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

+ **W.P. (C) 6874/2009 and CM No.2132/2009**

% *Date of Judgment: 28th November, 2016*

JOINT COMMISSIONER OF POLICE Petitioner
Through Mr. Naushad Ahmed Khan, ASC with
Ms. Hancy Wadhwa, Advocate

versus

CONSTABLE PHOOL SINGH Respondent
Through: Ms.Saahila Lamba, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (ORAL)

1. Challenge in this writ petition is to the order dated 1st January, 2008 passed in RA No.76/2007 in OA No.2274/2004 as well as the order dated 11th October, 2006 in OA No.2274/2004 passed by the Central Administrative Tribunal (hereinafter referred to for short as 'the Tribunal') by which the RA filed by the respondent was allowed.
2. The respondent was working as a Constable in Delhi Police. A departmental inquiry against ASI Sube Singh, Constable Harminder Singh and the respondent herein was initiated by an order dated 10th September, 1998 under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980. A complaint was received from many residents of Nangla Machi through Shri Raghubir Singh Kapoor, resident of

1178, Dev Ram Park, Tri Nagar, Delhi, narrating that the inhabitants of Nangla Machi, Dev Nagar, met him and gave a written complaint against ASI Sube Singh, who was posted in Police Station Parliament Street (Special Staff). It was alleged in the complaint that Shri Nissar Ahmed was falsely implicated in a case by ASI Sube Singh along with his subordinates i.e. Constable Harminder Singh and the respondent herein and took away Nissar Ahmed to Police Station Parliament Street though nothing was found from him and ASI Sube Singh accepted Rs.2,000/- from wife of Sh.Nissar Ahmed namely Smt.Shakila Begum in the presence of Prabhu Dayal and others in order to release her husband and the said bribe money was arranged by Smt.Shakila Begum after pledging her ornaments.

3. On the said complaint, an inquiry was conducted by the ACP/HQ/Vigilance which revealed that on 7th July, 1991, ASI Sube Singh along with two Constables i.e. Harminder Singh & the respondent herein carried out a search at the house of Nissar Ahmed, resident of Nangla Machi and during the search, a lighting *dibbi* containing kerosene oil fell down on the ground resulting into fire in the *jhuggi* which was extinguished by ASI Sube Singh and the people from the locality. Meanwhile, Nissar Ahmed, owner of the *jhuggi*, while returning to his *jhuggi* after hearing the news, was whisked away by ASI Sube Singh to Police Station Parliament Street where he kept him illegally. After hearing the news, neighbours including Sh.Prabhu Dayal, Sh.Allaha Bax and others came to the Police Station Parliament Street and contacted ASI Sube Singh who demanded bribe of Rs.10,000/- in order to release Nissar Ahmed. However, the bribe

could not be arranged due to odd hours and on next day i.e. 8th July, 1991, wife of Nissar Ahmed managed to procure Rs.2,000/- after pledging her ornaments and handed over the said amount to ASI Sube Singh in the presence of Allah Bax, Bulki and Prabhu Dayal. Despite promise, ASI Sube Singh did not release Nissar Ahmed.

4. On 10th July, 1991, ASI Sube Singh concocted a story that he along with Constable Harminder Singh and respondent herein while on patrolling duty, received a secret information at the spot and swung into action at once and at 4:15 pm the accused Nissar Ahmed, as per his secret information reached Pragati Maidan, was apprehended with one *Dessi Katta* (country made revolver) and two rounds and an FIR No.344/1991 under Sections 25/54/59 of the Arms Act was registered against Nissar Ahmed at Police Station Tilak Marg.
5. Keeping in view the gravity of mis-conduct, ASI Sube Singh, Constable Harminder Singh and the respondent herein were dismissed from the service under Article 311(2)(b) of the Constitution of India vide office order dated 8th May, 1992.
6. Aggrieved with the decision of the Disciplinary Authority dated 8th May, 1992, ASI Sube Singh, Constable Harminder Singh and the respondent preferred a joint OA No.1758/92 before the Tribunal. The said OA was disposed of by order dated 25th March, 1998. The following order was passed:

“16.....we dispose of this O.A. with a direction that in the event applicants file an appeal against the impugned order dated 8.5.92 within two months from the date of receipt of this judgment, the delay in filing the same shall be condoned and

the appellate authority will make a sincere and honest attempt to hold an enquiry in the manner prescribed by the rules, after affording full opportunity to the appellants to show that the charges against them are not true, and thereafter dispose off these appeals, in accordance with rules within four months from the date of their being filed.”

7. Pursuant to the said order passed by the Tribunal, a joint appeal was filed by ASI Sube Singh, Constable Harminder Singh and respondent herein against the order of punishment by way of dismissal from service dated 8th May, 1992 and the Appellate Authority set aside the orders of dismissal of ASI Sube Singh and Constable Harminder Singh and respondent herein and directed the initiation of a departmental inquiry into the allegations in the complaint under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980.
8. Finding of the Inquiry Officer vide report (Annexure P-3) reflects that the charge which if dissected is made of the following:
 - “(i) setting on fire the *jhuggi* of Nissar Ahmed;
 - (ii) demanding of Rs.10,000/- and accepting Rs.2000/- for his release; and
 - (iii) false implication of Nissar Ahmed under Arms Act.”
9. It is not in dispute that the first two charges framed against the respondent were not proved. As far as the third charge is concerned, the third charge was proved.
10. The Disciplinary Authority i.e. DCP, New Delhi, vide order dated 29th

September, 1999 awarded punishment of forfeiture of one year approved service of ASI Sube Singh, Constable Harminder Singh and respondent herein Phool Singh for a period of one year permanently. The pay of ASI Sube Singh was reduced by one stage from Rs.4400/- P.M. to Rs.4300/- P.M. in the pay scale of Rs.4000-100-6000 for a period of one year from the date of issue of this order. The pay of Constable Harminder Singh was reduced by one stage from Rs.3,125/- P.M. to Rs.3050/- P.M. in the time scale of pay of Rs.3050-75-3950-80-4590 for a period of one year and similarly pay of respondent was reduced by one stage from Rs.3,125/- P.M. to Rs.3050/- P.M. in the time scale of pay of Rs.3050-75-3950-80-4590 for a period of one year from the date of the order. It was also directed that they will not earn increment of pay during the period of reduction and on the expiry of this period the reduction will have the effect of postponing of their future increment of pay. The period of suspension of ASI Sube Singh and Constable Harminder Singh from 16th July, 1998 to 19th August, 1999 and of respondent herein from 22nd July, 1998 to 19th August, 1999 was treated as “Not Spent on duty”.

11. The Appellate Authority rejected the appeal of the respondent herein on 10th April, 2000. This resulted into filing of OA No.2637/2002 by the respondent herein before the Tribunal which was decided on 20th May, 2003. The Tribunal quashed the orders passed by the Disciplinary Authority and Appellate Authority holding that it is a case of “no evidence”. Paras 5 to 7 of the said order read as under:

“5. We do not dispute the proposition that if there is no material against a person, in that event this

Tribunal would be competent to take into the evidence and interfere. However if there is any material or on preponderance of probabilities, the findings arrived at by the concerned authorities could be supported, this Tribunal will not sit as a Court of appeal and thereupon interfere in the said findings. Even if on appreciation of evidence, the Tribunal intends or feels that the findings cannot be supported the scope of interference in judicial review would be negligible.

6. What is the position herein? The witnesses examined did not name the applicant to be the person instrumental in taking away Nishar Ahmed from his Jhuggi and subsequently implication. There is no overt act on the applicant indicated or read to us in evidence to come to such a conclusion in fact the appellate authority while deciding the appeal filed by the applicant also was conscious of this fact and recorded:

“Only one PW i.e. Nishar Ahmed who was arrested in the Arms Act case had deposed that ASI Sube Singh and Ct. Phool Singh, whom he identified during Delhi Police, had implicated him falsely in Arms Act case. The other witnesses did not name any police official but they only stated that 4/5 policeman took away Nishar Ahmed from his Jhuggi. Since during the D.E. the involvement of ASI Sube Singh and Ct. Phool Singh is established, the appeal of Constable Phool Singh No.1201/ND is rejected. However, since Constable Harminder Singh's involvement is not indicated by any witness, he cannot be held

guilty for wrongful apprehension. However, since his departure along with two remains unrebutted, he remains at fault to that extent and I take a lenient view and modify the punishment of forfeiture of one year approved service for a period of one year permanently awarded to Constable Harminder Singh, No.1204/ND by the disciplinary authority, to that of censure. The period of dismissal of Constable Harminder Singh No.1204/ND i.e. from 8.5.1992 to the date of joining of the department i.e. 16.7.1998 has already been correctly decided by the disciplinary authority as dies non on the principle of "No work No pay" and there is no scope to modify this part of punishment. However, his suspensions period from 16.7.1998 to 19.8.1999 is decided as period spent on duty for all intents and purposes."

7. Once it had come in findings that there is no evidence against the applicants with respect to the charge for which he has been held guilty question of taking a lenient view or awarding a penalty of censure will not have the sanction of law. The appellate authority, as we have already indicated above, was aware of the fact that there was no witness who made any averment against the applicant for apprehending Nishal Ahmed wrongly and subsequently implication in the case referred to above. In that view of the matter, there is no escape not only to hold that it was a matter of no evidence against the applicant. Therefore the disciplinary and the appellate authority cannot be sustained.

8. For these reasons, we quash the impugned order holding that it is a case of no evidence. O.A. is disposed of.”

12. It is unfortunate that despite quashing of the orders passed by the Disciplinary Authority (dated 29th September, 1999) and that of the Appellate Authority (dated 10th April, 2000) by the Tribunal vide order dated 20th May, 2003, the DCP, New Delhi, without applying its mind issued an order No.6243-6268 dated 8th August, 2003 by which it gave effect to the order of the Disciplinary Authority dated 29th September, 1999. In this order dated 8th August, 2003, the Disciplinary Authority i.e. DCP has wrongly mentioned that the order has been passed pursuant to order dated 20th May, 2003 of the Tribunal in OA No.2637/2002.
13. The Appellate Authority rejected the appeal of the respondent on 9th July, 2004 against the order dated 8th August, 2003. The respondent herein filed an OA No.2274/2004 before the Tribunal assailing the order dated 8th August, 2003 and 9th July, 2004. By an order dated 11th October, 2006, in view of the order passed in the matter of ASI Sube Singh, the Tribunal directed the petitioner herein to pay 50% of the salary to the respondent herein for the period from 8th May, 1992 to 22nd July, 1998 and during the suspension, full salary for the period from 22nd July, 1998 to 19th August, 1999 after deducting suspension allowance, if paid to the respondent herein.
14. Neither of the parties in OA No.2274/2004 brought to the notice of the Tribunal its order dated 20th May, 2003 by which the order of the Disciplinary Authority dated 29th September, 1999 and order of the

Appellate Authority dated 10th April, 2000 were already quashed. It was also not brought to the notice of the Tribunal that in violation of order of the Tribunal dated 20th May, 2003, the Disciplinary Authority gave effect to its order dated 29th September, 1999. Without noticing the order dated 20th May, 2003, even the order dated 11th October, 2006 was passed by the Tribunal which led the respondent herein to file RA No.76/2007 and again the Tribunal allowed RA on 1st January, 2008 by substituting para 12 of the original order dated 11th October, 2006 which reads as under:

“12. In the present case also we have no reason to take a different view. Accordingly, in view of the above background as well as the identical facts and circumstances, we set aside the impugned orders of the disciplinary and the appellate authorities and the applicant is restored his forfeited one year's approved service. We, however, direct the respondents to pay 50% of the salary to the applicant for the period 8.5.1992 to 22.7.1998. So far as the period of suspension is concerned, since the applicant has been subsequently reinstated, he shall be entitled to the full salary for the period from 22.7.1998 to 19.8.1999 by deducting the suspension allowance, if paid to the applicant. With these directions, OA is disposed off. No costs.”

15. We have heard the learned counsel for the parties and perused the record.
16. It is contended by the learned counsel for the petitioner that in the connected OA filed by ASI Sube Singh regarding incident in question, the Tribunal has directed the petitioner to pay 50% salary to ASI Sube

Singh for the period from 8th June, 1992 to 16th July, 1998 and full salary for the period from 16th July, 1998 to 19th August, 1999 after deducting suspension allowance and by order dated 23rd November, 2016 passed in W.P. (C) 2417/2007, the order was modified and he was neither given 50% of salary from 8th June, 1992 to 16th July, 1998 and nor salary for the period from 16th July, 1998 to 19th August, 1999 and only for purpose of calculation of pensionary benefits, the period from 8th June, 1992 to 16th July, 1998 was treated as a period spent on duty and the same view should have to be taken in this matter.

17. Per contra, it is argued by the learned counsel for the respondent that when Tribunal has quashed the order of Disciplinary Authority dated 29th September, 1999, the question of passing order dated 8th August, 2003 by the Disciplinary Authority does not arise and hence the order dated 11th October, 2006 and 1st January, 2008 be quashed and order of Tribunal dated 20th May, 2003 be restored.
18. After quashing of the order of the Disciplinary Authority dated 29th September, 1999 and order of the Appellate Authority dated 10th April, 2000 by the Tribunal on 20th May, 2003, the Disciplinary Authority had wrongly given effect to its order dated 29th September, 1999 and imposed the penalty on the respondent. It appears to us that even the respondent herein was not properly conveyed the order dated 20th May, 2003 or he was ill-advised. Once the orders of the Disciplinary Authority and the Appellate Authority have been quashed by the Tribunal vide its order dated 20th May, 2003 in OA No.2637/2002, the respondent herein could not have been burdened with any penalty and the subsequent proceedings which had taken place either by way of

orders dated 8th August, 2003 and 9th July, 2004, by Disciplinary Authority and Appellate Authority respectively, filing of the OA No.2274/2004 or the order dated 11th October, 2006 therein, filing of RA No.76/2007 and order dated 1st January, 2008 therein by the Tribunal, are void ab-initio and are of no consequence and as such all these orders/proceedings after passing of the order dated 20th May, 2003 in respect of respondent herein are hereby quashed.

19. The petition is accordingly disposed of.

VINOD GOEL, J.

G. S. SISTANI, J.

NOVEMBER 28, 2016

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