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**(2018) 09 CAT CK 0006**

**In the Central Administrative Tribunal**

**Case No :** Original Application No. 1013, 993 Of 2013, Miscellaneous Application No. 1116, 1117 Of 2013, 1113, 1114 Of 2017

Constable Ramesh Kumar And Ors

APPELLANT

Vs

Union Govt. Of NCTD And Ors

RESPONDENT

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**Date of Decision :** 28-09-2018

**Acts Referred:**

Administrative Tribunals Act, 1985 — Section 19

Delhi Police(Punishment & Appeal) Rules, 1980 — Rule 16(v), 15(2), 15(1)(2), 15(1)

**Citation :** (2018) 09 CAT CK 0006

**Hon'ble Judges :** K.N. Shrivastava, Member (A), Ashish Kalia, J

**Bench :** Division Bench

**Advocate :** A K Behera, Sachin Chauhan, Amit Anand, P K Gupta

**Final Decision :** Disposed Of

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**Judgement**

K.N. Shrivastava, Member (A)

1. Since common issues of facts and laws are involved, with the consent of the parties, it was decided to dispose of these two O.As. by this common order. However, for the sake of convenience, the facts in O.A. No.1013/2013 are discussed.

2. Through the medium of O.A. No.1013/2013, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:

"(i) To quash and set aside order 14.08.2012 whereby an extreme punishment of removal from service was imposed upon the applicant and order dated 28.02.2013 whereby the statutory appeal of the applicant is rejected by the Appellate Authority and to further direct the respondent to reinstate back in service with all consequential benefit including seniority & promotion and pay and allowance.

(ii) To set aside the findings of the Enquiry Officer."

3. The factual matrix of the case, as noticed from the records, is as under:-

3.1 The applicant was appointed as a Constable in Delhi Police on 04.10.1990. He was subjected to a departmental enquiry, together with HC Ishwar Singh (applicant in O.A. No.993/2013), on the allegation that while posted in 3rd Bn. DAP, they were detailed with under trial prisoner (UTP), Vikas Yadav, who was admitted in AIIMS hospital from 10.10.2011 to 04.11.2011, for proper custody and care, and during this period, UTP Vikas Yadav was admitted in the hospital, and as per the doctors on duty, on 26/27.10.2011, the said UTP, duly accompanied by the applicant and HC Ishwar Singh, went out of the hospital from 12.45 AM to 06.00 AM in the midnight. They were placed under suspension on 23.04.2012. A summary of allegations (Annexure A-8) was issued by the enquiry officer (EO), Inspector Rajeshwar Aggarwal to them, which reads as under:-

"Summary of allegations

It is alleged against HC Ishwar Singh No.2578/DAP (PIS No.28892422) and Ct. Ramesh No.7730/DAP (PIS No.2890118), that while posted in III Bn. DAP, they were detailed with the UTP Vikas Yadav S/o D P Yadav who was admitted in AIIMS Hospital from 10.10.2011 to 04.11.2011 for proper custody and care. During this period the UTP Vikas Yadav remained admitted in Hospital. On 26.10.2011 / 27.10.2011 as per the Doctors on duty, it has been mentioned in their order sheet, that "8.30 PM, call attended for non-availability of the patient in the room. As per the sister on duty the patient went out from the room along with the police constables. There was not any information to the sisters neither any written permission; the case was informed to the ward In charge ortho-II" Patient came back at 12 mid night and wrote in sisters chart that he went out at 10.30 to Doctor's hostel and came back at 12 mid night, but as per one of the UTP's attendant he had gone to meet one of his known to who admitted in CN Center. At 12.45 AM, the patient again went out from the room without any information. On asking the patient as well as the police Constable refused to tell any rather the constable on duty told the sister on duty that the "patient is under our custody, it is our responsibility regarding the patient not yours". The Nursing staff informed to their supervisor and ward In Charge Ortho- II. As per the Nurses daily record sheet of AIIMS dated 26/27/10.2011 at 12.45 AM, it has been mentioned that "Pt taken by Police Constable at 12.45 AM Police Constable refuses to write in paper. On inspection the room was found locked from outside, the patient did not report till morning he was seen on the morning at 6 AM when the police constable came for the key. HC Ishwar Singh No.2578/DAP and Ct. Ramesh No.7730/DAP, were detailed to ensure proper care and custody of the UTP and they were remained in collusion with the UTP and facilitated the UTP while in their custody.

The above act on the part of HC Ishwar Singh No.2578/DAP (PIS No.28892422) and Ct. Ramesh No.7730/DAP (PIS No.2890118), amounts to gross misconduct, dereliction in the discharge of duty and unbecoming of a police officer, which

renders them liable for disciplinary action under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980."

3.2 Pursuant to the Annexure A-8 summary of allegations, a joint enquiry was conducted against the applicant and HC Ishwar Singh. The EO submitted his report on 23.07.2012 to the disciplinary authority, namely, the Deputy Commissioner of Police, 3rd BN. DAP, Vikas Puri. The EO, in his report, concluded as under:-

"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."

3.3 The disciplinary authority provided a copy of EO's report to the applicants, together with Annexure A-2-B show cause notice, asking them to file their written representation / submissions, if any, against the findings of the EO within 15 days. The applicant and his co-accused HC Ishwar Singh ((applicant in O.A. No.993/2013) submitted their Annexure A-4 joint representation against the EO's report.

3.4 Not satisfied with the joint representation of the applicant and co-accused, and acting on the EO's report, the disciplinary authority, vide its Annexure A-1 order dated 14.08.2012, imposed the penalty of removal from service on the applicant and HC Ishwar Singh with immediate effect. The order also stated that their suspension period from 27.03.2012 to 22.04.2012 was also decided as ? period not spent on duty".

3.5 The applicant and HC Ishwar Singh filed Annexure A-5 joint appeal dated 17.08.2012 before the departmental appellate authority, namely, the Special Commissioner of Police, Armed Police, PHQ, Delhi against the impugned Annexure A-1 order of disciplinary authority. The appellate authority dismissed the appeal and affirmed the order of the disciplinary authority vide its Annexure A-2 order dated 28.02.2013.

Aggrieved by the Annexures A-1 & A-2 orders of the disciplinary authority and appellate authorities respectively, the applicants have approached the Tribunal in the instant O.As. praying for the reliefs as indicated in paragraph (1) above.

4. In support of the reliefs claimed, the applicants have pleaded the following important grounds:-

4.1 The allegation against the applicants is that they facilitated UTP Vikas Yadav to go outside the hospital despite being in the custody of police, but UTP Vikas Yadav was not examined in the enquiry proceedings; as a result, the applicants were deprived of their right of cross examination. The charge of collusion leveled against the applicants cannot be proved until and unless UTP Vikas Yadav is

examined as a witness.

4.2 The disciplinary enquiry (DE) proceedings were started against the applicants with pre-conceived motion of proving the charge, so that a status report be filed by the Delhi Police in CrI. M.A. No.1168/2012 in CrI. Rev. No.369/2008 in the case of Nilam Katara v. State Govt. of NCT of Delhi & others, with the sole intention to escape from media trial.

4.3 There is no provision in Delhi Police to conduct DE in a manner where the statement of witnesses is recorded at the place of working. It is stated that the nursing staff and doctors on duty, who have been cited as prosecution witnesses (PWs), were not called by the EO at the place of the conduct of the enquiry and instead they were examined at their work places. Such an action on the part of the EO was without competence and jurisdiction.

4.4 The present case is a case of no misconduct, as the UTP remained in the safe custody of the applicants and no favour has been extended to the UTP by the applicants in AIIMS hospital.

4.5 The punishment inflicted on the applicants is disproportionate to the alleged misdemeanor of the applicants.

4.6 Inspector Dharambir Singh, who had conducted the preliminary enquiry, has not been included in the list of witnesses and thus a very important witness was left out, who, in fact, had supported the case of applicants.

4.7 The authorities (disciplinary and appellate authorities) have failed to consider that the applicants were not given opportunity to present and examine defence witnesses (DWs). The applicants were directed to submit defence statements within three days, whereas under Rule 16 (v) of Delhi Police (Punishment & Appeal) Rules, 1980 (for short "1980 Rules"), they had a liberty to give list of DWs within two working days and to produce them within ten days at their expense.

4.8 The applicants had cross-examined PW-7 (Sumesh Chand s/o Suraj Parkash), who was working as hospital attendant at AIIMS hospital and who purportedly had seen UTP Vikas Yadav going out of the hospital along with the police constables. But the EO, in his report, has not recorded the cross-examination of PW 7 by the applicants. This would indicate that the EO has been selective in recording the evidence. Further, PWs 2 to 6 had stated that the UTP went out of room at 12.45 AM, whereas PW 7 had stated that the UTP was present.

4.9 Further, the PWs 2 to 6 had stated that the UTP went out at 12.45 PM along with the applicants, whereas, the PW 7 stated that the UTP was not present between 11.30 PM to 12.30 PM.

4.10 The EO intentionally did not call even a single independent witness, like Inspector Vimal Kishore, who had made the DD entry No.4 on 26.04.2011.

5. Pursuant to the notices issued, the respondents entered appearance and filed

their replies in both O.As., in which, besides narrating the incident, have broadly submitted as under:

5.1 The EO brought all the facts of the incident on record and conducted the enquiry within the ambit of Rules and in accordance with the procedure specified in S.O. No. A 20 and Delhi Police (Punishment & Appeal) Rules, 1980.

5.2 It is a fact that the hospital staff, i.e., doctors and nursing sisters were examined at AIIMS by the EO but that did not cause any prejudice to the applicants, as these PWs were examined in the presence of the applicants and ample opportunity was given to them to cross-examine the PWs, which they did. Pertinent to mention that the duties performed by the hospital staff fall under the category of 'essential services' and as such, there was no harm in examining these witnesses in the AIIMS hospital itself.

5.3 It is well established that the applicants had taken the convict Vikas Yadav from the ward room of AIIMS to an unknown place and they were not present in the ward between 12.45 AM to 6.00 AM in the intervening night of 26/27.10.2011.

5.4 The applicants, being police officers, were expected to perform their duties strictly as per the Rules, which ordained them to ensure proper care and custody of the convict Vikas Yadav. They, with ulterior motive, allowed the convict to go out of the hospital, which could have resulted in the escape of the convict as well. Their misconduct has not only tarnished the image of Delhi Police, but has also given a bad name to the force.

5.5 Inspector Dharambir Singh, the then I/C Central Jail, 3rd BN. DAP was never associated with the preliminary enquiry. As a matter of fact, the preliminary enquiry was conducted by Mr. Jai Prakash, ACP/3rd BN. DAP, and as such, there was no need to cite Inspector, Dharambir Singh as PW in the DE proceedings.

5.6 The depositions of PW-3 (Ms. Prabha Massey) and PW-4 (Ms. Elizabeth Ekka), Nursing Sisters, AIIMS, Delhi have established and proved that the applicants had taken the convict Vikas Yadav from the ward room of AIIMS to an unknown place and they were not found in Room No.3008 of New Private Ward of AIIMS hospital from 12.45 AM to 6.00 AM in the intervening night of 26/27.10.2011.

5.7 As per the statements of the applicants on 13.07.2012 before the EO at the time of service of charge memo, they did not opt to produce any DW and had consented to submit their defence statements within seven days, which they did on 18.07.2012. As such, there is no violation of any Rule of 1980 Rules.

6. The applicants have filed the rejoinders to the replies filed on behalf of the respondents, in which, more or less, they have reiterated the issues raised by them in the O.As.

7. On completion of pleadings, the cases were taken up for hearing the

arguments of learned counsel for the parties on 28.08.2018. Arguments of Mr. A K Behera with Mr. Sachin Chauhan, learned counsel for applicants in both O.As., Mr. Amit Anand, learned counsel for respondents in O.A. No.1013/2013 and that of Mrs. P K Gupta, learned counsel for respondents in O.A. No.993/2013 were heard.

8. We have considered the arguments of learned counsel for the parties and have perused the pleadings in both the O.As.

9. The AIIMS doctors and nursing staff, who were cited as PWs, have corroborated the allegation that the UTP Vikas Yadav and two police constables, i.e., the applicants herein, were missing from Room No.3008 of New Private Ward of AIIMS hospital from 12.45 AM to 6.00 AM in the intervening night of 26/27.10.2011. These witnesses, in fact, were independent witnesses. Thus, their depositions are to be considered most credible.

10. Mr. A K Behera, learned counsel for applicants tried to argue that Mr. Inspector Dharambir Singh, the then I/C Central Jail, 3rd BN. DAP, in his preliminary enquiry report, has stated that there was nothing amiss and that the UTP was never taken out by the applicants, deserves to be discarded in view of the specific averments made by the respondents in their replies that Inspector Dharambir Singh was never associated with the preliminary enquiry.

11. Mr. Behera argued at length that the provisions of Rule 16 (v) of the 1980 Rules were not complied with and hence the interests of the applicants have been grievously prejudiced. For better understanding, the ibid rule is extracted hereinbelow:-

"16 (v) The accused officer shall be required to state the defence witnesses whom he wishes to call and may be given time, not exceeding two working days, to prepare a list of such witnesses together with a summary of the facts they will testify and to produce them at his expense in 10 days. The enquiry officer is empowered to refuse to hear any witnesses whose evidence he considers to be irrelevant or unnecessary in regard to the specific charge. He shall record the statements of those witnesses whom he decides to admit in the presence of the accused officer who shall be allowed to address question to them, the answers to which shall be recorded; provided that the enquiry officer may cause to be recorded by any other Police Officer superior in rank to the accused officer the statements of a witness whose presence cannot be secured without delay, expenses or inconvenience and may bring such statements on record. When such a procedure is adopted, the accused officer may be allowed to draw up a list of questions he wishes to be answered by such witnesses. The enquiry officer shall also frame questions which he may wish to put to the witnesses to clear ambiguities or to test their veracity. Such statements shall also be read over to the accused officer and he will be allowed to take notes."

12. Another argument of Mr. Behera was that the requirements of Rule 15 (2) of the 1980 Rules have not been complied with by the respondents. He stated that

permission of Additional Commissioner of Police was not obtained before instituting the DE proceedings against the applicants, which was a mandatory requirement. In this regard, he relied upon the judgment of Hon"ble Supreme Court in Vijay Singh v. Union of India & others (Appeal (Civil) No.7212/2005) decided on 23.02.2007, wherein it has been held as under:-

"A reading of Rule 15(1)&(2) together and the language employed therein clearly discloses that a preliminary enquiry is held only in cases of allegation, which is of weak character and, therefore, a preliminary enquiry is to be held to establish the nature of default and identity of defaulter; to collect the prosecution evidence; to judge quantum of default and to bring relevant documents on record to facilitate a regular departmental enquiry. In cases, where specific information is available, a preliminary enquiry is not necessary and a departmental enquiry may be ordered by the disciplinary authority straightaway. It is because of this reason sub-rule 2 of Rule 15 is couched in such a way as a defence to the delinquent officer. The Additional Commissioner of Police being higher in hierarchy next to DGP, the requirement of his approval is mandatory, so that the delinquent officer is not prejudiced or harassed unnecessarily in a departmental enquiry. Such approval, if any, must also be accorded after due application of mind. It is a case of violation of mandatory provisions of law."

13. On this issue, Mr. Amit Anand, learned counsel for respondents in O.A. No.1013/2013 stated that permission of Additional Commissioner of Police is required only if the offence committed by the police officials is cognizable in nature. He stated that the applicants have not committed any cognizable offence and as such, the permission of Additional Commissioner of Police was not required. Mr. Anand further argued that Rule 15 (2) of the 1980 Rules should not be read in isolation and it should be read in conjunction with Rule 15 (1) of the 1980 Rules.

14. Mr. Behera further argued that all the documents required by the applicants to defend themselves in DE proceedings were not provided. In this regard, he drew our attention to Annexure A-10 letter (pp. 91 - 94). He further stated that the enquiry was conducted in a hush-hush manner; three material witnesses, namely, UTP Vikas Yadav, Inspector Dharambir Singh, the then I/C Central Jail, 3rd BN. DAP and Inspector Vimal Kishore, who had made the DD entry No.4 on 26.04.2011, were not examined. He further argued that the points raised in the defence statements have not been discussed in the EO"s report. In this regard, Mr. Behera drew our attention to the judgment of Hon"ble Apex Court in Hardwari Lal v. State of U.P. & others, 2000 (1) ATJ (SC) 244, wherein it has been held as under:-

"Before us the sole ground urged is as to the non- observance of the principles of natural justice in not examining the complainant, Shri Virender Singh, and witness, Jagdish Ram. The Tribunal as well as the High Court have brushed aside the grievance made by the appellant that the non-examination of those two persons has prejudiced his case. Examination of these two witnesses would have

revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the Tribunal and the High Court were justified in thinking that non-examination of these two persons could not be material. In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant.

15. The respondents, in their replies, have stated that the applicants did not opt to produce any DW and had consented to submit their defence statements within seven days, and accordingly, they did on 18.07.2012. This averment has not been controverted by the applicants. In view of it, we hold that the provisions of the 1980 Rules have been complied with in spirit and, in no way, the interests of the applicants have been prejudiced on this count.

16. Mr. Behera strenuously argued that unusual practice had been adopted by the EO in conduct of the enquiry in terms of examining the doctors and nursing staff of AIIMS, who had been cited as PWs, at their work places. In this regard, we are in agreement with the learned counsel for respondents that those doctors and nursing staff of AIIMS were performing "essential duties" and it was not prudent to pull them out from their work places and make them to depose at the place where the enquiry proceedings were being conducted.

17. Mr. Behera failed to convince us that as to in what way the applicants' interests have been prejudiced on account of recording of depositions of these witnesses at their work places. It is also on record that the applicants were provided opportunity to cross-examine these witnesses. Hence, we repel this argument of Mr. Behera.

18. Another point raised by the applicants is that they were not allowed to present and examine their DWs. This argument is of no consequence in view of the fact that the applicants themselves had mentioned before the EO on 13.07.2012 that they did not intend to produce any DWs and that they would be submitting only their defence statements.

19. From the records, we find that the disciplinary proceedings have been conducted as per the prescribed procedures and principles of natural justice have been followed at every stage of such proceedings. The Hon"ble Apex Court, defining the judicial review in DE matters, has laid down the following broad principles:

- (a) Principles of natural justice have not been followed in the conduct of disciplinary enquiry proceedings,
- (b) Incompetent authorities have issued the charge memorandum and passed the penalty orders,
- (c) The penalty orders have been passed in violation of relevant laws/rules; and

(d) The punishment inflicted is disproportionate to the offence committed.

20. The above principles have been enshrined in the following judgments of Hon"ble Supreme Court:

(i) Union of India v. P. Gunasekaran,(2015) 2 SCC 610

(ii) Ranjit Thakur v. Union of India & others, (1987) 4 SCC 611; and

(iii) Kuldeep Singh v. Commissioner of Police & others, JT 1998 (8) SC 603.

21. In the conspectus, we are of the view that the applicants not only failed in their duties but apparently connived with the UTP Vikas Yadav in facilitating him to go out of the AIIMS premises from 12.45 AM to 6.00 AM in the intervening night of 26/27.10.2011. They even accompanied him. Thus, the applicants have acted in a manner unbecoming of police officers and they have been rightly punished by the authorities concerned. Such tendencies of the police officers need to be curbed firmly lest the public loses faith in the police.

22. In view of the discussions in the forgoing paragraphs, we dismiss these O.As. as we do not find any merit in them and uphold the Annexures A-1 & A-2 orders passed by the disciplinary authority and appellate authority respectively. No order as costs.

In view of the above order, M.A. Nos.1116 & 1117 of 2017 in O.A. No.1013/2013 and M.A. Nos.1113 & 1114 of 2017 in O.A. No.993/2013 stand disposed of.