



2024:DHC:6433-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 22.08.2024
Judgment pronounced on: 28.08.2024

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W.P.(C) 2047/2008**GOVT. OF NCT OF DELHI & ORS**

.....Petitioners

Through: Ms. Avnish Ahlawat, Standing
Counsel with Mr. N.K. Singh, Ms.
Laavanya Kaushik, Ms. Alize Alam
and Mr. Mohnish Sehrawat,
Advocates

versus

SANDEEP KUMAR

.....Respondent

Through: Ms. Saahila Lamba, Advocate

CORAM:**HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MR. JUSTICE GIRISH KATHPALIA****J U D G M E N T****GIRISH KATHPALIA, J.:**

1. This petition brought by the jail authorities under Article 226 of the Constitution of India seeks quashing of order dated 14.08.2007 of the learned Central Administrative Tribunal, whereby O.A No.2290/2006 filed by the present respondent was allowed and after setting aside the orders passed by the present petitioners (*pertaining to a departmental enquiry*) the present petitioners were directed to grant all consequential benefits to the present respondent.



1.1 On service of notice, the respondent entered appearance through counsel and vide order dated 07.05.2008, the predecessor bench ordered Rule DB, directing the present respondent to file counter-affidavit. After completion of pleadings, the matter came up for hearing on its turn in the list of Regulars.

1.2 We heard learned counsel for both sides.

2. Briefly stated, circumstances relevant for present purposes are as follows.

2.1 The respondent was appointed as Warder in the Central Jail, Tihar on 13.05.1996 and while posted in Central Jail No.4, he was deputed in Ward No.4 for night duty from 03:00 am to 6:00 am during the intervening night of 07.10.1996 & 08.10.1996. During the fateful night, a violent incident allegedly took place in Cell No.25 of Ward No.4, in which thumbs of both hands of a prisoner, namely Rakesh were chopped off by his co-prisoners.

2.2 Pertaining to the said incident, the respondent was chargesheeted on 05.08.1997 under Rule 14 of the CCS (CCA) Rules, 1965 on the ground that at the time of the said incident, he failed to perform his duty properly and attentively by not noticing the quarrel among the prisoners of Cell No.25 and cutting off of thumbs of both hands of prisoner Rakesh and that after the said incident, he failed to provide necessary medical help to the injured prisoner, which acts show negligence and lack of devotion to duty,



unbecoming of a government servant in violation of Rule 3 of CCS (Conduct) Rules, 1964.

2.3 On the basis of report submitted by the Enquiry Officer, the disciplinary authority vide order dated 16.07.1999 imposed upon the respondent punishment of reduction of pay by three stages, which punishment was upheld by the appellate authority vide order dated 18.03.2003. Against the said orders of the disciplinary authority and the appellate authority, the respondent filed O.A No.38/2001, which was disposed of by the learned Tribunal vide order dated 16.04.2002, directing the appellate authority to pass reasoned and speaking order within two months. The appellate authority vide order dated 16.07.1999 quashed the punishment order and remanded the case with the directions to hold a *de novo* enquiry.

2.4 Consequently, a *de novo* enquiry was conducted, though by the same Enquiry Officer, who had conducted the earlier enquiry. In the said *de novo* enquiry, only one witness namely Subhash Batra was examined, however, the victim Rakesh, who had been released from jail by that time, could not be traced out, so was not examined. On the basis of the report of the said *de novo* enquiry, the disciplinary authority vide order dated 04.12.2002 imposed on the respondent punishment of reduction of pay by three stages of increments in the present scale with further stipulation that he would not earn any increment during that period. The said punishment was upheld by the appellate authority as well as by revisional authority by way of orders



impugned before the learned Tribunal.

2.5 By way of the order impugned before us, the learned Tribunal quashed the said punishment orders, observing that since at the time of chopping off of thumbs, the prisoner Rakesh was gagged and could not shout, it was not possible for the present respondent to hear any commotion and consequently no negligence in performance of duties could be attributed to him.

3. Hence, the present petition.

4. During arguments, learned counsel for petitioners took us through the above records and contended that the impugned order is not sustainable in the eyes of law insofar as it was duty of the respondent as a Warder to take rounds of the Ward and had he done so, the incident would have certainly come to his notice. Learned counsel for petitioners also took us through documents on record of these proceedings and contended that mere failure to examine the victim Rakesh is of no consequence in this case since his statement recorded earlier by the concerned Sub Divisional Magistrate is on record.

5. On the other hand, learned counsel for respondent supported the impugned order and contended that since at the time of the alleged incident, the victim Rakesh had been gagged by co-prisoners, he could not shout, so it was not possible for anyone to notice any commotion.



6. Thence, the issue before us is as to whether the learned Tribunal rightly quashed the punishment order, finding it to be a case of no negligence on the part of the respondent Warder.

7. In that regard, having examined the entire material placed on record of these proceedings, we find facing us certain discomfoting issues, which create a suspicion of some cover up by the petitioners/jail authorities.

8. As mentioned above, pertaining to the same incident and allegations, disciplinary enquiry was conducted twice and by the same officer. The second enquiry was directed to be specifically a *de novo* enquiry. That being so, there was no occasion in the second enquiry to import the records of the first enquiry. But that was done. Not only this, despite the appellate authority having trashed the first enquiry report and having directed *de novo* enquiry, the Enquiry Officer in his report on second enquiry went on to observe that *“The enquiry conducted by the then Supdt. Jail is near to the truth and the sequence of events are more plausible. The co-prisoners of Cell No.25 had admitted before the Supdt. Jail that....”*

9. In the second disciplinary enquiry, only one witness namely Subhash Batra was examined and cross examined. No other witness was examined in the second enquiry. As reflected from the report of the Enquiry Officer, whereabouts of the victim Rakesh, who had been released from jail could not be found. The said solitary witness Subhash Batra stated that he was deputed in Central Jail No.4 as Duty Officer from 6:00 am to 2:00 pm on



08.10.1996 and at about 7:40 am, he came to know about some quarrel between the victim Rakesh and co-prisoner Uma Charan, but he did not witness the incident and was not aware about chopping off of thumbs of Rakesh. To repeat, no other witness was examined by the Enquiry Officer and there is nothing on record to show that any of the witnesses examined during the first enquiry (*records whereof were imported by the Enquiry Officer in the second enquiry*) was tendered for cross examination by the respondent. Consequently, there is no material on record, which could be treated as evidence against the respondent.

10. In his defence at every stage, the respondent consistently denied any knowledge about the alleged incident and also claimed that the incident, if at all any, it occurred prior to commencement of his duty hours. That being so, it was incumbent upon the petitioners department to adduce some reliable evidence to establish that the alleged incident of chopping off of thumbs of prisoner Rakesh did take place and if so, the same took place between 3:00 am to 6:00 am. But as mentioned above, there is not even an iota of such evidence. Rather, from statement of the victim Rakesh (*though the same having not been subjected to cross examination cannot be read against the respondent*), it appears that the assailants were sharpening and heating up the spoon (*allegedly used as weapon of offence*) at about 11:00 pm. It is not plausible that the weapon prepared for assault at 11:00 pm would have remained hot and effective till 3:00 am and that lends credence to the possibility of the assault being prior to commencement of duty hours of the respondent.



11. Neither any Medico Legal Certificate *qua* injuries suffered by Rakesh nor any forensic report *qua* blood stains on the spot or clothes of victim or assailants nor even the chopped off thumbs were brought before the Enquiry Officer. Even the weapon used in committing the alleged offence or seizure of the same was not produced before the Enquiry Officer. Admittedly, till 7:40 am when the gates of the Ward were opened, nobody knew about the alleged assault. Duty hours of the respondent, as mentioned above, ended at 6:00 am.

12. Of course, standard of proof required to hold the charged official guilty in the departmental enquiry is much lesser than the one required to hold an accused guilty in the criminal trial. But there has to be some reliable evidence. Bald statement of a witness, not subjected to cross examination is no evidence at all. And in the present case, even that bald statement had been recorded in the earlier departmental enquiry, which enquiry was discarded by the appellate authority, directing conduct of a *de novo* enquiry.

13. We find it to be a case of zero evidence *qua* the alleged incident of chopping off of thumbs of the prisoner Rakesh and the alleged negligence on the part of the respondent for which he was proceeded against.

14. In the backdrop of above unanswered questions, we are constrained to entertain a suspicion that either no such incident as alleged ever took place or that efforts were done by the jail authorities to shield not just the assailants but even the jail officials, who knowingly or negligently shut their eyes, leaving the helpless prisoner lose thumbs of both his hands.



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15. We are unable to find any infirmity in the impugned order, so the same is upheld and the petition is dismissed.

**GIRISH KATHPALIA
(JUDGE)**

**SURESH KUMAR KAIT
(JUDGE)**

**AUGUST 28, 2024
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