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

+ **WP (C) No.4052/2014**

Date of Decision: 25th February, 2015

SUBE SINGH JANGHU

.... Petitioner

Through : Dr.N. Pradeep Sharma, Adv.
with Mr.S.K. Rout, Adv.

Versus

REGISTRAR GENERAL, DELHI HIGH COURTRespondent

Through : Mr.Rajshekhar Rao, Adv. with
Ms.Gauri Puari, Adv. for Delhi
High Court.
Mr.Atul Sharma, Deputy
Registrar (Criminal).

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE P.S. TEJI

GITA MITTAL, J (Oral)

1. Heard learned counsel for the parties. The writ petitioner assails an order dated 24th September, 2011 passed by the respondent whereby a penalty of withholding of increment for one year without cumulative effect was imposed upon the petitioner.

2. The facts giving rise to the instant petition are largely undisputed and to the extent necessary are briefly noted hereafter.

On the 18th April, 1984, the petitioner joined service with this court as a Lower Division Clerk. He was promoted thereafter on 5th September, 1998 to the rank of Upper Division Clerk and on 9th October, 2007 to the post of Senior Judicial Assistant. It is submitted that between 1999 till 2009, the petitioner worked as an Upper Division Clerk.

3. It is not disputed that other than the case in hand, the services of the petitioner were blemishless and there is not even any complaint let alone finding of any culpability in misconduct, misdemeanor, error or omission on his part.

4. It appears that in the year 2008, it came to the notice of the petitioner that certain trial court records in the criminal branch were not traceable. At this time, the petitioner was posted as Senior Judicial Assistant in the Criminal Branch. The petitioner contends that he brought this fact to the notice of his immediate seniors who asked him to try to locate the said record. However, despite best efforts, the missing records could not be traced out.

5. It appears that one such trial court record was summoned by the court in a judicial proceedings. It transpires that on 3rd May, 2010, the court did not hold sitting and the matter was adjourned to 9th August, 2010. For that date the dealing assistant had reported that the trial court record was not traceable. In these circumstances, on 9th August, 2010, the court had directed the Deputy Registrar concerned to conduct an inquiry and submit a report to the court within a period of six weeks.

It appears that the petitioner was the concerned dealing assistant at the relevant time.

6. During the course of the inquiry by the Deputy Registrar, the petitioner's statement was recorded on 14th September, 2010 wherein he stated thus:-

"In this case Hon'ble Court vide order dated 30.4.08 had summoned the Trial Court record. Accordingly a letter was sent to summon the record which was received in this Court on 02.08.08. Thereafter, as directed the LCR was sent to Hon'ble Court in peshi for 04.08.08. The case was adjourned to 05.12.08. As indicated below the order, the LCR was added for the peshi for 05.12.08.

It is also submitted that earlier the seat of Crl. Revision was being dealt with from Main Building and in March 2009, seat of Crl. Revision was also shifted from Main Building to Basement New Building. At the relevant time of shifting I was assigned more than 2000

pending cases of Crl. Revision alongwith LCRs. Moreover, only one helping hand was attached with me. Due to such large number of cases, I could not monitor shifting process properly. Though I had requested the concerned AOJ verbally either to bifurcate the seat or to deploy more additional hands for the smooth sailing of work of my seat. However, my request was not entertained at that time but I was only assured that as and when more officials are provided by the Establishment Branch, my request will be considered. In the meanwhile, I was transferred to the Writ Branch in November, 2009 but my aforesaid request could not be entertained. However, right now one more additional hand has been provided to work with the seat.

It is pertinent to mention here that the during shifting, the employees who have been assigned the work of maintenance of High Court building were asked to help in shifting our cases and while shifting due care was not taken as I and my asstt. Kishan Kumar were busy in sending and packing the bags in the main building which were being sent through the aforesaid staff to the branch in basement of the new building. This may be the reason for missing of the said record. It has also been found that some LCRs in Crl. Appeal have also been lost during shifting process.”

(Underlining by us)

7. Based on this statement, Mr.Kafeel Ahmed, the then concerned Deputy Registrar (Criminal) had in his report dated 14th September, 2010, drawn attention of the court with the following rule:-

“If any document or part of record is subsequently found to be missing, the Presiding Officer of the Court shall immediately take action for its recovery or

reconstruction. He shall also fix responsibility on the custodian if the document was on the index or on the official whom the custodian received, if it was not on the index.”

On his request, reconstruction of the record was ordered so that no inconvenience is caused to the court. In the meantime, he also sought apportioning of responsibility for the missing record.

8. It appears that the memorandum dated 8th March, 2011 was thereafter issued to the petitioner purporting to be under Rule 16(1)(a) of the CCS (CCA) Conduct Rules, 1965 (Page 53) enclosing a statement of the imputations of misconduct on which the action was proposed to be taken. The petitioner was permitted an opportunity to make a representation. The report dated 14th September, 2010 of the Deputy Registrar as well as the representation dated 21st March, 2011 of the petitioner was placed before the Chief Justice of this court who by the order dated 27th August, 2011, held that the judicial record was misplaced while in custody of the petitioner and as such he was responsible for the loss and misplacement of the record which act was in contravention of Rule 3(1) of the CCS Conduct Rules, 1964. In view thereof, the penalty of stoppage of one increment with cumulative effect was imposed upon the petitioner. The order was

communicated to the petitioner on the cover of the letter dated 24th September, 2011.

9. In order to explain the delay in assailing the findings and imposition of penalty, the petitioner contends that being overburdened with work and demoralization is the reason for the same. It is further submitted that the impugned order fails to note that there was nothing to support the fact that the misplaced record was actually in the possession of the petitioner.

10. The petitioner has explained that there was a colleague associated to the seat of the petitioner and that the 2000 cases assigned to him were arranged in forty open racks in the branch. It is also the submission of the petitioner that as per practice, no handing over and taking over of files is ever taken by way of preparation of file records.

11. It is noteworthy that the petitioner was posted in the Criminal Revision Branch for a period of approximately 10 years from 1999 to October, 2009. The petitioner has submitted that he had no occasion to add the trial court record to the revision files while sending files to the courts. He also adverts to his effort to streamline the record despite facing a lot of problem while handing over charge of his seat to the senior judicial assistant who took over from him. The petitioner has also

explained the manner in which bulkier trial court records were segregated from the court files while records which were not bulky were kept with the case files.

12. A material factor which is not disputed before us is the fact that the entire criminal branch was shifted from the old 'C' Block building to the second floor of the Extension Block of the new building of the Delhi High court in the winter vacation during December 2006 and January, 2007. The petitioner has explained that the records of the cases were sent to the extension block in "bastas". The trial court records which stood tagged with the files would be sent along with the files while the bulkier trial court records were sent in separate bastas and kept in steel racks.

13. The petitioner contends that the almirahs provided were also not proper in size to accommodate files and that placement of the files in almirahs was also time consuming work.

14. Be that as it may, what the matter boils down to it is, that, it is impossible to keep any record of the movement of the files and their maintenance in the branches. One material circumstance which is pointed out is that the shifting of the files and records was outsourced to a private party which made the case files and the judicial record accessible to the

outsiders. Overall control could not be exercised by any person on account of the shifting. The petitioner has submitted that the work which was assigned to the him alone has since been divided between five to six members. As per learned counsel for the petitioner, this manifests that the petitioner was substantially over burdened as well as working under extreme conditions.

15. In order to buttress this submission, the petitioner has placed reliance on a report of a three Judge Work Study Committee appointed by this court which made recommendations qua the original side of this court. It is submitted that the findings and recommendations of this committee squarely apply to all other branches of this court inasmuch as they are all functioning under the similar circumstances. This committee had recommended steep increase in the staff strength of the branches to ensure efficiency and pointed out that the assistants in the court were severely overworked.

16. Dr.N. Pradeep Sharma, learned counsel on behalf of the petitioner has also drawn our attention to the fact finding inquiry dated 14th May, 2014 conducted by Ms.Anu Malhotra, a DHJS, the then Joint Registrar, after certain judicial records had gone missing from the writ branch. This inquiry

had also noted that there was no procedure followed for maintaining a register to indicate receipt of files by the personnel of the court and which files are handed over. The files of the sections were lying in open condition in open racks and on the floor and can be removed at any time coupled with the fact that the litigants are present in the writ branch even before the personnel of the branch reach or after they leave inasmuch as no guard was posted outside the judicial branches. In this background, the learned Joint Registrar had re-noted that particular case was not fit for initiation of disciplinary proceedings but the looking after and maintenance of records and their movement deserves to be corrected immediately. The position of the criminal branch is not different.

17. The statement of the petitioner would also show that despite the above recommendations by the Committee of three judges as well as by the learned Joint Registrar of this court as back as in 2004, the position has not changed.

18. Our attention is also drawn to the case of Manju Khanna, another employee of this court, who was posted as dealing assistant in the Criminal Branch and was also similarly penalized for trial court records having been misplaced. She was charged on 15th July, 2010, and, upon her

representation being found unsatisfactory, the penalty of withholding of two increments without cumulative effect as well as reversion to the substantive post of senior judicial assistant was imposed upon her.

19. Ms.Manju Khanna had challenged the imposition of this penalty by the Writ Petition (Civil) No.891/2013 which was allowed by the court on 9th May, 2014 quashing the penalty levied upon her. It is noteworthy that in her case also, the inquiry officer had noticed the fact that there was no proper handing over or taking over of files by her predecessor; records were lying open in branches with easy access to all; her being overburdened on her seat; reconstruction of the record had been undertaken; humiliation suffered by her and denial of promotion.

20. While allowing the petition on 9th May, 2014, the court was persuaded by the above observations of the inquiry officer and also returned the finding that there was *“neither willful negligence nor lack of bona fide on the part of the petitioner. The overwhelming adverse conditions are the actual cause for the trial court records to be misplaced. The failure is not that of the petitioner. It is the failure of the system”*.

21. Though increments were given to her, Ms. Manju Khanna was denied appropriate appointment and promotion. Manju Khanna was therefore

compelled to challenge the reversion by way of WP (C) No.574 of 2013. By an order dated 31st January, 2013, her writ petition was originally dismissed on grounds of delay and laches. However, Ms.Manju Khanna took the matter to the Supreme Court by way of Special Leave Petition which came to be granted by the order dated 4th April, 2014 whereby it was held that the writ petition did not suffer from delay and laches. Finally, Writ Petition (C) No.574 of 2013 was allowed by this court by the order dated 25th August, 2014. It is not disputed that the order dated 25th August, 2014 stands implemented and has attained finality.

22. The case of the petitioner is on parity on all material facts and circumstances with that of Ms.Manju Khanna. Both cases relate to the criminal branch and the circumstances in which the record came to be missing are not at all different. The inevitable conclusion from the foregoing discussion is that the petitioner has not acted willfully or negligently. The loss of the record cannot be attributed to the petitioner especially given the fact that the overwhelming adverse conditions are the actual cause for the trial court records to be misplaced. The failure is not that of the petitioner. We reiterate that it is the failure of the system.

Given these exceptional circumstances as well as the explanation tendered by the petitioner, we are not inclined to reject the consideration of the petitioner's case on grounds of delay and laches.

For all these reasons, the penalty imposed upon the petitioner by the order dated 27th August, 2011 communicated vide order dated 24th September, 2011 is hereby set aside and quashed leaving the parties to bear their own costs.

(GITA MITTAL)
JUDGE

(P.S. TEJI)
JUDGE

FEBRUARY 25, 2015
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