

Mahesh Kumar Vs. Learned District and Sessions Judge and ors.

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Court : Delhi

Decided On : Apr-26-2010

Judge : Sanjay Kishan Kaul and; Valmiki J. Mehta, JJ.

Acts : Delhi Police Act, 1973 - Section 103; ;[Constitution of India](#) - Article 226;
;Central Civil Services (Conduct) Rules, 1964 - Rule 3

Appeal No. : W.P(C) No. 3289/2008

Appellant : Mahesh Kumar

Respondent : Learned District and Sessions Judge and ors.

Advocate for Pet/Ap. : Ashok Gurnami and; Ranjan Roy, Advs.

Disposition : Petition allowed

Judgement :

Sanjay Kishan Kaul, J.

1. The petitioner was appointed as an LDC in the office of District and Sessions Judge, Delhi and was posted as an Ahlmad in the Court of MM from April 2000 to June 2000. It is during this period of time that one file titled as State v. K.P. Santosh under Section 103 of the Delhi Police Act, 1973 was misplaced. This resulted in suspension of the petitioner on 29.6.2000 and an enquiry was ordered against the petitioner.

2. A memorandum dated 30.1.2001 was issued by the learned District and Sessions Judge to the petitioner along with statement of charges framed against him. In terms of the statement of article of charges, the act of the petitioner in misplacing the file and failing to trace out the same (the file was subsequently traced out) was stated to amount to gross negligence, carelessness and lack of devotion to duty constituting the mis-conduct within the meaning of Rule 3 of the CCS (Conduct) Rules, 1964. The petitioner denied the charges and thus an enquiry proceeded where evidence was led. The enquiry officer of the rank of an Additional Sessions Judge found that the petitioner had omitted to do what he was required to do in performance of his official duties and acted without due diligence, care and precaution while performing his duties. The file had been subsequently traced out which showed that the delinquent official did not even make an endeavour to properly trace out the file which was lying in the almirah without any order sheets or even the bail bond of the accused.

3. The Disciplinary Authority examined the report of the enquiry officer and considered the representation of the petitioner against the enquiry report gave the following findings:

After the inquiry was concluded, copy of the inquiry report was given to him. He made representation and submitted that he was not given sufficient time to trace out the documents. His wife had given birth to a female baby by a major surgery and he proceeded on leave. He prayed for lenient view. I consider that the misconduct of the delinquent official is very grave and unbecoming of his post. He was having the responsibility of maintaining files of the court and the record of the court. It seems that he had intentionally placed the file in the almirah for an ulterior motive and the order sheet and bail bond were removed from the file. If the file had been simply misplaced, it would have been found with order sheet and bail bond. But it is not a case of simple misplacement and seems to be an deliberate conduct. I consider that delinquent official is liable for major punishment. He is removed from service. However, his removal shall not be a disqualification for further service in the Government. Formal orders be issued.

4. The petitioner aggrieved by the same preferred an appeal which was considered by the learned Single Judge on the Administrative side but the same did not cut-ice, and was dismissed on 28.9.2007. The appellate order other than saying that the misplacement of file appears to be a deliberate attempt on the part of the appellant which is a grave mis-conduct and unbecoming of government servant says nothing more.

5. The petitioner aggrieved by the orders, filed this petition under Article 226 of the [Constitution of India](#). On the first hearing itself on 29.4.2008, notice was confined to the submissions on the quantum of sentence especially taking into consideration the plea of the petitioner that there was no material on record to show that the conduct of the petitioner in misplacing the relevant order-sheets and the bail bond amounted to a deliberate mis-conduct.

6. We have heard learned Counsel for the petitioner and perused the record.

7. None has put in appearance for the respondent. Even though, the matter is at Item No. 5 on the 'Regular Board' and it is 3.30 PM.

8. We find that the imputation of misconduct qua the petitioner was only that of negligence and carelessness and there was no imputation of any deliberate act of concealing the file for any collateral purpose. The findings of the Enquiry Officer are also to the effect that the petitioner was blame-worthy of negligence and carelessness.

9. It is the Disciplinary Authority which gave a new twist to the finding by seeking to impute a deliberate act of concealing the file. We have already extracted the relevant portion of the findings of the then learned District & Sessions Judge who was the Disciplinary Authority. The Disciplinary Authority has found that 'it seems that he had intentionally placed the file in the almirah with ulterior motive and the order sheet and bail bond were removed from the file'. We find that no such imputation was made against the petitioner nor the petitioner had an opportunity to defend any such imputation. Not only that, we fail to understand how it 'seems' to the Disciplinary Authority and what was the material on the basis of which such a conclusion has been drawn of an ulterior motive. The fact that the file was without

certain order-sheet and bail bond only show that these papers were not connected with the file when it remained misplaced. The order of the Appellate Authority also does not go any further.

10. We are thus of the considered view that this allegation of an ulterior motive and deliberate misconduct, that being the only question to be examined, cannot be found against the petitioner as it is a case of negligence which was imputed to the petitioner.

11. Now coming to the issue of quantum of punishment arising from the aforesaid finding, we are guided by the pronouncement of the Supreme Court in *Dev Singh v. Punjab Tourism Development Corporation Ltd. and Anr.* : (2003) 8 SCC 9. The facts were similar. There was a misplacement of an office file. In the absence of any ulterior motive, punishment of dismissal from the service was held to shock the judicial conscience and was re-placed with a punishment of withholding of one increment including of stoppage of efficiency bar in substitution of punishment of dismissal awarded by the Disciplinary Authority with a further rider that the appellant therein would not be entitled to any back wages for the period of suspension. The Supreme Court, being mindful of the scope for interference in an appeal against punishment imposed by Disciplinary Authority observed as under:

6. A perusal of the above judgments clearly shows that a court sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty, however, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof. It is also clear from the abovenoted judgments of this Court, if the punishment imposed by the disciplinary authority is totally disproportionate to the misconduct proved against the delinquent officer, then the court would interfere in such as case.

12. The petitioner is stated to be aged about 38 years. The incident is about a decade old when he was only about 28 years old and at the anvil of service. The

petitioner had a child soon before the incident which is given as an excuse, though we make it clear that absence from duty for such a reason can hardly be accepted. There is no prior case of misconduct against the petitioner. We thus adopt the course of action following the judgment in the Dev Singh's case (supra) in substituting the order of dismissal with an order of withholding of one increment including stoppage of efficiency bar. We further direct that the appellant will not be entitled to any back wages other than the suspension allowance already paid to him till the formal order is issued by the competent authority reinstating petitioner in service, subject to the condition that the petitioner rejoins the service. Needful be done by the competent authority within one month from the date of communication of the order.

13. The writ petition stands allowed in the aforesaid terms leaving the parties to bear their own costs.

14. Copy of the order be sent expeditiously to the District and Sessions Judge, Delhi, for necessary compliance.

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