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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 7743/2015**
GNCT OF DELHI THROUGH: COMMISSIONER OF
POLICE, DELHI AND ORS

..... Petitioner

Through: Mr. Pankaj Sinha with Mr. Nupur
Grover, Advocates

versus

W/ ASI SHARDA

..... Respondent

Through: Mr. Sourabh Ahuja, Adv.
Mr. Sanjeev Singh, proxy counsel for
Mr. Raghvendra Panday, Adv. for
Respondent No.2.

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

ORDER
19.01.2016

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This Writ Petition impugns order dated 10.02.2015 passed by the Principal Bench of the Central Administrative Tribunal in O.A. No.1662 of 2013 filed by Woman ASI Sharda. The impugned order quashes orders dated 20.06.2012 and 15.02.2013 passed by the Disciplinary Authority and the Appellate Authority finding the respondent guilty of misconduct and imposing penalty of withholding of next increment permanently and for treating period of suspension from 25.01.2012 to 20.06.2012 as not spent on duty.

We have examined the impugned order and find the same well

reasoned as it details the issue in question, notices the conflicting and opposing stands taken by the respondent - W/ASI Sharda and Constable (Ct.) Ravi Punia, the Duty Officer in the Deen Dayal Upadhyay Hospital (DDU Hospital).

The Tribunal has also rightly observed that the reply/representation made by the respondent to the Additional Commissioner of Police (West District) is not an admission of guilt or misconduct on the part of the respondent. For the sake of convenience, we would like to reproduce the said reply :

“2. It was the matter between applicant and Const. Ravi Poonia. There is no other witness to support the claim of Ct. Ravi Poonia. Applicant has arbitrarily been disbelieved and Const. Ravi Poonia has been believed. The entry in hospital register is quite suspicious as name of applicant has been entered in the vacant line subsequently. However, enquiry officer has arbitrarily rejected applicant's contention and believed that the entry in the register is genuine.

3. Prosecution, during enquiry proceedings, could not attribute any malafide intention or ill-motive on the part of applicant due to which applicant had not entered the information in daily diary. As such an innocent mistake minus malafide intention or ill-motive does not amount to misconduct. In this context arbitrary decision has been counted as a misconduct. No other justification to count it as a misconduct has been given.”

The aforesaid reply would elucidate that the respondent had denied having been conveyed any information by Ct. Ravi Punia. Paragraph 3, we observe, does not accept that the respondent was guilty. The said paragraph only conveys that the respondent had not been negligent, and malafides and ill motive could not be attributed to

her.

One Saroj Poddar after an occurrence was admitted to DDU Hospital on 04.08.2011. He died in the said hospital on 18.08.2011. The body was, thereafter, taken and kept in the mortuary. On 23.01.2012, the mortuary attendant Sh. Vinod Kumar had intimated Ct. Pramod Kumar of PS- Hari Nagar, working as Duty Constable, DDU Hospital that the dead body of Saroj Poddar was lying in the mortuary since 18.08.2011. Apparently on being confronted, Ct. Ravi Punia had claimed that he had conveyed information regarding the death of Saroj Poddar on 18.08.2011 itself to W/ASI Sharda on telephone and was informed that DD No.23-A stands recorded in the Daily Dairy. The contention of the respondent – W/ASI Sharda, Duty Officer, was that no such information was communicated to her and therefore, she had not recorded any entry regarding the death of Saroj Poddar in the Daily Diary register.

The petitioner, i.e., the Commissioner of Police has placed on record a photocopy of the register maintained at DDU Hospital. Entry No.15550 dated 04.08.2011 relates to admission of Saroj Poddar S/o Ram Prasad. There is also a written endorsement recorded in the register that reminder was sent on 23.01.2012 vide DD No.26-B. On the left side of the said register, under Serial -1, there is an entry which has been scored off. The entry records that on 10.08.2011, the patient had been transferred to LNJP Hospital. The date on which the said entry was scored off is not so indicated or mentioned. Below this entry, which is scored off, there is a noting that Saroj Poddar had died on 18.08.2011 in Ward-8 DD-23-A and D.O. ASI Sharda. As the

space was less, it is apparent that some words “Saroj Poddar had died on 18.08.2011” have been squeezed, and thereafter, it is recorded - Ward-8 DD-23-A and D.O. ASI Sharda.

The issue is whether the aforesaid entry recording information being conveyed to ASI Sharda is correct or manipulated and made subsequently. It is the case of both, the Commissioner of Police and the respondent that the entry No. 23A was not recorded in the Daily Diary maintained at PS- Nihal Vihar.

Looking at the nature of these entries, the Tribunal has recorded reasons as to why they have quashed the two orders and the punishment. What we perceive and believe is that, if there was a grave doubt, then benefit of doubt should have been given to the respondent.

The Tribunal in the impugned order has noted and recorded several gaps and faults as to why the charge against the respondent would be a mere assumption and a guess. Charge, we hold, is not confirmed and supported by any credible and reliable material and evidence. The reason as to why the information was communicated subsequently after a gap of about more than 5 months on 23.01.2012, is not forthcoming and is not examined. Normally, the officer should have followed and checked whether there was a follow up. The punishment awarded is withholding of next increment permanently. The punishment, we observe would be inadequate and less if the allegations against the respondent are true and correct, for the misconduct, i.e., failure to record DD entry in the present case would constitute misconduct of a serious nature.

Learned counsel for the petitioner has referred to the photocopy

of the register maintained at the DDU Hospital and submits that there are other entries similarly made by squeezing or making adjustments due to lack of space. There are cases where the entries have been scored off. Our observations are not based upon merely on the scoring off of the entry, but on overall examination of the recording made on 10.08.2011, which has been scored off. It is possible that the Duty Officer may not have cross checked and verified the well being of the patient - Saroj Poddar after 10.8.2011 believing that the said patient had already been shifted to LNJP Hospital. With the aforesaid rather sketchy and ambivalent evidence, we would agree with the finding and observation of the Tribunal.

In the view of the aforesaid, do not find any reason to interfere with the impugned order. The writ petition is dismissed.

SANJIV KHANNA, J

NAJMI WAZIRI, J

JANUARY 19, 2016/acm