

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

% Judgment reserved on: 27.02.2012
Judgment pronounced on: 29.02.2012

+ **W.P.(C) 4961/2011**

SUB INSPECTOR RAJINDER KHATRI ... Petitioner

versus

GOVT. OF NCT OF DELHI & ORS. ... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Shankar Raju
For Respondent : Ms Shobhana Takiar

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

V.K. JAIN, J.

1. This writ petition is directed against the order dated 11.02.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, whereby OA No.2191/2010 filed by the petitioner was dismissed. The facts giving rise to the filing of the OA can be summarized as under:-

2. One Mr Yameen complained to Joint Commissioner of Police that on 28/29.01.2005, he was dispossessed from a plot which he owned and occupied in village Burari and that his complaints to the local police had yielded no result. On an enquiry conducted by DCP, it was found that the complainant was in possession of the aforesaid plot till 28.01.2005. It was also revealed during enquiry that the petitioner Sub-Inspector Rajinder Khatri, who was in-charge of Police Post Burari

and Inspector Bir Singh, SHO, Police Station Timar Pur, were prima facie involved in facilitating the dispossession of the complainant from the aforesaid property. Two other police officials, namely, Head Constable Virender Singh and Head Constable Mahabir Singh were also found prima facie guilty in the matter. A departmental enquiry was, therefore, held against four police officials, i.e. the petitioner, Inspector Bir Singh, Head Constable Virender Singh and Head Constable Mahabir Singh. After enquiry, penalty of forfeiture of one year's approved service temporarily entailing proportionate reduction in pay for a period of one year was awarded to the petitioner. Same penalty was awarded to the Head Constables. Inspector Bir Singh was, however, let off after giving warning to him on the ground that he was going to retire from service next year. The appeal filed by the petitioner was dismissed.

3. The order of punishment was challenged by the petitioner by way of O.A. No.2191/2010, which came to be dismissed by the Tribunal. Vide order dated 29.11.2011, this Court recorded that the only submission of the learned counsel for the petitioner was that though the charges against the petitioner and Inspector Bir Singh were identical, lesser punishment was awarded to Inspector Bir Singh. Thus, the challenge of the petitioner to the impugned order is based only on the discrimination alleged to have been meted out to him in the matter of award of punishment. The Tribunal dealt with this plea in paragraph 15 of its order, which reads as under:-

“15. It is open to the disciplinary authority to award different punishment to persons involved in a given case depending upon their role and extent of their involvement and other mitigating circumstances. There is thus no infirmity in the disciplinary authority taking a lenient view in respect of Inspector Bir Singh in view of his early retirement from service which is not the case of the

applicant. The primary responsibility in the case was that the applicant being Incharge of P.P. Burari, Inspector Bir Singh was concerned mere as a supervising officer. The lapse attributed to him is reporting on the complaint that there was no altercation, which did not find support from the D.D. entries. The applicant's position is thus not comparable with that of the Inspector. We do not find any infirmity in the respondents' action in this regard. His plea of discrimination is thus devoid of substance.”

4. It is an admitted position that the petitioner was the in-charge of the Police Post Burari when the complainant Yameen was dispossessed from the plot measuring 850 square yards in Khasra No.519, Burari Garhi, Delhi, occupied by him in village Burari. Admittedly, the area within the jurisdiction of Police Station Timar Pur was much larger than the area within the jurisdiction of Police Post Burari though it did include the area under the jurisdiction of the Police Post. It can thus be hardly disputed that being in-charge of the Police Post, the petitioner was nearer to the place of incident as compared to Police Station Timar Pur. The Police Post being nearer to the place of incident, the complainant obviously must have first approached the Police post for lodging complaint, besides calling Police Control Room. Therefore, primarily it was for the petitioner, he being in-charge of Police Post Burari, to initiate appropriate legal action on the complaint of Shri Yameen. The role of SHO Police Station Timar Pur which was more of a supervisory role comes later and in fact there would have been no occasion for the complainant to approach the SHO, had the petitioner, being in-charge of the Police Post taken prompt action on receipt of complaint from him. Therefore, in our opinion, it cannot be said that the degree of delinquency on the part of the petitioner was the same as on the part of the Inspector Bir Singh. Being in-charge of the Police Post, the petitioner was the first point of contact for the complainant

and, therefore, the degree of negligence/misconduct on the part of the petitioner would also be more, though it cannot be disputed that the SHO also would be responsible in the matter since he also did not take any action despite coming to know of the incident.

5. In these circumstances, when the degree of delinquency on the part of the petitioner was higher as compared to Inspector Bir Singh, the Disciplinary Authority, in our view, was not unjustified in not giving same treatment to him, as was given to the petitioner, particularly when he was going to retire from service next year.

6. The learned counsel for the petitioner has relied upon **State of Uttar Pradesh And Others v. Raj Pal Singh** : 2010(5) SCC 783 and **Man Singh v. State of Haryana And Others** : 2008 (12) SCC 331. In the case of **Raj Pal Singh** (*supra*), the allegation against the respondent was that he along with four other Assistant Warders had beaten one Shivdan Singh. The respondent was dismissed from service whereas the penalty awarded to the remaining four was stoppage of five increments. The High Court set aside the order of dismissal in case of the respondent and directed stoppage of five increments on the ground that all the five had been served with same sets of charges and, therefore, there were no justified reasons to pass different decisions. The appeal filed by the State was dismissed observing that the reasoning given by the High Court could not be faulted with since the State was not able to indicate as to any difference in the delinquency of these employees. In **Man Singh's case** (*supra*), the allegations were that the appellant and the one Head Constable working under him were deputed from

Chandigarh to Hyderabad in connection with repair of two Government vehicles. The Head Constable, who was driving one of the vehicles, purchased 12 bottles of Indian-Made Foreign Liquor and concealed them in the dicky of the car without appellant's consent. Liquor was detected by the excise staff of Andhra Pradesh, which registered a criminal case against Head Constable. Departmental proceedings were also initiated against the appellant as well as the Head Constable. The charge against the appellant was that he had failed to exercise requisite supervisory control over his subordinate. The penalty of stoppage of two increments was awarded to the appellant. The Head Constable was, however, acquitted in criminal case and thereupon the Disciplinary Authority removed the punishment imposed on him. Thus, the appellant stood punished whereas perpetrator of misconduct, i.e., Head Constable was let off both in the criminal case as well as in the departmental enquiry. In these circumstances, Supreme Court was of the opinion that the respondents could not be permitted to resort to selective treatment to the appellant and Head Constable Vijay Pal, who was involved in criminal case besides departmental proceedings. The Court also noted that after exoneration, the Head Constable Vijay Pal had also been promoted whereas the appellant had been punished on the ground that he had failed to exercise proper and effective control over the Head Constable. Supreme Court, therefore, decreed the suit filed by the appellant challenging the order of dismissal from service. The facts of this case being altogether different, the judgment can be of no help to the petitioner. In the case before Supreme Court, the person let off by the respondent was the main culprit and the only charge against the appellant that he had failed to exercise control over him. Since the main culprit had been let off, the Court felt that the punishment awarded to the appellant would not be justified. However, in the case before this Court, the degree of delinquency on the part of the petitioner

being higher, he cannot claim parity with Inspector Bir Singh in the matter of punishment.

7. In **Administrator, Union Territory of Dadra and Nagar Haveli v. Gulabhia M. Lad: (2010) 5 SCC 775** there was a joint inquiry conducted against the respondent and two other delinquents and major penalty of removal from service was imposed on all of them. The appeal filed by the respondent was dismissed. The appeal filed by the other two was partly allowed and the punishment in the case of one person was modified to that of compulsory retirement whereas in case of other person it was modified to reduction of lower stage of pay by 05 stages with cumulative effect. The OA filed by the respondent was allowed by the Tribunal holding that similarly placed persons had been treated differently and that awarding different punishments could not be sustained. The Writ Petition filed by the department having been dismissed, the matter was taken to Supreme Court. Allowing the appeal, Supreme Court inter alia held as under:

“The exercise of discretion in imposition of punishment by the Disciplinary Authority or Appellate Authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the Court or a Tribunal would not substitute its opinion on reappraisal of facts. In a matter of imposition of punishment where joint disciplinary enquiry is held against more than one delinquent, the same or similarity of charges is not decisive but many factors as noticed above may be vital in decision making. A single distinguishing feature in the nature of duties or degree of responsibility may make difference insofar as award of punishment is concerned. To avoid multiplicity of proceedings and overlapping adducing of evidence, a joint

enquiry may be conducted against all the delinquent officers but imposition of different punishment on proved charges may not be impermissible if the responsibilities and duties of the co-delinquents differ or where distinguishing features exist. In such a case, there would not be any question of selective or invidious discrimination. (emphasis supplied)”

8. In **Chanderpal v. NCT of Delhi & Ors.**: 2002 VIII AD (Delhi) 252 a Full Bench of this Court was of the view that awarding different punishments to different officials, who were served charge-sheets on the same allegations would not amount to discrimination. The issue referred to the Full Bench in that case was as to whether an order of the Appellate Authority had to be set aside only on the ground that on purported similar charges, the Appellate Authority himself had set aside the order of punishment. After considering various judgments of Supreme Court on the subject, the Full Bench, inter alia, held as under:

“A writ of mandamus can be sought for by a person when there exists a legal right in himself and a corresponding legal obligation on the respondents.

Equality clauses enshrined in Articles 14 and 16 of the Constitution of India would apply only when the petitioner has been deprived of a legal right. A delinquent officer in no circumstances can based his claim invoking equality clause where its foundation is based on illegality.”

He cannot be permitted to urge that although he is guilty of commission of a misconduct he should not be punished only because others have been let off either by mistake or otherwise.

X X X X X

Article 14 speaks of equality before law and equal protection of law. The claim of equality and the claim of equal protection thus must be claimed within the four corners of

law. Furthermore, it is well settled that two wrongs do not make one right.

9. The decision of the Full Bench was relied upon by this Court in WP(C) 4211-4213/2006 decided on 24.9.2007. In that case the charge against the respondent was that he had misappropriated money-order payments, particulars of which were mentioned in the charge-sheet. Penalty of dismissal from service was imposed upon the respondent. The appeal filed by him was dismissed. He filed OA before the Tribunal challenging the order of dismissal from service. The Tribunal interfered with the punishment on the ground that the same was discriminatory. In taking this view, the Tribunal noted that similar charge-sheets containing these very allegations were served upon two other employees, but in those cases punishment imposed was much lesser i.e. reduction of pay by 05 stages. The Tribunal accordingly quashed the penalty and remitted the case back to the Disciplinary Authority, to pass fresh order of penalty after taking into consideration the penalty imposed on Shri Biri Singh and Shri Prem Singh into consideration. The order passed by the Tribunal was challenged before this Court and it was contended on behalf of the petitioner that such comparison cannot be made in the matter of disciplinary proceedings and the Tribunal could not have held the punishment to be discriminatory only on the ground that two other persons had been given milder punishment. Accepting the contention, this Court held that the approach of the Tribunal was not correct in law. The Court was of the view that if the Disciplinary authority in case of other two officials decided to impose a particular punishment that would not mean that same punishment is to be meted out to the respondent as well. The order passed by the Tribunal was accordingly set aside by the Court and the punishment awarded to the respondent was restored.

10. In the case before us, the petitioner being in-charge of Police Post, within jurisdiction of which the offence took place, he was directly responsible for not taking appropriate action on the complaint of Shri Yameen. The delinquency on his part, therefore, was greater as compared to delinquency on the part of Inspector Bir Singh and this, in our view, justified the differential treatment meted out to him.

For the reasons given hereinabove, 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

FEBRUARY 29, 2012
‘sn’/’vn’