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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P. (C.) No. 5627/2004

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Date of Decision: 09.08.2010

COMMISSIONER OF POLICE, DELHI

.... Petitioner

Through Mr.V.K.Tandon, Adv.

Versus

DESH RAJ

.... Respondent

Through Mr.Anil Singhal, Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

MOOL CHAND GARG, J. (ORAL)

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1. Petitioner has assailed the order passed by the Central Administrative Tribunal (hereinafter referred to as the Tribunal) whereby the penalty imposed upon the respondent stopping one increment for one year vide order dated 09.03.1999 has been set aside on the ground that there were various irregularities in the disciplinary proceedings; it was a case of no evidence and that the inquiry officer cross-examined the witnesses at the back of the respondent. Tribunal vide order dated 04.08.2003 has set aside the punishment of one increment imposed upon the respondent by allowing the OA filed by the respondent.

2. Vide order dated 01.04.1998, by the Addl. Commissioner of Police New Delhi range served upon the respondent a charge sheet containing the following allegations:

“It is alleged that on 29.03.1997 at about 9.10 PM an information was received at PS GokalPuri from one Sher Mohd r/o Shaheed Nagar, Delhi that smack is being sold in Dhobi Shop, at Mahalaxmi Enclave, Main Road. The same was entrusted to HC Desh Raj No. 181/NE vide DD No.15-A, who along with Constable Anil Kumar No.612/NE reached there and took search of the table/house of the washerman Abdul Hamid.

During an enquiry conducted on the complaint of Abdul Hamid, it has been revealed that Manisha aged 14 years, daughter of Sh. Abdul Hamid a ret'd. Army Hawaldar (Washerman) was raped by one Khalid on 23.04.1996 following which case FIR No. 276/96 dated 23.04.96 u/s 376 IPC, PS Gokal Puri was registered. This case was put up in Court for trial on 12.07.96. Thereafter, on 22.03.97, the case came up on hearing but the PWs did not reach Court. On 29.03.97, the PWs were present but were not examined by the Court. Interestingly, the raid conducted by HC Desh Raj was on 29.03.97 itself. The complainant has alleged that they were stopped on 22.03.97 from attending the Court by the accused party, after which, police pressure started on them to compromise the matter. On 29.03.97, the advocate of the accused offered them Rs. 10,000/- to give favourable statements which they did not accept. On 29.03.97, the raid was conducted in the evening. This is too much of a coincidence and the entire raid, obviously, even to a layman, would clearly appear to be bogus in nature and conducted with the intention of pressuring the complainant party. Moreover the search was illegal & unauthorized as u/s 42 NDPS Act 1985, search can only be conducted between sunrise and sunset. HC Desh Raj cannot claim ignorance of the facts because he was posted as record Moharrar and he can not claim that he did not know of the rape case, especially so when the days of evidence were 22.03.97 and 29.03.97. Further, no search memo was prepared. Inspector Bharat Singh the then SHO/Gokal Puri failed to exercise proper supervision and control as he failed to take action on DD No.15-A regarding the incident. He would have made enquiries to find out why the provisions of the NDPS Act were not followed in this case, but he failed to do so and he cannot claim ignorance of this unfortunate episode.

The above act on the part of Inspector Bharat Singh No. D-1/268, the then SHO Gokal Puri, HC Desh Raj No. 181/NE and Const. Anil Kumar No. 612/NE amounts to

grave misconduct, negligence, misuse of official power and dereliction in the discharge of their official duties, which renders them liable for departmental action under the Delhi Police (Punishment & Appeal Rules-1980)".

3. The enquiry officer after examining the witnesses produced during enquiry held that the following charges against the petitioner stood proved beyond doubt:

- i) The raid/search of the place of Abdul Hamid was illegal and unauthorized.
- ii) No search memo was prepared by the Police, and
- iii) Inspr. Bharat Singh, the SHO PS Gokul Puri failed to take action on DD No. 15-A, dated 29.03.1996, regarding the incident and did not make enquiries why the provisions of NDPS Act were not followed.

4. Even though three persons were proceeded departmentally namely the respondent, Constable Anil Kumar and Sub-Inspector Bharat Singh, only the respondent was punished while others were exonerated. Appeal filed against the order of disciplinary authority imposing penalty of withholding of one increment for a period of one year by the respondent vide order dated 09.03.1999 was dismissed. The respondent then filed O.A.No.2785/2003 before the Tribunal and made the following submissions:

"that no recovery memo of the raid has been referred to or prepared which goes to prove that this was a case of no evidence. The counsel has pointed out that the report of the Enquiry Officer suffers from a serious irregularity inasmuch as the Enquiry Officer has himself taken the role of the prosecutor as would be evident from the indiscriminate cross-examination of witnesses that he has undertaken. In support of his argument he has referred to the cross-examination of PW3 Shri Lal Singh and the cross-examination of PW-5 H.C. Om Pal Singh, and cross-examination of SI Rajesh Sinha vide which the Enquiry Officer has put leading questions to the witnesses which has the effect of vitiating the enquiry proceedings. Finally, the counsel has submitted that the applicant was initially exonerated when the preliminary enquiry was conducted.

However, because of the biased attitude of the authorities, a second preliminary enquiry has been conducted in this case which runs against the principles of natural justice. The counsel has, therefore, submitted that there is absolutely no fault on the part of the applicant who has sincerely carried out the orders of the superiors. He has also pointed out that even though the allegations include other Police Officers, he alone has been picked up for the punishment which smacks of the bias against him.”

5. It would be of importance to note the background of the case as incorporated by the Tribunal in para 7 of the impugned order which reads as under:

“7.The counsel for the respondents in rebuttal has referred to the background of the case. According to him, H.C. Desh Raj was instrumental in the conduct of the raid on the complainant, Shri Abdul Hamid’s residence. The motive behind the raid as stated by the counsel was to pressurize the complainant, Shri Abdul Hamid in the case registered under Section 376 IPC in P.S. Gokul Puri. According to the counsel, Shri Abdul Hamid was the complainant in a rape case of his daughter following which FIR No. 276/96 dated 23.04.96 was registered. This case was put for trial in the Court which, after successive hearing, was fixed on the 29.03.1997, the very day the raid was conducted. According to the counsel, the complainant had earlier alleged that the witnesses in the case were stopped from attending the Court and on the 29.03.1997 the advocate of the accused party had offered them Rs. 10,000/- to give favourable statement which they did not accept. The counsel has contended that it was too much of a coincidence that a raid was conducted on the very day when the complainant had refused to succumb to the pressure from the opposite party and has alleged that H.C. Desh Raj was behind them in their efforts to compromise the matter.

8.The counsel, in support of his argument, has questioned the presence of H.C. Desh Raj at past 9 PM in the Police Station whereas he was supposed to have been off duty. He has also referred to the search memo not having been prepared meaning thereby that the whole exercise was conducted to pressurize the complainant in the criminal case which is a grave mis-conduct and the punishment awarded is fully commensurate with the gravity of the misconduct.”

6. The Tribunal however allowed the Original Application for the following reasons by concluding:

- i) it is a case of no evidence.
- ii) the enquiry officer acceded the brief by cross-examining the witnesses and
- iii) certain irregularities had occurred while carrying out the disciplinary proceedings.

7. However after hearing the parties we find that the conclusions arrived at by the Tribunal are in complete ignorance with the basic reasoning for having served the respondent with a charge sheet. The proceedings goes to show that it was not a case of a simple raid to be conducted upon Abdul Hamid but it was a case where Abdul Hamid who was the complainant in rape case of his daughter following which FIR No. 276/96 dated 23.04.1996 was registered. This case was put up for trial in the Court which after successive hearings was fixed on 29.03.1997 the very day when the raid was conducted and Abdul Hamid and his daughter had to appear as the witnesses. There is a reference partly about the complaint made by Abdul Hamid pressurized to succumb to the pressure from the opposite party on the very same day when the raid was conducted so as not to support the complaint. HC Desh Raj was also siding with the accused. The net effect of the raid, which was unsuccessful, was that the complainant and his daughter could not appear in the witness box, on that day.

8. The learned counsel for the respondent tried to support the decision of the Tribunal by also making a submission that the respondent never wanted to be a party for conducting the raid but was instructed to do so by the SHO concerned namely Inspector Bharat Singh. He read to us the statement made by the PW5 who appeared as one of the witnesses before the enquiry officer namely Head Constable Ompal Singh to support this assertion. However, the perusal of the statement given by the witnesses does not support such contentions. The enquiry officer recorded his statement in the

enquiry report which we are for the sake of reference reproduced hereunder:

“PW-5 Statement of HC Om Pal Singh No. 176/NE, Duty Officer, PS Gokul Puri.

He deposed that on 29.03.97 he was posted as Duty Officer from 4 PM to 12 Midnight a PS Gokul Puri. At 9.10 PM, one Sher Mohd. S/o Shri Mukhtiar, R/o Shahad Nagar, Jawahar Nagar from public booth had informed on telephone that from Shiv Vihar 'T' point towards Mahalaxmi Enclave on main road at Dhobi Shop the smack is being sold. Accordingly he lodged the report in the Daily Diary vide DD No. 15-A dated 29.03.97 which is exhibited as PW-5/A. The SHO was present in the Police Station and he informed about the contents of the said report. On this the SHO had directed to sent the Emergency Officer to the spot. As there was no SI/ASI available in the PS, he again informed the SHO about it. The SHO had again orders to send a Head Const. available on duty. Accordingly, HC Desh Raj, No. 181/NE and Const. Anil Kumar No. 612/NE were sent at the spot. Relating to this case HC Desh Raj No. 181/NE himself had lodged his arrival report vide DD No. 83-B which is exhibited as PW-5-2. The said DD entry was lodged by the HC Desh Raj in his presence.

No cross-examination by the defaulter although opportunity was given to them. On cross-examination by the EO, the PW clarified that in NDPS Act, raid should be conducted an officer minimum of the rank of Inspr. And search should be taken in the presence of a C.P. He had known thee instructions and he informed the SHO about it but due to non-availability of any officer in the Police Station, the SHO asked to him to send a head Const. And later of the information was found to be correct then he would go personally. He did not remember whether HC Desh Raj had given any information to SHO from the place of occurrence but HC Desh Raj had talked to Addl. SHO over telephone.

9. A bare reading of the statement goes to show that Head Constable Ompal Singh who was present in the Police Station at the relevant time when Head Constable Desh Raj had been asked by the Inspector nowhere says that Head Constable Desh Raj was reluctant in coming to the spot where the raid was to be conducted.

10. The respondent also relied upon on a preliminary enquiry conducted by one ACP who it is stated had exonerated the respondent. It was stated that in the said enquiry it has been opined by the enquiry officer who conducted the preliminary enquiry that the respondent had no role to play in the incident whereby the raid was conducted at the house of Abdul Hamid.

11. Before referring to the report of the ACP we may observe that Shri Abdul Hamid the complainant has also deposed about the background:-

“PW-2 Statement of Abdul Hamid S/o Sh. Shamsheer Ahmed, R/o 313, Bhisham Pitamah Marg, Mahalaxmi Enclave, Delhi.

He deposed that the rape case relating to his daughter was under trial in the court of Karkardooma. The accused party gave him threat to change his statement in the Court and tried to offer him some money but he did not accept the same. Whatever the Court decides will be acceptable to him. Thereafter policeman of PS Gokul Puri started coming to him. Once or thrice they visited his house. One day policeman came to him at 9.00 PM and enquired about smelling of smack at his place. He told the policemen that nothing of that sort happens here at his place. One day at about 9 PM a man came to him and asked to get his two clothes ironed. Firstly he refused to do so but on his repeated request, he asked his daughter to iron the clothes and he started to take his food. Just after 2/3 minutes, HC Desh Raj along with a Const. came to his place on a scooter and stood at the door. On enquiry to the policeman about their visit they told him to finish his food first, meanwhile the man who had come to get his clothes ironed took his clothes and went away. The Head Const. enquired from him as to other he lived and worked, than man informed him as to where he lived and worked, and that man informed the police that he was working as Mistry and left the place. He again asked the Head Const. the reason about his visit, the HC told him that they had an information about the sale of smack as they would search his place. He did not allow them to take search and further asked the policeman who had sent them at his place and from which place they had come. Thereafter, these

policeman made telephone call to Police Post Karawal Nagar and one SI came from there and the officer requested him to allow them to take the search. Accordingly, he allowed policeman to take search of his "Thiya" (Place of ironing) and nothing was recovered from that place and the policeman left from there. He was afraid of the accused party and submitted a complaint bearing his signature against the policeman, which is exhibited as PW-2/A.

On cross-examination he admitted that he did not allow HC Desh Raj to conduct his search and the Head Const. did not take his search. He further clarified that the place used for ironing clothes is outside the house on the road. He stated that after submitting the complaint, his statement was recorded by Inspr. Rich Pal Singh in the office of DCP at Seelampur. He further clarified that on that night after reaching the Sub Inspector from PP Karawal Nagar, the search of his 'Thada' was taken and his house was not searched.

He further admitted that he himself removed the clothes lying on Thada for search and the Sub-Inspr. was satisfied that there was nothing. He stated that he is illiterate and could not read Hindi. He got his complaint typed at Mahalaxmi Enclave where he resides. He further clarified that on 29.03.97 HC Desh Raj and a Const. came to his house. After about 15 minutes another person also came who asked for taking search, then he showed his table to them, and thereafter they left the place. He admitted that his present statement is correct instead of his previous statement given during enquiry. He was in doubt that the raid was conducted for creating pressure on him but now it is clear that it was not true, as the accused person has been punished. Lastly he admitted that he was not under any pressure while giving his statement.

12. It has been argued on behalf of the respondent that in fact no search was conducted by Head Constable and in fact he was not even competent to do so. It has also been stated that Abdul Hamid did not allow the search to be conducted. This also seems to be the conclusion drawn by the ACP who conducted a preliminary enquiry.

13. The issue before us is not as to whether Head Constable Desh Raj was authorized to conduct the raid or not or that he was reluctant

to go and participate in the raiding party or not. The circumstances which led to the commission of raid at the house of Abdul Hamid who was the complainant in the rape case and was threatened in the morning are important and shows that Head Constable Desh Raj acted contrary to what is expected from a Police Constable or a Head Constable. The sequence of event reflects upon his attempt somehow to restrain Abdul Hamid to appear as a witness in the rape case so as to help the opposite party who were the accused in the rape case.

14. Since the role of Inspector Bharat Singh who was the SHO concerned and Constable Anil Kumar was different the claim of the respondent that it was a discriminatory treatment in having punished him is of no consequence.

15. Considering all the facts and circumstances of the case we are of the opinion that the order passed by the Tribunal cannot be sustained and accordingly we uphold the order of the appellate authority and the disciplinary authority imposing upon the punishment of stoppage of one increment for one year and uphold the punishment awarded to the respondent in this case of course for the reasons stated above.

16. The writ petition is accordingly allowed but with no orders as to costs.

MOOL CHAND GARG, J.

AUGUST 09, 2010
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PRADEEP NANDRAJOG, J.