

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

Date of Decision: 04.02.2016

+ W.P.(C) 1787/2013

MAHESH KUMAR Petitioner

Through: Mr. Samrat K. Nigam with
Ms. Ayshwarya Chandar,
Ms. Ankita Mahajan &
Mr. Abhimanyu Walia, Advs.

versus

THE HIGH COURT OF DELHI
THROUGH THE REGISTRAR GENERAL Respondent

Through: Mr. Viraj R.Datar with
Mr. Vikram Pradeep &
Mr. Karan Balraj Mehta, Advs.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAJMI WAZIRI

HON'BLE MR. JUSTICE SANJIV KHANNA (Oral)

1. Mahesh Kumar, Senior Judicial Assistant of the High Court of Delhi impugns (i) the order dated 4.9.2012 of the Registrar General of this Court imposing on him a penalty of withholding of two increments for two years without cumulative effect and (ii) the order dated 23.11.2012 by which his representation against the former order was dismissed.

2. The disciplinary proceedings were initiated against the petitioner under Rule 16(1) (b) of the CCS (CCA) Rules, 1965 on two Articles of Charge conveyed to him vide memo dated 22.07.2011. The first Article records that the petitioner, working

as a Dealing Assistant in Original-I Branch, Seat C-II, was dealing with civil suits, including judicial file of CS(OS) No.406/2005 titled ***Rajesh Gulati & Anr. vs. Jagdish Chander Gulati & Ors.***, and was negligent, careless and inattentive in performing his official duties having lost the judicial file of the aforesaid suit resulting in a lot of inconvenience to the parties and the Court. The second Article of Charge imputes that the petitioner, in his reply dated 21.2.2011, had falsely implicated Mr. Birender Singh, Senior Judicial Assistant for the loss of the file in question.

3. The enquiry report dated 30th May, 2012 holds that the two charges stand proved.

4. We have heard the learned counsel for the petitioner and the counsel for the High Court of Delhi, examined statement of witnesses recorded before the enquiry officer, the replies/queries answered by the petitioner, and other officers during the preliminary enquiry, the enquiry and the report and the impugned orders.

5. The seminal issue and question which had arisen before the Enquiry Officer was: whether the file of CS(OS) No.406/2005 was returned to the petitioner after it was sent to the office of Mr. Birender Singh, Senior Judicial Assistant. By circular dated 27.11.2008, judicial records/case files in 118 suits, including CS(OS) No.406/2005, were called. The circular Annexure-I (Page 49) mentions:

“As directed by Registrar (Original), all

Dealing Assistants were directed to make available the files of concerned cases shown in the list of that date itself’.”

6. The stand and the stance of the petitioner is that the file of suit bearing CS(OS) No.406/2005, along with other files included in the said list in his unit, were sent to the office of the Senior Judicial Assistant and was never returned; that this fact was brought to the notice of Administrative Officer (Judicial) [AOJ]; that the petitioner is thus not guilty and the charge of negligence, etc., were not established or proved; that the petitioner has an unblemished and perfect service record of more than 27 years.

7. It is an admitted and accepted position that recording of the delivery and receipt of the 118 suit files requisitioned from and sent by the Dealing Assistants pursuant to the circular dated 27th of November, 2008 was not maintained. We also do not know whether suit file No. CS(OS) No.406/2005 was actually presented for examination by the Committee of Judges. The record with regard to this examination was not brought on record and is not a part of the enquiry report or the evidence led.

8. Faced with the aforesaid situation, our attention was drawn to the statement of Mr. Birender Singh (PW-1) who has referred to document Ex.PW-1/5, a copy of the Movement Register, and submitted that the file of CS(OS) No.406/2005 was missing from 15th November, 2008 and hence was never sent, pursuant to the circular dated 27th November, 2008. Neeraj Kumar (PW-2) has deposed that one of the parties in that case had filed an application

for obtaining certified copies of some orders on 14.11.2008 and that even at that time, the suit file was untraceable. When Neeraj Kumar informed to the petitioner about this, he had told him that the file had been sent to the Lok Adalat. PW-2 has testified that he had repeatedly questioned the petitioner regarding the missing file.

9. We have considered the said aspect. The suit file was sent to the Lok Adalat fixed on 15.11.2008. Thereafter, the file was requisitioned in terms of circular dated 27th November, 2008 to be placed before the Committee of Judges. The charge-sheet including the Memorandum or Imputation of Misconduct did not allege that the file was untraceable on or before 27th November, 2008. Indeed, the statement of imputation of misconduct does not even state that the file was missing on 15th November, 2008. This assertion and imputation was developed only during the recording of evidence. We need not dilate and debate this matter any further because the enquiry officer's report, in categorical terms, holds:-

“PW 1 Sh. Birender Singh inter alia deposed that in November 2008 when the mediation process started, then had had been asked to prepare the list running into four pages and proved the same as Ex. PW1/8A to Ex. PW1/8D and the particulars of the suit in question find a mention at Sr. No.58 thereof. On the 1st page of Ex PW1/8A there is an endorsement dated 27.11.2008 by PW1 Birender Singh. As per the facts mentioned against point Nos. 3 & 5 of the statement of imputations of misconduct against the Govt. Servant/Charged Official in respect of Article 1 appended to the aforesaid Memo No.65/D5/Vig/Inq/DHC93 dated 22.07.2011 “file of the suit in question had been sent by him (i.e. the Govt.

Servant/Charged official) along with other case files which were fit for mediation in the Chamber of the nominated Hon'ble Judge". Hence, this means that even as per the Department, the case file of the suit in question had been received back in Original II Branch by which the same had been earlier sent "for 'Lok Adalat' on 15.11.2008" by him as reflected at point 'A' on Ex.PW1/5. Therefore, the above said portion of deposition of PW2 Neeraj Kumar to the effect that at the time of receipt of Ex PW1/7 dated 14.11.2008, the case file of the suit in question was not available; is not in consonance with the case of the Department. Hence, the said portion of his evidence is rejected."

(emphasis supplied)

10. The said judicial file has certainly been lost and has not been traced out. The judicial file was in custody of the petitioner but, as per the petitioner, it was sent to the office of Mr. Birender Singh, SJA in terms of the circular dated 27.11.2008 and thereafter it was not returned. We do not have any evidence to show that the file was never received in the office of Mr. Birender Singh, SJA and that the file was never presented to the Committee of Judges. The petitioner contends that if the file had not been sent, a requisition or note would have followed. It is not the case of the respondents that any such note or requisition was made. With regard to return of the file, there is no evidence and material to show that the petitioner had received it back. In fact, it is the case of the respondents that no signatures were obtained on the delivery of the file in the office of Mr. Bijender Singh, SJA or on the return of the file from his office to the petitioner.

11. Thus, in the present case, there is no evidence or document

to show that the suit file was returned to the petitioner after files were requisitioned in terms of the Circular dated 27th November, 2008. In the absence of a Delivery and Receipt register or any other such document, the petitioner cannot be presumed to be guilty. Possibly there may not have been such or similar incidents. In any case, the factual matrix of the present case highlights the importance and need to have a protocol or standard operating procedure in place for when files with original records/documents are requisitioned and returned. If a register was in place and had been maintained, this controversy would not have arisen and it would have been easy and effortless to ascertain when the file went missing.

12. The learned counsel for the petitioner has drawn our attention to three other judgments of this Court in WP(C) No.574/2011, *Manju Khanna vs. The Registrar General, Delhi High Court* decided on 25.8.2014, WP(C) No.891/2013 again filed by *Manju Khanna vs. The Registrar General of Delhi High Court* decided on 9th May, 2014 and WP(C) No.405/2014 and *Sube Singh Janghu vs. Registrar General, Delhi High Court* decided on 25th February, 2015. Certain aspects were also highlighted. These decisions proceed and were decided on related facts.

13. In view of the aforesaid factual position, we feel that the petitioner is entitled to succeed. Accordingly, we allow the present writ petition and set aside the order dated 4.9.2012 imposing penalty of withholding of two increments for two years

without cumulative effect. In the facts of the present case, there will be no orders as to costs.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

FEBRUARY 04, 2016/ak