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

+ **Date of Decision: 28.05.2019**

% **W.P.(C.) No. 5926/2019**

RAMESH KUMAR

..... Petitioner

Through: Mr. Rameshwar Singh Malik, Sr.
Advocate with Ms. Beena and Mr.
Hitesh Malik, Advocates.

versus

GOVT. OF NCTD & ORS.

.....Respondents

Through: Mrs. Avnish Ahlawat, standing
counsel GNCTD (Services) alongwith
Mr. Nitesh Kumar Singh and Ms.
Sakshi Sairwal, Advocates.

W.P.(C.) No. 6044/2019

ISHWAR SINGH

..... Petitioner

Through: Mr. Rameshwar Singh Malik, Sr.
Addv. with Ms. Beena and Mr. Hitesh
Malik, Advocates.

versus

GOVT. OF NCTD & ORS.

.....Respondents

Through: Mrs. Avnish Ahlawat, standing
counsel GNCTD (Services) alongwith
Mr. Nitesh Kumar Singh and Ms.
Sakshi Sairwal, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

VIPIN SANGHI, J. (ORAL)

1. These two writ petitions are directed against the common order passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA 1013/2013-preferred by Constable Ramesh Kumar, and OA 993/2014-preferred by Head Constable Ishwar Singh, wherein they had assailed the disciplinary proceedings taken against them and the consequential punishment of dismissal imposed upon them. Enquiry against both the petitioners was a joint enquiry, since the charge against both of them was similar. They were also punished by the common order passed by the Disciplinary Authority.

2. The allegation against both the petitioners was that while they were detailed for ensuring proper and safe custody of the Under Trial Prisoner (UTP) Vikas Yadav-who was then charged, inter alia, under Section 302 IPC, they allowed the said prisoner to leave the All India Medical Institute of Medical Sciences on the night of 26/27.11.2011 between 12.45 to 6 am. A detailed joint enquiry was held against the petitioners, wherein they were found guilty by the Enquiry Officer. The discussion of the evidence found in the enquiry report reads as under:-

“DISCUSSION OF EVIDENCE

*I have carefully gone through the statement of PWs,
Exhibits, defence statement submitted by the*

delinquents and all relevant materials so collected during the course of joint departmental enquiry proceedings in the light of facts and circumstances of the case. The charge leveled against the delinquents is that on 26/27.10.11 while both of them were on duty to ensure care and custody of the UTP patient Vikas Yadav S/o Sh. D.P. Yadav admitted at ortho new private ward, AIIMS Hospital Delhi, provided undue facility to the UTP and remained collusion with the UTP and facilitated the UTP while in their custody.

There are seven PWS who have categorically supported the version of prosecution side. PW-1 proves that, according to duty roster both defaulters, HC Ishwar Singh No. 3578/DAP, and Ct. Ramesh, No. 7730/DAP were on duty to ensure care and safe custody of UTP patient Vikas Yadav S/o D.P. Yadav admitted at AIIMS hospital Copy of which is already exhibited and marked as PW-1/A. The other six PWs who were on duty at the intervening night of 26/27-10-2011 at AIIMS hospital have clearly stated in their respective statements that the defaulters had taken out the UTP and returned only in the next morning. PW-3 (Sister Parbha Messy) who informed PW-2 (Mrs. Leelama Methew) about the absconding of the UTP patient Vikas Yadav along with police personnel without information and permission and recorded all the facts of the incident in sister's duty record copy of which is already exhibited and marked as Ex.PW-3/A, confirms the charge against both the defaulters. The charge is also reconfirmed from the statement of PW-4 (Elizabeth Ekka) that the patient Vikas Yadav had

gone out at around 00.45 hrs along with police personnel and came back around 6.00 AM next morning. The charge is also not disputed from the testimonies of PW-5 (Dr. Pankaj Kumar Sharma) and PW-6 (Dr. Deepak GAutam) who also visited the room No. 3008, after receiving the information regarding the incident and found neither the patient nor the police personnel were present in the room and recorded all these facts in doctors order sheet copy of which is already exhibited and marked as Ex.PW-6/A.

The feeble plea taken by the defaulters that they were present in the room and had bolted the room from inside is completely shattered by the testimony of both doctors (PW-5 & PW-6) who visited the room at night and found the room vacant in addition to all these facts the room was locked from outside is also clear from the testimony of PW-3 as she had stated that at about 6 AM, when she was standing in front of room No. 3005, then the UTP patient Vikas Yadav came with the police personal from lift side and collected the “key from the nursing station.

From the perusal of statements of PWs, exhibits, defence statement and documentary evidences adduced in the enquiry I am of the considered opinion that both the defaults remained in collusion and facilitated the UTP while on their safe custody and care either by some ulterior motive or acquisition of monetary gains and thus acted in a manner of unbecoming police officials.

CONCLUSION

From the above discussion and material placed on DE file, I have arrived at the conclusion that the charge leveled against the defaulters delinquents HC Ishwar Singh, No. 2578/DAP, and Ct. Ramesh, No. 7730/DAP are fully substantiated beyond any shadow of doubt and I hold them guilty of the charge.”

(emphasis supplied)

3. The disciplinary authority concurred with the said findings and consequently passed the common order of dismissal against both the petitioners on 14.8.2012. In the said order of dismissal, the Disciplinary Authority recorded as follows:-

“I have carefully gone through the depositions made by the PWs as well as relied upon documentary evidence. The pleas taken by the defaults are devoid of substance. The contentions raised by the defaulters in their defense statements have been discussed by the Enquiry Officer at length in his finding. It is a fact that the Hospital Staff i.e. Doctors and Nursing Staff etc. were examined at AIIMS, New Delhi, however it does not cause any prejudice to the defaulters, as these PWs were examined in the presence of the defaulters and ample opportunity was accorded to the defaulters to cross-examine the witnesses. Moreover, the duties performed by the Hospital Staff fall under the category of “essential services” and as such, there is no harm in examining the witnesses of A.I.I.M.S. in the Hospital itself when the defaulters were provided with full opportunity to defend themselves. Further, Inspr. Dharambir Singh, the then I/C Central Jail, 3rd Bn. DAP, was never associated with the Preliminary Enquiry contrary to the claims of the defaulters. Instead, Shri Jai Prakash, ACP/3rd Bn DAP, conducted the PE, hence, there was no need to cite Inspr.

Dharambir Singh as prosecution witness in the departmental enquiry against the defaulters. The plea of the defaulters that they were present when checked by Inspr. Vimal Kishor at 11.50 PM is devoid of merit as the main charge against them was that they were not found present in the ward between 12.45 AM to 6.00 AM on the night between 26/27.10.2011. Besides, neither there is any contradiction in the depositions made by PWs-1 to 6 nor any manipulation is seen in the documents provided by the Hospital authorities. The claim of the defaulters that they did not remain in collusion and facilitate the convict has no legs to stand as from the overall evidence and relied upon documents it is clearly proved that convict Vikas Yadav and both the defaulters were not present in the ward room from 12.45 AM to 6.00 AM on the intervening night of 26/27.10.2011.

*Both the defaulters were also heard in OR held on 03.08.2012. During O.R., they added nothing specific to what they have already stated in their final representation against the finding of the E.O. They reiterated that they did not go anywhere and were present in the ward room on the alleged day of incident. The plea taken by them is a total lie and cannot be believed. It has been proved in the departmental enquiry that both the defaulters had taken out the convict Vikas yadav from the ward room of A.I.I.M.S. to an unknown place and were not found present alongwith the convict from 12.45 AM to 6.00 AM of the intervening night of 26/27.10.2011 as is evident from the statement of PW-3 as well as other corroborating statements of other PWs. Vikas Yadav is a convict and is undergoing sentence of life imprisonment of murdering one Shri Nitish Katara, an incident which shocked the nation and remained in the news for long time. **The defaulters, being police officers were expected to perform their duty strictly as***

*per rules which required of them to ensure proper care and custody of convict Vikas Yadav. Instead of doing, so, they remained in collusion with the convict and provided him undue and illegal favours which could have caused serious breach of custody or the convict. The omission and commission or both the defaulters is totally intolerable being members of the disciplined police force. They had been assigned such a sensitive task to ensure that the convict does not escape from lawful custody, but they took the convict to an undisclosed destination, in the process they took a high risk, obviously with an ulterior motive which could have resulted in escape of the convict. Their misconduct has not only tarnished the image of the Delhi Police but also given a bad name to the force. I agree with the findings of the E.O. **Therefore, keeping in view the overall facts and circumstances of the case as well as above discussion, both the defaulters deserve exemplary punishment.** Hence, I, Shibesh Singh, Deputy Commissioner of Police, 3rd Bn. DAP, Delhi, hereby order to remove HC Ishwar Singh, No. 2578/DAP and Constable Ramesh Kumar, No. 7730/DAP from the force with immediate effect. Their suspension period from 27.03.2012 to 22.04.2012 is also decided as period not spent on duty.”*

(emphasis supplied)

4. The appeal preferred by the petitioners was also rejected by a common order passed by the Special Commissioner of Police acting as Disciplinary Authority and dismissed the said appeal. The relevant extracts from the said order dated 28.2.2013 reads as follows:

*“I have carefully gone through the appeal, impugned order dated 14.08.2012 and all the relevant material available on record. The pleas of the appellants are not admitted. **The punishment awarded to the***

appellants is commensurate with the gravity of their misconduct, which is legal and justified. There was no need to cite Inspr. Dharambir Singh, the then I/C Central Jail/3rd Bn. DAP as PW in the DE because he was never associated with the PE. The plea of the appellants that they were present when checked by Inspr. Vimal Kishore vide DD No. 4 dated 26.10.2011 at 11.50 PM is devoid of merit as the main charge against them was that they were not found present in the ward between 12.45 AM to 6 AM on the night between 26/27.10.2011. During DE proceedings, all the material witnesses, i.e. PWs-1 to 6 have fully supported the prosecution. It has been proved during the DE proceedings that both the appellants had taken the convict Vikas Yadav out of the ward/room of AIIMJS to an unknown place and were not found present along with convict from 12.45 AM to 6 AM on the intervening night of 26/27.10.2011. Vikas Yadav was a convict and was undergoing sentence of life imprisonment for murdering one Sh. Nitish Katara, an incident which shocked the nation and remained in news for a long time. The appellants, being police officers, were expected to perform their duty strictly as per rules which required of them to ensure proper care and custody of convict Vikas Yadav. Instead of doing so, they worked in collusion with the convict and provided him undue and illegal favours which could have caused serious breach of custody of convict. The omission and commission of both the appellants is totally intolerable being members of disciplined police force. They had been assigned the sensitive task of ensuring that the convict does undisclosed destination and took a high risk. Their misconduct has not only tarnished the image of the Delhi Police but also given a bad name to the force.

Keeping in view of the above and considering the overall facts, I do not find any reason to interfere with

the impugned order. The appeal is, accordingly, rejected.” (emphasis supplied)

5. The Tribunal did not find favour with the submissions of the petitioners and, consequently, the original applications were rejected.

6. Learned counsel for the petitioners submits that the venue of the enquiry was changed inasmuch, as, the statements of the prosecution witnesses namely doctors and paramedical staff of the All India Institute of Medical Science (AIIMS) were recorded at AIIMS and not in the police station. The Tribunal has rejected the submissions of the petitioners and we find no merit in the said submission either. There is no rule which mandates that the enquiry proceedings have to be conducted only in a police station. Moreover, the petitioners are not in a position to point out any prejudice suffered by them, since they were allowed to cross-examine the witnesses- which they did. The enquiry may be conducted by the Enquiry Officer at any convenient place, keeping in view the circumstances of the case, as well as the convenience of the witnesses. The said witnesses were all serving in the AIIMS, and to require them to appear in the enquiry at any other location would have meant that the same would have adversely impacted their discharge of duties in a public hospital. We, therefore, find no merit in the submissions.

7. Learned counsel for the petitioner further submits that in the inquiry proceedings two material witnesses namely, Inspector Vimal Kishore and Inspector Dharambir Singh were not examined. The petitioners submitted that Inspector Vimal Kishore recorded DD Entry No.4 on the night of 26.10.2011 when the alleged misconduct is stated to have taken place.

Inspector Dharambir Singh had conducted a preliminary inquiry. The said preliminary inquiry was in favour of the petitioners.

8. We do not find merit in this submission of the petitioners as well. Firstly, we find that this submission has been considered and rejected by the Disciplinary Authority as well as the Appellate Authority. The recording of the DD entry by Inspector Vimal Kishore is claimed to be of 11.50 p.m, whereas the charge relates to the UTP being taken out at 12.45 am. So far as Inspector Dharambir Singh is concerned, the Disciplinary Authority has observed that he did not conduct the preliminary enquiry, and the same was conducted by Sh. Jai Prakash ACP.

9. Pertinently, the petitioners chose not to lead evidence by on their own in the inquiry and it was for them to produce the said officers as their defence witnesses, since they were seeking to rely upon them.

10. When the evidence led in the inquiry is to be appreciated, it is the evidence which is actually led and brought on record which is relevant and requires examination. It is on the appreciation of the evidence produced, that the guilt/innocence of the delinquent is required to be assessed. Having not led the evidence of Inspector Dharambir Singh or Inspector Vimal Kishore, it does not lie in mouth of the petitioner to now claim that the inquiry was vitiated on account of non-production of these two witnesses in the inquiry proceedings.

11. Learned counsel for the petitioner has also sought to place reliance on Standing Order No.125 of 2008 which deals with the subject of conducting departmental inquiries. The said Standing Order, inter alia, provides:

“The punishment of dismissal or removal shall be awarded for the act of grave misconduct rendering him unfit for police services. This means that unless a police officer is unfit for the police service, he should not be dismissed or removed. The mere finding of grave misconduct is not sufficient for an order of dismissal or removal with reference to rule 8(a) of the DP (P&A) Rule, 1980. A clear cut finding to that effect that grave misconduct is of such a nature which renders the official unfit for police service has to be recorded before passing the order of dismissal/removal.”

12. Learned counsel submits that while passing the impugned orders of dismissal, neither the Disciplinary Authority, nor the Appellate Authority have recorded any finding that the grave misconduct found against the petitioners has rendered them unfit for police service.

13. We do not find merit in the submission either, for the reasons that the Disciplinary Authority while passing the order of punishment has clearly recorded that in view of the grave and serious misconduct found against the petitioners, their conduct is intolerable. The Standing Order relied upon by the petitioners has to be understood in the context, and there is no statutory requirement that the specific words used in the said Standing Order should necessarily be used in the order that the Disciplinary Authority, or the Appellate Authority may pass, and if they are not used in the orders passed

by them, the order of removal/dismissal would be illegal. These words are not to be understood as a *Mantra*, without which the order of dismissal or removal from service could not be imposed, or would not become effective. The Disciplinary and the Appellate Authorities have said enough, and the gravity of the misconduct established against the petitioners is enough to justify the punishment imposed upon them.

14. We do not find any merit in these petitions and the impugned order does not call for interference. Dismissed.

VIPIN SANGHI, J.

RAJNISH BHATNAGAR, J.

MAY 28, 2019

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