

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision : February 05, 2008

WP(C) No.409/2008

Sh.A.S.Parmar PETITIONER
! Through: Mr.N.S.Dalal, Advocate.

Versus

\$ Delhi Transco Co.Ltd RESPONDENT
^ Through : Mrs.Avnish Ahlawat, Advocate.

CORAM :-

*** HON'BLE MR. JUSTICE ANIL KUMAR**

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J. (Oral)

1. The petitioner has impugned the penalty imposed upon him of reduction of three stages of his pay.

2. Disciplinary proceedings under Regulation 7 of the DESU (DMC) Regulations were initiated against the petitioner and an enquiry report was submitted holding that the charges were not proved. The disciplinary authority, however, disagreed with the findings of the enquiry officer after giving opportunity to the petitioner and communicated the disagreement note dated 21st November, 2003.

3. The disciplinary authority imposed a penalty of reduction of six stages in his scale of pay for a period of three years with further direction that he will not earn increments of pay during the period of reduction and on expiry of period the reduction will have the effect of postponing the future increments of pay.

4. An appeal filed by the petitioner was dismissed and, thereafter, a revision was filed which was disposed of by order dated 29th September, 2005 whereby the penalty was modified from reduction of six stages to the reduction of three stages in time scale pay of petitioner for a period of three years and with a further direction that he will not earn increments of pay during the period of reduction and on expiry of the period, the reduction will have the effect of postponing the future increments of pay.

5. While disposing of the revision the revisional authority considered the contention of the petitioner that he was neither part of a joint inspection team nor he lodged an FIR and the FIR issued was not in his knowledge. The revisional authority noted that the petitioner while giving technical feasibility report had concealed the existence of two connections on the sites. The revisional authority also noted that despite there being no financial bungling on the part of the

consumer, disciplinary action was taken against him for grant of a new connection at the same site where FAE case was booked.

6. Against the order of the revisional authority modifying his penalty from reduction of six stages to three stages, a review petition was also filed which was also disposed of by order dated 18th October, 2007 dismissing the same.

7. The learned counsel for the petitioner has very vehemently contended that if the disciplinary authority had already accepted the enquiry report, the disciplinary authority subsequently could not differ with the enquiry report and issue disagreement note dated 21st November, 2003 and has relied on the letter dated 27th February, 2001 of Director, Vigilance/CVO.

8. Perusal of the said letter dated 27th February, 2001 shows that the letter was written to the Secretary, Central Vigilance Commission requesting him to examine the matter and to give a second stage advice so that the decision can be taken. It is admitted by the petitioner that Sh.Virender Prakash, Director (Vigilance) was not the disciplinary authority, however, had the rank equivalent to the disciplinary authority. The disciplinary authority seems to be General Manager (Admn). The letter dated 27th February, 2001 reflects that it

is not an order passed by the disciplinary authority after considering the enquiry report.

9. In any case this plea that disciplinary authority had taken a decision while communicating the letter dated 27th February, 2001 to the Secretary, Central Vigilance Commission and had accepted the report of the enquiry officer and therefore, later on the disciplinary authority could not differ with the alleged earlier decision was neither taken before the disciplinary authority pursuant to disagreement note dated 21st November, 2003 nor before the appellate authority and nor before the revisional authority which had reduced the penalty from reduction of six stages to the reduction of three stages.

10. The learned counsel for the petitioner has contended that the ground was taken in the review petition dated 19th February, 2007 where this ground seems to have been incorporated in para 12 as under:-

“CVO of DVB also accepted the IO report vide letter No.V.C.152-157/95-VIG/AVO-I/JS/54 dated 27.2.2001.”

11. The learned counsel for the petitioner has contended that this ground is a question of law which could be raised at any time. The letter dated 27th February, 2001 is a letter written by Director (Vigilance) and not by the disciplinary authority to the Secretary,

Central Vigilance Commission. What was the intent of the said letter and whether it was binding on the disciplinary authority, shall be a question of fact which has not been raised and adjudicated and consequently the plea of the learned counsel for the petitioner that it is only a question of law is not correct and, therefore, the petitioner could not be allowed to raise the same seeking review of the order of disciplinary authority, appellate authority and revisional authority. The petitioner, therefore, cannot be allowed to impugn the order of penalty imposed upon him on this ground now. In any case the letter dated 27th February, 2001 shall not be an order of the disciplinary authority accepting the enquiry report.

12. The learned counsel for the petitioner has also raised a ground that the disciplinary authority could not differ with the inferences drawn by the enquiry officer on the same material on the basis of which enquiry report was given absolving the petitioner from all the charges. The plea of the learned counsel for the petitioner is untenable as in accordance with the established procedure the disciplinary authority can differ with the enquiry report after giving due opportunity to the delinquent. No precedent or law has been brought to the notice of this Court holding that the disciplinary authority cannot draw inferences different from the enquiry officer on the basis of same material. The plea of the petitioner is not

sustainable in the facts and circumstances.

13. The learned counsel for the petitioner has also impugned the penalty imposed on the petitioner on the ground that the FIR relied in the case against the consumer was quashed by a bench of this Court. Perusal of the orders of the disciplinary authority, appellate authority and revisional authority reflect that disciplinary action has been taken against the petitioner not merely on the basis of FIR registered against the consumer but on account of grant of new connection at the same site where FAE case was booked and the report given by the petitioner concealing the existence of two connections at the same site where two IL and IP connections existed whereas in the reports given by the petitioner he mentioned the name of one user only that is M/s.Rani Absorbent Cotton Mfg.Co. Consequently on account of quashing of FIR filed against the consumer, the petitioner cannot be absolved of charges leveled against him.

14. While exercising its powers of judicial review under Article [226](#) of the Constitution of India this Court is not to re-appreciate the evidence. It is a settled position of law that in exercise of jurisdiction under Article 226 of the Constitution of India, the Court is not to interfere with factual findings and should restrain itself from re-appreciating evidence while exercising powers of judicial review.

Reliance for this proposition can be placed on the judgment of the Supreme Court, *Government of A.P. and Ors. v. Mohd. Nasrullah Khan* reported as (2006) 2 SCC 373. Reliance may also be placed on the following judgments rendered by the Supreme Court and this Court concerning the scope of judicial review by a writ court: *Harbans Lal v. Jagmohan Saran* (1985) 4 SCC 333; *B.C. Chaturvedi v. Union of India* (1995) 6 SCC 749; *Indian Overseas Bank v. I.O.B. staff Canteen Workers' Union* AIR 2000 SC 1508 ; *Municipal Corporation of Delhi v. Asha Ram and Anr.* 117 (2005) DLT 63 and *Filmistan Exhibitors Ltd. v. N.C.T. Secy. Labour and Ors.* 131 (2006) DLT. In all the above judgments, it has been held that a writ court should refrain from interfering with the orders of an inferior tribunal or subordinate court unless it suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law.

15. The objective of judicial review is that a person receives a fair treatment and objective is not to re-appreciate the entire pleas and evidence and draw inferences again. The Apex Court in (1995) 6 SCC 749 *B.C.Chaturvedi Vs Union of India* at page 759 in para 12 had held as under:

“ 12 . Judicial review is not an appeal from a decision but a review of the manner in which the decision is made.

Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or **whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion.** But that finding must be based on some evidence. **Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding.** When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. **The Court/Tribunal in its power of judicial review does not act as Appellate Authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence.** The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. **If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."**

16. In the circumstances there is no such error manifest in the decisions taken by the respondent in awarding the penalty nor there is denial of principles of natural justice so as to entail interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

17. In the facts and circumstances, the writ petition is without any merit and therefore, it is dismissed. All the pending applications are also disposed of.

February 05, 2008
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ANIL KUMAR, J.