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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 10175/2024, CM APPLs. 41769/2024 & 41770/2024

GOVT OF NCT OF DELHI & ORS.Petitioners

Through: Mr. Vikrant N. Goyal with
Mr. Nishu Dagar, Mr. Aditya Shukla and
Ms. Shivani Yadav, Advs.

ASI Devender Singh, Parvi Officer.

Ms. Avnish Ahlawat, Standing Counsel with
Mr. Nitesh Kumar Singh, Adv.

versus

MANOJ KUMAR & ANR.Respondents

Through: Mr. Anil Kumar Singal, Adv.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% **31.01.2025**

AJAY DIGPAUL, J.

1. The relevant facts that emerged from the pleadings are as follows:

The respondent herein, Manoj Kumar was an Assistant Sub-Inspector (ASI) in the Delhi Police and was assigned arrangement duty at Traffic Circle, Narela concerning the Farmers Agitation at Singhu border. The assignment was recorded vide DD No. 28, dated 29.12.2020.



The respondent's alleged involvement centres around a disciplinary proceeding arising from the events on 30.12.2020, when the respondent/Manoj Kumar and Head Constable (HC) Umesh Kumar were deployed for duty at Singhu border during the said Agitation.

2. The incident on duty happened when both the officers were found to have been absent from their designated duty point. It was alleged that they went to a wine shop at Kundli, Haryana, consumed liquor, and became involved in a scuffle with farmers. HC Umesh Kumar was later found in an inebriated condition with some injuries, whereas the respondent managed to escape from the spot before any medical examination could be conducted.

3. Following this incident, a Departmental Enquiry (DE) was initiated, wherein Sh. Sunil Srivastava, ACP Traffic was entrusted upon vide Order dated 16.01.2021 to conduct the same on day-to-day basis. The DE proceedings were initiated whereby the summary of allegations, list of witnesses, and list of documents were served upon the respondent and HC Umesh Kumar on 28.01.2021. The Enquiry Officer (EO) proceeded with the enquiry and examined a total of 10 PWs. The EO on 01.07.2021 served a formal charge sheet to the respondent, once the prosecution evidence was concluded.

4. The respondent thereafter submitted the defence statement on 12.07.2021 against the said charges brought against him. It was contested that the allegations levelled against the respondent had



inconsistencies in the evidence presented and procedural lapses during the enquiry.

5. The EO submitted his findings on 05.10.2021, holding that the charges against both the respondent and HC Umesh Kumar were proved based on the statements and the evidence gathered during the DE proceedings. The findings concluded that the respondent, along with HC Umesh Kumar got themselves unauthorizedly absent from duty point, went to a wine shop in the area of Haryana, consumed liquor, and had a scuffle with some farmers.

6. On 21.03.2022, the DCP Traffic-VIP Route/petitioner no.4 (Disciplinary Authority) reviewed the findings of the DE and after considering the defence, dismissed both the respondent and HC Umesh Kumar from Delhi Police. Furthermore, the petitioner no.4 directed that the period of suspension from 30.12.2020 to 11.03.2021 be treated as 'Not spent on duty'.

7. On 04.04.2022, the respondent preferred statutory appeal under Rule 23 of the Delhi Police (Punishment and Appeal Rules) against the dismissal order dated 21.03.2022

8. Feeling aggrieved by the fact that the statutory appeal of the respondent was not being decided by the petitioners, the respondent filed OA No. 2879/2022 before the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter "Tribunal") on 28.09.2022. The OA was decided vide order dated 06.10.2022, whereby the Tribunal directed the Appellate Authority to pass a reasoned and



speaking order on the pending appeal within six weeks. However, this was already rejected by the Appellate Authority vide speaking order dated 26.09.2022.

9. Aggrieved from this, the respondent subsequently filed OA No. 3194/2022 on 01.11.2022, wherein the following reliefs are sought:

“8.1 Quash and set aside the impugned order of dismissal dated 21.03.2022 at Annexure A-2 and the impugned appellate order dated 26.09.2022 at Annexure A-1 along with Enquiry Officers report dated 05.10.2021 at Annexure A-3 (Colly) and direct the respondents to reinstate the applicant in service with all consequential benefits including continuity of service, pay and allowances, seniority etc. and regularize the period of suspension from 30.12.2020 to 11.03.2021 as regular service for all intents and purposes.

8.2 Any other relief that the Ld. Tribunal may deem fit and proper in the facts and circumstances of the case.”

10. On 07.03.2023, a reply was filed by the petitioners, highlighting the sequence of events and the evidence that justified the disciplinary action taken against the respondent. It was emphasized that the due procedure was followed in the DE and the Tribunal should not interfere with the quantum of punishment imposed by the disciplinary authority to dismiss the respondent. Moreover, it was also submitted that it is a well-settled principle that the court should not act as an appellate court and re-assess the evidence led in the domestic enquiry.

11. The Tribunal, vide order dated 08.03.2024, partly allowed OA No. 3194/2022 and set aside the dismissal. The Tribunal held that there were discrepancies in key testimonies and absence of evidence which cannot be sustained in the eyes of law therefore, reaching to the



conclusion that the decision made by the disciplinary authority is not tenable. The said order reinstated the respondent with all consequential benefits but provided the department with liberty to initiate further fresh proceedings, if necessary.

12. Moreover, the Tribunal vide order dated 08.03.2024 instructed the competent authority to take appropriate action in accordance with the rules, within a period of three months from the date of receipt of the order, by regularizing the suspension period, which was from 30.12.2020 to 11.03.2021.

13. The petitioners, namely the Government of NCT of Delhi through the Commissioner of Police and Delhi Traffic Police, have filed the present writ petition challenging the Tribunal's order, wherein the petitioners sought the following reliefs:

“(a) quash and set aside the per-se perverse order dated 08.03.2024 in O.A No. 3194/2022 passed by Central Administrative Tribunal, Principal Bench, New Delhi.

(b) Pass any other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

14. We have gone through the record and are of the considered view that there are procedural lapses in relation to the enquiry report submitted by the EO, wherein some aspects raised in the defence statement submitted by the respondent on 12.07.2021 and the subsequent cross-examination of the PWs are not addressed.

15. It was highlighted by the respondent in the defence statement that he was not performing any duty with HC Umesh Kumar, and



there was no connection between them. To support this contention, the respondent relied upon the statement of PW-4 HC Deepak Kumar, which is reproduced herein:

“That PW4 HC Deepak Kumar No. 3719/T MHC Narela Traffic Circle produced the duty roaster dated 29/30.12.2020 of Traffic Circle, Narela, regarding arrangement of traffic staff in connection with farmers agitation at Singhu Border.

It is submitted that as per the duty roaster Ex. PW4/A and DD No. 28 dated 29/30.12.2020 Traffic Circle, Narela which are marked as Ex. PW4/A & B respectively, the applicant ASI Manoj Kumar No. 1134/T was detailed on fixed point of duty at Singhu Village cut with SI Anand Pal No. 5798/T.

It is clear that applicant ASI Manoj Kumar No. 1134/T was not performing duty with HC Umesh Kumar No. 1152/T at Singhu Village cut point as mentioned in the charge. It is clear that HC Umesh Chand No. 1152/T was not performing with the applicant on 30.12.2020. It is also clear that HC Umesh Kumar was not posted at Todapur Traffic Line with the applicant but he was posted in traffic Circle, Kotwali and the applicant has no connection in any manner with HC Umesh Kumar.”

16. The perusal of the above statement clearly indicates a fact that the respondent was not with HC Umesh Kumar at Traffic Circle, Narela, as claimed by the petitioners. This fact goes deep to the root of the allegations and seriously dents the allegations against the petitioners.

17. Furthermore, through the cross-examination of PW-9, SI Sachin, who prepared the misconduct report (Ex.PW9/A) containing the allegations relied upon to frame the charges against the respondent, the respondent attempted to establish that the statements made in the report were incorrect. SI Sachin initially stated that he was marked for necessary action following a PCR call vide DD No.



34A, dated 30.12.2020. Upon reaching the police booth at Singhu border, Delhi, he found HC Umesh Kumar in an inebriated state with some injuries. After conducting a brief local inquiry, SI Sachin discovered that both HC Umesh Kumar and the respondent had left their duty point, travelled to a wine shop in Kundli, Haryana, near the protest site, where they consumed liquor and created nuisance. Both were subsequently beaten by the protesters. However, the respondent managed to escape, while HC Umesh Kumar was handed over to the police by the protesters. It was admitted by SI Sachin that he did not travel to the alleged place of incident and there was no statement recorded of any police personnel on duty at Singhu border police booth where HC Umesh Kumar was found present, nor of any public person or any wine shop vendor. He did not even record any statement from HC Umesh Kumar or the respondent.

18. It was also submitted in the defence statement that the respondent reported for duty at the designated time as required but soon experienced significant physical discomfort due to pre-existing medical conditions, including Sugar and High Blood Pressure. Despite attempting to perform the duties, his health condition deteriorated, making it necessary for the respondent to leave the duty point. It was stated that the respondent's daughter, Anjali took him to Kesar Hospital, AH-11, Shalimar Bagh, Delhi where Dr. Ayush Gupta examined the respondent and prescribed appropriate treatment. In support of this statement, the respondent submitted a medical prescription slip dated 30.12.2020 as evidence to validate the version of events mentioned therein.



19. In the view of the aforesaid, it can be concluded that in the absence of clinching evidence, the enquiry report itself is vitiated and it cannot be relied upon.

20. Having heard Mr. Goyal, learned Counsel for the petitioners and Mr. Singal, learned Counsel for the respondent we do not find any cause for interference with the judgment of the Tribunal.

21. We are of the opinion that the Tribunal is correct in its assessment that the only substantial material on the basis of which the IO proceeded was the statement of PW-9 SI Sachin and that reliance has been placed on the said statement without factoring his cross examination. In so far as the absence of the respondent is concerned from the spot, the respondent had furnished the evidence of his daughter who had explained his absence and that her evidence was also supported by the doctor's prescription, genuineness of which was never questioned.

22. It is also an undisputed position that there is nothing to indicate that the respondent was inebriated unlike HC Umesh Kumar.

23. In that view of the matter, given the scope of our jurisdiction under Article 226 of the Constitution, we do not feel that any case is made out for us to reverse the findings of the Tribunal.



24. The writ petition is accordingly dismissed.

AJAY DIGPAUL, J.

C.HARI SHANKAR, J.

JANUARY 31, 2025/sk

Click here to check corrigendum, if any