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

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Date of Decision: 17.04.2017

% **W.P.(C.) No. 5810/2015**

SMT. KUSUM CHAUDHARY Petitioner

Through: Mr. Sachin Chauhan, Advocate.

versus

COMMISSIONER OF POLICE & ORS. Respondents

Through: Mr. Anuj Aggarwal, ASC, GNCTD.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

VIPIN SANGHI, J. (ORAL)

1. The petitioner assails the order dated 13.10.2014 passed by the Central Administrative Tribunal (the Tribunal) in O.A. No.1046/2009; the order dated 02.03.2007 passed by the Additional Deputy Commissioner of Police (ED), whereby punishment of dismissal was imposed upon the late husband of the petitioner; the order dated 22.10.2007 dismissing the statutory appeal preferred by the petitioner's late husband and; the finding of the inquiry officer against the late husband of the petitioner. The petitioner also seeks a direction to the respondents to grant the pay & allowances to the petitioner on the basis of the qualifying service rendered by her late husband till the date of his death, and to further grant family pension and retiral benefits to the petitioner with all arrears and consequential benefits.

2. We may observe that when notice was issued in this petition on 10.08.2015, it was stated on behalf of the petitioner by the learned counsel that the petitioner would be willing to forego all other benefits, provided she is granted family pension. On that premise, notice was issued in the petition to the respondents. The respondents have contested the petition and it is submitted that the petitioner cannot be granted any relief on account of the fact that the late husband of the petitioner was dismissed from service after finding him guilty of a serious misconduct. Consequently, the submissions of learned counsel have been heard and we proceed to judgment.

3. The conduct of the petitioner's late husband Ex-Constable Yashbir Singh and another Ex-Constable Harbeer Singh of Delhi Police was inquired into in a departmental inquiry.

4. The summary of the allegations made against the late husband of the petitioner Ex-Constable Yashbir Singh and the co-delinquent Ex-Constable Harbeer Singh, which have been set out in the impugned order, reads as follows:

“ It is alleged against you Const. Yashbir Singh, No.859/E and Const. Harbeer Singh, No.2200/E that on 20.06.2006 you made your departure for Indira Puram, Ghaziabad (UP), vide DD No.46-B P.S. Shakar Pur to nab a P.O. namely Kuldeep Singh s/o Sh. Amar Singh of case FIR No.201/92 u/s 324 IPC, P.S. Gandhi Nagar. You both brought Kuldeep Singh and produced him before SHO and Addl. SHO/Shakarpur. During interrogation his father's name was found as Pratap Singh. Hence, he was asked to produce some document in his support. Complainant made a call to his neighbour Smt. Lata, who produced Ration Card, Election Card and license of the complainant, which were produced before Addl. SHO/Shakar

Pur. Hence, Addl. SHO ordered to release him but in lieu of his release you Const. Yashbir and Const. Harbeer demanded and took Rs.20,000/- from the complainant and his neighbour Smt. Lata.

On 27.06.06, you Const. Yashbir again made a phone call to complainant on his mobile and demanded 'Kharcha Pani' conversation of which has been recorded by the complainant in his mobile phone and he got that conversation converted into CD. Efforts were also made to trap you Const. Yashbir but that could not be successful due to some reasons.

The above act on the part of you Const. Yashbir Singh, No.859/E and Const. Harbeer Singh, No. 2200/E amounts to gross negligence, carelessness and dereliction in the discharge of your official duty which renders you liable to be dealt with departmentally under the provision of Delhi Police (Punishment & Appeal) Rules 1980"

5. Both were found guilty of the alleged misconduct in the said departmental enquiry by the Enquiry Officer.

6. In the departmental inquiry proceeding, the Inquiry Officer examined six Prosecution Witnesses (PWs), and one Defence Witness (DW). In his findings, he concluded that the charge against the deceased Ex-Constable Yashbir Singh and the co-delinquent - that they had demanded and taken money from the complainant and his neighbour on one occasion, and demanded "kharcha paani" from the complainant from the mobile phone of late Ex- Constable Yashbir Singh and, thus, had harassed innocent citizens, were proved. The inquiry report was served upon the late husband of the petitioner on 21.01.2007 and he was granted 15 days time to submit his representation against the findings. The said representation was submitted on 05.02.2007. The Disciplinary Authority agreed with the findings of the

Enquiry Officer and the late husband of the petitioner was dismissed vide order dated 02.03.2007 passed by the disciplinary authority. His appeal to the Joint Commissioner of Police – the appellate authority, was rejected vide order dated 22.10.2007.

7. Consequently, the late husband of the petitioner preferred the Original Application in question, i.e. O.A. No.1046/2009 to assail the orders dated 02.03.2007; 22.10.2007; the inquiry report, and; the charge-sheet issued to him. During pendency of the Original Application, the husband of the petitioner passed away on 01.02.2014. Consequently, the proceedings were continued by the petitioner – the widow and legal representative of the Ex-Constable Yashbir Singh.

8. Only two submissions have been pressed by the petitioner before this Court. They may now be taken note of.

9. The first submission of learned counsel for the petitioner is that the respondent department has violated Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980 (the Rules). To be able to appreciate this submission, it is essential to extract Rules 15(1) and 15(2). The same read as follows:

“15. Preliminary enquiries.—(1) A preliminary enquiry is a fact finding enquiry. Its purpose is (i) to establish the nature of default and identity of defaulter(s), (ii) to collect prosecution evidence, (iii) to judge quantum of default and (iv) to bring relevant documents on record to facilitate a regular departmental enquiry. In cases where specific information covering the above-mentioned points exists a Preliminary Enquiry need not be held and Departmental enquiry may be

ordered by the disciplinary authority straightaway. In all other cases a preliminary enquiry shall normally proceed a departmental enquiry.

(2) In cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held.”
(emphasis supplied)

10. The submission of learned counsel for the petitioner is that in the facts of the present case, a preliminary inquiry was conducted. He points out that a preliminary inquiry is a fact-finding inquiry, the purpose whereof is, inter alia, to establish the nature of default and identify the defaulters and to collection the prosecution evidence. To substantiate the petitioners claim that a preliminary inquiry was held, learned counsel for the petitioner has referred to the inquiry report. He has referred to the summary of the statement of Sh. Kuldeep Singh (PW-3), and the summary of the statement of Inspector K.C. Negi, Additional SHO, PS-Shakar Pur, Delhi (PW-6), which are extracted in the inquiry report. In the statement of Sh. Kuldeep Singh (PW-3) the said witness has, inter alia, stated that:

“... .. Yashbir had demanded money from him which was recorded by him and he covered it into a CD. He had demended the money on 27/6/06 and 2/7/06, which was recorded by him. Regarding this he had made a complaint against them at DCP office near Swaran Cinema and an enquiry was ordered into it.”

11. PW-6 during his cross-examination by the delinquents denied:

“that during his enquiry Kuldeep Singh had apprised him about the demand of money by the delinquents or Kuldeep Singh made any written or oral complaint.”

12. The submission of the petitioner is that the aforesaid extracts from the statement of PW-3 and PW-6 show that the formal inquiry by the Inquiry Officer was preceded by a preliminary inquiry under Rule 15(1) of the Rules.

13. Learned counsel for the petitioner submits that in cases where a preliminary inquiry discloses commission of a cognizable offence by a police officer of a subordinate rank in his official relations with the public, a departmental inquiry can be ordered only after obtaining prior approval of the Additional Commissioner of Police concerned on the issue - whether a criminal case should be registered and investigated, or a departmental inquiry should be held. He submits that compliance of Rule 15(2) was mandatory prior to initiation of the departmental inquiry. The submission is that in the facts of the present case, a departmental inquiry was initiated without obtaining the prior approval of the Additional Commissioner of Police on the aforesaid aspect. That not having been done, the inquiry proceedings are vitiated, and cannot form the basis for infliction of any punishment upon the late husband of the petitioner.

14. Learned counsel for the petitioner further submits that complainant/ PW-3 Kuldeep Singh was not reliable inasmuch, as, in his complaint and in his statement made in chief, he had implicated both – the late husband of the petitioner and Constable Harbeer Singh. However, on cross-examination by the representative of Constable Harbeer Singh, he admitted that no money

was demanded by Constable Harbeer Singh and he had made a false complaint. Thus, the complainant could not have been relied upon and his statement could not have formed the basis for finding the late husband of the petitioner guilty.

15. Having heard learned counsel, we are of the view that there is no merit in the above submissions of the petitioner.

16. A perusal of Rule 15(1) shows that a preliminary inquiry is a fact-finding inquiry. The purpose for which a preliminary inquiry may be undertaken is:

- (i) to establish the nature of default and identity of defaulter(s),
- (ii) to collect prosecution evidence,
- (iii) to judge quantum of default, and
- (iv) to bring relevant documents on record to facilitate a regular departmental enquiry.

17. From a plain reading of Rule 15(1), it is clear that it is not necessary that in each & every case a preliminary inquiry, i.e. a fact-finding inquiry, be held. In cases where specific information with regard to the alleged misconduct of a police officer to whom the Rules apply is available, which throws light upon the aspects relating to the nature of default and identity of the defaulters, and prosecution evidence is available; where the quantum of default, i.e. the nature and seriousness of the default can be gathered from the complaint, and relevant documents may be available to facilitate regular departmental inquiry, a preliminary inquiry may be dispensed with and,

straightaway, a regular departmental inquiry may be ordered by the disciplinary authority. This position is also well settled in ***Vijay Kumar v. Union of India***, (2007) 9 SCC 63, wherein the Supreme Court, inter alia, observed:

“6. A reading of Rule 15(1)&(2) together and the language employed therein clearly discloses that a preliminary enquiry is held only in cases of allegation, which is of weak character and, therefore, a preliminary enquiry is to be held to establish the nature of default and identity of defaulter; to collect the prosecution evidence; to judge quantum of default and to bring relevant documents on record to facilitate a regular departmental enquiry. In cases, where specific information is available, a preliminary enquiry is not necessary and a departmental enquiry may be ordered by the disciplinary authority straightaway.”

18. Sub-Rule (2) of Rule 15 itself makes it clear that the said Sub-Rule would come into play only in cases in which a preliminary inquiry is conducted, and where such preliminary inquiry discloses commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public.

19. In the present case, the stand of the respondents consistently has been that looking to the nature of the allegations against the late husband of the petitioner and the co-delinquent Ex-Constable Harbeer Singh, no preliminary inquiry was ordered to be held. Thus, Rule 15(2) of the Rules did not come into play, and there was no question of obtaining prior approval of the Additional Commissioner of Police on the aspect whether a criminal case should be registered and investigated, or a departmental inquiry should be held.

20. To claim that a preliminary inquiry was indeed held, the petitioner has sought to place reliance upon the aforesaid extracts from the statements of PW-3 and PW-6. In our view, there is no merit in the aforesaid submission of the petitioner. PW-3 is the complainant. All that he has stated is that he had made a complaint against the late husband of the petitioner and the co-delinquent to the Deputy Commissioner of Police, and an inquiry was ordered into the said complaint. From this statement of PW-3, it does not follow that initially a preliminary inquiry was ordered to be held.

21. So far as reliance placed on the extract from the summary of the statement of PW-6 is concerned, it appears to us that the same is being read out of context. Inspector K.C. Negi (PW-6) was the officer before whom late husband of the petitioner Ex-Constable Yashbir Singh and the co-delinquent had produced the complainant/ PO Kuldeep Singh. His denial of the suggestion given to him that during his inquiry, the complainant/ PW-3 Kuldeep Singh had apprised him about the demand of money by the delinquents, or Kuldeep Singh made any written or oral complaint, does not lead to the inference that Inspector K.C. Negi (PW-6) conducted any preliminary inquiry.

22. Pertinently, during the inquiry, three official witnesses were examined, namely, Constable Ashok Kumar (PW-1), Head Constable Bhagat Singh (PW-2) and Inspector K.C. Negi, Additional SHO, PS – Shakar Pur, Delhi (PW-6). The delinquents also examined as their defence witnesses Head Constable Ashok Kumar. It was not suggested to any of the aforesaid official PWs during their cross-examination that any preliminary inquiry was ordered to be conducted under Rule 15(1). Even in the

statement of DW-1, he does not state that any preliminary inquiry under Rule 15(1) had been ordered, or held. If a preliminary inquiry were to be ordered, or held under Rule 15(1), the same would be a matter of record. A preliminary inquiry is only a fact-finding inquiry. However, the same is statutorily provided for and recognized. Rule 15(3) is relevant in this regard and reads as follows:

*“(3) The suspected police officer may or may not be present at a preliminary enquiry but when present he shall not cross-examine the witness. **The file of preliminary enquiry shall not form part of the formal departmental record, but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. There shall be no bar to the Enquiry Officer bringing on record any other documents from the file of the preliminary enquiry, if he considers it necessary after supplying copies to the accused officer. All statements recorded during the preliminary enquiry shall be signed by the person making them and attested by enquiry officer.**”* (emphasis supplied)

23. The aforesaid Sub-Rule shows that a preliminary inquiry is also a formal proceeding and the proceedings of the preliminary inquiry would form part of record/ file. The petitioner has not produced any material to even remotely suggest that any preliminary inquiry was ordered, or conducted, by resort to Rule 15(1) of the Rules. As noticed above, Rule 15(1) itself provides that it is not essential that in every circumstance a preliminary inquiry be conducted and Rule 15(2) would come into play only and only after a preliminary inquiry is conducted and it discloses commission of a cognizable offence by a police officer of a subordinate rank in his official relations with the public.

24. The submission of the petitioner that the complainant PW-3 was not a credible witness, also has no force. Firstly, this submission is not available to be urged before us, since it is not within the scope of these proceedings for us to re-appreciate the evidence. Even otherwise, there is no merit in this submission.

25. From the summary of the examination-in-chief of PW-3 it is seen that late Ex-Constable Yashbir Singh and Constable Harbeer Singh had together gone to the house of PW-3. He stated in his complaint and examination-in-chief that *“They had demanded Rs.25,000/- for his release After they took the above amount, he was released. He was to give them a balance of Rs.5,000/- which was not in favour of giving to them.”* Pertinently, in the same statement, he also stated that *“Yashbir had demanded money from him which was recorded by him and he covered up into a CD”*. He also stated that *“he had demanded the money on 27.06.2006 and 02.07.2006, which was recorded by him”*. It is clear that the expression *“he”* refers to Yashbir Singh as, in the preceding sentence, he specifically named the person as Yashbir Singh who had demanded money from him which had been recovered *“by him”*, i.e. Yashbir Singh. During his cross-examination by delinquent Constable Harbeer Singh PW-3, he had clarified that the money was demanded by Constable Yashbir Singh and no money was demanded by Constable Harbeer Singh. It is in this context that, apparently, it was suggested to him that he had made a false complaint. Since PW-3 admitted in his cross-examination that money was demanded by Constable Yashbir Singh, it logically followed that the complaint made by him was false qua Constable Harbir Singh.

26. In our view, the aforesaid does not impinge on the credibility of the complainant PW-3 Kuldeep Singh. This is for the reason that both Constable Yashbir Singh and Constable Harbeer Singh had together proceeded to the residence of PW-3 Kuldeep Singh and they were together when the demand for Rs.25,000/- was made. It was, therefore, natural for him to assume that the demand was made on behalf of both of them, even though the actual demand was made by Constable Yashbir Singh and the money was also collected by him. Pertinently, in the statement of PW-4 Smt. Lata Aggarwal, it has also clearly come out that the complainant PW-3 Kuldeep Singh gave the money to Yashbir Singh.

27. For all the aforesaid reasons, we find no merit in the present petition and dismiss the same leaving the parties to bear their respective costs.

VIPIN SANGHI, J.

DEEPA SHARMA, J.

APRIL 17, 2017

B.S. Rohella