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

Date of hearing and order: 24th February 2015

+ W.P.(C) 3497/2014

COMMISSIONER OF POLICE AND ORS Petitioners
Through: Ms. Avnish Ahlawat with Ms. Latika
Choudhry, Advocates.

versus

EX CONST RAJ KUMAR Respondent
Through: Mr. Arun Bhardwaj with Mr. Rishi
Kapoor, Advocates.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR
HON'BLE MR. JUSTICE I.S. MEHTA

ORDER

% **24.02.2015**

KAILASH GAMBHIR, J. (Oral)

1. Arguing the present petition, Ms. Avnish Ahlawat, learned counsel for the petitioner submits that the learned Tribunal has committed illegality in not appreciating the fact that there was sufficient evidence against the deceased Constable Raj Kumar to award major penalty of dismissal and therefore, the report submitted by ACP Satbir Singh could have been easily ignored. Counsel also submits that the Appellate Authority vide orders dated 22.02.2010 got the matter inquired into through an ACP as the earlier inquiry conducted by the ACP did not consider as to how many people were

W.P. (C) No. 3497/2014 Page 1 of 10

actually cheated by the complainant, but this fresh Enquiry directed by the Disciplinary Authority do not efface the evidence already surfaced against the deceased, proving his guilt in the Enquiry proceedings. Counsel also submits that after submission of the report by the ACP, the Appellate Authority had granted opportunity of hearing to the deceased constable and, therefore, there was no violation of principles of natural justice on the part of the Appellate Authority. Counsel also submits that looking into the gravity of the charge against the delinquent, the Disciplinary Authority rightly awarded the punishment of dismissal and the Appellate Authority rightly rejected the appeal preferred by the Constable Raj Kumar. Counsel thus, submitted that learned Tribunal has committed an error in taking a view that the Appellate Authority has rightly relied on the additional inquiry conducted by it through ACP Satbir Singh although the evidences to prove the guilt of the charged officer were sufficient even without additional Inquiry. Counsel also submits that even the direction given by the Appellate Authority directing reinstatement of Constable Raj Kumar could not lead to infer that he was absolved of the charges but the said direction was given only to await the report of the ACP and reinstatement of the officer was only pending final decision of the Appellate Authority. Premised on the above

contention, counsel submits that this Court may set aside the impugned order passed by the learned Tribunal.

2. Per contra, Mr. Arun Bhardwaj, Advocate appearing on behalf of the respondent submits that the Appellate Authority had directed further inquiry by the ACP level officer after he felt satisfied that the evidence proved on record during the course of inquiry against the charged officer was not sufficient enough to confirm the order of punishment passed by the disciplinary authority. The learned counsel for the respondent further submits that this is also evident from the fact that the Appellate Authority while ordering further Inquiry, ACP officer directed reinstatement of the charged officer, which it would certainly have not directed had there been sufficient evidence on record to prove the Article of charges framed against him. The learned counsel for the respondent also submits that after the report was submitted by ACP – Satbir Singh, the Appellate Authority chose to pass a final order in the appeal himself without remitting the matter back to the disciplinary authority and without even supplying a copy of the report of the ACP to the charged officer. The learned counsel for the respondent thus submits that the charged officer was not made aware of any fresh findings arrived at by the ACP and without supplying a copy of the inquiry report of

ACP, the Appellate Authority had dismissed the appeal preferred by the charged officer. Such a course adopted by the Appellate Authority was in flagrant violation of principles of natural justice and also beyond the power of the Appellate Authority of having usurped the power of disciplinary authority. Based on these submissions, the learned counsel for the respondent submits that the order passed by the learned Tribunal is a well reasoned order and the same may not be interfered with by this Court while exercising its powers under Article 226 of the Constitution of India.

3. We have heard the submissions of the learned counsel for the parties and given our thoughtful consideration to the arguments advanced by them. We have also gone through the entire material placed on record and the impugned order passed by learned Central Administrative Tribunal.

4. The disciplinary proceedings were initiated against the charged officer based on the following allegations: -

“It is alleged against Const. Raj Kumar, No. 327/ND that on 30/08/2008, while he was posted at AATS/ND, one Shri L. Sakhensana Singh along with his brother L. Lakhikanta Singh r/o 18, Mahadev Road, M.Ps Staff Qutr., New Delhi were brought to Special Staff Office, New Delhi Distt. By Sh. Rajesh Kapoor S/o Late M.R. Kapoor r/o 289/14, Sanjay Nagar, Rohtak, Haryana (who is reportedly brother-in-law of Ct. Raj Kumar,

No.327/ND) and his associate Shri Jasbir Singh S/o Sh. Jeet Singh r/o 605/28, Bharat Colony, Rohtak, Haryana & Ct. Rajkumar, No.327/ND. Shri Rajesh Kapoor stated that he is receiving some E-mails with different names since last one month, in which the sender is saying that huge amount may be transfer in his account, if he completes some formalities. He completed formalities as asked and then the sender again send an E-mail to him asking him to deposit Rs. 1,22,000/- in A/c No. 10818873950. On suspicion, he traced the address of said Account holder, which was found of L. Shakhensana r/o above. Thereafter, they reported the matter to Special Staff/ND. They were interrogated by Inspector Special Staff/ND. The matter was found suspicious and as the statement of Account E-mails in question were to be verified as such both the brothers were released in the evening on 30/08/2008 on the undertaking of one Shri Himanshu Jakhmola. Shri Rajesh Kapoor & Jasbir Singh were also asked to produce all the relevant E-mails etc on Monday i.e. 1st September 2008. The enquiry was kept pending. All the facts were lodged in Roznamcha vide DD No.7, dated 30/08/08 by Insp Special Staff/ND.

On 30.8.08, after releasing from the office of Spl. Staff/NDD Shri L. Lakhikanta had gone to Ashoka Hotel, where he is working. Thereafter, Shri Rajesh Kapoor, Jasbir Singh and Ct. Rajkumar No.327/ND took Shri L. Sakhensana in their car and also reached Ashoka Hotel, where they threatened both the brothers that either they should give them Rs.1,50,000/- otherwise they will booked them in Haryana in cheating case.

Due to fear, Shri L. Lakhikanta & his brother L. Sakhensana Singh gave them Rs.50,000/- on that day.

On 1st September 2008 Rajesh Kapoor and one another person again went to the residence of Shri L. Lakhikanta and again threatened him and his brother Shri L.

Sakhensana to give remaining demanded amount of Rs.1,00,000/- and took Rs.1,00,000/- from them.

The above act on the part of Const. Raj Kumar, No. 327/ND amounts to gross misconduct, indulged in corrupt malpractice & moral turpitude, which render him liable to be dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980.”

5. The charged officer had duly participated in the inquiry proceedings. He had submitted his defence statement on 7.8.2006. On 14.09.2009 the inquiry officer (EO) had submitted its finding to disciplinary authority (DA). On 29.09.2009, the charged officer made a representation to the disciplinary authority urging him to drop the proceedings against him. On 10.11.2009 the disciplinary authority passed an order dated 05.11.2009 dismissing the charged officer from service. On 04.12.2009, the charged officer had preferred an appeal against the order of dismissal. On consideration of the appeal preferred by the charged officer, the Appellate Authority directed further inquiry by an ACP level officer vide order dated 22.02.2010. While directing further inquiry by an officer of ACP, the Appellate Authority also directed the reinstatement of the charged officer and accordingly the charged officer had resumed the service. The inquiry report was submitted by ACP before the Appellate Authority and based on the report of the ACP, the W.P. (C) No. 3497/2014

Appellate Authority upheld the order passed by disciplinary authority against the charged officer. Feeling aggrieved by the order passed by the Appellate Authority, the charged officer had filed O.A. No. 1603/2011 before the learned Central Administrative Tribunal, Principal Bench, New Delhi.

6. During the pendency of the original application, he had expired leaving behind his widow and two minor daughters, who were impleaded in his place to prosecute the said application.

7. It is not in dispute between the parties that the copy of the inquiry report which was conducted by ACP – Satbir Singh, pursuant to the direction given by the Appellate Authority was not made available to the charged officer. Further the Appellate Authority upheld the order passed by the Disciplinary Authority on the basis of this report, in such circumstances non supply of the same to the charged officer is in brazen violation of the principle of natural justice. . It is a settled legal position that the inquiry report must be supplied to the delinquent to afford him an opportunity to defend himself. In the matter of *Managing Director, ECIL, Hyderabad, etc. etc.V. Karunakar, etc. reported in AIR 1994 SC 1074*, it has been held by the Hon'ble Apex Court as follows:

“The supply of the copy of the report is neither an empty formality, nor a ritual, but aims to digress the direction of the disciplinary authority from his derivative conclusions from the report to the palliative path of fair consideration. The denial of the supply of the copy, therefore causes to the delinquent a grave prejudice and avoidable injustice which cannot be cured or mitigated in appeal or at a challenge under Article 226 of the Constitution or Section 19 of the Tribunal Act or other relevant provisions. Ex post facto opportunity does not efface the past impression formed by the disciplinary authority against the delinquent, however, professedly to be fair to the delinquent. The lurking suspicion always lingers in the mind of the delinquent that the disciplinary authority was not objective and he was treated unfairly. To alleviate such an impression and to prevent injustice or miscarriage of justice at the threshold, the disciplinary authority should supply the copy of the report, consider objectively the records, the evidence, the report and the explanation offered by the delinquent and make up his mind on proof of the charge or the nature of the penalty. The supply of the copy of the report is, thus, a sine qua non for a valid, fair, just and proper procedure to defend the delinquent himself effectively and efficaciously. The denial thereof is offending not only Article 311(2) but also violate Articles 14 and 21 of the Constitution.”

8. The learned Tribunal is thus correct in its observation that the proper course of action for the Appellate Authority was to remit the matter back to the disciplinary authority for a fresh decision after supplying a copy of the inquiry report of the ACP Satbir Singh to the charged officer, so that he could have an opportunity to make a representation and adduce any evidence, as per his wish.

9. Learned Central Administrative Tribunal further observed that by not doing so the Appellate Authority has usurped the power of disciplinary authority and acted as a disciplinary authority himself and deprived the charged officer of his statutory right to file an appeal against the said order. The Appellate Authority thus clearly exceeded his jurisdiction as conferred on him under Rule 25(1)(a) of Delhi Police (Punishment and Appeal) Rules, 1980, which is extracted below:-

“Orders on appeal. – (1) On appeal, the Appellate Authority may,

- a) Confirm the impugned order, or
- b) Accept the appeal and set aside punishment order, or
- c) Reduce the punishment, or
- d) Disagree with the disciplinary authority and enhance the punishment after issue of a fresh show cause notice to the appellant and affording him a reasonable opportunity (including personal hearing if asked for) against the proposed enhancement.
- e) Remit the case to the authority which made the order or to any other authority to make such further enquiry as it may consider proper in the circumstances of the case; or
- f) Pass such other orders as it may deem fit.”

10. The Appellate Authority had exceeded its powers by not remitting the matter back to the disciplinary authority after collecting fresh evidence in the shape of inquiry report submitted by the ACP Satbir Singh.

11. In the light of the above discussion, we hardly find any tangible reason to agree with the impugned order passed by the disciplinary authority. There is no merit in the present petition filed by the petitioner and the same is hereby dismissed. Resultantly, the impugned order dated 30.04.2014 passed by the learned Tribunal is upheld and we direct the petitioner to comply with the directions given by the learned Tribunal within a period of two months from the date of this order.

12. With the aforesaid directions the present petition stands disposed of.

KAILASH GAMBHIR, J

I.S. MEHTA, J

FEBRUARY 24, 2015

Srb/pkb