

(2008) 08 AHC CK 0343

Allahabad High Court

Case No: None

Ram Pal Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** Aug. 25, 2008**Citation:** (2009) 120 FLR 790**Hon'ble Judges:** Tarun Agarwala, J**Bench:** Single Bench**Final Decision:** Dismissed

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### Judgement

Tarun Agarwala, J.

Since the controversy involved in both the writ petitions are identical, the same is being decided together.

2. It transpires that an undertrial, who was involved in a scam of crores of rupees, was admitted in the District Hospital, Gautam Budh Nagar for treatment of a heart disease. It is alleged that the undertrial complained of chest pains and accordingly, he was referred to the MNC Heart Centre Noida for investigation and treatment on 16.8.2005. The undertrial was sent to this MNC Heart Centre under police escort where he was admitted and, after treatment, the undertrial was discharged on 18.8.05 and was given custody to the petitioner, Ram Pal Singh, who was posted on duty. 3. Upon discharge, the undertrial, was required to be brought back to the District Hospital. Instead, the petitioners took the undertrial and admitted him in another private hospital known as Kailash Hospital, Noida without obtaining prior permission from the higher authorities, presumably for extraneous consideration. The petitioners were suspended and, based on a preliminary enquiry, a departmental enquiry was initiated and a charge sheet of dereliction of duty, carelessness, not following the orders of the superior authorities, extraneous consideration, etc., was levelled against the petitioners. After providing an opportunity of hearing, the enquiry report was submitted, and based on that report, a show cause notice was given, to which a reply was submitted, and thereafter, the

disciplinary authority issued an order of dismissal on the basis of the charge so proved against them. The petitioners filed an appeal which was rejected, against which, a revision was filed which was also dismissed. Consequently, the writ petitions.

4. The learned Counsel for the petitioners submitted that the District Judge while extending the remand of the undertrial, had directed the authority to keep the undertrial in the hospital, as he was suffering from a heart trouble and that the doctors while discharging the undertrial from the NMC Heart Centre, Noida, had also advised a MRI, and on this basis, and considering the gravity of the condition of the undertrial, the petitioners admitted the undertrial in Kailash Hospital upon intimation to the higher authorities. The petitioner"s contended that they were only following the orders of the doctors and had intimated their superior authorities and did not commit any illegality. The learned Counsel for the petitioners further submitted that assuming that the petitioners had misconducted themselves, the offence was not so grave nor the misconduct was so serious to warrant a punishment of dismissal from the service and submitted that the punishment awarded did not commensurate with the misconduct.

5. Having heard Sri V.M. Zaidi, the learned Counsel for the petitioners and the learned Standing Counsel, the Court finds that it is not a fit case where the Court should interfere in the order of dismissal passed by the authorities.

6. From a perusal of the order of remand dated 17.8.2005 and the order of discharge issued by the Noida Medical Centre, Noida and from the perusal of other documents, it is clear that the petitioners had shifted the undertrial to another hospital instead of taking him back to the district Hospital for vested reasons and, quite possible, on extraneous consideration. The record indicates that the undertrial on a complaint of chest trouble was referred to the Noida Care Centre. The petitioners were entrusted with the duty of escorting the undertrial who was examined and was discharged on 18.8.2005. The order of discharge indicates that the undertrial was in a stable condition and consequently was handed over to the petitioners. The discharge order further indicated that while conducting the X ray of the lumbar spine of the undertrial, it showed compression fracture of L2 vertebra and, consequently while discharging the undertrial, advised him to undergo an MRI of the spine. The petitioners are relying upon the discharge order alleging that the undertrial was suffering from a heart disease and, since the undertrial was required to undergo an MRI, he was shifted from Noida Medical Care Centre to Kailash Hospital under intimation to the higher authorities. The petitioner further relied upon the order of the District Judge extending the remand which stated that the undertrial may remain in hospital.

7. In my opinion, the submission of the learned Counsel for the petitioner is bereft of merit. The discharge order clearly indicates that the undertrial was in a stable position and was advised to undergo an MRI of the spine for the treatment of his

backache. This advice did not necessitate the petitioners into rushing the undertrial to another hospital especially in the absence of any order from the higher authorities. The order of remand is also not helpful. The District Judge only directed the undertrial to remain in the hospital for his treatment and there was no direction for transferring the undertrial to another hospital.

8. Once, the undertrial was discharged from NMC centre, it was the duty of the petitioners to escort the undertrial to the district hospital and, by not doing so, and By admitting the undertrial in another hospital in order to give the undertrial some benefit, amounted to a serious misconduct not only of a dereliction of duty but gross disobedience of the orders of the higher authorities coupled with the fact that such action taken by the petitioners gives rise to the fact that the action taken by the petitioners was based on extraneous consideration, especially when the undertrial was involved in a scam involving crores of rupees.

9. In view of the aforesaid, this Court finds that the order of the dismissal was perfectly justified in the circumstances of the case. The order of punishment commensurated with the misconduct. If such dismissal orders, are allowed to be whittled down on the ground that the punishment did not commensurate with the misconduct, it would lead to indiscipline in the police force. A high degree of discipline is required to be maintained in the police force which brings confidence to the public and if the action of the petitioners are condoned or whittled down by a lesser punishment, the confidence of the public will be eroded.

10. Consequently, this Court does not find any error in the impugned order. The writ petition fails and is dismissed.