

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

Date of decision: 24th JANUARY, 2023

IN THE MATTER OF:

+ **CRL.M.C. 934/2021**

SHIV HARI

..... Petitioner

Through: Mr. Hrishikesh Baruah, Mr. Joy Banerjee, Advocates

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Amit Sahni, APP for the State with Inspector Brahma Dutta, PS Lajpat Nagar

+ **CRL.M.C. 935/2021 & CRL.M.A. 4694/2021**

MR. PRITI PANT

..... Petitioner

Through: Mr. N Hariharan, Senior Advocate with Mr. P R Wadhwa, Mr. Varun Deswal, Ms. Punya Rekha Angara, Mr. Sharian Mukherji, Mr. Prateek Bhalla, Mohd. Qasim, Mr. Hrishikesh Baruah, Mr. Joy Banerjee, Mr. Deed Pal Singh Alagh, Ms. S Janani, Mr. Nishant Kumar, Advocates

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Amit Sahni, APP for the State with Inspector Brahma Dutta, PS Lajpat Nagar

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The instant petitions, filed under Section 482 of the Code of Criminal Procedure, before this Court are for quashing of the second supplementary charge sheets dated 16.08.2019 arising out of FIR No.354 /2017 dated 06.08.2017 registered at Police Station Lajpat Nagar for an offence under Section 304 IPC, and to set aside the order dated 03.03.2020 whereby the Ld. Additional Sessions Judge in Sessions Case No. 406/2017, summoned the Petitioners in criminal proceedings. The Petitioners in CRL. M.C. 934/2021 and CRL. M.C. 935/2021 were working as Assistant Engineer and Executive Engineer, respectively, with the Delhi Jal Board.

2. Shorn of details, the facts leading to instant petitions are that on 06.08.2017, four labourers were deputed by one Dinesh, a contractor employed with a private cleaning agency, for the task of cleaning 25 manhole covers of the Delhi Jal Board sewer line located opposite Sant Kanwar Mandir, Jal Vihar Road. It is stated that three out of four labourers died of asphyxiation due to inhaling poisonous gases inside one of the manhole covers. The surviving labourer, one Rakesh, stated that the contractor, Dinesh Kumar, had deputed four labourers for cleaning 25 sewer covers from Jal Sadan up to Ring Road but had refused to provide protective equipment such as masks to the labourers, despite multiple requests for the same. He stated that on the day of the incident, at around 12 PM, the complainant had gone to fetch a hammer and was not present at the place of the incident. He stated that the driver of the jetting vehicle informed him that

his companion labourers had fainted inside one of the sewers and when they were brought to the hospital, they were declared dead. It is stated that the deaths have been caused due to the gross negligence on the part of the contractor and the deaths could have been easily avoided had the labourers been provided with masks and basic protection equipment. An FIR, being FIR No.354/2017, was registered under Section 304 IPC, on the basis of statements made by the complainant.

3. It is stated that during the course of investigation, two log books were seized from accused Kiran Pal for the months of July and August, 2017 and one log book was seized from accused SK Srivastava, JE of DJB for the month of August, 2017. It is stated that the Forensic Lab submitted a report ("**FSL Report**") of a hand writing expert with respect to the veracity of signatures on the front pages of the seized log books. It is stated in the FSL report that the log book seized from SK Srivastava, which was with respect to the movement of jetting machine for the month of August 2017, was fabricated inasmuch as the first page contained his antedated signatures along with that of the Petitioners herein. Based on this expert finding and on the basis of statements of witnesses and documents on record, the Petitioners herien were arrayed as accused parties on 16.08.2019 for the first time in FIR No.354/2017, filed through the impugned supplementary chargesheet under Section 173(8) CrPC, for offences under Section 177/196/197/218/467/468/471/120-B and later on, offences under Section 7 and 9 of Prohibition of Employment of Manual Scavengers and their Rehabilitation Act, 2013; and Section 3(1)(j) of the SC/ST (Prevention of Atrocities) Act, 2015, were also added on the grounds that the Petitioners had in connivance and conspiracy with SK Srivastava created an antedated

fabricated log book, to thereby save SK Srivastava through submitting misleading evidence before the Investigating Officer that would alter the course of investigations into the incident. It is also recorded that the charges are being imputed on the Petitioners without arrest on recognizance by placing their names in the chargesheet.

4. The relevant portion of the impugned supplementary chargesheet which arraigned the Petitioners as accused reads as under:-

"In view of the above mentioned facts, terms & conditions between M/s Kleenwell Enviro Engineering Services & Delhi Jal Board, statements of witnesses (filed with previous charge sheets) and report/opinion furnished by the hand writing expert, it is apparent that the log book was to be got printed by M/s Kleenwell Enviro Engineering Services and thereafter required to be kept in the custody/possession of the officials of said M/s Kleenwell Enviro Engineering Services Company (i.e. driver of jetting machine or the supervisor of the Company etc.) and was to be submitted in DJB office by 7th of next month. Moreover, the front page of the log book contained a certificate wherein vehicle thereafter the same was to be signed by JE AE and EE. The certificate on the front page of the log book for the month of August 2017 of jetting cum suction machine/vehicle No. DL1GC5533, which was produced by JE S.K. Srivastava on 08.08.2017 contained the signatures of JE, AE and EE despite the fact that the log book was only upto 06.08.2017 and as such how could it contain/bear signatures of the AE and EE before completion of work for the month of August 2017 and without mentioning of closing KM reading for the month of August 2017 on the front Page/certificate. Further, AE's signature have been shown appended on the said front page/certificate on 01.08.2017 (both AE & EE had accepted in their statements that they had signed it on 01.08.2017) whereas this log book was taken by JE S.K. Srivastava

from supervisor Sh. Kiran Pal on 07.08.2017 and thereafter forged/fabricated/created by JE S.K. Srivastava on 07.08.2017 itself and as such JE S.K. Srivastava in connivance and conspiracy with Sh. Priti Pant (EE) and Sh. Shiv Hari (AE) had prepared an antedated forged/fabricated log book/record to deviate the course of investigation and to save main, accused JE S.K. Srivastava by producing false evidence. This fact that the log book for the month of July & August 2017 produced by supervisor Sh. Kiran Pal on 08.08.2017 is authentic/genuine and the log book for the month of August 2017 produced by accused JE S.K. Srivastava on 08.08.2017 was forged & fabricated has been corroborated by the hand writing expert as well as witnesses like Sh. Kiran Pal (supervisor), Sh. Manoj Kumar (driver), Sh. Sushil Kumar (driver), Sh. Amresh Awasthi (owner of jetting machine), Sh. Mohd. Tarique (JE Civil in DJB) and Sh. Vinod Kumar (official of DJB) etc. the above said witnesses and record had corroborated the fact that the log book is/was to be got printed by M/s Kleenwell Enviro Engineering Services Company and kept with their supervisor or driver of the respective jetting cum suction machine who maintained it on day to day basis & kept it with him and subsequently after completion of month end the same was submitted to JE/DJB by 7th of next month for issuance of payments, after completing entire of front page/certificate. The log book for the month of July 2017 was available with supervisor Kiran Pal as the same couldn't be submitted by 06th of August in 2017 (day of incident), therefore, he submitted the same with the investigating agency for the purpose of investigation.

One of the deceased who expired on 06.08.2017 was Abby S/o Sh. Rajbir Rio 89, Dattu Pura, Durga Park, New Delhi. Caste Certificate in his name was not available; therefore, for the purpose of investigation we had obtained Caste Certificate details of Sonu (brother

of deceased Annu) s/o Rajveer Chauhan r/o 89, Durga Park, Dallupura Village, Delhi. The Executive Magistrate, Mayur Vihar, O/o the District Magistrate, East District, L.M. Bundh, Shashtri Nagar, Delhi vide letter No. TEHSILDAR /MVNERIFICATION /2018-19/473 DATED 12.03.2019 confirmed that Certificate No. 90510000316866 in the name of Sonu (brother of deceased Annu) s/o Rajveer Chauhan r/o 89, Durga Park, Dallupura Village, Delhi was issued from their office. As per this Caste Certificate he belongs to Balmiki Caste of Delhi State, which is recognized as a Scheduled Caste. As such deceased Annu was also of the same caste (Balmiki Caste of Delhi State, which is recognized as a Scheduled Caste) being brother of Sonu.

Further the Deputy director (PG) office of the Department for the welfare of SC/ST/OB, GNCT of Delhi, B-Block, 2nd Floor, Vikas Bhawan, I.P. Estate, New Delhi vide letter No. F. 21 (April/June)/2019/DSCST/GRIV/PG/8910-25 dated 12.07.2019 had intimated the decision of Permanent Standing Committee constituted under the Chairmanship of Principal Secretary (DSCST) to decide the compensation under the SC/ST (PoA) Act, 1989, that it came to notice of the Committee that in the cases related to Sewer Death of Sewer workers belonging to SC/ST Category, Delhi Police registered FIRs under section 304 of IPC, Section 7/9 of the PEMSR Act, 2013 and 3(i)G) of the SC/ST (PoA) Act, 1989 whereas as per provisions contained under SC/ST (PoA) Act, 1989, it is prescribed that in case where punishment is more than 10 years section 3(2)(v) of the SC/ST (PoA) Act, 1989 is to be added. The Chairman of National Commission for Scheduled Caste had also issued direction to pay compensation of Rs.8.25 lacs to family member of SC/ST deceased under (PoA) Act for which appropriate applicable section of the SC/ST (PoA) Act, 1989 is 3(2)(v). It was intimated/mentioned that section 3(2)(v) of the

SC/ST(PoA) Act, 1989 should be invoked by Delhi Police in sewer death wherein deceased belonged to Scheduled Castes/Scheduled Tribes category. Accordingly, Section 3(2)(v) of the SC/ST (PoA) Act, 1989 has been added in the present case against the accused persons.

In view of the investigation carried out, result of handwriting expert (FS, Rohini), statements recorded & material that surfaced on record, accused persons namely S.K. Srivastava (the then JE of DJB), Sh. Shiv Hari (the then AE of DJB) and Sh. Priti Pant (the then EE of DJB) in connivance & Conspiracy with each other had facilitated/assisted accused JE S.K. Srivastava in creating an antedated forged/fabricated log book/record to deviate the course of investigation and to save JE S.K. Srivastava by producing false evidence/forged certificate before Investigating Officer/Public Servant, which renders all three of them liable u/s 177/196/197/218/467/468/471/120-B IPC. Accused persons JE S.K. Srivastava (the then JE of DJB), Sh. Shiv Hari (the then AE of DJB) and Sh. Priti Pant (the then EE of DJB) in connivance & conspiracy with each other had committed crime, therefore, section 120-B IPC was added in the present case against them.

It is pertinent to mention here that accused S.K. Srivastava (the then JE of DJB) already stands charge sheeted for the offences/section as mentioned in the previous charge Sheet/Supplementary charge sheet. Further, no recovery or discovery of any material/fact is to be effected from Sh. Shiv Hari (the then AE of DJB) and Sh. Priti Pant (the then EE of DJB), therefore, both of them are being charge sheeted without arrest on recognizance by placing them in Column No. 11 through present supplementary charge sheet u/s 173(8) CrPC. Further, accused S.K. Srivastava (the then JE of DJB) may be

tried/prosecuted for contravention of Sections 304/177/196/197/218/ 467/468/471/120-BIPC R/W Sections 7/9 of the Prohibition of the employment as Manual Scavengers & Their Rehabilitation Act, 2013 R/W 3(1)J & 3(2)(V) of SC/ST Act and accused persons Sh. Shiv Hari (the then AE of DJB) and Sh. Priti Pant (the then EE of DJB) may be tried and prosecuted for contravention of Sections 177/196/197/218/467/468/471/120-B IPC.

It is prayed that this Hon'ble Court may kindly accept the present supplementary charge sheet u/s 173 (8) Cr PC. The supplementary charge-sheet along with documents, exhibits and opinion attached herewith may please be placed on judicial record and the same may be clubbed with the main charge sheet filed earlier & made a part of the trial as a piece of evidence."

5. The first supplementary chargesheet states that Satender Kumar Srivastava, JE of DJB, under whose Division the Kasturba Nagar constituency lies, where the incident took place, was to be held solely responsible for the deaths on account of negligence on his part inasmuch as that under his watch, there was no supervision at the time of cleaning, nor was any safety equipment provided to the workers. The Report notes that SK Srivastava had directed Kiran Pal; the supervisor in charge of Kasturba Nagar constituency on behalf of the private cleaning agency; and the driver of the vehicle of the jetting cum suction machine, to report for cleaning duty on 06.08.2017.

6. The CEO of DJB being the Competent Authority, placed the Petitioners under suspension under Rule 10(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 ("CCS Rules"), and disciplinary proceedings were initiated against the Petitioners under Rule 14

of CCS Rules. Criminal proceedings were also initiated against the persons responsible for the incident.

7. The DJB vide a memorandum dated 22.03.2018 issued a statement setting out charges of misconduct in two articles against the Petitioners. While the first article imputes the charge of negligence since the subordinates working under the Petitioners undertook cleaning work without site supervision and necessary protective equipment, which ultimately led to the deaths of the labourers, whereas the charge in the second article pertains to connivance in getting the records of the log book changed and to that extent, this allegation relates to conspiring with DJB officials to alter the evidence presented before the Court and thereby, to save the skin of SK Srivasatava. The statement of articles of charge framed against the Petitioners in CRL.M.C. 934/2021 & CRL.M.C. 935/2021 respectively, read as under:-

"Article No-1

Sh. Shiv Hari S/o Sh. Jai Pal Singh. while working as Assistant Engineer under Executive Engineer (South)-II during the year 2017, committed misconduct in as much as due to gross negligence on his part, his subordinate staff took up the manna(cleaning of sewer manholes at DJB's 450 mm dia sewerline opposite Sant Kanwar Ram Mandi Vihar Road, Lajpat Nagar. New Delhi. on 06.08.2017 (Sunday) without site supervision and without providing the mandatory safety equipment to the workers so deployed. His negligence resulted in loss of three precious human lives as three labourers of the contractor M/s Dinesh Chandra died of asphyxiation due to the presence of poisonous gases inside the manhole while cleaning the manhole manually.

This act of Sh. Shiv Hari amounts to gross misconduct on his part, as he failed to maintain absolute integrity, devotion to duty and acted in a manner unbefitting of a Govt. Servant. He has, thereby, contravened Rule 30 (1)(i)(ii) & (iii) of the CCS (Conduct) Rules, 1964, as amended from time to time and made applicable to the employees of Delhi Jal Board.

Article No.-2

That Sh. Shiv Hari SM Sh. B. Pal Singh, while working as Assistant Engineer under Executive Engineer (South)-II during the year 2017, committed misconduct in as much as he in connivance with his EE and JE got the original log-sheet of the hired jetty cum-suction machine bearing no: DLAGC-5513 manipulated and changed after the incident leading to loss of three precious human lives in the DM sewer manhole opposite Sam Kamm Ram Mande, 3a1 Vihar Road, Lajpat Nagar, New Delhi, on 06.08.2017 (Sunday) during manual cleaning of the manhole.

The above act of Sh. Shiv Hari amounts to gross misconduct on his part, as he failed to maintain absolute integrity, devotion to duty and acted in a manner unbefitting of a Govt. Servant. He has, thereby, contravened Rule 3(1) (i), (ii) & (iii) of the CCS (Conduct) Rules, 1964, as amended from time to time and made applicable to the employees of Delhi Jal Board."

"Article No-1

Sh. Priti Pant S/o Sh. B.C. Pant, while working as Executive Engineer (South)-II during the year 2017, committed misconduct in as much as due to gross negligence on his part, his subordinate staff took up the manual cleaning of sewer manholes at DJB's 450 mm dia sewerline opposite Sant Kanwar Ram Mandir, Jal Vihar Road, Lajpat Nagar, New Delhi, on 06.08.2017 (Sunday) without site supervision and without providing

the mandatory safety equipment to the workers so deployed. His negligence resulted in loss of three precious human lives as three labourers of the contractor M/s Dinesh Chandra died of asphyxiation due to the presence of poisonous gases inside the manhole while cleaning the manhole manually.

This act of Sh. Priti Pant amounts to gross misconduct on his part, as he failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Govt. Servant. He has, thereby, contravened Rule 3(l)(i)(ii) & (iii) of the CCS (Conduct) Rules, 1964, as amended from time to time and made applicable to the employees of Delhi Jal Board.

Article No-2

That Sh. Priti Pant S/o Sh. B.C. Pant, while working as Executive Engineer(South)-II, during the year 2017, committed, misconduct in as much as he in connivance with his sub-ordinate staff got the original log-sheet of the hired jetting-cum-suction machine bearing no: DL-1GC-5533 manipulated and changed after the incident leading to loss of three precious human lives in the DJB sewer manhole opposite Sant Kanwar Ram Mandir, Jal Vihar Road, Lajpat Nagar, New Delhi, on 06.08.2017 (Sunday) during manual cleaning of the manhole.

The above act of Sh. Priti Pant amounts to gross misconduct on his part, as he failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Govt. Servant. He has, thereby, contravened Rule 3(1) (i), (ii) & (iii) of the CCS (Conduct) Rules, 1964, as amended from time to time and made applicable to the employees of Delhi Jal Board."

8. Disciplinary enquiry proceedings commenced from 17.09.2018 and culminated on 01.11.2019. In the course of proceedings, both sides relied upon and adduced the materials placed on record and examined the

witnesses. In the departmental enquiry proceedings, what emerged was that the log book produced by SK Srivastava containing the signatures of the Petitioners, for the month of August 2017 was found to be genuine, contrary to what is stated by the investigation authorities in the second supplementary chargesheet.

9. Investigations into the incident revealed that the jetting and suction machine in question was hired from a private agency for cleaning operations in Kasturba Nagar constituency for a period of 12 months. It is alleged by the supervisor and later by the Prosecution that the Petitioners had submitted a false and fabricated copy of the log book of the jetting machine for the month of August 2017, which contained antedated signatures on the first page, and in doing so, the Petitioners along with the primary accused had been in connivance to alter the course of proceedings by presenting misleading evidence.

10. Report of the Ld. Inquiry Officer exonerated the Petitioners on merits. The conclusion arrived at was after a perusal of all the material on record and in light of facts and circumstances of the case, the Inquiry Report rendered the Petitioners free from the guilt of the charges maintained in the disciplinary inquiry proceedings. In summary, the Prosecution was not able to prove that the log book submitted by the Petitioners was forged/fabricated, whereas there was reason to believe that the logbook submitted by supervisor Kiran Pal was fabricated. The Inquiry Report also held that no connection could be established to prove that the Petitioners are responsible in causing the deaths due to negligence. There was no work order for the task of cleaning sewers, therefore no case for negligence on the part of Petitioners and no case for connivance and conspiracy with other

officials of DJB could be made out. The evidence presented by the supervisor Kiran Pal seemed contradictory and, therefore, unreliable.

11. It is stated that the Petitioners were not served a notice, and were informed of the pending case registered against them in the court of Ld. ASJ as FIR No.354/2017, only through a letter served to them by the Vigilance Department dated 12.01.2021. Being aggrieved by the Ld. Additional Sessions Judge taking cognizance of the charges framed against them, the Petitioners have approached this Court under Section 482 of the CrPC, with prayers to quash the order of summons and to quash the charges against them in the second supplementary chargesheet dated 16.08.2019. The Petitioners in the instant petitions, have prayed for the following reliefs:-

"(a)Quashing the supplementary charge sheet dated 16.08.2019 arising out of FIR No. 354 of 2017, P.S. Lajpat Nagar and pending trial before the Learned Additional Session Judge-02, South East District, Saket District Court, Delhi in so far as it relates to the present Petitioner; and

(b) Setting aside/Quashing the order dated 03.03.2020 passed in Sessions Case No. 406 of 2017 whereby the Learned Additional Session Judge had summoned the present Petitioner.

(c) Pass such other and further order[s] as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

12. Heard Ld. Counsel for the parties and perused the material on record.

13. At the outset, the Ld. Counsel for the Petitioners submits that the allegations as set out in the impugned second supplementary chargesheet with respect to FIR No. 354/2017 are identical to those set out in two articles

contained in the memorandum of charges dated 22.03.2018, on the basis of which disciplinary inquiry proceeded on multiple dates against the Petitioners. It is further submitted that charges against the Petitioner as contained in the statement of articles of charges could not be proved in the disciplinary inquiry proceedings, as can be evinced from the final order of the Ld. Inquiry Officer. The Disciplinary Authority accepted and confirmed the findings of the Ld. Inquiry Officer which held that contrary to allegations made in the charges, the Petitioners did not play any role into the deaths of labourers through their negligence and on this basis were being exonerated on a careful consideration of material placed on record.

14. It is further submitted by Ld. Counsel for the Petitioners that the case of prosecution in the disciplinary proceedings against the Petitioners was based on the testimony of Kiran Pal and the logbooks produced by him. It is submitted that the Ld. Inquiry Officer concluded that neither Kiran Pal's statements nor the documents produced by him could be relied upon, on account of several contradictory statements made by him, which would go on to prove that the Petitioners had no involvement in the tragic deaths of the labourers.

15. The relevant portion of the report exonerating the Petitioners read as under:-

"Article 1

Shri Priti Pant S/o Shri B.C. Pant, while working as Executive Engineer (South)-II during the year 2017 committed misconduct in as much as due to gross negligence on his part, his subordinate staff took up the manual cleaning of sewer manholes at D)B's 450 mm dia sewerline opposite Sant Kanwar Ram Mandir, Jal Vihar Road, Lajpat Nagar, New Delhi on

06.08.2017(Sunday) without site supervision and without providing the mandatory safety equipment to the workers so deployed. His negligence resulted in loss of three precious human lives as three labourers of the contractor M/s Dinesh Chander died of asphyxiation due to the presence of poisonous gases inside the manhole while cleaning the manhole manually.

The act of Shri Priti Pant amounts to gross misconduct on his part as he failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Govt. Servant. He has, thereby, contravened Rule 3 (1) (i) (ii) & (iii) of the CCS (Conduct) Rules, 1964 as amended from time to time and made applicable to the employees of Delhi Jal Board.

Analysis of the 'Enquiry'

I have gone through all the listed Prosecution Documents, Preliminary Investigation Report of the then CE (South), statement of Prosecution Witnesses, cross examinations, reports of the listed witnesses, the details of Affidavit filed before (Labour Commissioner) and the affidavit of Mr.Parveen Bhargava of DJB .in the Hon'ble High Court and have come across the following facts:

1.1 That the work order NO.99 dated 01-02-2017 for hiring Jetting Cum Suction machine No. DL 16 C 5533 was issued to M/s Kleenwell Enviro Engg. Service.Co. with the date of start and completion as 02.02-2017 to 01-02-2018, respectively.

1.2 That there is a contract agreement No. 99 dated 01-02-2017 executed by Shri Priti Pant, EE (South)-II and M/s Kleenwell Enviro Engg.Service.Co., the agency.

1.3 That Shri Kiran Pal S/o Shri Rafe Ram was said to be an employee engaged by M/s Kleenwell Enviro Engg. Service.Co. in the capacity of supervisor and Shri Manoj Kumar. Driver S/o Shri Narayan to manage the operation of Jetting Cum Suction machine.

1.4 That Shri Manoj Kumar, Driver S/o Shri Narayan of the Jetting Cum Suction Machin: bearing No. DL. 1GC 5533 was very much present at the site of the incident on the fateful day where the incident took place as per his statement (PD-9/1-2).

1.5 Shri Kiran Pal S/o Shri Raje Ram in his statement to Shri R.S.Negi, CE (S) conducting the Preliminary Inquiry stated that (Ref. statement of Shri Bindra Parsad-PW-4, during cross examination) that the shaft of the vehicle was broken due to this vehicle was not engaged where as In his statement to Vigilance (Ref.PD-10 on 11.08-17) stated that he received a phone call on 05-08-2017 (Saturday) from Shri Satendra Kumar Srivastava, JE-CO that he (Sh Satendra Kumar Srivastava) wanted driver on 06-08-2017 (Sunday) and accordingly Shri Manoj Kumar, Driver S/o Shri Narayan was sent on duty.

1.6 The statement of Shri Kiran Pal S/o Shri Raje Ram are contradictory to the statement given before the CE(South), who conducted the preliminary inquiry on 07-08-17 (ReEPD-11/1-3) and cross examination report of Shri Bindra Parsed PD-4(Ref. F2/ page 1041).

1.7 It is understood from the statement of Shri Kiran Pal S/o Shri Raje Ram that jetting Cum Suction Machine was out of order on 06.08.17(Sunday). Shri Kiran Pal has stated (ref. PD-10), he directed Shri Manoj Kumar, Driver S/o Shri Narayan to attend duty on 06-08.17 but it was not mentioned that he (Sh.Manoj Kumar, Driver) has to attend the duty

alongwith Jetting Cum Suction machine or without the machine.

1.8 Shri Manoj Kumar, Driver S/o Shri Narayan In his statement (Ref.PD9/1-2) to Shri Vikas Rathi, JE (C) of Vigilance stated that on 05.08-17 (Saturday), Shri Satendra Kumar Srivastava. JE-CO told him to come on duty on next day (Sunday) and further, Sh Manoj Kumar stated that he can coin's on duty, if he is directed by Shri Kiran Pal, Supervisor. Subsequently, be stated that he got a call from Shri Kiran Pal to come on duty on 06.08-17 (Sunday) at Lal Sai Market in Lajpat Nagar and accordingly went to Lal Sai Market on 06.08.17 (Sunday) as directed further by Sh. Satendra Kumar Srivastava, JE.

1.9 Shri Manoj Kumar, Driver S/o Shri Narayan in his statement (PD-9/1-2) stated that he reached at the site after getting the water filled in the vehicle from the Jal Sadan water emergency but did not operate the vehicle as no instruction from any one was received to operate the Jetting Cum Suction machine.

1.10 He stated that three labourers had cleaned 2 sewers and while taking the work of cleaning of 3rd sewer he saw that First, Second and Third labourers went into the sewer subsequently and were found fainted.

1.11 Shri Hanoi Kumar, Driver S/o Shri Narayan farther stated that he called (informed of the incident) to Shri Rakesh Kumar, the fourth labourer, who was not at the site and went to Store to bring a hammer.

1.12 Shri Rakesh-S/o Shri Masicharan tried to enter into manhole likely to save the labourers inside the manhole where incident said to have taken place but while doing this, Shri Rakesh Kumar was also became unconscious.

1.13 Shri Manoj Kumar, Driver S/o Shri Narayan in his statement to Vigilance (PD-9/1-2) had stated that with the help of public and police Shri Rakesh Kumar and other trapped labourers were taken out and were sent to a hospital.

1.14 After that the SCM was taken to Jal Sadan for parking and he (Manoj Kumar, Driver) left to his home. In the last part of his statement to the Vigilance (PD-9/1-2) Shri Manoj Kumar, Driver S/o Shri Narayan stated that during this period he was not asked by anyone to operate the vehicle.

1.15 However, there are no records of Shri Kiran Pal S/o Shri Raje Ram and Shri Manoj Kumar, Driver S/o Shri Narayan of employment by M/s Kleenwell Enviro Engg. Service.Co. the agency except the statement of M/s Kleenwell Enviro Engg. Service.Co. (Ref PD-11/7) and the statement of Shri Kiran Pal, Supervisor and Shri Manoj Kumar, Driver S/o SAH Narayan. (Ref PD10 and PD9/1.2)

1.16 Shri Rakesh Kumar S/o Shri Masicharan in his statement (PD43/1) to Vigilance on. 11-08-2017 has stated that two days before Shri Dinesh Chander, Contractor directed him to clean 25 manholes on Sant Kanwar Ram Mandir, Jal Vihar Road. He further stated that he himself and three other colleagues namely S/Sh. Yogender, Annu and Mona together had cleaned three manholes and since the fourth manhole was not opening, he went to bring a hammer and meanwhile received a phone call from Shri Manoj Kumar, Driver S/o Shri Narayan that your three colleagues have become unconscious in a manhole and you should come back at the earliest Shri Rakesh Kumar reaching at site went into the manhole for helping the trapped labourers but due to gas stroke he became unconscious and called for help. He was

brought out of the manhole by the police. Other three colleagues were taken out of manhole by Fire Department who were declared dead while reaching at a Hospital.

1.17 Shri Manoj Kumar. Driver S/o Shri Narayan was directed to report at Lal Sai Market falling in Kasturba Nagar Constituency but SCM was brought opposite Sant Kanwar Ram Mandir, Jal Vihar Road, Lajpat Nagar falling in Jangpura Constituency by the driver on his own without any direction.

1.18 The vehicle was never said/directed to be operated by anyone of the Cos including Shri Pries Pant then EE(S)-II and it seems clearly that Shri Manoj Kumar, Driver S/o Shri Narayan of the SCM on its own brought the vehicle to the site of the incident and had witnessed entire episode of the fateful incident which took place on 06-08-2017 (Sunday).

1.19. It is also clearly understood that Lal Sai Mandir under Kasturba Nagar Constituency and Sant Kanwar Ram Mandir, Jal Vihar Road, Lajpat Nagar under Jangpura are two different places under the control of different AE and IE: Shri Shiv Hari, AE, Shri Satendra Kumar Srivastava, JE and Shri Bindra Prasad, AE and Shri Mohd. Tarique, JE respectively. Shri Manoj Kumar, Driver S/o Shri Narayan in between the incident did not inform any of the COs (PD-9/1-2) about the incident and left the site of the incident without informing any of the officials, which is understood to be unbecoming on the part of Shri Manoj Kumar, Driver S/o Shri Narayan engaged by M/s Kieenwell Enviro Engg. Service Co.

1.20 Sh. Rakesh Kumar S/o Sh. Masicharan did not name any of the COs including Shri Priti Pant, EE (S)-II of any directions, to clear the sewer at the said site. It means the labourers were taking the cleaning of sewer

without any direction of any of the COs except saying that he was directed by M/s. Dinesh Chander Contractor. It is clear from the statement of Shri Rakesh Kumar S/o Sh. Masicharan that none of the COs including Shri Priti Pant, BE have directed to take up such sewer cleaning causing loss of three precious lives on 06-08-17 (Sunday). In his statement Shri Rakesh Kumar S/o Shri Masicharan have though mentioned the presence of Shri Manoj Kumar, Driver S/o Shri Narayan of the said vehicle.

1.21 From the available record and witnesses. It has not been proved that Shri Rakesh S/o Shri Masicharan was an employee and engaged by M/s Dinesh Chander, Contractor to clean the sewer line at the said site of incident.

1.22 I have gone through the replies of show cause notice (OD 15/3,-15/4, 15/5)served upon by Shri Priti Pant, EE(South)-11-CO (Ref. PD-4/2, PD-5) to M/s Dinesh Chander, Contractor, have categorically denied that Shri Rakesh S/o Shri Masicharan and three deceased persons were ever directed to clean the sewer line opposite Sant Kanwar Ram Mandir, Jal Vihar Road, the site of the incident. He further stated that no work order for such work have ever been Issued to him for taking up such work. Shri Dinesh Chander, Contractor in his reply to the show cause notice have mentioned that one Shri Rakesh Kumar in persuance of conspiracy hatched amongst himself and other unknown DJB officials who were apparently undertaking unauthorised work of sewer cleaning and he has Implicated falsely in Fir bearing N.354/207 U/S 304 IPC at Lajpat Nagar Polite Station. He further stated that FIR apparently got registered to save the real culprits. M/s. Dinesh Chander, Contractor has further stated that his last dealing was till 2016 with Shri Rakesh Kumar and no dealing with said Shri Rakesh Kumar nor any contact with him executed. He

was also not contacted telephonically with him since then, stated by Shri Dinesh Chander, Contractor, Shri Dinesh Chander, Contractor has further represented to the area DCP for taking action against who have tried to implicate him (M/sDinesh Contractor) in the cm bearing No.354/17. He has also requested for taking action against Shri Rakesh Kumar and unknown persons of 0)8 officials for damaging his reputation by implicating him Inthe matter of incident.

1.23 Prosecution has not been able to put up anything on record against the statement Shri Dinesh Contractor where in it could be proved , that Shri Rakesh Kumar S/o Masicharan alongwith other three deceased persons were engaged, to take up sewer cleaning work at the site of the incident on 06-08-2017 (Sunday).

1.24 In the preliminary investigation also refer (PD/11/1-3) It has not been firmly concluded that Shri Rakesh Kumar S/o Shri Masicharan was engaged by M/sDinesh Chander, Contractor to take up the sewer cleaning work and the Preliminary Investigation by CE (South) ended with the remarks that the final picture will-come out only after, completion of the police investigation which in my view will depend upon outcome of the Judgement In the matter by the Horrible Court dealing with the case.

1.25 It is clear from the submission of Shri Vikas Rathie JE-10 (Ref Cross Elimination) that it could not be clearly arrived to the conclusion that the deceased employees along with Shri Rakesh Kumar were engaged for taking sewer line cleaning work by M/s Dinesh Contractor.

1.26 In the Joint inspection report (PD-1/1) conducted on 10-08.2017. By Shri Vikas Rathie, JE of Vigilance Department and the team have not some out of any

suggestion involving the COs in the matter of the incident causing loss of three precious lives.

1.27 I have gone through the cross examination details of Shri Vikas Rathi, the inquiry Officer deputed for investigating into the matter of incident by Vigilance Department. In reply to the question No. 5, he has reiterated (PD-9/1-2) that Shri Satendra Kumar Srivastava, JE-CO asked Shri Manoj Kumar, Driver S/o Shri Narayan to come on duty on 06.08-2017 {Sunday} at Lal Sat Market (Kasturba Nagar Constituency) whereas the incident took place at Sant Kanwar Ram Mandir, Jai Vihar Road, Lajpat Nagar (Jangpura Constituency),

1.28 Also there is nothing on record to prove that there was any work, order for taking up _ sewer cleaning work in Kasturba Nagar Constituency issued by EE(South)II under the supervision of the Shri Shiv Hari AE-CO and Shri Satendra Kumar Srivastava, JE-CO. There has to be an Official work order for the sewer 'cleating work awarded to M/s Dinesh Chander, Contractor. In the absence of such a Work Order and contract agreement, it could not be ascertained and firmly said that any of the COS could call M/s.Dinesh Chander, Contractor to engage labourers to do the sewer cleaning work opposite Sant Kanwar Ram Mandir on any sewer line. In this case a sewer line sizing 400 mm die has been suggested by the prosecution.

1.29 In the preliminary inquiry (PD-11/1.3) report submitted by CE (South) on 10-08-2017, EE(South)-II have said to be reported that no work order for sewer cleaning was issued to M/s. Dinesh Chander, Contractor.

1.30 Further, no statement of M/s Dinesh Chnader. Contractor has been recorded to ascertain their

involvement in engaging the labourers at the said incident site (Ref: reply of Shri Vikas Rathi (PW-8) in his cross examination)

1.31 When there is no official work order and a contract signed by M/s Dinesh Chander and EE(South)II, how-it could be said that the survivor and deceased persons were not provided with any safety equipments, whatsoever to perform the-sewer cleaning work at the site of the Incident

1.32 In a reply dated 09-08/2017 addressed to SHO Lajpat Nagar (PD-6/1), it has been intimated by EE(South)-II that no work order was awarded to any contractor by DJB for cleaning the sewer man holes and reason for cleaning the said sewer on 06-08-17 are not known.

1.33 Further in an affidavit dated 15-09-2017 filed before the Hon'ble High Court of Delhi on behalf DJB (D.11/1.8) it has been mentioned that some private person unauthorisedly sent these men into the DJB sewer line without having any work order and work permit from DJB (Para 12 of D-8/6). It means DJB was confirm on this issue and have taken a stand accordingly before the Hon'ble Court and as such none of the Cos including Shri Priti Pant, EE (South) II-CO was any way involved in engaging/employing any of the survivor and the deceased persons for taking up the sewer cleaning work at the site of the incident that took place on 06-08-2017.

1.35 An affidavit filed before Shri A.V.Prem Nath, Commissioner, Employees Compensation, Pushpa Bhawan, New Delhi (Ref. D7/1-8), it has mentioned that there exists no employer-employee relationship between the parties i.e. the deceased person and the respondent-1, Delhi Jal Board (Para-1 of D-7/1 and D-7/3). In para 7 (D-7/4) it has been stated that the

deceased persons were not directed by any official of DJB to carry out the cleaning of any sewer line at any point of time.

1.36 In para-2 of D-7/4-5 it has further been stated that neither DJB nor Shri Satendra Kumar Srivastava, JE-CO issued any written direction for sending any jetting machine for doing any work at Jal Sadan, Lajpat Nagar.

1.37 Para 4 of D-7/5 categorically states that no contract of the contractor Dinesh Chander was in operation with DJB on the day of the incident i.e. 6-8-2017.

1.38 Para 4 of D-7/5-6 has been stated that the deceased persons were not deputed by DJB to do any work of cleaning of any sewer.

1.39 Again, it means, DJB was confirm about the facts of the case of the incident and have taken the stand correctly, proves that none of the COs Including Shri Priti Pant, EE (South)-II-CO was involved in any manner in deploying/engaging the survivor and the deceased persons for taking up the sewer cleaning at the said site of the incident where three person lost their lives.

1.40 Ref replies to the question 4 (cross examination) asked by Sh. Priti Pant-CO to Sh. Rakesh Kumar whether Sh. Mattel Kumar, driver came at the site of incident with the Suction Cum Jetting Machine. Sh. Rakesh Kumar S/o Sh. Sh. Masicharan during the cross examination by the CO and the undersigned stated that Sh. Manoj Kumar S/o Sh. Narayan, Driver came at the site of the incident without Suction Cum Jetting Machine.

1.41 In the Police statement Shri Kiran Pal. Supervisor S/o Shri Raje Ram stated that he is working for the last 10 years (Ref F4/D5) with M/s Kleenwell Enviro Engg. Service.Co. where as in PD-10 he stated that he has been working for the last 3 to 4 years with the same company (Ref cross examination Ques arid reply -2. F2).

Conclusion

With the above explained facts, circumstances and the available records, I find that the charges framed against Shri Priti Pant, EE (S) II under article-I is not proved.

Article No.2:

That Shri Priti Pant S/o Shri B.C. Pant, while working as Executive Engineer (South)41 during the year 2017 committed misconduct In as much as he, In connivance with his subordinate staff got the original log- sheet of the hired jetting-cum-suction machine bearing No.DL-1GC-5533 manipulated and changed after the incident leading to loss of three precious human lives in the DJB sewer manhole opposite Sant Kanwar Ram Mandir, JalVihar Road, Lajpat Nagar. New Delhi on 06.08.2017 (Sunday) during manual cleaning of the manhole.

The above act of Shri Priti Pant amounts to gross misconduct on his part as he failed to maintain absolute integrity, devotion to duty and acted In a manner unbecoming of a Govt. Servant. He has, thereby, contravened Rule 3 (1) (1) (H) & (Ili) of the CCS (Conduct) Rules, 1964 as amended from time to time and made applicable to the employees of Delhi JalBoard".

Analysis of the Inquiry

2.1 Shri Kiran Pal S/o Shri Raje Ram in his statement (Ref PD-10) to the Vigilance given on 11-08-2017 stated that he received a call from Shri Satendra Kumar Srivastava, JE-CO on 05-08-17 to send Shri Manoj Kumar, Driver S/o Shri Narayan on duty on 06-08-17 but In his statement it not been mentioned that Shri Manoj Kumar, Driver S/o Shri Narayan should go to site alongwith vehicle as well.

2.2 Further, on cross examination by CO he (Sh.Kiran Pal S/o Sh.Raje Ram) has stated that on 07-08-17 Monday again Shri Satendra Kumar Srivastava, JE-CO called him on phone to come at Jal Sadan, Lajpat Nagar and pressurised to get the Log sheet changed and Shri Satendra Kumar Srivastava, JE-CO signed it in front of me (Shri Kiran Pal).

2.3 Where as it has been stated by Shri Bindra Prasad, AE, PW4 (Ref Q 5 of the cross examination) that during the Preliminary Inquiry by CE(South), Shri Kiran Pal S/o Shri Raje Ram said that the shaft of the vehicle was broken which could not be operated.

2.4 In his statement (Ref.PD-9), Shri Manoj Kumar, Driver S/o Shri Narayan stated that the machine was not operated as he did not get any direction from any of the officials

2.5 In the Preliminary Investigation Report by Shri RS.Negi, CE (South), there is a log sheet attached which was signed by JE, AE and EE (South)-II , the COs and as such till the time of Preliminary Inquiry the only one Log sheet was found on record and signed by all COs, this could be the original log sheet.

2.6 Shri Manoj Kumar, Driver S/o Shri Narayan in his statement to the Vigilance (PD-9/1-2) has also not named Shri Priti Pant, ES-CO for any manipulation in the Log sheet.

2.7 During the Cross examination of Shri Vikas Rath, JE(Vigilance) in reply to the question No.-2 by Shri Priti Pant, EE(South) CO that, there are two sets of Log sheets one duly signed by JE, AE. EE concerned (PD-21/9-16) and other not signed by them, which is authentic log sheet? In reply, Shri Vikas Rath stated that as per practice the log sheet duly signed by JE, AE, EE on the front page is a valid log sheet and he further stated that it is not possible to accept log sheet without signature of the concerned JE,AE and EE.

2.8 On asking the Question-1 by the undersigned that how Shri Priti Pant was responsible for the fateful incident which took place on 06.08-17? From the reply of Sh Vikas Rath, JE, PW-8; I did not find any material suggesting that Sh. Priti Pant EE (South)-II was involved in manipulation of the log sheet or having directed to take up Sewer cleaning work.

2.9 During the cross examination of Shri Kiran Pal S/o Shri Raje Ram and Shri Manoj Kumar, Driver S/o Shri Narayan by CO and the undersigned, no statement have been found on record to prove any change/manipulation of any kind in the log sheet by Shri Priti Pant, EE-CO.

2.10 With the details of cross examinations of Shri Kiran Pal S/o Shri Raje Ram and Shri Manoj Kumar, Driver S/o Shri Narayan and other PWs following contradictory and uncredit worthy statement could be seen.

2.11 Very Vague answer, being supervisor he (Sh.Kiran Pal. Supervisor S/o Shri Raje Ram) must know the period of employment, specifically.

2.12 Ref.Question-3: Didn't he know about the boundaries of Kasturba Nagar and Jangpura Constituencies, area being with ZE/JE Incharge of the

constituencies: Shri Kiran pal S/o Shri Raje Ram straightaway said that hedid not know the jurisdictions and the name of the incharge of JE/ZEs of Kasturba Nagar and Jangpura Constituencies.

2.13 Being supervisor, he must have acquainted himself of the Jurisdiction of the employment as regard to the supervision of the area under the Contract agreement and how come It could be believed that a Supervisor should not know all such details assigned to him byM/s.

Kleenwell Enviro Engg.Service Co., the owner of the vehicle.

2.14 Ref.Question-7: On 06-08-2017 where the incident said to have occurred was with Shri Mohd. Tarique? Whether, permission was taken before deploying the said SCM? Shr. Kiran Pal S/o Raje Ram replied that he does not know, as what the jurisdiction was and who the JE incharge was for the deployment of Vehicle in these particular areas.

2.15 Again reply is very uncertain, vague and un-creditworthy. Being a supervisor of a responsible company, Shri Kiran Pal must know the Jurisdictional area as per Contract Agreement and also under whom the said vehicle was ordered to be operated/run.

2.16 The reply of Shri Kiran Pal is unbecoming of a Supervisor like, as being a Supervisor, he must know his rolls and responsibilities generally may or may not be defined but by doing regular job in the present capacity he should have learnt all such details and operate the vehicle as per the provision of Contract Agreement.

2.17 Ref. Question 12: Shri Satendra Kumar Shrivastva called upon on 07-08-2017 at Jal Sadan, Could you tell me for what work you were called?: Shri

Kiran Pal stated as Log sheet was not traceable and reaching at Jal Sadan(Sh.Kiran Pal) handed over the Log sheet to Shri Satendra Kumar Shrivistava taking out from the vehicle.

2.18 I observe here that such an important paper was kept without lock and key in the vehicle (SCM). Shri Kiran Pal further stated that the vehicle was standing without lock and key and it (Vehicle) was used to be kept open.

2.19. It is again seems to be irresponsible way of working of Shri Kiran Pal, Supervisor S/o Shri Raje Rain so called Supervisor of a responsible company M/s Kleenwell Enviro Engg. Service Co.

2.20 Ref.Question.15: Had you gone to Jal Sedan on 07.08-2017 with vacant Log sheet and why?: Shri Kiran Pal stated that when I started from 'my home to Jal Sedan I did not know that I had a Log sheet and when I reached Jal Sadan, I opened my bag and a vacant Log sheet was handed over to Shri Satendra Kumar Srivastava, JE-CO.

2.21 What one may observe from foregoing paras that Shri Khan Pal was never stable in his statements and till the time he has mentioned of two log sheets one in the bag and one in the said vehicle.

2.22 Once he said that vacant Log sheet was taken out from the vehicle anti was handed over to him (Shri Satendra Kumar Srivastava, JE-CO).

2.23 Another time being stated that he had a vacant Leg sheet in his bag and subsequently handed over to Shri Satendra Kumar Srivastava, JE-CO. Here Shri Kiran Pal S/o Shri Raje Ram mentioning of two log sheets but not been able to clear about the original and duplicate or which of two different log sheets is the

original one. It is an intentional idea of Sh. Kiran Pal, Supervisor S/o ShriRaje Ram to hide something.

2.24 His varying statements are not credit worthy and are unreliable.

2.25 – Ref.Question17: From where did you make the Log sheet entries asked by Shri Priti Pant to Shri Kiran Pal.: As asked by Shri Satendra Kumar Srivastava, I (Sh.Kiran Pal) made entries from the Log sheet initially taken out from the vehicle(SCM). Here it is not clear whether the entries were made for all the six days w.e.f 01.08.17 to 06.08.17 or only one entry was made for the 6th day of August 2017.

2.26 It is observed that there are two Log sheets but which one is original one for now. As per the statement of Shri Kiran Pal both the Log sheets were seems to be vacant Log sheets (without entries) for the day of the incident.

2.27 Ref.Question18: Shri Kiran Pal stated that he himself made the entries in the Log sheet when asked by Shri Satendra Kumar Sriyastava, JE-CO and further stated (Sh. Kiran Pal) that he himself signed the log sheet and was not signed by Manoj Kumar, Driver and so the log sheet manipulated seems to be a duplicate log sheet

2.28 It is observed that the Log sheet usually in the custody of the driver (Shri Manoj Kumar, Driver S/o Shri Narayan) of the vehicle and entry/entries, if any, should be made by the Driver only and not by the Supervisor who in this case stated that the entries were made and signed by him is completely wrong doing on his part and the statements being given to the reply of the questions are misleading/tried to be smartly made to mislead the inquiry which was being conducted into

the Incident which took place on 06-08-17 by the prosecution and then CE(South).

2.29 Ref.Question 21: When asked by Shri Priti Pant, EE-CO that as stated before police on 06-08-2017 Shri Satendra Kumar Srivastava asked to bring the Vehicle opposite Jal Sedan where as Shri Manoj Kumar, Driver S/o Shri Narayan in his statement to the Police stated that he was asked to bring the vehicle at Lal Sai Market.

2.30 Shri Kiran Pal, Supervisor S/o Shri Raje Ram in his statement stated that it must be known to Shri Manoj Kumar, Driver S/o Narayan saying that he (Sh. Kiran Pal) could not explain about the location.

2.31 Ref.Question 25: Shri Kiran Pal attended the office of SE(South) where he was asked, Did you attend the office of SE (South) and whether he was asked to send the vehicle on 06-08-2017. To this he replied in YES.

2.32 It is observed that Shri Kiran Pal's statements are not in consonance. His replies are likely to keep himself in comfortable position involving the others in this case to Shri Priti Pant, EE-CO. The erratic statements of Shri Kiran Pal S/o Shri. Raje Ram shows that he himself is involved in the episode trying to manipulate sequences and facts of the incidents which took place on 06.08-2017 causing loss of precious lives of 3 persons.

2.33 Ref.Question 05 : Shri Bindra. Prasad, AE; in charge of Jangpura Constituency in his statement to Shri R.S.Negi, CE(South) Preliminary Inquiry Officer stated that : Sh. Khan Pal said to the Inquiry Officer that the vehicle was out of order and could not be operated as the shaft of the vehicle was broken.

2.34 *It is observed that The Log Sheet which was produced before Shri R.S.Negi, the Preliminary Inquiry Officer and attached with the Preliminary Inquiry Report is an original Log Sheet (Ref PD-21/9-16) which was signed by AE, JE and EE-COs. Another log sheet is a fake-log sheet to form a story by Sh. Kiran Pal S/o Sh. Masicharan and Sh. Manoj Kumar S/o Sh. Narayan, driver said to be working with M/s Kleenwell Enviro Engg. Service Co.*

2.35 *It is not understood as why the log sheet was needed to change and manipulated when vehicle was not made to work/operated. Shri Kiran Pal S/o Shri Raje Ram dared to make the entries said to be vacant for the day of 6th Aug.2017 and manipulated the log sheet.*

2.36 *It Is noted that none of the witnesses (PW-1 and PW-2) named ShriPriti Pant EE (South)-II CO of any manipulation/change in log sheet in any manner.*

2.37 *Prosecution has mentioned of the two log sheets PD-21/1-8 and PD-21/9.16 (having the signature of JE/AE/EE)but which log sheet is the fake and original has not been clarified in the charge sheet.*

2.38 *The prosecution has not challenged the authenticity of the log sheets/books. In the preliminary inquiry report Shri R.S.Negi, thenCE(South) has not mentioned about the existence of any other log sheets.*

2.39 *According to (D-5) Shri Kiran Pal S/o Shri Raje Ram went to Lajpat Nagar Police Station on 06-08-2017 where as during the cross examination in reply to Question 24 he stated that it was 08-08-17 when Sh. Kiran pal S/o Shri Raje Ram went to Laipat Nagar Police Station; his statement contradictory and seems that he is hiding the facts to save himself from any consequences, otherwise.*

2.40 After going through the entries of the log sheets it is seen that the pattern of the entries writing dates are different in original and duplicate log sheets. I observe that where date is mentioned, there is no need to mention the day like 01-08-2017 Mangalwar, 02-08-2017 Budhwar, 03-08-2017 Virwar and 04-08-2017 Shukrwar etc. to me it seems to be in a manipulated log sheet/book.

2.41 On 05-08.2017 (Saturday) in one log sheet the date mentioned is the format 05-08- 2017 and in other 05-08-2017 Shaniwar. The Saturday and Sunday are the days involving the issue of tire call to engage the vehicle and the incident. I observe that the log sheet without giving/mentioning the day is original one which has been attached with the preliminary enquiry report submitted by Shri R.S.Negi, then CE(South).

2.42 in a statement (PD-10) Shri Mang Kumar, Driver S/o Shri Narayan has stated that the machine was not operated as no one directed him to operate the jetting machine and in the preliminary inquiry by then CE (South) Shri Kiran Pal S/o Shri Raje Ram stated that the machine was out of order and so was not engaged (Ref.statement of Shri Bindra Prasad, PW-4) during the preliminary inquiry. There seems to be consonance in the statement that the machine was never engaged and operated and any manipulation what so ever, admittedly, done by Shri Kiran Pal S/o Shri Raje Ram; has been his wrong doing to save himself and his colleague Shri Manoj Kumar, Driver of the bitter consequences. Here I observe that whatever has been done, by Shri Kiran Pal S/o Shri Raje Ram and Shri Manoj Kumar, Driver of M/s Kleenwell Enviro Engg. Service.Co. and none of the COs have been involved in the change of log sheet and its manipulations.

2.43 The log sheets at PD-21/9-16 has been duly signed on 01-08-2017 by JE/AE/EE and ever. the subsequent pages upto 05-08-2017 have been signed by Shri Satendra Kumar Srivastava, JE-CO and the last page that on 06-08-2017 there is no entry neither has been signed by Shri Satendra. Kumar Srivastava, JE-CO where as the Log Sheet (PD-21/1-8) nor first page neither other pages have been signed by the JE/AE/EE and as explained by the witnesses unsigned log sheets cannot be the original (Ref. statements of PW4, PW-5 and Pw4 and contents of PD-11 and D-6 discussed above) Here I observe that the log sheet (PD-21/9-16) attached with the Preliminary report is the original log sheet and other (PD-21/1.18) is a duplicate log sheet.

CONCLUSION:-

With the above facts and circumstances, I find Sh. P.P. Pant, EE (South) II, CO was no way involved in the manipulation and change of the log sheet as such the charge framed under the article-2 is not proved.

**CHARGES UNDER ARTICLE 1: NOT PROVED
CHARGES UNDER ARTICLE 2: NOT PROVED"**

16. The Petitioners have been exonerated of both the charges contained in Article 1 and Article 2. A perusal of the aforesaid Article 2 and the relevant portion of the supplementary chargesheet which has been filed against the Petitioners shows that both are identical to each other. The gist of the allegations against the Petitioners in the impugned supplementary chargesheet and Article 2 of the charges in the disciplinary inquiry is that the Petitioners were in connivance with the Executive Engineer and the Junior Engineer and have got the original log sheet of the jetting cum suction machine bearing No. DL-1GC-5533 manipulated and changed after the incident in an attempt to exonerate the concerned officers from their

complicity to the incident. The gist of the allegations in both the disciplinary inquiry and the criminal prosecution are same. The short question which arises for consideration is whether exoneration in disciplinary inquiry will automatically result in the closure of the criminal prosecution.

17. The present case for invoking the jurisdiction of this Court under Section 482 of the CrPC with prayers to quash criminal charges and the summoning order against the Petitioners hinges on the argument that once exoneration on merits, which is not merely on technical grounds, is granted in disciplinary enquiry proceedings, criminal proceedings in the same factual circumstances and on identical charges ought not to continue and are therefore liable to be quashed. In the context of this argument, Ld. Counsel for Petitioners states that the legal position with respect to continuance of criminal prosecution on the same set of facts in disciplinary proceedings where the allegations against the accused are found to be unsustainable and the person is held innocent on merits, is settled in a slew of Apex Court rulings. In furtherance of this submission, reliance is placed on the principles laid down in a 2:1 majority decision in Radheshyam Kejriwal v. State of West Bengal, (2011) 3 SCC 581, which was duly followed and applied in Videocon Industries Limited and Anr. v. State of Maharashtra, (2016) 12 SCC 315, and Ashoo Surendranath Tewari v. Deputy Superintendent of Police, EOW, CBI, (2020) 9 SCC 636.

18. *Per contra*, the Ld. APP for the State relies on a decision rendered by a three Judges Bench of the Supreme Court in State (NCT of Delhi) v. Ajay Kumar Tyagi, (2012) 9 SCC 685. In the aforementioned case, the Apex Court departed from the ruling delivered in PS Rajya v. State of Bihar, (1996) 9 SCC 1.

19. It is submitted that in State (NCT of Delhi) v. Ajay Kumar Tyagi (supra), a three Judges Bench held that none of the aforementioned instances reproduced in PS Rajya (supra) contemplated a situation wherein exoneration of an employee in departmental enquiry proceedings would necessarily lead to quashing of criminal prosecution, even if both proceedings pertained to prosecution on identical charges. It was held that:

19. Even at the cost of repetition, we hasten to add that none of the heads in P.S. Rajya [(1996) 9 SCC 1 : 1996 SCC (Cri) 897] is in relation to the effect of exoneration in the departmental proceedings on criminal prosecution on identical charge. The decision in P.S. Rajya [(1996) 9 SCC 1 : 1996 SCC (Cri) 897] , therefore, does not lay down any proposition that on exoneration of an employee in the departmental proceeding, the criminal prosecution on the identical charge or the evidence has to be quashed.

20. It is well settled that the decision is an authority for what it actually decides and not what flows from it. The mere fact that in P.S. Rajya [(1996) 9 SCC 1 : 1996 SCC (Cri) 897] , this Court quashed the prosecution when the accused was exonerated in the departmental proceeding would not mean that it was quashed on that ground. This would be evident from para 23 of the judgment, which reads as follows: (SCC p. 9)

“23. Even though all these facts including the report of the Central Vigilance Commission were brought to the notice of the High Court, unfortunately, the High Court took a view that the issues raised had to be gone into in the final proceedings and the report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the criminal case against the appellant. We have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant cannot be pursued.

Therefore, we do not agree with the view taken by the High Court as stated above. These are the reasons for our order dated 27-3-1996 [P.S. Rajya v. State of Bihar, Criminal Appeal No. 434 of 1996, order dated 27-3-1996 (SC)] for allowing the appeal and quashing the impugned criminal proceedings and giving consequential reliefs.”(emphasis supplied)

From the reading of the aforesaid passage of the judgment it is evident that the prosecution was not terminated on the ground of exoneration in the departmental proceeding but, on its peculiar facts.

21. It is worth mentioning that the decision in P.S. Rajya [(1996) 9 SCC 1 : 1996 SCC (Cri) 897] came up for consideration before a two-Judge Bench of this Court earlier, in State v. M. Krishna Mohan [(2007) 14 SCC 667 : (2009) 1 SCC (Cri) 922] . While answering an identical question i.e. whether a person exonerated in the departmental enquiry would be entitled to acquittal in the criminal proceeding on that ground alone, this Court came to the conclusion that exoneration in departmental proceeding ipso facto would not lead to the acquittal of the accused in the criminal trial. This Court observed emphatically that the decision in P.S. Rajya [(1996) 9 SCC 1 : 1996 SCC (Cri) 897] was rendered on peculiar facts obtaining therein. It is apt to reproduce paras 32 and 33 of the said judgment in this connection: (M. Krishna Mohan case [(2007) 14 SCC 667 : (2009) 1 SCC (Cri) 922] , SCC p. 676)

“32. Mr Nageswara Rao relied upon a decision of this Court in P.S. Rajya v. State of Bihar [(1996) 9 SCC 1 : 1996 SCC (Cri) 897] . The fact situation obtaining therein was absolutely different. In that case, in the vigilance report, the delinquent officer was shown to be innocent. It was at that juncture, an application for quashing of the proceedings was filed before the High Court under Section 482 of the Code of Criminal Procedure which was allowed relying on State of

Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] holding: (P.S. Rajya case [(1996) 9 SCC 1 : 1996 SCC (Cri) 897] , SCC p. 9, para 23)

‘23. Even though all these facts including the report of the Central Vigilance Commission were brought to the notice of the High Court, unfortunately, the High Court took a view that the issues raised had to be gone into in the final proceedings and the report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the criminal case against the appellant. We have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant cannot be pursued.’”

(emphasis in original)

Ultimately this Court concluded as follows: (M. Krishna Mohan case [(2007) 14 SCC 667: (2009) 1 SCC (Cri) 922] , SCC p. 676, para 33)

“33. The said decision was, therefore, rendered on the facts obtaining therein and cannot be said to be an authority for the proposition that exoneration in departmental proceeding ipso facto would lead to a judgment of acquittal in a criminal trial.”

20. In light of the aforesaid, the Ld. APP submits that the ratio in Ajay Kumar Tyagi (supra) is contrary to the findings in PS Rajya (supra), inasmuch that exoneration in disciplinary enquiry proceedings would not by itself lead to acquittal in a criminal trial.

21. Therefore, the question that arises for consideration is whether in the facts and circumstances of the immediate case, the criminal charges set out in the impugned supplementary charge sheet would survive in light of exoneration on grounds of merit in departmental enquiry proceeding, for the same charges in the same factual matrices. On a perusal of the impugned supplementary charge sheet dated 16.08.2019 and the memorandum of

charges, what emerges is that the substance of charges are indeed identical and in consideration of the same factual matrices.

22. In the opinion of this Court, paragraph 38(vii) of Radheshyam Kejriwal (supra) would squarely apply when imported to the facts and circumstances of the case at hand. Paragraph 38(vii) of the aforementioned judgment of the Supreme Court is reproduced herein again for convenience:

"38. The ratio which can be culled out from these decisions can broadly be stated as follows:

(i) Adjudication proceedings and criminal prosecution can be launched simultaneously;

(ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;

(iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;

(iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;

(v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.

39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court. " (emphasis supplied)

23. At this juncture, it would be relevant to distinguish the applicability of the decision rendered in Ajay Kumar Tyagi (supra) from the facts of the present case. Attention is drawn to the following paragraphs of the judgment:

"4. The enquiry officer conducted the departmental inquiry and submitted its report. The enquiry officer observed that "the evidence on record does not substantiate the charge of demand and acceptance of bribe" by the accused and, accordingly, recorded the finding that the charge against the accused has not been proved due to lack of evidence on record" (emphasis supplied)

24. A perusal of the above reveals that in the said case, charges of corruption under the Prevention of Corruption Act could not be proved due to lack of evidence on record. Whereas in the present case, the Inquiry Officer in disciplinary proceedings considered all the evidence and material on record to conclude that the charges against Petitioners could not be proved for want of reliability of the Prosecution's witness and evidence presented, and in light of the evidence submitted by and examination of the Petitioners.

25. In Radheshyam Kejriwal (supra), the Apex Court has affirmed the power of the High Court under Section 482 of the CrPC to quash criminal proceedings in respect of the accused who have been exonerated in disciplinary enquiry proceedings. Videocon Industries Limited v. State of Maharashtra, (2016) 12 SCC 315, elaborated on the yardsticks laid down in Radheshyam Kejriwal (supra) as under:

"17. Clarifying the position, the majority in Radheshyam Kejriwal case [Radheshyam Kejriwal v. State of W.B., (2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721] observed that the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for the prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court. On the basis of the aforesaid principles, the majority proceeded to analyse the factual matrix and analysed the finding recorded by the adjudicating authority and opined when there is a finding by the Enforcement Directorate in the adjudication proceeding that there is no contravention of any of the provisions of the Act, it would be unjust and an abuse of the process of the court to permit the Enforcement Directorate to continue with the criminal prosecution."

26. Further, in Ashoo Surendranath Tewari v. Deputy Superintendent of Police, EOW, CBI, (2022) 9 SCC 636, and in J Sekar v. Directorate of Enforcement, (2022) 7 SCC 370, also applied the principles delivered in Radheshyam Kejriwal (supra).

27. This Court is of the view that the principles culled out in Radheshyam Kejriwal (supra) should squarely apply to the present case. The standard of proof being higher in criminal cases, and considering that the Disciplinary Authority has already confirmed the exoneration of Petitioners on merits, prosecution on the same set of facts should not be allowed to continue against them. The standard of proof which is warranted for conviction in a criminal case is "proof beyond reasonable doubt", whereas the standard of proof required to hold a person guilty in disciplinary proceedings is based on preponderance of probabilities. When a person has been found not to be guilty and disciplinary proceedings have exonerated them, they cannot be convicted on the principle of proving guilt beyond reasonable doubt, especially, when the evidence that is to be adduced in the criminal proceeding is identical to the very same evidence in the disciplinary proceedings. Even though both the criminal proceedings and civil proceedings are separate from each other and continue parallelly, it can be said with certitude that if it is found fit not to proceed ahead in disciplinary proceedings which is based on the same set of facts and the same set of evidence, then it would be unreasonable and violative of Article 21 of the Constitution of India to allow the continuation of criminal prosecution against the very same person. This Court has carefully seen the findings arrived at in the disciplinary proceedings and is of the opinion that no useful purpose would be served in continuing with the criminal prosecution against the two Petitioners who were facing identical charges in the criminal proceedings and the disciplinary inquiry and have been exonerated in the disciplinary proceedings.

28. In view of the facts and circumstances of this case, this Court is inclined to quash the charges framed against the Petitioners in FIR No.354/2017.

29. The present petitions are disposed of along with pending application(s), if any.

JANUARY 24, 2023

hsk/ss

SUBRAMONIUM PRASAD, J

