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

+ **W.P.(C) 294/2016**

Date of Decision : 22nd November, 2016

ANIL KUMAR

..... Petitioner

Through: Mr. V.S.R. Krishna, Advocate

versus

GOVT OF NCT OF DELHI AND ANR

..... Respondents

Through: Mr. Satyakam, ASC

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

1. Leaned counsel for the petitioner has restricted his arguments to the following contentions : -

- (i) The Tribunal, while dismissing OA N.3091/2014, vide order dated 1.7.2015, has made observations on merits, which are likely to prejudice the petitioner in the disciplinary inquiry.
- (ii) The petitioner should not have been suspended on oral instructions or approval by the Chief Secretary, who is the competent officer to suspend a group 'B' employee.
- (iii) The petitioner was suspended vide order dated 25.2.2014 and

the chargesheet was issued on 29.9.2015. As per the mandate and ratio of the decision of the Supreme Court dated 16.12.2015 in Civil Appeal No.1912/2015 titled *Ajay Kumar Choudhary v. Union of India & Anr.*, the suspension order should not have continued beyond 90 days or three months.

2. OA No.3091/2014 was filed by the petitioner, challenging the Suspension Order dated 25.2.2014 and the order dated 18.6.2014, enclosing therewith a copy of the Order dated 23.5.2014, extending the suspension till 24.11.2014.

3. Thus, the subject-matter of the challenge in OA No.3091/2014 was the original Suspension Order and the first of extension of suspension.

4. We have no hesitation in clarifying and recording that the observations in the impugned order would not be construed as findings and observations, which would influence the disciplinary proceedings. Learned counsel for the respondent – GNCTD has agreed. The inquiry officer, the disciplinary authority or the appellate would not be influenced by the said observations. This would take care of the first contention.

5. Regarding the second contention, the respondents have produced before us the original file relating to suspension of the petitioner. We have examined the notings made by Ms. Saumya Gupta, Director (Women & Child Development), dated 25.2.2014. Paragraph 6 of the order states that approval of the Principal Secretary (Women & Child Development), Delhi had been taken for placing the petitioner under suspension. It was also recorded that the matter would be submitted for formal approval of the Chief Secretary, Delhi. The noting of the Principal Secretary, though dated 25.2.2014, probably were made on 26.2.2014 as the file was received in the Office of the Principal Secretary (Women & Child Development) on 26.2.2014 as per stamp, which indicates diary number and the date of receipt. The noting also states that the case was discussed with the Chief Secretary on 25.2.2014, which is indicative that the noting was made on 26.2.2014. Be that as it may, this would not make any material difference.

6. The detailed noting of the Chief Secretary dated 26.2.2014 affirm that he had issued oral directions.

7. In the aforesaid circumstances, we are inclined to accept the submission of the respondents that, indeed, they had taken oral or telephonic

approval from the Chief Secretary (Women & Child Development) before placing the petitioner under suspension. This would be in accord with Rule 3 (2) (iv) of the Central Civil Services (Conduct) Rules, 1964, the relevant portion of which reads:

....

“(iv) A Government servant who has received oral direction from his official superior shall seek confirmation of the same in writing as early as possible, whereupon it shall be the duty of the official superior to confirm the direction in writing.”

8. Reference in this regard can be also made to OM No. 11013/12/78-Ests. (A) dated 1.8.1978, the relevant portion of which reads:-

“4. In the light of the aforesaid provisions of the Conduct Rules, and the instructions issued thereunder, it is impressed upon all Government servants that:-

(i) Oral instructions should not, as far as possible, be issued by senior officers to their subordinates;

(ii) if the oral instructions are issued by any senior officer they should be confirmed by him in writing immediately thereafter;

(iii) if a junior officer seeks confirmation to the oral instructions given by the senior, the latter should confirm it in writing whenever such confirmation is sought.

(iv) a junior officer who has received oral orders from his superior officer should seek confirmation in writing as early as practicable;

(v) whenever a member of the personal staff of a Minister communicates an oral order on behalf of the Minister, it should be confirmed by him in writing immediately thereafter;

(vi) if a junior officer receives oral instructions from the Minister or from his personal staff and the orders are in accordance with the norms, rules, regulations or procedures, they should be brought to the notice of the Secretary or the Head of the Department, as the case may be, for information.

(vii) if a junior officer receives oral instructions from the Minister or from his personal staff and the orders are not in accordance with the norms, rules, regulations or procedures, they should seek further clear orders from the Secretary or the Head of the Department, as the case may be, about the line of action to be taken, stating clearly that the oral instructions are not in accordance with the rules, regulations, norms or procedures.”

9. The respondents, in the counter-affidavit, have set-out the reasons which had led to the issue of Suspension Order and why oral approval was imperative. We would like to reproduce the said assertions, without commenting or expressing any opinion on merits as it may cause prejudice to the petitioner or the respondents. Paragraphs 3 and 4 of the counter-affidavit read as under:

“3. The brief facts of the case may be stated before responding to the averments and the submissions in the petition under reply. That Sh. Anil Kumar while working as Superintendent of Observation

Home for Boys-II, Kingsway Camp was placed under suspension, as he failed to discharge his duties to prevent the recurrence of incidents of violence and escape of juvenile from the institution. The Observation Home for Boys-II, Sewa Kutir Complex, Kingsway Camp had been inspected by Director, Department of Women and Child Development and Principal Magistrate – Juvenile Justice Committee before the incident during the month of Jan. – Feb., 2014, wherein they based on their inspections of the Home had issued directions to the Superintendent to improve the functioning of the Home, as the state of affairs of the Home, due to the laxity on part of Superintendent of the institution were found deplorable. Had Sh. Anil Kumar as Superintendent of Home, shown foresight and taken timely steps to identify and segregate the potential miscreants and alerted the local police and DAP about probable danger of escape bid by juveniles, the incident dated 24.2.2014 could have been averted. There was clear failure of internal intelligence of the Home Staff that could not sense the escape plan of the juveniles.

4. That on 24.2.2014, 38 juveniles in conflict with law placed under protective custody at Observation Home for Boys-II, escaped the home at around 3:50 pm, after indulging in violent and riotous behaviour and creating a ruckus at the premises. Timely action of protective segregation of the juveniles i.e. repeated offenders charged of heinous crime like murder, rape and dacoities from the boys charged with petty offences like snatching or stealing mobiles etc. or who are first time offenders, could have prevented such

incident. By using the tree trunks lying near the boundary wall, 38 juveniles managed to scale the 12 ft. wall and escaped the Observation Home on 24.2.2014. During inspection of the Home, Sh. Anil Kumar had been directed to remove the logs of woods from the compound, cutting the twigs or trunks leaning against outer boundary wall of the playground but he chose to ignore the instructions resulting into the escape of 38 juveniles.”

10. The second contention of the petitioner, in view of the aforesaid discussion, would fail. We would, however, only clarify that the petitioner has submitted that the petitioner was not responsible and guilty of any misconduct. We do not express any opinion on the said assertion as this is a matter and issue which will be examined in the disciplinary proceedings.

11. The third contention of the petitioner is also flawed and devoid of merit. The petitioner, as noticed above, has challenged two orders – one dated 25.2.2014, which is the initial Suspension Order and the Order dated 23.5.2014, which had extended the suspension period beyond 90 days. In the OA itself, it was not alleged or submitted that the suspension could not have continued after 90days, in case the chargesheet was not served. The judgment of the Supreme Court in **Ajay Kumar Choudhary v. Union of India & Anr.**(supra), in our opinion, would not be applicable, for in the said case, suspension itself was set aside and quashed, observing that the

concerned employee, who was under suspension, could have been shifted to another office within the State or to another post, where he would not obstruct the investigations against him. *Ajay Kumar Choudhary v. Union of India & Anr.* (supra) was pronounced on 16.2.2015. In the present case, the petitioner had not challenged the subsequent orders extending the suspension. The petitioner was allowed to rejoin the service on 19.5.2015.

12. In view of the aforesaid, while clarify that any findings or observations made above would not be construed as final or binding observations relating to merits of the charges, we would dismiss the main prayer made in the writ petition.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

NOVEMBER 22, 2016
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