the UTP boarded the Shramshakti Express train from Kanpur at 11.40 P.M. for returning to Delhi.
- (iii) SI Alam Singh prepared a duty roster chart for the entire night journey in order to keep a strict vigil on the UTP. As per the roster assigned, Constable Suresh Chand (petitioner in WP(C) 1465/2012), along with Head Constable Gopal Singh was given custody of the UTP from 12:00 midnight to 3:00 A.M. and Constable Kishan Pal Singh (petitioner in WP(C) 3028/2012) with Constable Rohtas from 3:00 A.M.to 6:00 A.M.
- (iv) As the train crossed the Yamuna Bridge in Delhi and was approaching Tilak Bridge Station, it slowed down near the signal. At this juncture, the UTP wanted to go to the toilet. At

about 6:00 A.M on 13.05.2008, Constable Kishan Pal Singh and Constable Rohtas, in whose custody the UTP was, took him to the toilet. However, all of sudden, the UTP gave a sudden jerk and pushed both the Constables. After doing so, the UTP managed to free himself by jumping from the running train and escaped.

- (v) SI Alam Singh vide DD No. 54B dated 13.05.2008 at about 1:50 P.M., telephonically informed the DO/IIIrd Bn. DAP., about the incident regarding the escape of the said UTP. Consequently, an FIR No. 165/2008 dated 13.05.2008 under Section 224 IPC was registered at PS New Delhi in the context of the incident on the statement made by Constable Kishan Pal Singh.
- (vi) On account of the above lapse, all the members of the escort party were placed under suspension and a departmental enquiry was initiated against them by an order dated 07.10.2008. The delinquents were charged with allegations of gross misconduct, negligence, dereliction in discharge of official duties which

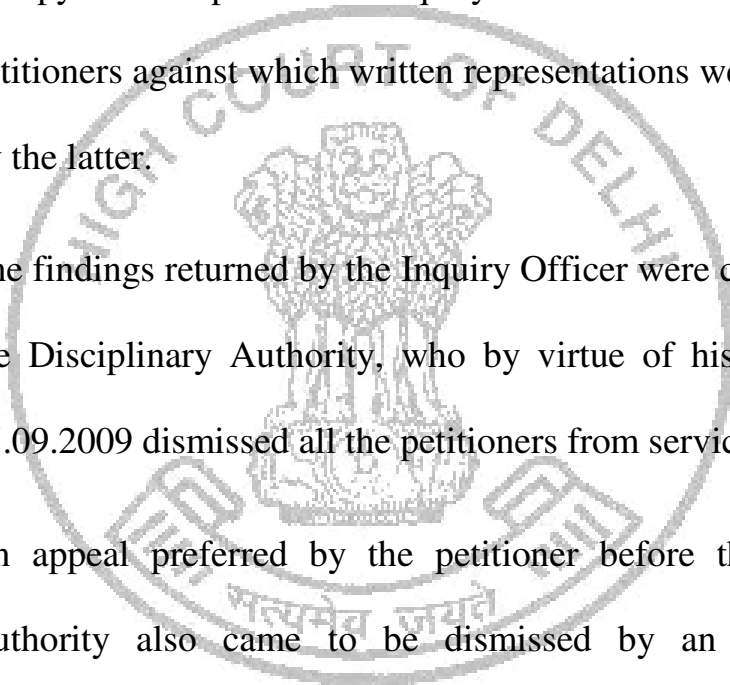
rendered them liable to be dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980.

(vii) In the meanwhile, SI Alam Singh who headed the escort party retired from the force on attaining the age of superannuation on 31.05.2008.

(viii) The Inquiry Officer after completing the enquiry submitted his report dated 11.06.2009 in which he concluded that the UTP escaped due to the negligence and carelessness of the whole escort party and consequently the charge of negligence stood proved against each of the the delinquent officers. The finding of the Inquiry Officer is extracted below:-

“Considering the merits of every facts and circumstance with open mind, it is found that UTP Mohd. Imran escaped from the custody of escort party at 6.00 AM on 13.05.2008 when the train was approaching at Tilak Bridge Station, New Delhi. Ensuring custody of UTP was primarily the duty of Constable Krishan Pal, No.2333/DAP and Constable Rohtash, No.2601/DAP under whose personal custody UTP was at the time of escape as per Chitha and they do not deny or contest their custody. Therefore they namely Constable Krishan Pal, No.2333/DAP and Rohtash, No.2601/DAP are found guilty of careless, negligence and dereliction of duty.

However, a member of escort party everyone is supposed to be equally alert and dutiful. Though HC Gopal Singh, No.7571/DAP and Constable Suresh Chand, No.7603/DAP were not having custody of UTP Mohd. Imran @ Shiva, had they been alert and vigilant, escape of UTP Mohd. Imran @ Shiva could have been prevented. Therefore, they are found to be guilty of carelessness and negligence.”

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- (ix) A copy of the report of the Inquiry Officer was duly supplied to petitioners against which written representations were submitted by the latter.
- (x) The findings returned by the Inquiry Officer were considered by the Disciplinary Authority, who by virtue of his order dated 15.09.2009 dismissed all the petitioners from service.
- (xi) An appeal preferred by the petitioner before the Appellate Authority also came to be dismissed by an order dated 27.01.2010.
- (xii) Aggrieved by the order of dismissal from service imposed by the respondents, the petitioners approached the Tribunal by way of two separate Original Applications, one being O.A. No. 828/2010 filed by Head Constable Gopal Singh and Constable Suresh Chand and the other being O.A. No 1236/2010 filed by

Constable Kishan Pal Singh and Constable Rohtas Singh. The Tribunal dismissed both the Original Applications and upheld the findings returned by the Disciplinary Authority as well as the Appellate Authority. However, as aforesaid, in the present writ petitions before us, we are only concerned with the aspect of the quantum of punishment and therefore, the finding of the Tribunal in this regard is reproduced below:-

“Counsel for the applicants next contended that degree of culpability had to be kept in mind while imposing the punishment as was done in other cases. To substantiate his case he had placed reliance on the order passed in the case of Constable Prem Kumar. Perusal of the order at page 79 shows the escort party was detailed to escort two Juveniles from Observation Home whereas in the instant case applicants were escorting a hazardous criminal who had escaped earlier also from the police custody, therefore, they cannot compare their case with the case of escape of a Juvenile. After all, each case has to be decided on the basis of the facts of that case. In the instant case since all the 4 delinquents were responsible for the escape of said UTP from their custody, they were all equally responsible for the custody of UTP. It cannot be said that one was more responsible than the other because they had gone as an escort party, therefore, each would be equally responsible. This contention also does not have any merit. The same is accordingly rejected.”

5. The learned counsel for the petitioner Head Constable Gopal Singh has contended that on various other occasions too, UTP have escaped from custody of several other officers entrusted with their custody, but in none of those cases punishment of dismissal from service had been imposed upon the delinquent officials. It is only in the present case that all the Constables who were members of the escort party have been awarded the severe punishment of dismissal from service which ought not to have been imposed in the facts and circumstances of the present case. In order to buttress his contention, the learned counsel for the petitioner has drawn our attention to page 126 of the petition which enlists in a tabular form punishment awarded to various other delinquent officials who have been found guilty of negligence when an UTP had escaped from their custody. For the sake of convenience, the table supplied by the Head Constable Gopal Singh is reproduced below:-

DETAILS OF DEPARTMENTAL ACTION TAKEN AGAINST POLICE PERSONNEL ON UTP ESCAPE FROM 2004 to 2011

S. No.	Punishment	Rank				
		SI	ASI	HC	Ct.	Total
1.	Dismissed	0	0	0	4	4
2.	Forfeiture	2	0	14	28	44

	of Service					
3.	Withholding of Increment	0	0	4	5	9
	Total	2	0	18	37	57

6. The learned counsel for the petitioner also invited our attention to a similar case of Head Constable Randhir Singh where the UTP had jumped from the train and the Disciplinary Authority taking a lenient view awarded the punishment of withholding of one increment for a period of one year only without any cumulative effect. In this background, the counsel for the petitioner urged that the respondents have acted in a discriminatory manner while awarding penalty of dismissal from service to the petitioners in the instant case.

7. The learned counsel for the petitioners next urged that Wednesbury principles pertaining to proportionality of punishment ought to have been applied by the Tribunal in the case of the petitioners as no reasonable authority could have awarded the penalty of dismissal from service in the facts of the instant case.

8. The learned counsel for the petitioner Head Constable Gopal Singh and Constable Suresh Chand further argued that as per the duty roster devised by SI Alam Singh, they were granted the duty to keep a vigil on the UTP from 12:00 A.M to 3:00 A.M. and hence, at the time at which the UTP escaped, that is, 6:00 A.M in the morning both the above said petitioners were off duty. He further asserted that the finding of the Inquiry Officer holds them guilty only on the counts of negligence and carelessness and not for dereliction of duty. Therefore, the penalty of dismissal from service imposed upon them is totally uncalled for.

9. Per contra, the counsel for the respondent has invited our attention to the findings of the Tribunal with respect to the fact that the escort party was aware that the UTP in their custody was a dangerous criminal and had previously escaped from custody and, therefore, extreme precaution had to be taken during the transit of the UTP. The Tribunal also noted that there was a serious lapse on the part of Constable Kishan Pal Singh and Constable Rohtas Kumar inasmuch as while accompanying the UTP to the toilet, guidelines for guarding a UTP were not followed. In fact, all the Constables acted carelessly and negligently while performing their duties.

10. It has further been submitted by the learned counsel for the respondent that there is clear finding by the Tribunal that the contention of the petitioners regarding UTP escaping at 6:00 A.M. cannot be accepted in view of the letter received from Divisional Operation Manager (Coaching), Delhi dated 19.08.2009. The said letter clearly mentioned that Shram Shakti Express Train No.2451 from Kanpur to New Delhi passed from Tilak Bridge station at 6:25 AM on the date of the incident (13.05.2008). Admittedly, after 6:00 A.M. it was the duty of all the members of the escort party to be alert, vigilant and careful. Resultantly, it was on account of the sheer negligence on the part of the members of the escort party that the UTP managed to escape and hence, the punishment of dismissal from service warrants no interference. The learned counsel for the respondent further pointed out that none of the petitioners informed the higher authorities about the escape of the prisoner till 1:50 P.M., which information was supplied later on by SI Alam Singh.

11. The learned counsel for respondent further contended that there is no question of comparison between the cases of punishments imposed on other delinquent officials as each case has to be examined on its own facts and circumstances. Counsel for the respondent has placed reliance on three decisions of the Supreme Court in **State of U.P. vs. Man Mohan Nath**

Sinha: AIR 2010 SC 137; High court of Judicature of Bombay vs. Uday Singh: AIR 1997 SC 2286; State of Andhra Pradesh & Ors. V. Chitra Venkata Rao: (1975) 2 SCC 557 in order to bring home the point that unless the punishment imposed by the authorities shocks the conscience of the court, no judicial interference can be made in the quantum of punishment inflicted on the delinquent officials.

12. We have heard the learned counsel for the parties.

13. The documents available on record reveal that on the date of the incident, that is, on 13.05.2008 Shram Shakti Express train from Kanpur to Delhi passed Tilak Bridge at about 6:25 A.M. (letter issued by Divisional Manager, Railways dated 19.08.2009), by which time the duty roster devised by SI Alam Singh demarcating different time periods during which the four constables had to keep vigil on the UTP had already expired. As per the version of the petitioner Constable Kishan Pal Singh and Constable Rohtas Kumar itself, the UTP escaped only when the train slowed while approaching the Tilak Bridge Station. Therefore, in view of the letter dated 19.08.2008, issued by the Divisional Manager Railway specifying the time at which the Shram Shakti Express Train passed the Tilak Bridge, no distinction can be made between the cases of Constable Gopal Singh and

Constable Suresh Chand on the one hand and Constable Kishan Pal Singh and Constable Rohtash Kumar on the other, for the reason that the train passed Tilak Bridge Station after 6:00 A.M by which the duty roster had already come to an end and hence, it was the duty of all four constables to keep a strict surveillance on the prisoner in their custody.

14. The next contention of the petitioner that it is only in the cases of these three Constables who have been found guilty of carelessness and negligence in an event when a prisoner has escaped from custody, that punishment of dismissal from service has been imposed, is untenable. It is trite law that imposition of a suitable punishment falls within the domain of the Executive though due consideration has to be accorded to mitigating circumstances, if any, once an employee is found guilty. Only when, in the facts and circumstances of a matter, it appears that the punishment imposed by the department concerned shocks the conscience of the court or is in violation of the principles of natural justice or punishment inflicted is excessively disproportionate to the gravity of charges, it would be necessary for the Court to interfere with the quantum of punishment. Looking at the facts of the present case, it cannot be said that the punishment of dismissal imposed upon the petitioners is strikingly wrong or disproportionate. The reason for drawing this conclusion is that the escort party was already aware about the

previous conduct of the UTP and that he was a dangerous criminal who had managed to escape from the custody of the police on a prior occasion as well. Further, no mitigating circumstances with regard to past services rendered by delinquent employees or that there was no carelessness on their part have been placed before us.

15. The only other point that in no other case punishment of dismissal from service has been imposed, where an incumbent has been found guilty of carelessness and negligence in case a prisoner had escaped, cannot be sustained, as punishment has to be imposed in accordance with facts and circumstances of each case. In the present case, five police men were deployed for securing safe custody on one criminal who possessed a serious criminal background. If we view the present case in this backdrop, it cannot be said that punishment of dismissal of service imposed upon the petitioners is disproportionate. It may also be pointed that the case of Head Constable Randhir Singh, which has been cited before us by the petitioner, for the purpose of drawing equivalence, can be distinguished inasmuch as, in that case the UTP who escaped from custody was involved in a civil suit under Section 13 of the Hindu Marriage Act, which is an entirely different offence.

16. In view of the discussion above, these writ petitions, being devoid of merit, are dismissed.

17. No costs.

SIDDHARTH MRIDUL, J.

BADAR DURREZ AHMED, J.

DECEMBER 14, 2012
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