

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

+ **WRIT PETITION (CIVIL) NO. 9112/2016**

% **Reserved on : 21st February, 2017**
Pronounced on: 19th July, 2017

RAJBIR SINGH Petitioner

Through: Mr. Yogesh Chhabra, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents

Through: Mr. Devesh Singh, ASC for GNCTD.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J.

1. The petitioner-Rajbir Singh, was appointed as a Constable in the Delhi Police on 14th April, 1977 and subsequently promoted as Assistant Sub Inspector (ASI).
2. By the order dated 3rd September, 2011, the Disciplinary Authority, the Additional Deputy Commissioner of Police, imposed penalty of withholding one increment for a period of 2 years with cumulative effect on the petitioner. The penalty was upheld by the Appellate Authority, i.e. the Joint Commissioner of Police, vide order dated 23rd November, 2012.
3. The Principal Bench of the Central Administrative Tribunal ("Tribunal") vide order dated 24th May, 2016 dismissed OA No.197/2013 filed by the petitioner challenging the aforesaid orders of the Disciplinary Authority and the Appellate Authority.

4. These orders are now impugned in the present writ petition.
5. The facts leading to the imposition of penalty on the petitioner are partly disputed and for the sake of clarity and decision, are recorded. On 24th February, 2010, when the petitioner was posted as ASI at Police Station Badli, an incident of a road accident at the GTK Road was reported. The DD was marked for enquiry and action to the petitioner. The petitioner had purportedly visited the spot and had submitted the report that the injured, the accidental motor cycle and the complainant were not to be found at the spot. The DD was returned untraced.
6. On 23rd March, 2010, FIR No.77/2010 under Section 279 and 304A of the Indian Penal Code, 1860 was registered at the instance of Braham Prakash that his son Sumit @ Babloo had lost his life in the road accident on 24th February, 2010. The reference was to the accident, which was marked to the petitioner for enquiry and action vide DD marked to the petitioner.
7. The petitioner, it was felt, had taken his duty in a casual manner and had neglected and failed to take prompt action.
8. Upon consideration, departmental proceedings were initiated against the petitioner on 11th June, 2010 under the provisions of the Delhi Police (Punishment and Appeal) Rules 1980. Harpal Singh Yadav, Assistant Commissioner of Police, Alipur was appointed as the enquiry officer. The articles of charge framed against the petitioner read as under:

“An enquiry conducted into the complaint of one Sh.Braham Parkash r/o. village Chhatehra Bahadurpur, Sonipat, Haryana revealed that on 24.2.2010, a PCR call vide DD No.17-A, P.S. S.P. Badli about accident at GTK Road near Jain Mandir was received and the same was marked to ASI Rajbir Singh, No.2008/D for enquiry and action. He visited at the spot and lodged a report that neither the injured and accidental motorcycle nor the complainant was found at the spot. This call was also attended by PCR Van L-84 and I/C Van HC Banwari Lal, No.192/PCR, who had removed the injured to SRHC Hospital vide MLC No.229/10 dated 24.2.2010. Since, the condition of the injured Sumit @ Babloo was serious, the doctor of SRHC Hospital referred him to LNJP Hospital by a Government Ambulance. Later on, injured Sumit @ Babloo was got admitted in Saroj Hospital, Madhuban Chowk by his relatives, where he remained admitted from 24.2.2010 to 02.03.2010. On 27.02.2010, the complainant Sh.Brahm Parkash, father of the victim visited P.S. S.P. Badli. Since, SHO/IO were not found present there, he informed in Duty Officer’s room that his son is admitted in Saroj Hospital. The accidental Motorcycle No.DL-8S-NC-3583 was brought to Police Station from the spot by beat constable Narender, No.1972/OD, on the information given by one Narender Kumar, the relative of the complainant on 27.2.2010. Beat Constable Narender, No.1972/OD informed IO ASI Rajbir Singh on telephone on the same day about the above motorcycle. Due to poor financial condition, the father of injured requested the doctor of Saroj Hospital to discharge his son Sumit @ Babloo from the Hospital and he was discharged on request on 02.03.2010. Thereafter, the complainant got his son Sumit @ Babloo admitted in LNJP Hospital through OPD and he succumbed to his injuries on 08.03.2010. The dead body was taken by complainant to his village without Post

Mortem and he did not inform the LNJP police staff about death of his son. However, on the statement of complainant Sh.Braham Prakash, case FIR No.77/10 dated 23.3.2010 u/s.279/304-A IPC, P.S. S.P. Badli was registered on 23.3.2010 and copy of the FIR was given to the complainant.

Therefore, I, Harpal Singh, ACP/Alipur, E.O. charge you ASI Rajbir Singh, No.2008/D that you took the matter in a casual way and failed to take prompt legal action in the matter after ascertaining the facts, as mentioned above in detail. This is a serious lapse on your part.

I, Harpal Singh, ACP/Alipur, E.O. charge you Const. Dhirender, No.1720/OD (deputed as Duty Constable at SRHC Hospital) that you failed to get a report lodged in the daily diary with the Duty Officer of P.S. S.P. Badli. You took the matter in a casual manner and simply noted down the name of the IO and DD No. from the Duty Officer of P.S. S.P. Badli, whereas, you were supposed to get lodged a prompt DD entry regarding the admission of injured Sumit @ Babloo in the Hospital and should have noted down the DD No. lodged in this regard and name & number of the Duty Officer. But you failed to do so, which amounts to a serious lapse on your part.

I, Harpal Singh, ACP/Alipur, E.O. charge you HC Mahabir Singh, No.405/OD (detailed as Duty Officer of P.S. S.P. Badli) that you were duty bound to lodge the complete detail after obtaining from the Duty Constable SRHC Hospital regarding the admission of the injured Sumit @ Babloo. But you failed to do so, which amounts to a serious lapse on your part.

I, Harpal Singh, ACP/ Alipur, E.O. charge you Const. Narender Singh, No.1972/OD (Beat Constable) that you collected the Motorcycle reportedly driven by the injured

deceased Sumit @ Babloo from the place of accident and parked the same in P.S. S.P. Badli, without informing the Duty Officer of P.S. S.P. Badli. This is a severe negligence on your part.

The above act on the part of you ASI Rajbir Singh, No.2008/OD, Const. Dhirender No.1720/OD, HC Mahabir Singh No.405/OD and Const. Narender Singh No.1972/OD collectively amounts to gross misconduct, negligence, carelessness and dereliction in the discharge of your official duty, which renders you liable for punishment under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980.”

9. The petitioner submitted his defence statement on 3rd June, 2011. Evidence was recorded by the Enquiry Officer. On the basis of the evidence and material on record, the Enquiry Officer held that the charge against the petitioner stood proved. The findings of the enquiry officer were communicated to the petitioner on 30th June, 2011. The petitioner submitted a detailed representation against the said findings. The Disciplinary Authority, upon consideration of evidence and the representation of the petitioner, imposed penalty of withholding of one increment for the period of two years with cumulative effect vide order dated 3rd September, 2011. As recorded above, the petitioner had filed an appeal which was rejected by the Appellate Authority vide 23rd November, 2012.
10. The petitioner then filed OA No. 197/2013 which has been dismissed by the impugned order of the Tribunal, recording that the petitioner was unable to bring on record any material to show that he had taken necessary and proper action and his entire defence was only limited to

the assertion that the Disciplinary Authority had acted in an improper and biased manner.

11. The primary contention of the petitioner before the Tribunal and before us was that the case was one involving a joint departmental enquiry, for three others namely, Head Constable Mahabir Prasad, Constable Narender Singh and Constable Dhirender, were also charge sheeted but they have been awarded lesser punishments. Head Constable Mahabir Prasad was awarded penalty of withholding of one increment for a period of one year without cumulative effect. Constable Narender Singh was awarded penalty of censure and Constable Dhirender was given a warning to remain more careful. Another contention of the petitioner was that the departmental proceedings suffer from serious lacunae, as the charge was vague and the orders of the Disciplinary Authority and Appellate Authority were perverse, biased and suffered from non-application of mind.
12. As per the charge reproduced above, the petitioner had visited the spot/place of the accident and had made a report that the injured, the complainant and the motor cycle involved in the accident were not to be found there. Enquiries had however revealed and it is accepted that the call was also attended to by a PCR van and the injured Sumit @ Babloo, had been removed to a private hospital (Saroj Hospital). As the condition of the injured was serious, the injured was referred by the doctors of Saroj Hospital to LNJP hospital. Subsequently, the injured was taken to a private hospital and again shifted to LNJP hospital. On 27th February, 2010, Sumit's father, Braham Prakash had visited Police Badli and had informed the duty officer that his son

was admitted in a private hospital. The accidental motor-cycle was brought to the police station from the spot by beat Constable Narender Singh. Information to this effect was given by one of the relatives of the injured (Sumit @ Babloo) on the same date i.e. 27th February, 2010. The injured (Sumit @ Babloo) succumbed to his injuries and expired on 8th March, 2010 in LNJP hospital. The dead body of Sumit @ Babloo was taken by the complainant to his village without post-mortem. Subsequently, FIR No.77/2010 dated 23rd March, 2010 under Sections 279/304-A of the Indian Penal Code was registered at Police Station Badli.

13. Further, the enquiry report refers to the statements of Head Constable Khem Chand (PW-1), Constable Rakesh Kumar (PW-2), Head Constable Banwari Lal (PW-3) and S.I. Gopal Dutt (PW-4) made in the enquiry proceedings. Braham Prakash, father of Sumit was examined as PW-5. Narender Kumar as PW-6 affirmed deposit of accidental motor cycle on 27th February, 2010. Inspector Sunil Kumar Vashishtha (PW-7), who was then working in the vigilance had deposed regarding the complaint received from Braham Prakash (PW-5). The evidence on record proved that the petitioner who had been marked DD No.17-A for enquiry and action, albeit he had acted in a casual and half hearted manner and had failed to ascertain the facts and take action. The petitioner, as well as the other delinquents who were charge-sheeted, were responsible for the misconduct, negligence, carelessness and dereliction in discharge of official duty.
14. We are of the opinion that the findings of the Tribunal on merits and appreciation of evidence and findings recorded in the departmental

enquiry does not call for any interference. This is not a case of lack of evidence or perverse conclusion. Neither is it a case of any procedural lapse which has caused prejudice to the petitioner.

15. The petitioner's submission that the punishment is disproportionate to the alleged and proved delinquency must be rejected. As per the petitioner, he had visited the spot, but did not notice or find any evidence of an accident and could not meet the complainant. He had accordingly recorded that the call was found untraced. The facts were to the contrary. The contention of the petitioner that he had other duties which were assigned to him, would not in our opinion make any difference, for if that was the case, he should have informed the higher officers including SHO about the accident. A young boy had an accident and had suffered injuries to which he succumbed. The punishment awarded is not disproportionate.
16. The petitioner has also challenged the order of penalty as being vitiated for it was passed by an unauthorized officer. It is submitted that the petitioner had joined Delhi Police as a Constable on 14th April, 1977. Reference is made to the appointment letter (Annexure P-16) of the petitioner issued by the Superintendent of Police. The argument of the petitioner is that the Additional Deputy Commissioner of Police, who had passed the order of penalty dated 3rd September, 2011 could not have acted as the Disciplinary Authority under the Delhi Police Act. In other words, the contention is that the Additional Deputy Commissioner of Police was not the competent authority which could have passed and imposed the penalty. It is pleaded that the petitioner was appointed by the

Superintendent of Police and Additional Deputy Commissioner of Police who had acted as the Disciplinary Authority was not an officer of equivalent rank and status.

17. The aforesaid contention of the petitioner has to be rejected in view of the decision of the Supreme Court in ***Ram Kishan Vs. Union of India & Ors.*** (1995) 6 SCC 157. This decision refers to section 11 of the Delhi Police Act, 1978, which enumerates that the Additional Deputy Commissioners assist the Deputy Commissioner of Police. The Deputy Commissioner of Police is in-charge of the District and one or more Additional Deputy Commissioners of Police has / have the authority to assist him. Reference was also made to Section 19 of General Clauses Act, 1897, which reads as under:-

“19. *Official chiefs and subordinates.*— (1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of expressing that a law relating to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.”

Elucidating upon the import of the said provision, it was held that where a superior has been authorized to perform certain duties under the Act or Regulation, a subordinate or deputy officer is empowered to lawfully perform the same duties in place of the superior. Rule 4 of the Delhi Police (Appointment & Recruitment) Rules 1980, stipulates that the Additional Deputy Commissioner of Police is also an appointing authority, having been delegated the power to appoint Sub-Inspectors, Assistant Sub-Inspectors, Head Constables and

Constables. Rule 6 of the Delhi Police (Punishment & Appeal) Rules, 1980, stipulates the authorities who are competent to award punishment depending upon the classification. Punishments mentioned at serial Nos.(i) to (vii) in Rule 5 of the Rules are deemed to be major punishments and may only be awarded by an officer not below the rank of the appointing authority after regular departmental enquiry. Harmoniously reading the aforesaid provisions, including Rule 4 of the Delhi Police (Punishment & Appeal) Rules, 1980, and Section 19 of the General Clauses Act, 1897 in particular, the Supreme Court concluded that the Additional Deputy Commissioner being an appointing authority, could pass an order of dismissal and the said order would not lack authority and would be in consonance with the mandate of Rule 6 of the Delhi Police (Punishment & Appeal) Rules, 1980, and is valid in law. The decision in ***Ram Kishan*** (supra) is squarely applicable to the present case. The last contention of the petitioner would therefore fail.

18. In view of the aforesaid discussions, we do not find any merit in the present petition and the same is dismissed. In the facts of the present case, there will be no order as to costs.

Sd/
SANJIV KHANNA, J.

Sd/
CHANDER SHEKHAR, J.

JULY 19th, 2017/ssn