

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

% Judgment delivered on: 29.01.2014

+ W.P.(C) 635/2012

RAJENDER SINGH PETITIONER

VERSUS

GOVT. OF NCT OF DELHI & ANR. RESPONDENTS

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioner:	Mr. J.P. Sengh, Sr. Advocate with Mr. Raj Sharma, Mr. S.N. Sharma, Mr. Dushyant Yadav and Mr. Sumit, Advocates
For the Respondents:	Ms. Sonakshi, proxy counsel for Ms. Sonia Sharma, Advocate for R-1 Ms. Latika Chaudhary, proxy counsel for Ms. Avnish Ahlawat, Advocate for R-2

**CORAM :-
HON'BLE MR JUSTICE RAJIV SHAKDHER**

RAJIV SHAKDHER, J

1. The hearing in this writ petition was expedited, on an early hearing application, moved by the petitioner. The reason the hearing was expedited was because of the fact that the petitioner had brought to the notice of the court on 22.01.2014, that the charges levelled against the alleged co-conspirators had failed both in the criminal proceedings as well as in the departmental proceedings.

2. Accordingly, the writ petition was placed for hearing.

3. The brief background of this case is as follows :-

3.1 The Anti Corruption Branch of the Government of Delhi at Tikri Khampur border Check Post of Azadpur Mandi conducted a raid on 16.09.2000 upon receipt of an anonymous complaint. In the raid held, three members of the staff of Agricultural Produce Market Committee (APMC), were arrested, for the charge of acceptance of bribe from truck drivers. The modus operandi, according to the respondents was that slips were issued, which enabled the truck drivers; who are otherwise to follow the queuing system, to jump the queue, on payment of a nominal amount, which varied between Rs.20 to Rs.100/-. According to the respondents, a part of the said money went to the superiors, which included, one, Mr. N.P. Rai, Dy. Secretary and the petitioner, who was at that point of time designated as Assistant Secretary-I.

3.2 Consequent, upon the aforementioned raid, criminal proceedings were instituted against the three persons, arrested. These being: Mr. Sushil Kumar, Mr. B.S. Khari and Mr. Indu Bhushan. Pertinently, at the time of the raid, a sum of Rs.540/- was recovered from the custody of Mr. Indu Bhushan.

3.3 In addition, departmental proceedings were also launched against the three officers i.e., Mr. Sushil Kumar, Mr. B.S. Khari and Mr. Indu Bhushan.

3.4 In the criminal proceedings though, neither Mr. N.P. Rai nor, the petitioner, were arrayed as accused. In so far as the departmental proceedings were concerned, they were triggered against all five, that is, Mr. N.P. Rai, the petitioner and aforementioned three officers.

3.5 In so far as Mr. N.P. Rai and the petitioner were concerned, disciplinary proceedings were commenced against them due to a disclosure statements made by the other three officers i.e., Mr. Sushil Kumar, Mr. B.S. Khari and Mr. Indu Bhushan.

3.6 In so far as the petitioner was concerned, enquiry was conducted, in which, the charge framed against him of having received a part of the bribe collected by Mr. Sushil Kumar, Mr. B.S. Khari and Mr. Indu Bhushan, was proved.

3.7 The recommendation of the Enquiry Officer, was put before the disciplinary authority. The disciplinary authority vide order dated 06.10.2009 accepted the recommendation. The petitioner, was found guilty of the charge framed against him and, a penalty of reduction to a lower stage in time scale for a period of five years with cumulative effect, was imposed.

3.8 A further direction was issued, which was, that the petitioner would not earn increments of pay during the period the reduction operated and furthermore the reduction, would also have effect on postponing his future increments, in pay.

3.9 The criminal proceedings against Mr. Sushil Kumar, Mr. B.S. Khari and Mr. Indu Bhushan culminated in a judgment of the competent court; dated 29.11.2010.

4. A reading of the judgment quite clearly shows that the prosecution witnesses turned hostile and, therefore, the prosecution's case against the accused collapsed.

4.1 Consequently, the court held that the charge against the accused (which is incidentally identical to the charge against them in the disciplinary proceedings) had not been proved and, therefore, the accused were acquitted of the charge levelled against them, in the criminal proceedings.

4.2 In respect of the aforementioned three officers i.e., Mr. Sushil Kumar, Mr. B.S. Khari and Mr. Indu Bhushan, the Enquiry Officer, in the departmental proceedings, had made the recommendation that the charge against them had been proved.

4.3 The disciplinary authority though, disagreed with this conclusion, primarily on account of the fact that, in the criminal case, the said officers had been acquitted. The orders passed by the disciplinary authority in the case of Mr. Sushil Kumar and Mr. Indu Bhushan, are two separate orders of even date i.e., 14.03.2012. The order qua Mr. B.S. Khari, is dated 22.03.2012.

4.4 The net effect of this was that in so far as the alleged co-conspirators were concerned, they have been acquitted in the criminal case as well as in the disciplinary proceedings.

5. In the present petition, what is assailed before me are the orders of the disciplinary authority and the appellate authority, whereby the aforementioned penalty has been imposed qua the petitioner. To be noted, the view taken by the disciplinary authority has been affirmed by the appellate authority.

5.1 Both, the order of the appellate authority as well as the order of the disciplinary authority which is merged in the order of the appellate authority are thus challenged before me.

5.2 In view of these circumstances, it is argued on behalf of the petitioner that, given the fact that in the criminal proceedings, the co-conspirators stand acquitted; which also, resulted in their exoneration by the disciplinary authority, the charge of conspiracy against him has clearly collapsed and, therefore, the same result should follow vis-a-vis him in the disciplinary proceedings.

5.3 Mr. Sengh, who appears on behalf of the petitioner, to buttress his case, has cited before me two judgments of the Supreme Court. These being: *M. Raghavelu Vs. Govt. of A.P. and Anr., (1997) 10 SCC 779* and *Rajendra Yadav Vs. State of M.P. and Ors. (2013) 3 SCC 73*.

5.4 Mr. Sengh has also argued, in my view, quite correctly, that a charge of conspiracy can sustain only if, there is more than one person involved; and, therefore, if the co-conspirators are acquitted then, the charge of conspiracy cannot sustain against the only remaining person, who is alleged to be a part of the conspiracy. In support of this submission, he has relied upon the judgment of the Supreme Court in the case of : *Topandas Vs. State of Bombay, AIR 1956 SC 33*.

6. Ms. Latika Chaudhary, on the other hand submits that disciplinary authority for Mr. Sushil Kumar, Mr. B.S. Khari and Mr. Indu Bhushan was different to that which had dealt with the petitioner's case. She says that, the petitioner, was derelict in his

duty, in as much as, being the supervisory officer, he did not ensure that the said officers discharged their duties in accordance with what was expected of them. To buttress her submission, the learned counsel read parts of the report of the Enquiry Officer.

6.1 In so far as the facts relating to the acquittal of the said three officers are concerned, both in the criminal proceedings and in the disciplinary proceedings, the same were not disputed before me, by Ms. Chaudhary.

6.2 Ms. Chaudhary thus, largely relied upon the enquiry report, the order of the disciplinary authority, and the appellate authority, to advance her case.

7. I have heard the learned counsels for the parties and perused the record.

8. Having regard to the charge framed against the petitioner, which was of having indulged in conspiracy, it is quite clear that the said charge can only sustain if, the co-conspirators are also found guilty. On the same set of facts and evidence, the co-conspirators Mr. Sushil Kumar, Mr. B.S. Khari and Mr. Indu Bhushan have been acquitted by the criminal court, followed by exoneration by the disciplinary authority. There is also merit in the submission of the petitioner that, the petitioner, cannot be held guilty of the charge of conspiracy if the co-conspirators are acquitted.

8.1 In these circumstances all that can be said based on the record and the evidence presently available is: that, though, the petitioner may have been guilty of dereliction of duty, there is no charge of

conspiracy made out against him. The petitioner, in the disciplinary proceedings, has been charged with conspiracy, and not with dereliction of duty. In these circumstances, the writ petition would have to be allowed and the impugned orders will have to be set aside. It is ordered accordingly. The petitioner will get all consequential reliefs due to him, pursuant to the order of punishment having been set aside.

RAJIV SHAKDHER, J

JANUARY 29, 2014

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