

\$~17

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

%

Date of decision: 28th March, 2016

+ **W.P.(C) 23308-10/2005**

UOI & ORS

..... Petitioners

Through : Mr Anuj Aggarwal, ASC with
Mr Shubhanshu Gupta, Advocate.

versus

H.C.SILAK RAM & ORS.

..... Respondents

Through : Mr Mimansak Bhardwaj and
Ms Gunjan Bansal, Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJIV KHANNA

HON'BLE MR JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J. (ORAL):

1. Union of India, through Commissioner of Police and Others, has filed this writ petition which impugns a common order dated 24.05.2005 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (Tribunal, for short), in O.A. No.416/2004 filed by Head Constable Silak Ram, O.A. No.627/2004 filed by Jeet Ram (Driver), O.A.No.417/2004 filed by ASI Ram Kumar and O.A. No.255/2004 filed by Head Constable Ramesh Kumar. The OAs filed by the respondents have been allowed and penalty of forfeiture of three years of approved service permanently entailing proportionate reduction of pay has been quashed. However, in case of ASI Ram Kumar and HC Ramesh Kumar liberty has been granted to the disciplinary authority to re-consider the whole matter and pass appropriate fresh order in accordance with

rules/law.

2. The same order dismisses O.A.No.633/2004 filed by ASI Khajan Singh. It is stated that ASI Khajan Singh had expired during the pendency of the OA before the tribunal. This decision has attained finality and has not been challenged.

3. The present writ petition arises out of second round of litigation for the earlier orders passed by the disciplinary authority were set aside by the High Court in Civil Writ Petition No. 2368/2000 permitting the disciplinary authority to pass a fresh order.

4. The disciplinary authority consequently passed the order dated 19.2.2001, imposing the following penalty:-

“Therefore, in view of the directions given by the Hon’ble CAT vide judgments dated 09.12.02 and 28.01.03 and PHQ’s circular No.12230-430/CR-I/PHQ dated 16.4.02, it is hereby ordered that three years approved service of ASI Khzan Singh, No.4499/D, ASI Ram Kumar No.4648/D, Const. (Dvr.) Jeet Ram No.4211/PCR, 210/Commn. (now 4529/PC)HC Ramesh Kumar, No.1183/PCR-135/W (now 972/PCR) and HC Silak Ram, No.572/PCR, 314/N (now 877/PCR) is forfeited permanently entailing proportionate reduction in their pay.”

5. Appeals preferred by the respondents herein were dismissed by the Additional Commissioner of Police on 13.02.2002.

6. These orders were then made subject matter of the challenge before the Tribunal in the aforesaid O.As. The said O.A.s have been allowed in the case of Head Constable Silak Ram and Jeet Ram and also in the case of ASI Ram Kumar and Head Constable Ramesh Kumar. In the latter cases of ASI Ram Kumar and Head Constable Ramesh Kumar with

liberty to the disciplinary authority to consider the whole matter and pass appropriate order in accordance with rules/law.

7. Head Constable Ramesh Kumar and ASI Ram Kumar, on 10.08.2000, at about 7.28 A.M., were posted at Shalimar Bagh Police Station as Commander C-4, where as ASI Khajan Singh, Head Constable Silak Ram and Constable Jeet Ram were posted at Police Control Room Van (Commander-21). They were served with the charge sheet on the following summary of allegations:-

“SUMMARY OF ALLEGATIONS

It is alleged that on 10.08.2000 at 7.28 A.M. a telephonic call was received in Control Room which was attended by ASI Abdul Jaffar and he filled up PCR Form and sent the same to Commander-1 Net through W/Const. Gyan Wati. Commander-1 flashed the message to Commander-2, Commander-4 and Commander-21 which is as under:-

“EK BLUE COLOUR ESTEEM CAR NEAR BENGALI KOTHI MULTANI MOHALLA ME 3-4 LADKE SHEESHA BAND KARKE SANDEH JANAK HALAT ME EK GHANTE SE KHADE HAIN”

But the staff of Commander-4 i.e. ASI Ram Kumar, No.4648/D, HC Ramesh No.1183/PCR and Commander-21 i.e. ASI Khajan Singh, No.4499/D, HC Silak Ram, No.572/PCR and Const. (DVr.) Jeet Ram, No.4211/PCR recorded the messages in their log books which are as under:-

Commander-4:- “EK ESTEEM CAR RANI BAGH MULTANI MOHALLA ME 3-4 AADAMI SHAK KI HALAT ME SHEESHA BAND KARKE

KHADE HAIN”.

Commander-21:- “CALL NOTE KARO : EK NEELE RANG KI MARUTY CAR ESTEEM JO MULTANI MOHALLA RANI BAGH ME CAR BAND SHEESHA KIYA HUA HAI OR 3-4 LADKE JINHONE APNE MUH DHAK RAKHE HAIN JO UGARWARDI LAE RAHE HAIN SHAK KE HALAT ME KHADE HUA HAIN”.

Later-on at 7.38 A.M., another call was received in Control Room that the occupant of the abovesaid car had kidnapped a child. After some time, the alleged car along with the dead body of the kidnapped child was found abandoned near cement siding Punjabi Bagh. Had C-4 and C-21 recorded the call correctly and if C-21, the PCR Van could reach the exact place immediately. Then the alleged incident could have been avoided.

It is further alleged that as per the directions of Senior Officers circulated vide this office order No.3864-901/Admn./PCR, dated 1.7.2000, that the PCR Van scheduled for patrolling near Parks/Schools/Places visited by morning walkers wherever applicable but the PCR Van C-21 remained at its base which is clear violation of the directions of senior officers. Had the staff of PCR Van C-21 complied with the said orders/directions of the senior officers. Then their position could have been near School & Parks at the time of incident and the alleged incident could be averted.

The above act on the part of ASI Khajan Singh, No.4499/D, ASI Ram Kumar No.4648/D, HC Silak Ram, No.572/PCR, HC Ramesh, No.1183/PCR and Const. (Dvr.) Jeet Ram, No.4211/PCR amounts to gross misconduct,

negligence, carelessness and dereliction in the discharge of their official duties which renders them liable to be dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980.”

8. In nutshell as per the said charge sheet, the staff of PCR Van Commander-21 had failed to reach the place of incident as they had recorded incomplete address. The PCR Van (Commander-21) had reached Multani Mohalla within three minutes, but they could not trace the exact place due to incomplete address recorded in the log book. If complete and correct address had been duly recorded, PCR Van (Commandar-21) might have succeeded in tracing the real culprits or preventing the crime and, therefore, they were derelict in performing their duty. Similarly Static Commander C-4 had failed to correctly record the communication received from the Police Control room, which amounts to negligence, carelessness and dereliction in discharge of their official duties.

9. The Tribunal, in the impugned order, has referred to the contention of the respondents that two other police officers also charge-sheeted were exonerated and the petitioner had failed to file a copy of the call book of the conversation which took place with PCR Van (Commander-4) and PCR (Commander-2). True copy of the site plan was also not filed.

10. The contention of the respondents that the calls received were correctly recorded was not accepted by the Tribunal. However, the tribunal went into the question of the role and duties of the four respondents and on this basis has prefaced its findings.

11. On the question of involvement of ASI Ram Kumar and Head

Constable Ramesh Kumar, the Tribunal has, recorded the following findings:-

26. With respect to ASI Ram Kumar and HC Ramesh Kumar, there has been a controversy raised during the course of submissions about the duties of Commander C-4 where these applicants were posted. In paragraph 4.5 of the OA No.255/2004, it has been pleaded:

“4.5 That whenever any call at No.100 is received at the PHQ called Commander-I (C-I), it is directly flashed by C-1 to Commander-2 (the local police station in whose area the crime has taken place) and is also flashed to Commander-21 (the PCR van stationed/available nearest to the place of occurrence). This message is also just heard by static C-4, but static C-4 is not supposed to go to the place of occurrence. It is heard by C-4 because static C-4 is also stationed at the zonal level in the same Net. It is reiterated that C-4 is static where it is not the duty of the applicant to leave his office and to either rush to the local police station or to the PCR van. The reason is very clear and obvious as the message flashed from PHQ is received directly by Static C-2 (local police station and) static C-1 (nearest PCR VAN), for rushing to the place of occurrence. If in any situation, Mobile C-21 (the receiving nearest PCR van is not able to rush to the place of occurrence, then C-21 will inform C-1(PHQ) who will then ask C-4 over the net as to which is the other nearest PCR van which could be directed to rush to the place of occurrence. C-4(the static zonal then, looks at the detailed information which it has of all the PCR van in the zone and immediately informs C-1(PHQ) about the nearest available PCR van. On getting this information from C-4, C-2 flashes the message again to the next available PCR van. Thus C-4 has no roll to play in going to the spot or in informing or guiding either C-21 or C-2, C-4 is static.”

In the counter-reply that has been filed, though the fact has been denied but there are no other duties that have been shown as is apparent from the following pleadings:-

“4.4 That the contents of para 4.4 of the OA are incorrect as stated, hence denied as the applicant is misleading the facts. The case was not given to C-4 as this is the primary duty of the C-4 to note all calls given by the Commander-1 and he failed for the same and the staff of C-21 failed to reach the exact place of incident and to nab the culprits as well as the crime could have been prevented.

4.5 That the contents of para 4.5 of the OA are not admitted in view of reply to para 4.4 above.

27. This clearly shows that the assertions of the applicant cannot be taken to be incorrect. The plea of the applicants finds support from the information that was given by the Assistant Commissioner of Police which we have reproduced above already. It reveals that these applicants were not supposed, thus, to proceed towards the site.

28. In the charge, it has been mentioned that had he taken the call to heart to spring into action instantaneously, this incident could have been very well averted. As per the duties fixed, Commander-21 with staff had proceeded towards the site. It has not been shown that had the message been transmitted correctly, the incident could have been avoided so far as these applicants are concerned. The transmission of the messages does not indicate that any further assistance was required from Commander-4. Thus, it can only be stated that the message had wrongly been recorded by Commander-4.”

12. In the aforesaid circumstances, the Tribunal observed that ASI Ram Kumar and Head Constable Ramesh Kumar as per duty allocation were not supposed to proceed to the spot and investigate or make

inquires. Transmission of the message did not require or mandate any further assistance from the said officers. It had not been shown that the wrong recording of the message, had adversely effected or obstructed the police checking the occurrence. Whether or not wrong recording of message amounts to misconduct and what could be the appropriate punishment had not been examined by the disciplinary authority. The Tribunal, therefore, did not express any view and had given liberty to the disciplinary authority to consider the matter and pass appropriate fresh order in accordance with rules/law.

13. It is apparent from the judgment of the Tribunal that the role of the Commander-4 was limited and different from the role assigned or purportedly attributed to them by the disciplinary authority for they were not required to go to the place of occurrence. This was not their duty.

We do not find any infirmity in the aforesaid conclusion and finding recorded by the Tribunal in the case of ASI Ram Kumar and Head Constable Ramesh Kumar.

14. ASI Khajan Singh, Head Constable Silak Ram and Constable Driver Jeet Ram were posted in the PCR Van Commander-21 [Head Constable Jeet Ram has expired and is now represented by his legal heirs]. The Tribunal, in the impugned order, has recorded a finding, which is accepted as correct, that Head Constable Silak Ram was the Gun-man and Constable Jeet Ram was a driver. As a driver, Jeet Ram was to drive the PCR Van as per directions of ASI Khajan Singh or the Gun-man. A Gun-man renders assistance to the in-charge in attending calls. In the present case, the wireless message from Commander-2 was attended to and heard by ASI Khajan Singh of the PCR Van Commander-21. Defective noting

was made by ASI Khajan Singh. As a result of the said defective noting, ASI Khajan Singh, Head Constable Silak Ram and Head Constable (Driver) Jeet Ram could not locate and reach the place where the crime had taken place. The Tribunal, on the said aspect, has noted:-

“23. ASI Khajan Singh is the person who is stated to have recorded the message in Commander-21. Because of defective noting, though they went towards site, but could not trace it. The particulars were not completely recorded, therefore, ASI Khajan Singh is responsible in this regard. It is because of the delay occurred that incident took place. We find no reason, therefore, to conclude that ASI Khajan Singh can be exonerated.

24. However, as regards the HC Silak Ram, who was the Gunman and Constable (Driver) Jeet Ram, it has been pointed that they did their duty because Driver was to drive and the Gunman has to do his duty, if required. The duties of the Gunman has been provided to us. Though it is provided that he renders assistance to Incharge of the Van in attending the calls, but it is not the case that it is because of his non-assistance this fact took place.

25. Similar is the case of the Driver. The duties provided indicate that when Incharge of the Van and Gunman are busy in attending a call, he will be responsible for attending the wireless set. That is so, but it is not the case of the respondents that it is because of his dereliction of duty, that incorrect message was recorded. Therefore, in the peculiar facts, the Driver of the Van Jeet Ram and HC Silak Ram, Gunman cannot be held responsible. There is no material to fix responsibility on them.”

15. The aforesaid finding recorded by the Tribunal does not require any interference. The petitioners have failed to notice the difference in duties and role assigned to ASI Khajan Singh and Head Constable Silak

Ram and Head Constable (Driver) Jeet Ram. Wireless message was attended by ASI Ram Kumar and recorded in the log book. Head Constable Silak Ram had not recorded the said message and had not heard the same. Constable Jeet Ram was their driver and it is not the case of the petitioner that he was attending to the wireless, which was recorded by the ASI Khajan Singh in the log book.

16. We do not find any infirmity in the order passed in respect of Head Constable Silak Ram and Jeet Ram, (since expired and now represented by his legal heirs).

17. The writ petition is accordingly dismissed. No costs.

SANJIV KHANNA, J

SANJEEV SACHDEVA, J

MARCH 28, 2016
‘sn’/ssn

