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

+ **W.P.(C) 1173/2012**

JAI KISHAN SHARMA Petitioner
Through: Mr Narinder Sharma, Advocate.

versus

UOI & ORS Respondents
Through: Ms Purnima Maheshwari, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **05.12.2017**

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning an order dated 05.10.2009 passed by respondent no.2 (Commissioner of Police), whereby the disciplinary proceedings initiated against respondent nos. 3 & 4 have been withdrawn. The petitioner also challenges the promotion awarded to respondent nos. 3 & 4. In addition, the petitioner also seeks an order directing respondent Nos. 1 and 2 to grant sanction under Section 140 of the Delhi Police Act, 1978.

2. Briefly stated, the relevant facts are that the younger brother of the petitioner - Sh Jai Prakash Sharma - filed a complaint on 12.06.2002 with P.S. Nangloi against the petitioner. Respondent no. 4 who, at the material time, was a Sub Inspector conducted the preliminary inquiry in the matter.

3. The petitioner claims that respondent nos. 3 & 4 took possession of the petitioner's car (vehicle bearing registration no. DL-4CN-1634) and handed over the same to petitioner's younger brother, Jai Prakash Sharma. This is disputed by respondent nos. 3 & 4 and it is claimed that the petitioner had voluntarily handed over the car to his brother as the same was registered in his name. A statement to this effect was also recorded and a copy of the same has been filed along with the counter affidavit filed on behalf of respondent no.2.

4. The principal dispute between the petitioner and his younger brother relates to an immovable property bearing No. E-20, Kunwar Singh Nagar, Nangloi. The petitioner's younger brother claims to have purchased the said property from the original owner Sh Jai Kumar BaabGonda Patil on 17.12.2002. It appears that the petitioner had also produced photocopies of certain documents and the inquiries had revealed the said photocopies to be fabricated.

5. It is further stated that an FIR No. 92/2003 dated 07.02.2003 has also been registered for offences under Section 420/468/471 IPC with P.S. Nangloi. The petitioner was also arrested on 06.04.2003 and was, thereafter, released on bail. It is stated that after re-investigation a charge sheet had also been filed against the petitioner and the case is fixed for framing of charges on 07.12.2017.

6. The petitioner made a complaint dated 13.02.2003 against respondent nos. 3 & 4 and other persons making several allegations.

7. The petitioner alleges that respondent no.4 took over the original

documents relating to the property bearing No. E-20, Kunwar Singh Nagar, Nangloi, Delhi and has included them as a part of the judicial file. The petitioner also claims that respondent nos. 3 & 4 had illegally arrested three tenants of the petitioner with a view to assist petitioner's brother in grabbing the property in question.

8. The petitioner claims that the matter was also reported to the Vigilance Department on 13.08.2003.

9. The petitioner claims that at various stages different authorities had found that the allegations made against respondent nos.3 and 4 sustainable. It is stated that the Vigilance Department of Delhi Police had in the status report filed in August, 2003 in the writ petitions preferred by the tenants of the petitioner indicated that departmental action was recommended against respondent nos. 3 and 4. It is also claimed that on an inquiry conducted by one of ACPs, it was found that allegations levelled against respondent nos. 3 & 4 could not be ruled out and departmental action was recommended.

10. The petitioner further claims that on 02.03.2006 the higher authorities had recommended initiation of departmental inquiry. Pursuant to the aforesaid recommendation, on 27.08.2008, a joint departmental inquiry was initiated and a charge sheet and summary of allegations (SOA) were issued to respondent nos. 3 & 4.

11. The petitioner claims that on 05.03.2009 respondent no.2 had directed that departmental inquiry be commended against respondent nos. 3 & 4.

12. The principal grievance of the petitioner is that the departmental

inquiry against respondent nos. 3 and 4 has been dropped by an order dated 05.10.2009, which is impugned in the present petition.

13. Mr Sharma, the learned counsel appearing for the petitioner submitted that once the inquiry proceedings had commenced it could not be dropped without finally concluding the same. He contended that respondent no.2 also had no authority to withdraw the inquiry proceedings.

14. It was further argued that ostensibly the inquiry proceedings had been withdrawn for administrative reasons, however, no such reasons exists and, therefore, the withdrawal of inquiry for disciplinary proceedings against respondent nos. 3 & 4 cannot be sustained.

15. Mr Sharma, also submitted that respondent nos. 3 & 4 had managed to show that departmental proceedings were dropped whereas the response received by the petitioner pursuant to his application under the Right to Information Act, 2005 indicates that a warning had been issued to respondents nos. 3 and 4. He submitted that issuance of warning amounted to imposition of punishment and the same could have been imposed only if respondent nos. 3 & 4 were found to have misconducted themselves. He submitted that in the circumstances, the petitioner ought to be granted permission to prosecute respondent nos. 3 & 4.

16. Lastly, Mr Sharma, contended that respondent nos. 3 & 4 had been granted promotion even though the departmental inquiry was pending against them and the same was impermissible.

17. The aforesaid submissions were countered by Ms Purnima

Maheshwari, learned counsel appearing for the respondents. She submitted that in terms of the circular dated 11.10.2010, the Disciplinary Authority had the power to recommend that departmental proceedings be dropped in cases where the Disciplinary Authority was of the opinion that the same are not warranted. She contended that the said proceedings could be dropped with the concurrence of Jt. C.P./Spl.C.P. She stated that respondent nos. 3 & 4 had approached the Central Administrative Tribunal against initiation of departmental proceedings and by an order dated 17.08.2009, the Central Administrative Tribunal had directed respondent no.2 to dispose of the representation made by respondent nos. 3 & 4 by passing a speaking order.

18. I have heard learned counsel for the parties.

19. At the outset, it is relevant to mention that some of the contentions advanced on behalf of the petitioner are mutually destructive. On one hand, it has been contended that Disciplinary Proceedings against respondent no. 3 and 4 have been withdrawn (which is correct) and on the other hand it has been argued that a warning has been issued to them and, therefore, they could not be promoted.

20. Notwithstanding the contradictory contentions the same have been considered hereunder.

21. It is relevant to mention that charges have been framed against the petitioner in respect of FIR No. 92/2003. It is also not disputed that documents given by the petitioner and his younger brother were sent to CFSL for comparison and CFSL's report is against the petitioner.

22. By an order dated 17.08.2006, the learned Metropolitan Magistrate had ordered re-investigation of the case by an officer not below the rank of an ACP. The petitioner had also filed a petition (CrI. (M) 9620/2006) for quashing the FIR, however, the same was dismissed by this Court by an order dated 20.04.2009. The Special Leave Petition (SLP (CrI.) 3310/2009) preferred by the petitioner before the Supreme Court was also dismissed by an order dated 13.05.2009.

23. Insofar as the inquiry proceedings against respondent nos. 3 & 4 are concerned, a joint inquiry was commenced by an order dated 24.06.2009 in respect of allegations connected with the investigation done by respondent nos. 3 & 4 in connection with FIR No. 92/2003.

24. On 06.07.2009, respondent nos. 3 & 4 filed a representation against the initiation of such inquiry. They also moved the Central Administrative Tribunal against the proceedings initiated against them.

25. By an order dated 17.08.2009, the Central Administrative Tribunal directed respondent no.2 to dispose of the representation filed by respondent nos. 3 & 4 by passing a speaking order within a period of four weeks from the said date.

26. In view of the above, the contention that the representations ought not to have been considered by respondent no.2, is wholly bereft of any merit.

27. Respondent no.2 considered the representations of respondent nos. 3 & 4 and by an order dated 05.10.2009 (which is impugned herein) concluded that the proceedings may be withdrawn without prejudice to the

right to reinstitute disciplinary proceedings, if warranted, after conclusion of the investigation in the case. The relevant extract of the said order is reproduced below:-

“1. The submissions made by the defaulters at 1,3,4,5 and 7 need to be verified. Submissions at Para 6 would be cleared after the Crime Branch completes its investigation. The allegations regarding Shri Mehmi having a bias are not impounded.

2. Further the investigation of this case has already been entrusted to the Crime Branch.

3. In view of the facts and circumstances that have been emerged so far, I feel that we need to await the conclusion that the Crime Branch investigations would arrive at before a decision to initiate DE proceedings or to recommend sanction of prosecution under Section 140 D.P. Act is given.

4. In view of this, I feel that DE proceedings may be withdrawn on administrative ground without prejudice to DE proceedings which may be instituted, if warranted, after the conclusion of investigation of this case. We may also inform the Govt. of NCT of Delhi about orders of further investigation by the MM and the order of the Hon'ble High Court and our recommendation on the request for grant of sanction for prosecution under Section 140 DP Act dated 20.03.09 may be treated as cancelled and no further action may be taken till the further investigation of the case is completed.”

28. A plain reading of the above order indicates that respondent no.2 was of the view that since the issues were already under investigation, it was apposite to await the outcome of the investigations.

29. This Court finds no infirmity with the aforesaid approach.

30. The contention that the disciplinary authority does not have the power to withdraw the disciplinary proceedings is also unmerited. Standing order No. 125/2008 which concerns conduct of departmental inquiries expressly provides that representations/applications regarding dropping of departmental inquiries or other matter should be forwarded to Dy. Commissioner of Police, Vigilance, Delhi *“for examination and orders of the competent authority”*. Further circular dated 11.10.2010 expressly provides as under:-

“However, where the disciplinary authority feels that there is not enough evidence to proceed against the police officers who are accused in criminal cases or if he feels that initiation of departmental proceedings are not warranted given the facts and circumstances of the case, the file should be put up for the concurrence of Jt.C.P./Spl.C.P. concerned who may take a final decision in consultation of Spl. C.P./Vigilance.”

31. In view of the above, this Court finds no infirmity with respondent no.2 considering the representations of respondent nos. 3 & 4 and dropping the departmental inquiries with a right to re-institute the same at a later date if warranted.

32. The contention that respondent nos. 3 & 4 had been issued a warning in connection with the departmental inquiry conducted on the basis of the complaint filed by the petitioner is also incorrect. Ms Maheshwari, had produced a clear copy of the response dated 29.12.2011 of the Public Information Officer to the information sought by the petitioner. The same clearly indicates that respondent no.3 had been warned by an order dated 13.08.2010. Ms Maheshwari explained that this warning related to another matter and was not connected with the complaint made by the petitioner.

Thus the contention that the Disciplinary proceedings initiated against the respondent no. 3 on the compliant made by the petitioner had culminated into issuance of warning, is incorrect.

33. In view of the above, the present petition is dismissed. The parties are left to bear their own costs.

DECEMBER 05, 2017
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VIBHU BAKHRU, J

