

\$~28

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

+ **W.P.(C) 4187/2021**

SUBHASH MALIK

..... Petitioner

Through: Mr. Mritunjay Kumar Singh and Ms.
Ranjana Tiwary, Advocates.

versus

COMMISSIONER OF POLICE & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

%

08.04.2021

CM APPL. 12733/2021 (for exemption)

1. Allowed, subject to just exceptions and as per the extant rules.
2. The application is disposed of.

W.P.(C) 4187/2021

3. The petition impugns the order dated 4th January, 2021 of Central Administrative Tribunal (CAT), Principal Bench, New Delhi, of dismissal of OA No. 2214/2020 preferred by the petitioner, an Inspector in the respondents Delhi Police, against the punishment of 'censure' meted out to him in disciplinary proceedings and confirmed in the departmental appeal preferred by the petitioner.

4. The said disciplinary proceedings against the petitioner and two others were initiated in pursuance to certain observations in an order in a

W.P.(C) 4187/2021

page 1 of 4

Habeas Corpus petition preferred in this Court. This Court, while disposing of the *Habeas Corpus* petition observed that there was lack of diligence on the part of officials concerned.

5. It is the case of the petitioner, that he was not even the Station House Officer (SHO) of the concerned Police Station when the complaint of missing person/elopement, subject matter of the *Habeas Corpus* petition, was lodged and joined the said Police Station as an SHO subsequently and thus the disciplinary proceedings against him were unwarranted.

6. We have perused the order dated 22nd March, 2019 of the Disciplinary Authority, at page 243 of the file, and find the Disciplinary Authority to have reasoned (i) that the petitioner, since his joining as SHO of the concerned Police Station on 13th June, 2017 did not take any action on the complaint and was spurred into action only after the *Habeas Corpus* petition dated 15th November, 2017 was filed in the Court; (ii) the petitioner did not act swiftly on the complaint, though received prior to his joining as SHO of the concerned Police Station but pending at the time when he joined; (iii) the Status Report dated 20th November, 2017 filed by the petitioner in the Court was not in conformity with the facts; and, (iv) such acts on the part of the petitioner amounted to gross miss-conduct, carelessness, negligence and dereliction in the discharge of official duties.

7. Counsel for the petitioner has contended that the finding of the Disciplinary Authority of the petitioner having mis-represented facts in the status report filed in the *Habeas Corpus* petition, is contrary to the documents on record.

8. We have however enquired from the counsel for the petitioner, how in exercise of power under Article 226 of the Constitution of India we can act as an Appellate Court sitting over the decision of the Disciplinary Authority on merits and whether not our jurisdiction is confined to interfere in disciplinary matters only if there has been any error of procedure, violation of the principles of natural justice or the decision arrived at so wholly arbitrary and capricious that no reasonable person could have arrived at that conclusion as held in *State of Andhra Pradesh Vs. S. Sree Rama Rao* AIR 1963 SC 1723, *State of Andhra Pradesh Vs. Chitra Venkata Rao* (1975) 2 SCC 557, *Union of India Vs. G. Ganayutham* (1997) 7 SCC 463, *Apparel Export Promotion Council Vs. A.K. Chopra* (1999) 1 SCC 759, *R.S. Saini Vs. State of Punjab* (1999) 8 SCC 90, *Ashok Kumar Vs. Sita Ram* (2001) 4 SCC 478, *Registrar General, High Court of Judicature of Madras Vs. K. Muthukumarasamy* (2014) 16 SCC 555, *Director General of Police, Railway Protection Force Vs. Rajendra Kumar Dubey* 2020 SCC OnLine SC 954 and *State of Rajasthan Vs. Hem Singh* 2020 SCC OnLine SC 886.

9. Counsel for the petitioner then contends that CAT, though exercising same powers as were earlier exercised by the High Courts prior to coming into force of the Administrative Tribunals Act, 1985, has, while dismissing the OA preferred by the petitioner, made certain adverse comments and which are costing the petitioner further promotion.

10. CAT, in paragraph 11 of the impugned order, has *interalia* observed “What is more startling is that the disciplinary authority had chosen to honour the applicant herein with just a censure for the serious lapse..... In any other organization, the Disciplinary Authority

himself would have been exposed to disciplinary proceedings for such inefficient handling of the serious issue.....It is hoped that the higher authorities including the Hon'ble Lieutenant Governor would take the issue seriously and ensure that such incidents do not occur and the persons who are part of that indifference do not remain in the disciplined force like the Delhi Police."

11. The aforesaid observations, in so far as against the petitioner, are indeed, in the facts of the case, found to be uncalled for.

12. None appears for the respondents Delhi Police.

13. However, for disposing of this petition as herein under, the need to issue notice is not felt.

14. Petition is disposed of, directing that the impugned order dated 4th January, 2021 of the CAT shall be read as an order of dismissal *simpliciter* of the OA preferred by the petitioner and any adverse observation therein against the petitioner shall not come in the way of further promotion/posting, if any of the petitioner.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

APRIL 8, 2021/sr

W.P.(C) 4187/2021

page 4 of 4