

(2016) 03 DEL CK 0202

In the Delhi High Court

Case No : W.P. (C) No. 3963/2015 & CM No. 19779/2015

Manju Pandey

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 31-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Police Act, 1978 — Section 147(1), Section 21, Section 23
Penal Code, 1860 (IPC) — Section 147, Section 148, Section 149, Section 186, Section 323, Section 34, Section 353
Prevent

Citation : (2016) 230 DLT 648 : (2016) 156 DRJ 368

Hon'ble Judges : Rajiv Sahai Endlaw, J.

Bench : Single Bench

Advocate : Prashant Bhushan, Syed Musaib and O. Kultan, Advocates, for the Appellant; Suparna Srivastava, Anushka Arora and Manu Dev Sharma, Advocates, for the Respondent

Final Decision : Disposed off

Judgement

Rajiv Sahai Endlaw, J.—1. This petition under Article 226 of the Constitution of India seeks a mandamus to the respondent no. 2 Commissioner of Police (CP) to comply with the order dated 9th October, 2014 of the Lieutenant Governor (LG) of Delhi for taking departmental action as per Rules against the respondent no. 3 Inspector Rajnish Parmar (No. D-2182) PIS No. 16890104 and to also initiate departmental action against respondent no. 4 Ct. Amar Singh (No. 9448/PC) and respondent no. 5 Ct. Sudarshan (No. 2310/PCR) of Delhi Police, as per the Service Rules of Delhi Police.

2. It is the case of the petitioner:

(i) that the son of the petitioner viz. Sh. Karan Pandey aged 19 years while coming home in the night between 27th and 28th July, 2013 riding a pillion of the motorcycle of his friend Sh. Puneet Sharma was at about 2:00 p.m. in the

night chased by a Police Control Room (PCR) van on night patrol duty near Windsor Place roundabout, Ashoka Road, New Delhi and the respondent no. 3 Inspector Rajnish Parmar sitting in the said PCR van opened fire with his left hand from his service revolver and which hit Sh. Karan Pandey in his back;

(ii) that Sh. Karan Pandey was taken to Dr. Ram Manohar Lohia hospital by that very PCR van but died on the way and was declared brought dead;

(iii) that the police officials of the PCR van involved in the incident however got FIR No. 127/2013 dated 28th July, 2013 registered with the police station Parliament Street against the said Sh. Karan Pandey and his friend of offences under Sections 147, 148, 149, 186, 323, 353 and 34 IPC read with Section 3 of the Prevention of Damage to Public Properties Act, 1984;

(iv) that in the false FIR, it was alleged that on 28th July, 2013 at about 2:10 to 2:15 A.M. PCR van performing night checking duty against stunt bikers was attacked by violent bikers numbering about 34/40 who were performing stunts and dangerous maneuvers at Windsor Place at Ashoka Road;

(v) that the PCR van tried to contain the bikers by giving warning over public announcement (PA) system but they paid no heed and became very aggressive and started pelting stones on the PCR van;

(vi) that the respondent no. 3 Inspector Rajnish Parmar fired two warning shots in the air from his service revolver to disperse the mob attacking the PCR Van; however the mob continued to pelt stones and performed threatening maneuvers on the move;

(vii) that the respondent no. 3 Inspector Rajnish Parmar as a last resort aimed and fired at the rear tyre of a threatening biker; however the biker suddenly lifted the front portion of the bike in a daring stunt and the bullet hit the pillion rider on his back instead of the rear tyre;

(viii) that the LG of Delhi on 6th August, 2013 ordered a magisterial inquiry into the incident;

(ix) that the District Magistrate (DM) in his report dated 23rd January, 2014 found that the allegation in the FIR of heavy stone pelting by bikers at PCR van which forced the occupants of the PCR van to open fire on bikers to be improbable and doubtful; that the amount of force used by the police in the incident was disproportionate to the amount of threat perception to life of the police personnel or public; and, that there is every possibility of tampering of evidence / conclusion of facts by PCR officials;

(x) that the LG of Delhi on the basis of the report aforesaid sanctioned monetary relief of Rs. 50,00,000/- to the next of kin of Sh. Karan Pandey and directed the respondent no. 2 CP to take departmental action against the Police Inspector concerned as per Rules;

(xi) that the National Human Rights Commission (NHRC) also took cognizance of

the incident and on the basis of the aforesaid report and its own inquiry passed an order dated 27th July, 2014 recommending payment of Rs. 5,00,000/- as monetary compensation to the petitioner and action against the delinquent officials;

(ix) that though in view of the aforesaid a clear case of criminal negligence, commission of culpable homicide not amounting to murder, destruction of evidence and cooking of evidence in their favour by police officials is made out but the respondent no. 2 CP neither recommended registration of criminal action against the guilty officers nor initiated departmental proceedings against any of the erring police officials.

3. The petition came up first before this Court on 22nd April, 2015 when notice thereof was issued.

4. On the next date i.e. 28th May, 2015, the standing counsel for the Government of NCT of Delhi (GNCTD) stated that departmental inquiry had been commenced against the respondent no. 3 Inspector Rajnish Parmar in December, 2014.

5. A status report dated 11th August, 2015 has been filed by the respondent no. 2 CP to the effect that i) during investigation in pursuance to FIR No. 127/2013, the motorcycle on which Sh. Puneet Sharma and deceased Sh. Karan Pandey were travelling was got mechanically examined and the structure of the motorcycle was found to have been modified to make it capable of creating enormous sound with high speed and by fitting it with special quality horns; ii) inspection of PCR van also confirmed damage to it; brick and stone pieces were found from inside the PCR Van and stones / brick pieces were also found lying at the spot; iii) medical examination of Sh. Puneet Sharma and Sh. Karan Pandey confirmed that both had consumed alcohol; iv) that as per the post mortem examination of deceased Sh. Karan Pandey, cause of death was as a result of haemorrhage and shock consequent upon firearm ammunition injury; v) that the magisterial inquiry has concluded negligence and error on judgment on the part of the respondent no. 3 Inspector Rajnish Parmar to open fire at the rear tyre of the bike which resulted in the death of Sh. Karan Pandey; vi) that the departmental inquiry against respondent no. 3 Inspector Rajnish Parmar for the above lapses was in progress; vii) that the respondent no. 4 Ct. Amar Singh was performing the duty of Driver in PCR van used by respondent no. 3 Inspector Rajnish Parmar for patrolling duty; viii) that the respondent no. 5 Ct. Sudarshan was performing the duty of Wireless Operator with respondent no. 3 Inspector Rajnish Parmar; ix) that the magisterial inquiry in no manner indicted either of the respondents no. 4 and 5; x) that NHRC report is primarily based on magisterial inquiry report and does not specify any other report and also did not indict either of the respondents no. 3,4 or 5 specifically or any other police official; xi) that the Disciplinary Authority on an examination of magisterial report and evidence / facts emerging during investigation of FIR No. 127/2013 of police station Parliament Street has come to a conscious decision that no case is made

out to initiate any departmental action against the respondents no. 4 and 5; xii) that during magisterial inquiry the petitioner had suspected Sh. Puneet Sharma for the death of her son.

6. The petitioner has filed CM No. 19779/2015 seeking disciplinary proceedings against the respondents no. 3 to 5 by a neutral agency like Central Vigilance Commission (CVC) averring that the petitioner has every reasons to believe that there cannot be a fair departmental inquiry against the respondents no. 3 to 5 by the Inquiry Officer appointed by the Disciplinary Authority of Delhi Police and that the petitioner bona fide believes that the inquiry initiated by the police department is nothing more than an eyewash.

7. On 15th September, 2015, it was enquired from the counsel for the petitioner whether not departmental / disciplinary proceedings by their very nature are an internal proceedings and how can it be ordered to be carried out by an outside agency like the CVC. It was further observed that giving of any such direction as sought in CM No. 19779/2015 unless it was permitted by the Rules of Delhi Police may ultimately become a ground for challenging the departmental / disciplinary proceedings. Vide order of the same date, on the statement of the counsel for the petitioner that though the petitioner was being called for recording of her statement in the departmental proceedings but the said statement was being purported to be recorded by the respondent no. 3 Inspector Rajnish Parmar himself, the standing counsel for GNCTD was requested to look into the matter and ensure that no harassment is caused to the petitioner. The counsels were heard on 17th December, 2015 and judgment reserved with a direction to the counsel for the respondent no. 2 CP to place on record a copy of the Service Rules relating to Delhi Police. The same have been placed on record.

8. The counsel for the petitioner during the hearing, besides drawing attention to the magisterial report, the order dated 19th October, 2014 of the LG of Delhi and to the comments of the Delhi Police on the findings of the magisterial inquiry inter alia to the effect that the actions of respondent no. 3 Inspector Rajnish Parmar were bona fide acts performed in discharge of his lawful duties, in response to the queries raised by me, drew attention to Sanjiv Kumar Vs. Om Prakash Chautala , (2005) 5 SCC 510 to contend that the departmental inquiry can be entrusted to the CVC. He also argued that the DM in his report having found police to be guilty of fabricating evidence and protecting its own personnel and the police notwithstanding the same having not lodged any FIR against respondent no. 3 Inspector Rajnish Parmar and having also not even initiated disciplinary proceedings as it had been directed till compelled by filing of this petition, cannot be trusted with conducting a fair departmental inquiry and thus the need to direct the same to be conducted by an independent agency as the CVC.

9. Per contra, it was the contention of the counsel for the GNCTD that of the 28 witnesses to be examined in the departmental inquiry, 23 had already been examined and only 5 witnesses remained to be examined and it would not be

proper to interfere with the departmental proceedings at such a stage. In response to the arguments of the counsel for the petitioner of the police having cooked up the case and having fabricated evidence, attention was also drawn to the magisterial inquiry report recording that it was very clear from CCTV footage that bikers were creating nuisance for public in this area on the night of 27th July, 2013 and statements of two public witnesses also confirmed the fact that bikers moved in groups, creating very high noise with modified silencers and high power horns and with rash driving at very high speed created problems for other vehicles as also clear from the CCTV footage. It is also shown from the report of the magisterial inquiry that it was proved that the respondent no. 3 Inspector Rajnish Parmar had first fired in the air and public announcement was also made. It was yet further contended that the Inquiry Officer appointed is an IPS officer of the Deputy Commissioner of Police rank and that there is no basis for apprehending that the report of the Inquiry Officer will not be fair.

10. The counsel for the petitioner in rejoinder argued that the negligence of the respondent no. 3 Inspector Rajnish Parmar is writ large from the factum of his having shot with his left hand when he admitted that he usually shoots from his right hand. It was also argued that from the stand of the respondent no. 2 CP in the comments on the magisterial inquiry protecting the delinquent police officials, the credibility of the departmental proceedings is doubtful.

11. As would be obvious from the aforesaid, two questions need consideration. Firstly, whether there is any need to direct departmental proceedings against the respondents no. 4 and 5. Secondly, whether there is any need to direct departmental proceedings / disciplinary proceedings against the respondent no. 3 Inspector Rajnish Parmar to be conducted by the CVC.

12. The order dated 9th October, 2014 of the LG of Delhi directs the respondent no. 2 CP to take departmental action only against the "Police Inspector concerned" and not against all the police personnel in the PCR Van. NHRC also vide its letter dated 22nd July, 2014 to the GNCTD only directed departmental proceedings to be initiated "against the delinquent police officials" without naming the respondents no. 4 and 5. The DM also in his report has concluded "negligence and error of judgment on the part of Inspector Rajnish Parmar to open fire at the rear tyre of bike which resulted in the death of Sh. Karan Pandey" and "unnecessary use of force by opening fire which was disproportionate to the amount of threat to PCR officials' life" and does not attribute any role to the respondents no. 4 and 5. The petitioner also in his petition has not attributed any role of respondents 4 and 5 in causing death to Sh. Karan Pandey. Per contra, the Disciplinary Authority of the Delhi Police has categorically reasoned that the respondents no. 4 and 5 were merely performing the role of the Driver and Wireless Operator in the PCR van. In this state of facts, I do not find any case for this Court to in exercise of powers of judicial review under Article 226 of the Constitution of India interfere with the decision of the Disciplinary Authority of Delhi Police of no grounds existing for initiating any

disciplinary action against the respondents no. 4 and 5 is made out. The petitioner thus cannot be granted the said relief.

13. Though the counsel for the petitioner sought the relief of conduct of the disciplinary proceedings by an outside agency as the CVC without citing the rules of Delhi Police under which such disciplinary proceedings are to be undertaken but the counsel for GNCTD as per the direction while reserving the judgment has supplied copy of the Delhi Police (Punishing and Appeal) Rules, 1980 made in exercise of powers conferred by Section 147(1) and (2) by Delhi Police Act, 1978. Rule 15 thereof provides for preliminary inquiry in the nature of a fact finding inquiry to establish the nature of default and identity of defaulter. Rule 16 provides the procedure in departmental inquiries and provides for appearance of the police official accused of misconduct before the Disciplinary Authority or such inquiry officer as may be appointed by the Disciplinary Authority. Rule 4(iv) defines Disciplinary Authority as the authority competent to award punishment as prescribed in the Delhi Police Act. Section 21 of the Delhi Police Act empowers the Police officials of the rank mentioned therein for awarding the punishments mentioned therein and Section 23 provides for appeals from orders of punishment.

14. It is thus found that in the Delhi Police Act and the Rules aforesaid the choice of inquiry officer has been left to the Disciplinary Authority.

15. The Courts are often faced with arguments by the charged officials objecting to the appointment of Inquiry Officer on the ground of belonging to the department / office which has initiated disciplinary proceedings or being subordinate to the Disciplinary Authority and thus being under the dictates of the department / office / Disciplinary Authority and expressing apprehensions as to the fairness of the enquiry and seeking appointment of an independent Inquiry Officer. It has however always been held that such allegations do not constitute a ground for the Court to direct appointment of an independent Inquiry Officer. I see no reason why the same should not hold good in the present case as well where the grievance, instead of being made by the officer under inquiry is made by the complainant at whose behest the inquiry has been initiated. I must also state that from the mere fact of the respondent no. 2 CP in his comments sought from him to the report of the DM has agreed with the version then before him of his own officials is no ground to presume that he, acting as the Disciplinary Authority, or the official appointed by him as the Inquiry Officer, would not make an unbiased and fair report. It has been held that there can be no such assumption and mere apprehension of bias cannot be a ground for interference without existence of real danger of bias being established. It has further been held that though domestic enquiries have to be fair but the principle of fairness cannot be extended to demanding an outside Inquiry Officer and that departmental bias cannot be put into the same cohort as a personal bias. Reference can be made to Lalit Kumar Modi Vs. Board of Control for Cricket in India , (2011) 10 SCC 106, Biecco Lawrie Ltd. Vs. State of West Bengal , (2009)

10 SCC 32, *The General Secretary, South Indian Cashew Factories Workers Union Vs. The Managing Director, Kerala State Cashew Development Corporation Ltd.* , (2006) 5 SCC 201 and *Om Pal Singh Vs. Union of India (DB)*. In *Mohd. Yunus Khan Vs. State of U.P.* , (2010) 10 SCC 539 it was also held that though technical rules of procedure do not apply to domestic enquiry but they are quasi judicial proceedings. Similarly, in *Ved Prakash Malhotra Vs. State Bank of India* it was held that the decision in a disciplinary proceeding is not a personal but an institutional decision.

16. With respect to the specific argument of the counsel for the petitioner, of negligence of the respondent No. 3 Inspector Rajnish Parmar and of unfairness of the stand of the Delhi Police having stood established from the respondent no. 3 Inspector Rajnish Parmar admittedly firing from his left hand instead of his right hand, all that can be observed is that it is the undisputed position that the respondent no. 3 Inspector Rajnish Parmar at that time was sitting on the front seat of the moving PCR van on the side of the driver and chasing the motorcycle and ordinarily the right hand of the person sitting besides the driver of a vehicle should be towards the driver and away from the window or the door of the vehicle through which the shot was fired.

17. Insofar as directions sought of conduct of the departmental inquiry by the CVC is concerned, the CVC has been constituted under the Central Vigilance Commission Act, 2003 to enquire or cause enquiries to be conducted into offences alleged to have been committed under the Prevention of Corruption Act, 1988 by certain categories of public servants and that the functions prescribed in Section 8 thereof. The said functions also extend to investigation of offences alleged to have been committed under the Prevention of Corruption Act. Supreme Court, in *Centre for Public Interest Litigation Vs. Union of India* , (2011) 4 SCC 1 also has held it to be an integrity institution empowered to exercise superintendence over vigilance administration of various ministries. The respondent no. 3 Inspector Rajnish Parmar herein is not being investigated under the Prevention of Corruption Act. The CVC being a statutory body can perform only such functions, to perform which it has been constituted and no other. The counsel for the petitioner has not cited any particular provision of the CVC Act empowering the CVC to conduct the departmental inquiry against the respondent no. 3 Rajnish Parmar. Supreme Court in *Sanjiv Kumar* supra cited by the counsel for the petitioner was concerned with complaint of large scale corruption and tampering of records by the Chief Minister in filling up of vacancies of JBT teachers in the State of Haryana and the grievance of the Chief Minister, owing to his high position, not allowing a fair investigation. It was in this circumstance that the Solicitor General of India appearing for the Central Bureau of Investigation (CBI) conceded to CBI being entrusted with the investigation so that it can be conducted expeditiously and fairly. Certainly the respondent no. 3 Inspector Rajnish Parmar, a mere Inspector of Delhi Police, cannot be said to be exercising the same clout as the Chief Minister of a State.

18. I am therefore of the opinion that the direction for conduct of departmental proceedings by the CVC also cannot be granted.

19. It cannot be lost sight of that the petition was filed with the grievance of the respondent no. 2 CP inspite of directions of the LG of Delhi and the NHRC having not initiated a disciplinary proceedings against the respondents no. 3 to 5 The proceedings against the respondent no. 3 Inspector Rajnish Parmar have since been commenced and are underway and the Disciplinary Authority of the Delhi Police after consideration has not found any material to initiate proceedings against the respondents no. 4 and 5 and I have hereinabove not found any ground to interfere therewith.

20. The petition is thus disposed of observing that the petitioner is not entitled to any further relief.

No costs.