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Central Administrative Tribunal, Principal Bench, New Delhi

O.A.No.2690/2004

New Delhi, this the 26th day of May, 2005

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. M.K. Misra, Member(A)

Suman Lata
W/ASI in Delhi Police
(PIS No.28863831)
R/o 279, Sector-3,
Pushp Vihar, M.B. Road,
New Delhi-17

...Applicant

(By Advocate: Shri Anil Singal)

Versus

1. GNCT of Delhi, through
The Commissioner of Police,
Police Head Quarter,
I.P. Estate, New Delhi
2. Joint Commissioner of Police,
Southern Range, PHQ,
I.P. Estate, New Delhi
3. DCP (South-West Distt.),
PS Vasant Vihar, New Delhi

....Respondents

(By Advocate: Shri S.Q. Kazim)

Order(Oral)

Justice V.S. Aggarwal, Chairman

The applicant Suman Lata is an Assistant Sub-Inspector in Delhi Police. She was

/s/ Agg

served with the following summary of allegations:

"It is alleged against ASI Charles Tirkey No.3038/SW who was detailed to investigate case FIR No.397/02 u/s 363/366/376 IPC, P.S. Dabri, New Delhi and against W/ASI Suman Lata No.3069/SW who was assisting the said ASI in the investigation of said case that during the course of investigation of the said case they proceeded to village Madusari Post Brahmin Pura, Distt. Mau (UP) on 18.9.2002 after obtaining written permission from senior officers and arrested one lady Noori Devi W/o Janglu Prashad in the said case on 19.9.2002 from her village Madusari and produced her on the same day in the court of CJM Mau (UP), who had given transit remand of the accused on the written request of the said ASI Charles Tirkey No.3038/SW with the direction to produce the accused before concern magistrate on 21.9.2002 thereby while traveling in the Magadh Express alongwith accused Noori Devi in the intervening night of 19/20.9.2002 the accused Noori Devi escaped from their lawful custody.

The above act on the part of ASI Charles Tirkey, No.3038/SW and W/ASI Suman Lata, No.3069/SW amounts to gross negligence misconduct and failure in discharge of their official duty, which renders them liable to be dealt with departmental action under the provisions of Delhi Police (Punishment & Appeal) Rules-1980."

2. In pursuance thereof, an enquiry officer was appointed. The charge was framed against the applicant almost on the same lines. The enquiry officer reported that the charge against the applicant is proved.

3. The disciplinary authority on 26.5.2004 imposed a penalty of stopping next increment of the applicant for a period of two years without cumulative effect. The applicant preferred an appeal which was dismissed on 14.10.2004.

4. By virtue of the present application, the applicant seeks to assail the said orders.

5. Needless to state that in the reply filed, the petition is being contested. Respondents contend that departmental proceedings were initiated on the allegation that when the applicant and another were posted at P.S. Dabri, one accused had been arrested. The said accused was given a remand by a Court in Uttar Pradesh. The police party

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alongwith the accused boarded Magadh Express. While they were traveling in the said train, the said accused is stated to have escaped from the lawful custody of the police party. This resulted in holding of an enquiry which resulted in a finding that the applicant was guilty of slackness and negligence in handling of the accused. Thereafter the departmental proceedings to which we have referred to above had been conducted.

6. We have heard the parties counsel and have seen the relevant record.

7. Learned counsel for the applicant contends that in the present case, sub-rule (3) to rule 29 of Delhi Police (Punishment & Appeal) Rules, 1980 has been violated. According to him, the file had not been put up to the Additional Commissioner of Police to decide as to if the departmental proceedings should be initiated or not.

8. The pleas are being controverted.

9. In the present case, perusal of the pleadings clearly shows that it is not being disputed that file was not put up before the Additional Commissioner of Police. It is also not being disputed that before the departmental proceedings, a searching enquiry had been held which revealed that the applicant was guilty of gross slackness and negligence in handling of the accused who is stated to have committed a heinous offence.

10. Sub-rule (3) to rule 29 of Delhi Police (Punishment & Appeal) Rules, 1980 which is being pressed into service reads as under:

“29(3) If the enquiry establishes negligence or connivance in an escape, thereby creating a presumption that an offence under Section 221, 222 or 223 I.P.C. has been committed, the police officer concerned shall be prosecuted in a criminal court, unless the Additional Commissioner of Police on a reference by the Deputy Commissioner of Police decides, for reasons to be recorded in writing that the case shall be dealt with departmentally. If the enquiry establishes a breach of discipline or misconduct not amounting to an offence under any of the sections of the I.P.C. mentioned above, the case shall ordinarily be dealt with departmentally. The criminal



prosecution under this rule of an upper subordinate shall not be undertaken without the sanction of the Additional Commissioner of Police.

Dismissal or removal from service shall normally follow a judicial conviction, for finding of guilt in a departmental enquiry for negligence resulting in the escape of a prisoner."


11. A glance through the provision to which we have referred to above clearly shows that if the enquiry establishes negligence or connivance, thereby creating a presumption that an offence punishable under Section 221, 222 or 223 I.P.C. has been committed, ordinarily the person must be prosecuted in the court of law unless the Additional Commissioner of Police on a reference by the Deputy Commissioner of Police decides, for reasons to be recorded in writing, that the person should be dealt with departmentally. The second part of the said sub-rule (3) to rule 29 shows that if the enquiry establishes breach of a discipline or misconduct not amounting to an offence under any Section of the I.P.C., the person should be dealt with departmentally but therein also, the prosecution should not be undertaken without the sanction of the Additional Commissioner of Police.

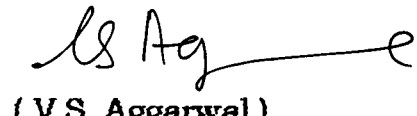
12. What is the position herein. The searching enquiry revealed that applicant was negligent. In case of negligence, rigours of Section 223 of the I.P.C. could well be attracted. Therefore, the present case would fall in the first part of sub-rule (3) to rule 29 of the Rules to which we have referred to above. In that view of the matter, before dealing the applicant departmentally, the permission of the Additional Commissioner of Police was mandatory. Unfortunately, it was not obtained as we have referred to above.

13. Consequently, on this short ground, we allow the present application and quash the impugned orders and direct that if deemed appropriate, the disciplinary authority may

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make a reference to the Additional Commissioner of Police for taking action under sub-rule (3) to rule 29 of the Rules referred to above. Applicant would be entitled to the consequential benefits. Keeping in view the aforesaid, it becomes unnecessary for us to express on the other contentions that may be open to either party.


(M.K. Misra)
Member(A)


(V.S. Aggarwal)
Chairman

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