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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 15.04.2019

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W.P.(C) 3883/2019

COMMISSIONER OF POLICE, DELHI AND ORS. Petitioner

Through Ms.Avnish Ahlawat, S.C. with
Mr.Nitesh Singh, Adv.

versus

SUKRAM PAL

..... Respondent

Through Mr.Sachin Chauhan, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

CAV No.393/2019

Learned counsel for the caveator/respondent enters appearance.

The caveat stands discharged.

W.P.(C) 3883/2019 & C.M.No.17603/2019

1. The present writ petition under Articles 226 and 227 of the Constitution of India assails the order dated 28.09.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal') in O.A. No. 2360 of 2015 filed by the respondent. Vide the impugned order, the Tribunal has allowed the respondent's aforesaid OA and has set aside the penalty imposed on him.

2. On 08.09.2005, while posted as a Constable at P.S. Roop Nagar, the respondent along with one Head Constable Mr. Sukra Oram was sent to Tis Hazari District Court to produce an under trial prisoner (UTP), namely Mr. Jai Prakash, before the court. At around 03:15

p.m., the said UTP escaped from the custody of the respondent and Mr. Sukra Oram near the Tis Hazari District Court Police Lockup but, while escaping, was crushed to death on the railway track behind P.S. Bara Hindu Rao.

3. Since the accused person died in an accident while in custody, a criminal case under Sections 223 and 224 of the Indian Penal Code, 1860 ('IPC') was registered against the respondent and Mr. Sukra Oram and after investigation, a challan was filed against them. They were also placed under suspension vide orders dated 08.09.2005 and 26.09.2005 respectively, which were subsequently revoked on 15.12.2005. As a result of the challan being filed against the respondent and Mr. Sukra Oram, an application under Section 140 of the Delhi Police Act, 1978 and Section 197 of the Code of Criminal Procedure, 1973 was made on 12.06.2006, seeking grant of sanction for their prosecution, which was granted on 29.11.2007.

4. On 17.03.2011, a chargesheet was issued to the respondent for gross misconduct, misuse of his official position, and dereliction in discharge of his official duties and a joint departmental enquiry was held against the respondent and Mr. Sukra Oram, under the Delhi Police (Punishment and Appeal) Rules, 1980.

5. On 07.06.2012, the learned Metropolitan Magistrate ('MM') found that the requisite sanction for initiation of prosecution, against the respondent and Mr. Sukra Oram, was granted after the expiry of one year from the date of commission of the alleged offence, which violated the express provisions of Section 140 of the Delhi Police Act, 1978 and on this ground itself, the respondent and Mr. Sukra Oram

were discharged. The petitioner preferred a revision petition against the aforesaid order of discharge passed by the learned MM, which was also dismissed by the Additional Sessions Judge-01, North Delhi ('ASJ') on 27.11.2012.

6. In the meanwhile, the Enquiry Officer appointed by the petitioner to conduct the departmental enquiry against the respondent and Mr. Sukra Oram, came to the conclusion that there was no evidence brought on record to prove any negligence and dereliction of duty on their part by observing as under:

"Conclusion:

If we look at the charge will find that basically there are two allegations leveled against the delinquents HC Sukra Oram and Const. Sukram Pal.

1. That they were carrying accused Jai Prakash who was to be produced before court. The custody of the accused was with Ct.Sukram Pal and under the supervision of HC Sukra Oram who was also the I.O. of the case. That the accused escaped from the lawful custody of the above name delinquents.

2. That there was negligence and dereliction in the discharge of their official duties.

As regard to first part of the charge is concerned it is a proved fact that accused Jai Prakash escaped from the custody of the delinquents and a case vide FIR No.351/05 u/s 223/224 IPC P.S Subzi Mandi was registered against both delinquents. However, it does not matter that in the above case the trial court did not take the cognizance of the offence on the technical ground as prosecution sanction u/s 140 D.P. Act was required to be taken as prescribed by the law was not taken and on this basis the delinquents were discharged in the case. But as far as the departmental proceedings are concerned this part of the charge stand proved against both

the delinquents.

However, as regard to the 2nd part of the charge regarding negligence and dereliction of the duty no evidence came on record to prove this thing. Hence, in view the charge is proved only partly as discussed above.”

7. On 14.02.2014, despite the aforesaid, the Disciplinary Authority, while accepting the findings of the Enquiry Officer, came to the conclusion that the respondent along with Mr. Sukra Oram had failed to produce anything in their defence to suggest that they were adequately alert and that the escape of the accused from their custody was unpreventable despite their alertness. The Disciplinary Authority, thereafter, imposed the penalty of forfeiture of one year approved service of the respondent alongwith temporary proportionate reduction in his pay, with a further direction that the respondent's suspension, from 08.09.2005 to 15.12.2005, be treated as time not spent on duty for all intents and purposes. The petitioner also included the respondent's name in the list of officers with doubtful integrity w.e.f. 14.02.2014.

8. Aggrieved by this penalty order, whereby he was penalised despite an order of discharge having been passed in his favour by the learned MM, which was also upheld by the learned ASJ, the respondent preferred an appeal before the Appellate Authority, which was dismissed vide order dated 15.01.2015. The respondent, therefore, filed the aforesaid O.A. No. 2360/2015 before the Tribunal seeking quashing of the findings of the Inquiry Officer and the consequential orders passed by the Disciplinary Authority and the Appellate Authority.

9. Vide its impugned order dated 28.09.2018, the Tribunal allowed the OA filed by the respondent by observing as under:

“11. In the instant case, it does not in dispute that at the time of escape of the UTP, the applicant was, in fact, paying the fare to the auto rickshaw and the UTP was under the lawful custody of Head Constable Sukram Oram. In this view of the matter, it cannot be alleged that the applicant was negligent and had connived to facilitate the escape of the UTP.

12. This aspect gets further corroborated by the factum of acquittal of the applicant in the criminal case, which has been filed vide FIR NO.351/2005 dated 08.09.2005 under Sections 233/234 IPG. The EO also, in his report, has stated that the second part of the charge, viz. negligence and dereliction in discharging the official duties, no evidence came on record to prove it. Hence, we are convinced that there was no negligence, connivance or dereliction of duty on the part of the applicant.

13. In view of the above as well as relying on the ratio of law laid down in the judgments cited at paragraph 3.9 (supra), we are of the view that the applicant has been unfairly punished. Accordingly, we quash and set aside Annexure A-2 order dated 14.02.2014 passed by the disciplinary authority and Annexure A-3 order dated 15.01.2015 passed by the appellate authority.”

10. The learned counsel for the petitioner states that the Tribunal has erred in overlooking the fact that the UTP, late Mr. Jai Prakash, had escaped from the lawful custody of the respondent and, therefore, it was evident that the respondent was guilty of negligence and dereliction of duties. The respondent was, thus, rightly penalised by the petitioner. She submits that even otherwise, the mere acquittal of the respondent in criminal proceedings on account of belated grant of

sanction could not affect the findings arrived upon in the departmental enquiry and, therefore, prays that the impugned order be set aside.

11. On the other hand, Mr. Sachin Chauhan, learned counsel for the respondent, supports the impugned order and states that once there was nothing to show that there was any negligence on the respondent's part, he could not be penalised merely because the UTP managed to escape, and that too when at the time of his escape, the respondent was making the payment of the autorickshaw fare and he was in the lawful custody of Mr. Sukra Oram.

12. We have heard the learned counsel for the parties and find absolutely no reason to interfere with the impugned order passed by the Tribunal. Once the enquiry officer appointed by the petitioner itself arrived at a categorical finding that there was nothing to show any negligence or dereliction of duties on the part of the respondent, there was no reason to hold that him guilty of any misconduct. In our view, in the light of the specific conclusion arrived at by Enquiry Officer that there was no evidence placed on record to prove the charge of negligence and dereliction of duty against the respondent and Mr. Sukra Oram, the Disciplinary Authority could neither have held them responsible for the escape and subsequent death of the UTP Mr. Jai Prakash, nor could have held them liable to be punished for the same and direct the imposition of penalty upon them.

13. The Disciplinary Authority, having accepted the findings of the Enquiry Officer exonerating the respondent of the charge of negligence and/or dereliction of duties, was not correct in holding the respondent guilty of misconduct by simply ignoring those findings and

imposing the penalty on him. We find that the conclusions of the Disciplinary Authority in its order dated 14.02.2014 were wholly unsustainable and rightly quashed by the Tribunal.

14. For the aforesaid reasons, the writ petition, being meritless, is dismissed alongwith pending application.

REKHA PALLI, J

VIPIN SANGHI, J

APRIL 15, 2019

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