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

+ **W.P.(C) 8138/2019**

GOVERNMENT OF NCT OF DELHI

THROUGH ITS CHIEF SECRETARY & ORS Petitioners

Through: Mrs. Avnish Ahlawat, Standing
Counsel with Mr. N.K. Singh and Ms.
Palak Rohmetra Advocates

versus

ACP MAHIPAL SINGH

..... Respondent

Through: Mr. A.K. Behera and Mr. Saurabh
Ahuja, Advs.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

29.07.2019

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Cav No. 758/2019

Learned counsel for the respondent caveator has appeared. The caveat stands discharged accordingly.

C.M. No. 33758/2019

Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 8138/2019 & C.M. No. 33757/2019

The GNCTD of Delhi has preferred the present writ petition to assail the order dated 08.02.2019, passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 471/2016. The

Tribunal has allowed the said Original Application preferred by the respondent applicant and set aside the charge memorandum dated 03.01.2013 as well as the order dated 22.06.2015, whereby the respondent's representation was rejected and the disciplinary proceedings initiated against him. The facts of the case have been taken note of in the impugned order , which read as follows:

“On 09.09.2010, a person, by name, Vikas Bakshi, was brought to Police Station CR Park, New Delhi, on a complaint submitted by Ms. Nazanin Gheidi, a resident of the area.. Alleging that said Vikas Bakshi behaved in an unruly and uncontrollable manner in the Police Station itself, and was found to be in intoxicated condition, an FIR/Kalandra was registered u/s 91/93/97 of the Delhi Police Act. The applicant was functioning as Assistant Commissioner of Police (ACP) at that time, M/s Anil Dureja and Sanjay Kumar Singh were functioning as Inspectors, and Dhananjay Pratap Singh as Sub Inspector, in the Police Station, at that time.

2. Mr. Vikas Bakshi submitted a complaint to the Lt. Governor of Delhi, stating that he had been subjected to ill treatment in the Police Station. This resulted in initiation of disciplinary proceedings against the two Inspectors and the SI, named above. The inquiry officer observed that the incident occurred mostly on account of the objection raised by one of the Inspectors for Vikas Bakshi holding a secret camera. The inquiry officer found that there was no basis for Mr. Bakshi to hold a camera. It was also observed that though he filed a writ

petition before the Hon“ble Delhi High Court challenging the Kalandra, the High Court declined to interfere, and that the concerned criminal court, before which the Kalandra was lodged, has taken cognizance of the offence. Ultimately, the departmental proceedings initiated against the Inspectors and SI were dropped, that too, after review by the Commissioner of Police, Delhi, vide order dated 06.04.2015.

3. The applicant was issued memorandum dated 03.01.2013, wherein it was mentioned that it is proposed to hold an inquiry against his acts and omissions in relation to the said incident. Statement of article of charge and statement of imputation of misconduct were also enclosed. The applicant filed OA No.2808/2013 challenging the charge memorandum dated 03.01.2013. The OA was disposed of through order dated 14.01.2015, with a direction to the respondents to take into account, the various aspects mentioned by the applicant in his representations. Not satisfied with that, the applicant filed a writ petition, WP (C) No.1001/2015, before the Delhi High Court. The writ petition was disposed of through order dated 03.02.2015 by fixing six weeks time for the respondents to pass reasoned and speaking order. When that was not complied with, the applicant filed CP (C) No.406/2015 before the High court. It was closed on 03.07.2015, fixing a period of one week for compliance.

4. Stating to be in compliance of the same, the Chief Secretary of the Government of NCT of Delhi, passed order dated

22.06.2015, taking the view that the disciplinary proceedings initiated against the Inspectors and the SI, on the one hand, and those initiated against the applicant, on the other, are different, and accordingly, decided to continue the proceedings. This OA is filed challenging the charge memorandum dated 03.01.2013, as well as the order dated 22.06.2015 passed by the Chief Secretary.”

On the complaint of the complainant – Vikas Bakshi, the SHO Inspector/ Sub-Inspector were preceded in departmental proceedings. They were discharged in those proceedings since the enquiry officer held that the charges were not proved. The Disciplinary Authority accepted the said finding. The respondent, who was the ACP of the area concerned and was also having an office at PS Ambedkar Nagar and was apparently present at the time when the incident took place on 09.09.2010, was issued the charge memorandum in question dated 03.01.2013. The statement of article of charge levelled against the respondent reads as follows:

“That the said Shri Mahipal Singh, ACP/ Delhi Police while functioning as ACP/ Ambedkar Nagar, Delhi, during the year 2010 committed gross misconduct in as much as he acted in a partial manner, abused his powers and influenced his subordinates including Station House Officer CR Park Police Station to act against one Shri Vikas Bakshi and consequently a Kalandara u/ s 91/93/97 of DP Act was lodged on 09/9/2010 against the said person, who was arrested in the matter and was accused of being under the influence of liquor and creating

nuisance etc. However, subsequently, the Court discharged the accused from charges u/ s 91 on the initial stage itself. Moreover, medical test of the accused did not confirm consumption of liquor by the accused. Thus, the accused was falsely implicated of offences under Section 91 of the DP Act.

Thus, the said Shri Mahipal Singh, ACP/ Delhi Police, by above acts of omission and commission failed to maintain professional integrity and exhibited the conduct unbecoming of a Government servant contravening thereby the provisions of Rule 3 of the CCS (Conduct) Rules, 1964.”

The statement of imputation of misconduct and misbehaviour in support of article of charge proceeds on the basis of the complaint made by Shri Vikas Bakshi and his version of the incident. While allowing the Original Application, the Tribunal took note of the fact that the Disciplinary Authority has accepted the position that the incident complained for by the complainant had not been proved. The proceedings initiated against Anil Dureja ended in the form of an order dated 10.12.2012 passed by the disciplinary authority, wherein it observed as follows:

“This is the final order in the joint departmental enquiry initiated against Inspr. Anil Dureja, No. D-1/651 (PIS No. 16860075), Inspr. Sanjay Kumar Singh, No. D-2753 (PIS No. 16890042) and SI Dhananjay Pratap Singh, No. D-1111 (PIS No. 16950270) that while they were posted as SHO/C.R. Park, Inspr. Investigation, PS C.R. Park and S.I. PS C.R. Park respectively on 09.09.2010 (here-in-after called the delinquents) under the provisions of Delhi Police (Punishment & Appeal), Rules, 1980, vide order No.DE-105/1227-95/P.Cell (P-V)/Vig., dated 30.09.2011, on the allegations that Shri Vikash Bakshi r/o 52/97 C.R. Park, New Delhi was called in

Police Station sequel to the incident had taken place on 08.09.2010 between Shri Vikash Bakshi and one lady Ms. Nazanil Gandhi r/o 52/03 C.R. Park, New Delhi through HC Nahar Singh. Subsequently on the summoning to the Police Station Shri Vikash Bakshi and his wife and PSO Ct. Hari Singh came to the P.S. at about 6 P.M. on 09.09.2010. At that time Inspr. Anil Dureja, SHO, Inspr. Sanjay Kumar Singh and Shri Mahipal Singh, ACP was present in the SHO's room. Shri Vikash Bakshi had a spy camera in his shirt pocket, which was found blinking. Inspr. Anil Dureja, SHO objected to this which offended Shri Bakshi and some heated arguments took place between Inspr. Anil Dureja and Mr. Vikas Bakshi. After that SI Dhananjay Pratap Singh arrested Shri Vikas Bakshi u/s 91/93/97 DP Act. His medical was got conducted in the AIIMS Hospital and then he was released on bail. The action u/s 91/93/97 D.P. Act taken against Sh. Vikash Bakshi was without proper justification. The contents of Kalandra pronounce Shri Vikash Bakshi being under the influence of liquor but the same is not supported by the medical examination. It is also unthinkable that a person who has been summoned by the police would visit the place in a drunken condition.

The departmental enquiry was entrusted to Sh. Rajesh Kumar, Addl. DCP/PCR (Ops.) and consequent upon the transfer it was transferred to Sh. Umesh Kumar, Addl. DCP/(G.A.)/PCR vide order No.DE-105/7596-7615/P.Cell(PV)/Vig., dated 25.07.2012 for completing the same on day to day basis and to submit his findings. The Enquiry Officer completed the same after observing all usual formalities and submitted his finding concluding therein that the charge leveled against the delinquents Inspr. Anil Dureja, No. D-1/651, Inspr. Sanjay Kumar Singh, No. D-2753 and SI Dhananjay Pratap Singh, No. D-1111 is not proved.

I have gone through the findings of the E.O., statements of PWs/DWs/ Defence statements of the delequents as well as other material/record available on DE file. It has been found that the conclusion arrived in Vigilance enquiry seems to be in haste and without proper application of mind. He has failed to appreciate and invoke the provisions under section 134 & 138

of Delhi Police Act, 1978 which given immunity to a police officer from penalty for the action taken by him under the Act in good faith in pursuance of his lawful duties. The Hon'ble Court of MM Saket, Delhi has already taken cognizance of the offences u/s 93/97 D.P. Act, 1978 against the complainant. As such no conundrum regarding jurisdiction of police action against a person, already having a criminal history of five cases in different police stations in Delhi, creating ruckus in police station with the intention to provoke breach of peace, arises. Initiation of D.E. against the police officers on false and frivolous complaints by the persons having criminal antecedents, without judicious application of mind not only makes mockery of the police system but also jettisons the moral of police force due to unwarranted harassments. Keeping in view of the totality of the facts and circumstances available on record, I am of the opinion that there was no malafide intention, negligence or dereliction in the discharge of their official duties on the part of the delinquents. Thus, I agree with the findings of the Enquiry Officer and exonerate Inspr. Anil Dureja, No. D1/651 (PIS No. 16860075), Inspr. Sanjay Kumar Singh, No. D-2753 (PIS No. 16820042) and SI Dhananjay Pratap Singh, No. D-1111 (PIS No. 16950207) of the charge. Let all the officers be informed accordingly."

The Tribunal has then extracted the statement of imputation of misconduct or misbehaviour alleged against the respondent herein and returned a finding that the same charge is sought to be levelled against the respondent in relation to the incident, which was levelled against the officers earlier and was found to be not proved. Consequently, the Tribunal has observed that the holding of the enquiry proceedings against the respondent would be a futile exercise.

Mrs. Ahlawat submits that the disciplinary authority of the respondent is different from the disciplinary authority of the police officer who were earlier proceeded against since the respondent was Assistant Commissioner

of Police at the relevant time. Be that as it may, in our view, since the complaint made by the complainant has been held to be not proved and the only allegation against the respondent was that he too was present against the police station when the alleged incident took place, in our view, the holding of the enquiry against the respondent would serve no useful purpose.

Since the tribunal has allowed the Original Application in the aforesaid background, we are not inclined to interfere with the same.

We may also observe that the petitioner did not chose to proceed against the respondent simultaneously with the other police officers and only after they were found not guilty in the enquiry proceedings held against them, the charge sheet in question was issued to the respondent.

Dismissed.

VIPIN SANGHI, J

RAJNISH BHATNAGAR, J

JULY 29, 2019

N.Khanna