
(2018) 09 CAT CK 0014

In the Central Administrative Tribunal

Case No : Original Application No. 2360 Of 2015

Constable Sukram Pal

APPELLANT

Vs

Govt. Of NCTD And Ors

RESPONDENT

Date of Decision : 28-09-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Indian Penal Code, 1860 — Section 223, 224, 233, 234
Delhi Police(Punishment & Appeal) Rules, 1980 — Rule 29, 29(1)(2)

Citation : (2018) 09 CAT CK 0014

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

Bench : Division Bench

Advocate : Sachin Chauhan, P K Gupta

Final Decision : Allowed

Judgement

K.N. Shrivastava, Member (A)

1. Through the medium of this O.A., Administrative Tribunals Act, 1985, the following reliefs:

"(i) To quash and set aside the order dated 14.02.2014 whereby the major punishment of 1 (one) years of approved service has been forfeited permanently entailing proportionate reduction in pay is being imposed upon the applicant and order dated 15.01.2015 whereby the appeal of the applicant has been rejected and to further direct the respondents that forfeited year of service be restored as it was never forfeited with all consequential benefits including seniority & promotion and pay & allowances and further the suspension period i.e. from 08.09.2005 to 15.12.2005 be decided as period spent on duty for all intent and purposes.

(ii) To quash and set-aside the order dated 17.03.2011 of initiation of D.E.

(iii) To quash and set-aside the finding of Enquiry Officer.

(iv) To quash and set aside the order dated 05.05.2014 and to further direct the respondent that name of applicant be removed from the list of Secret List of D.I. from the date of its inception i.e. w.e.f. 30.04.2014 with all consequential benefits."

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

2.1 The applicant is working as a Constable in Delhi Police. Annexure A-1 show cause notice / charge memo dated 17.03.2011 came to be issued to him, which reads as under:-

"Order

It is alleged against Const. Sukram Pal No.1027/N (now 8291/DAP) that on 08.09.2005 while posted at PS Roop Nagar, Delhi, he was sent to Tis Hazari Court vide DD No.44-B PS Roop Nagar, Delhi to produce accused Jai Prakash S/o Sh. Goverdhan r/o Jhuggi No.13/105 Kishan Nagar, Rana Pratap, Delhi who was arrested in case FIR No.258/2005 u/s 25/54/59 Arms Act PS Roop Nagar, in the Court. Accused was given in the custody of Ct. Sukram Pal under the supervision of HC Sukra Oram No.519/N (now 8175/DAP) by the Duty Officer of PS Roop Nagar. The said accused person escaped from the police custody near Tis Hazari lockup at 3.15 PM from the lawful custody of Ct. Sukram Pal under the supervision of HC Sukra Oram No.519/N (now 8175/DAP) and was crushed to death on the Railway Track behind PS Bara Hindu Rao. Inquest proceeding of accused Jai Prakash @ J.P. were conducted vide DD No.15-A dated 08.09.2005 PS R.M.D. Delhi. Postmortem was got conducted at Molan Azad Medical College vide P.M. report No.722/2005 dated 09.09.2005. A case vide FIR No.351/2005 dated 08.09.2005 u/s 223/224 IPC PS Subzi Mandi was registered and investigation was conducted by SI Vijay Kumar. As the accused person namely Jai Prakash died in an accident, challan of case was prepared u/s 223/224 IPC against HC Sukra Oram No.519/N and Const. Sukram Pal No.1027/N.

For this misconduct they were placed under suspension vide DD No.24-A dated 08.09.2005 P.S. Roop Nagar r/w order No.9709-40/HAP/ND dated 26.09.2005 and subsequently re-instated vide order No.13601-25/HAP/ND dated 15.12.2005 without prejudice to the criminal case and without deciding their suspension period.

The above act on part of HC Sukra Oram No.519/N (now 8175/DAP) (PIS No.28850430) and Const. Sukram Pal No.1027/N (now 8291/DAP) (PIS No.28892292) amounts to gross misconduct, misuse of official position and dereliction in discharge of their official duties which renders them liable for departmental action under the provision of Delhi Police (Punishment & Appeal) Rules, 1980.

Therefore, I, Rajiv Ranjan, Deputy Commissioner of Police, VII Bn. DAP, New Delhi, hereby order that a regular departmental enquiry be conducted against HC Sukra Oram No.519/N (now 8175/DAP) and Const. Sukram Pal No.1027/N (now

8291/DAP) by Inspr. Daya Nand Singhal (E.O.) on day to day basis, under the provision of Delhi Police (Punishment & Appeal) Rules, 1980, who will submit his findings expeditiously. A weekly progress of the departmental enquiry shall also be submitted to the undersigned on 1st & 16th of each month."

2.2 The applicant was also proceeded against in a criminal case vide FIR No.351/2005 dated 08.09.2005 under Sections 223/224 IPC. It is stated that the applicant was discharged in the criminal case by the trial court at the stage of framing of charges vide order dated 07.06.2012 (pp.59 - 60).

2.3 A revision petition was filed by the State against the discharge of the applicant in the court of Additional Sessions Judge-01, North Delhi in Criminal Revision Petition No.08/2012, which was dismissed by the said court on 27.11.2012 (Annexure A-12).

2.4 The applicant was placed under suspension on 08.09.2005 and later reinstated in service on 15.12.2005. He was proceeded against departmentally by way of issuance of Annexure A-1 show cause notice / charge memo dated 17.03.2011 as mentioned hereinabove. The applicant submitted his written defence statement on 28.11.2013 (Annexure A-9), primarily stating therein that there is no evidence to suggest that the under trial prisoner (UTP), Jai Prakash had escaped from the custody due to any negligence on the part of the applicant.

2.5 Not satisfied with the defence statement, the disciplinary authority (DA), namely, the Deputy Commissioner of Police, VII Bn. DAP, Delhi, ordered for conduct of enquiry and appointed Inspector Kuldeep Singh as the enquiry officer (EO). The EO framed charge against the applicant (Annexure A-7) on 17.09.2013, which reads as under:-

"Charge I Inspr. Kuldeep Singh charge you HC Sukra Oram No.8175/DAP and Const. Sukram Pal No.8291/DAP that while posted at PS Roop Nagar, Delhi on 08.09.2005, you both were sent to Tis Hazari court vide DD No.44-B PS Roop Nagar, Delhi to produce accused Jai Prakash s/o Sh. Goverdhan r/o Jhuggi No.13/105 Kishan Nagar, Rana Pratap Delhi arrested in case FIR No.258/05 u/s 25/54/59 Arms Act PS Roop Nagar, in the court. Accused was given in the custody of Ct. Sukram Pal under the supervision of HC Sukra Oram No.8175/DAP by the duty officer of PS Roop Nagar. The said accused person however escaped from the police custody near Tis Hazari Lock up at about 3.15 PM from the lawful custody of Ct. Sukram Pal and was crushed to death on the Railway tracks behind PS Bara Hindu Rao. Inquest proceeding of accused Jai Prakash @ J.P. were conducted vide DD No.15-A dated 08.09.2005 PS R.M.D. Delhi. Postmortem was got conducted at Molana Azad Medical College vide P.M. report No.722/05 dated 09.09.2005. A case vide FIR No.351/05 dated 08.09.2005 u/s 223/224 IPC PS Subzi Mandi was registered and investigation was conducted by SI Vijay Kumar. As the accused person namely Jai Prakash died in an accident, challan of case was prepared u/s 223/34 IPC against you HC Sukra Oram No.8175/DAP and Const. Sukram Pal No.8291/DAP.

The above act on part of you HC Sukra Oram No.8175/DAP and Ct.. Sukram Pal No.8291/DAP amounts to gross misconduct and dereliction in the discharge of your official duty which renders you both liable with departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980."

2.6 Based on this, a joint inquiry was conducted against the applicant as well as Head Constable Sukra Oram No.8175/DAP, in which the applicant participated. As many as 5 prosecution witnesses (PWs) and 6 documents were examined during the course of enquiry. The EO, vide his report dated 01.01.2014, concluded as under:-

"Conclusion:

If we look at the charge will find that basically there are two allegations leveled against the delinquents HC Sukra Oram and Const. Sukram Pal.

1. That they were carrying accused Jai Prakash who was to be produced before court. The custody of the accused was with Ct. Sukram Pal and under the supervision of HC Sukra Oram who was also the IO of the case. That the accused escaped from the lawful custody of the above name delinquents.

2. That there was negligence and dereliction in the discharge of their official duties.

As regard to first part of the charge is concerned it is a proved fact that accused Jai Prakash escaped from the custody of the delinquents and a case vide FIR No.351/05 u/s 223/224 IPC PS Subzi Mandi was registered against both delinquents. However, it does not matter that in the above case the trial court did not take the cognizance of the offence on the technical ground as prosecution sanction u/s 140 D.P. Act was required to be taken as prescribed by the law was not taken and on this basis the delinquents were discharged in the case. But as far as the departmental proceedings are concerned this part of the charge stand proved against both the delinquents.

However, as regard to the 2nd part of the charge regarding negligence and dereliction of the duty no evidence came on record to prove this thing. Hence, in view the charge is proved only partly as discussed above."

2.7 Acting on the EO's report, the DA, vide its impugned Annexure A-2 order dated 14.02.2014, imposed the punishment of "forfeiture of one year approved service temporarily entailing proportionate reduction in the pay" on the applicant and the co-accused Head Constable Sukram Oram. The operative part of the order reads as under:-

".....Hence, Head Const. Sukram Oram No.8175-DAP (PIS No.28850430) and Constable Sukhram Pal No.8291/DAP (PIS No.28892292) are hereby, awarded the punishment of forfeiture of one year approved service temporarily entailing proportionate reduction in their pay. Their suspension period from 08.09.2005 to 15.12.2005 is also decided as period "not spent on duty" for all intents and

purposes."

2.8 The applicant filed his statutory appeal before the departmental appellate authority (AA), namely, the Additional Commissioner of Police, who, vide his impugned Annexure A-3 order dated 15.01.2015, dismissed the appeal.

Aggrieved by the Annexures A-2 & A-3 orders, the applicant has approached this Tribunal in the instant O.A. praying for the reliefs as indicated in paragraph (1) above.

3. In support of the reliefs claimed, the applicant has broadly pleaded the following grounds:-

3.1 The departmental enquiry has been ordered under Rule 29 of Delhi Police (Punishment & Appeal) Rules, 1980 (for short "Rules 1980"), but no such enquiry can be ordered in a case where the person has escaped from police custody, without following the clauses (1) & (2) of Rule 29 of the Rules 1980.

3.2 The departmental enquiry is vitiated on the ground that the searching departmental enquiry under Rule 29 of Rules 1980 ought to have been conducted with the approval of Additional Commissioner of Police, which has not been done.

3.3 The EO has divided the charges into following two parts:

"1. That they were carrying accused Jai Prakash who was to be produced before court. The custody of the accused was with Ct. Sukram Pal and under the supervision of HC Sukra Oran who was also the IO of the case. That the accused escaped from the lawful custody of the above name delinquents.

2. That there was negligence and dereliction in the discharge of their official duties."

3.4 The first part of the charge cannot be constituted as 'misconduct' until and unless its second part is proved against the applicant. The EO has clearly given his findings that the second part of the charge of negligence and dereliction of duty has not been proved, and as such, the first charge also does not get proved.

3.5 The entire departmental enquiry proceedings are hopelessly time barred on the ground of delay and laches. The allegation pertains to the year 2005, whereas the charge sheet has been issued in the year 2011 and no explanation has been furnished by the respondents for this unexplained delay.

3.4 The order of the AA, whereby the statutory appeal of the applicant, has been dismissed, is absolutely non-speaking and bald, and thus, bad in law.

3.5 The EO has not dealt with the defence of the applicant.

3.6 The respondents have failed to consider that the UTP Jai Prakash was handed over in custody of the applicant under the supervision of Head Constable Sukra Oram for producing him in the court. The UTP, in fact, was in the physical custody of Head Constable Sukra Oram when he managed to escape.

3.7 The respondents failed to note that Head Constable Sukra Oram, on reaching the Tis Hazari Court Lock-up, in an auto along with UTP Jai Prakash, took custody of the UTP and directed the applicant to pay fare to the auto driver. When the applicant was busy making payment of fare to the auto driver, the UTP gave a jerk to Head Constable Sukra Oram and managed to flee from his custody. He was chased by the applicant and Head Constable Sukra Oram, but managed to run away and hide himself, and thus, could not be traced. Hence, the applicant cannot be accused of negligence and dereliction of duty.

3.8 It may be noted that in the case FIR No.351/05, the applicant has been discharged by the trial court at the stage of framing of charges and even the revision petition filed by the State was dismissed by the court of Additional Sessions Judge-01, North Delhi on 27.11.2012 (Annexure A-12).

3.9 The present case is a case of no misconduct, as there was no unlawful behaviour on the part of the applicant. In this regard, the applicant has placed reliance on the following judgments of this Tribunal and Hon"ble Apex Court:

(i) G P Sewalia v. Union of India (O.A. No.220/2006) decided on 27.08.2008, wherein it has been held as under:

"Non-performance of duties, which may have no element of unlawful behaviour, wilful in character, improper or wrong behaviour, misdemeanour, misdeed, impropriety or a forbidden act, may some time amount to not carrying out the duties efficiently, but the same cannot be construed to the misconduct."

(ii) Union of India v. J. Ahmed, (1979) 2 SCC 286, wherein it has been held as follows:-

"...deficiencies in the personal character or ability of a Government servant would not by themselves constitute misconduct for the purpose of disciplinary proceedings. They may be relevant while considering an officer's promotion to higher post or for his retention in a higher post but they cannot be elevated to the level of acts of omission or commission contemplated by Discipline and Appeal Rules for imposing punishment.."

4. Pursuant to the notices issued, the respondents entered appearance and filed their reply, in which, besides tracing the history of the case, they have averred as under:

4.1 The UTP Jai Prakash was under the lawful custody of the applicant under the supervision of Head Constable Sukra Oram. He escaped from the police custody at 3.15 PM on 08.09.2005 from the premises of Tis Hazari Courts. The UTP, however, got crushed to death on railway track behind PS Bara Hindu Rao.

4.2 A joint departmental enquiry was initiated against the applicant and Head Constable Sukra Oram for negligence and dereliction of duty. On the basis of testimonies of 5 PWs, the EO framed charge against the applicant.

Since the applicant did not plead guilty of the charge, he produced one Defence

witness (DW), who was examined.

4.3 The EO, in his report, has proved the first part of the charge.

4.4 The criminal case lodged vide FIR No.351/05 u/s 223/224 IPC against the applicant and Head Constable Sukra Oram was dismissed by the trial court on a very technical ground.

4.5 The DA, after considering the report of EO, has awarded the punishment of "forfeiture of one year approved service temporarily entailing proportionate reduction in the pay" on the applicant and the co-accused Head Constable Sukram Oram, and has also ordered that their period of suspension shall be treated as period "not spent on duty".

4.6 The applicant's statutory appeal has also been dismissed by the AA.

5. On completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties. Arguments of Mr. Sachin Chauhan, learned counsel for applicant and Ms. P K Gupta, learned counsel for respondents were heard.

6. Mr. Sachin Chauhan, learned counsel for applicant, besides reiterating the averments made in the O.A., submitted that in the Annexure A-13, i.e., case diary of Delhi Police, it is clearly indicated that the accused Jai Prakash (UTP) gave a jerk to the hand of Head Constable Sukram Oram and managed to flee from his custody. This would indicate that the UTP was not in the custody of the applicant at the time of his escape. As such, the applicant cannot be accused of any negligence and dereliction of duty.

He contended that at the time of escape of the UTP, the applicant, in fact, was paying the fare of the auto rickshaw on the instructions of Head Constable Sukram Oram.

7. Mr. Chauhan submitted that the case of the applicant is squarely covered by the judgment of this Tribunal in O.A. No.3416/2011 dated 3. 11.2012 where, in an identical case, the reliefs prayed for have been granted to the applicant therein.

8. Per contra, Ms. P K Gupta, learned counsel for respondents, by and large, reiterated the averments made in the reply filed by the respondents.

9. We have considered the arguments of learned counsel for the parties and have also perused the pleadings.

10. Section 29 of the Rules 1980 deals with suspension in cases of escape of prisoners from police custody. It stipulates that in the event of escape of a prisoner from police custody, a searching departmental enquiry is required to be held by or under the orders of the Deputy Commissioner of Police. Explaining the object of such enquiry, it states that the object is to elucidate all circumstances connected with the escape and to also determine where the escape could have

been prevented by the exercise of vigilance and courage on the part of the Police Officer. It further states that in the event of the conviction of the Police Officer by the Court, he should normally be dismissed or removed from service.

11. In the instant case, it does not in dispute that at the time of escape of the UTP, the applicant was, in fact, paying the fare to the auto rickshaw and the UTP was under the lawful custody of Head Constable Sukram Oram. In this view of the matter, it cannot be alleged that the applicant was negligent and had connived to facilitate the escape of the UTP.

12. This aspect gets further corroborated by the factum of acquittal of the applicant in the criminal case, which has been filed vide FIR No.351/2005 dated 08.09.2005 under Sections 233/234 IPC. The EO also, in his report, has stated that the second part of the charge, viz. negligence and dereliction in discharging the official duties, no evidence came on record to prove it. Hence, we are convinced that there was no negligence, connivance or dereliction of duty on the part of the applicant.

13. In view of the above as well as relying on the ratio of law laid down in the judgments cited at paragraph 3.9 (supra), we are of the view that the applicant has been unfairly punished. Accordingly, we quash and set aside Annexure A-2 order dated 14.02.2014 passed by the disciplinary authority and Annexure A-3 order dated 15.01.2015 passed by the appellate authority.

14. The O.A. is accordingly allowed. No costs.