

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

+ **W.P. (C.) No.1374/2010**

% **Date of Decision: 08.03.2010**

CONSTABLE SURESH PAL (10197/DAP) PETITIONER
Through Mr. U. Srivastava, Advocate

Versus

THE COMMISIONER OF POLICE & ANR. RESPONDENTS
Through Mr. Rajiv Nanda, adv. with Mr. Zeyaul
Haque, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

- | | | |
|----|---|-----|
| 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 |

MOOL CHAND GARG, J.

*

CM No. 2853/2010

Delay is condoned.

The application is allowed and disposed of.

W.P. (C.) No.1374/2010

1. This is a writ petition filed by the petitioner, who is working as Constable in Delhi Police against the order passed by the Principal Bench, Central Administrative Tribunal, New Delhi (hereinafter referred to as 'the Tribunal') on 26.07.2007 whereby the Original Application

No.2287/2006 filed by the petitioner has been dismissed. Briefly stating the facts of this case are:

i) The petitioner was proceeded departmentally and vide order dated 13.03.2001 an adverse order was passed against him by the disciplinary authority whereby his increment for one year was withheld and his period of suspension from 20.02.1999 to 08.04.1999 was decided as period not spent on duty. The said order was challenged by the petitioner before the Tribunal vide O.A. No.65/2003. One of the pleas taken by the petitioner was that against the impugned order passed by the disciplinary authority dated 13.03.2001, he had filed an appeal before the appellate authority on 26.03.2001 and that the said appeal had not been decided.

2. In view of the aforesaid, the matter came up before the Tribunal on 09.01.2003 whereby the Tribunal directed the appellate authority to decide his appeal and passed the following order:

“2. If the contention of the applicant is correct that the aforesaid appeal submitted by him against the disciplinary authority’s order dated 13.3.2001 is still pending with the respondents, we consider it would be appropriate to dispose of this OA, at this state, even without issuing notice to the respondents, with a direction to the respondents to take a decision on the statutory appeal which has been availed of by the applicant, in accordance with law within a period of two months from the date of receipt of a copy of this order. In case the decision had already been taken in the matter, a copy of the decision of the appellate authority shall be conveyed to the applicant within the same time.”

3. On receipt of the aforesaid order, the respondents initiated a second departmental inquiry against the petitioner on finding that the

allegation of the petitioner that he had filed an appeal before the appellate authority was not correct. In fact, according to the respondents, the scrutiny of records revealed that the petitioner had not filed any appeal before the appellate authority and further that entry in the diary register at Sl. No.1127 dated 26.3.2001 maintained in the office of RI/RND/Traffic was manipulated which had been managed by the applicant some time after September, 2002. During the enquiry, the petitioner could not produce any evidence to suggest that he had filed any appeal against the order of punishment, and this act on the part of the petitioner amounted to gross misconduct, concealment of facts and dereliction in discharge of his official duties, which would render him liable to be dealt with departmentally under the provisions of the Delhi Police (Punishment & Appeal) Rules, 1980.

4. Accordingly, a regular departmental inquiry was held and on the basis of the evidence which came on record, the inquiry officer arrived at the following conclusion:

“On the basis of statements recorded and documents produced, it is proved that there was no entry of appeal of Ct. Suresh Pal 3038/Traffic (now 10197/DAP) in the Dy. Register of RI/RND/T till the day of September, 2002 when Ct. Suresh Pal 3038/T visited the office of RI/RND/T and enquired from Ct. Sunil Kumar 1580/T about his appeal and requested him to make entry of his appeal in the space (vacant line) below Dy. No.1126 dt.26/03/2001. On next day there was also no entry of his appeal at the space ‘vacant line’ below Dy. No.1126. Ct. Sunil Kumar refused to make the entry and Ct. Suresh Pal 3038/T went away on that day. During the month of January, 2003 when HAP/Traffic enquired from Ct.

Sunil Kumar 1580/T about the appeal of Ct. Suresh Pal 3038/T only then he checked the register and found the entry of appeal of Ct. Suresh Pal at Dy.No.1127 dt.26/03/2001 below Dy.No.1126 which is apparently in different handwriting and different ink. There was no one other than Ct. Suresh Pal 3038/T who can derive any benefit from the said entry therefore the presumption that Ct. Suresh Pal 3038/T has managed to manipulate the entry of his appeal at Sl.No.1127 dt.26/03/2001 in the Diary Register maintained in the office of RI/RND-Traffic after September, 2002 carries weight. Ct. Suresh Pal No.3038/T could not produce any evidence to suggest that, he filed his appeal against the order of punishment.

Therefore, the Charge served upon Ct. Suresh Pal 3038/T (now 10197/DAP) stands proved.”

5. The disciplinary authority while agreeing with the findings returned by the enquiry officer, vide orders dated 4.2.2005 inflicted penalty of withholding of one increment permanently having effect of reducing his pay from Rs.4560/- to Rs.4485/- per month. Aggrieved, the petitioner filed an appeal against the order aforesaid, which has since been dismissed by the Additional Commissioner of Police vide order dated 15.2.2006.

6. The petitioner again challenged the order dated 04.02.2005 passed by the disciplinary authority as well as the order dated 15.02.2006 confirming the penalty awarded to him of withholding one increment permanently having effect of reducing his pay from Rs.4560/- to Rs.4485/- per month by filing an application under Section 19 of the Administrative Act, 1985 before the Tribunal vide O.A. No.2287/2006

7. However, the said O.A. has been dismissed by the Tribunal vide order dated 26.07.2007 which stands impugned before us.

8. Before us the petitioner had contended that there was no evidence whatsoever led by the respondents to prove that the appellant had not filed statutory appeal against the order dated 13.03.2001 and further that the conclusion arrived at by the enquiry officer confirmed by the disciplinary and appellate authorities that the petitioner manipulated an entry in the relevant register showing that he had filed an appeal is an outcome of misreading, non-reading and misinterpretation of the evidence. He also contends that while arriving at a conclusion against the petitioner on the crucial issue of manipulating entry in the register, the respondents did not consider that the register was in exclusive possession of the department and there was no occasion for the petitioner to have manipulated an entry therein. The learned counsel also contended that entry immediately preceding and succeeding the disputed entry is in the hand of the same person and if the disputed entry was manipulated by the petitioner, surely the person who made the very next entry would have known such manipulation and had brought it to the notice of the concerned authorities. The very fact that said person would not report the matter to higher authorities would clearly indicate that the petitioner had no role in manipulating the entry and the same was a genuine one having come into being only on receipt of the appeal filed by the applicant. These arguments were also addressed before the Tribunal.

9. However, the Tribunal did not agree with the contentions made on behalf of the petitioner and dismissed the original application by observing that:

“6. We have given our thoughtful consideration to the contentions raised by the learned counsel, but in the context of the facts and circumstances of this case, we do not find any merit in any of the contentions as raised above. It was the case of the applicant that he had filed an appeal. He alone was supposed to prove a fact asserted by him. The department was not to lead evidence in negative. That being the position, it cannot be urged that the department brought no proof on records to show that the applicant had not filed any appeal. In view of the nature of controversy in issue, the applicant had to bring some evidence to show that he had in fact and reality filed an appeal against the order dated 13.3.2001. The applicant indeed endeavoured to prove so by placing reliance upon entry No.1127. It is the case of the applicant till date that the entry pertaining to filing of the appeal at No.1127 is genuine. In the context of the facts as mentioned above, the only question is as to whether the said entry is genuine or has been manipulated. The department was to lead evidence only to prove that the said entry was an act of concoction and forgery manipulated at the end of the applicant. We have seen the records produced by the respondents, perusal whereof would clearly manifest that there are two entries bearing No.1127. It is the first entry bearing No.1127 which is in dispute. The same is indeed the last entry for the date 26.3.2001. The other entry bearing No.1127 is the first entry of 27.3.2001. It is a positive finding returned by the enquiry officer that there was no entry of appeal of the applicant in the diary register till September, 2002 when the applicant visited the office of RI/RND/T and enquired from Const. Sunil Kumar about his appeal and requested him to make entry of his appeal in the space (vacant line) below diary No.1126 dated 26.3.2001. Sunil Kumar refused to make the entry and the applicant then went away. It

has been further found on the basis of evidence that in the month of January, 2003 when HAP/Traffic enquired from Const. Sunil Kumar about the appeal of the applicant, only then he checked the register and found that the entry of appeal of the applicant at diary No.1127 dated 26.3.2001 below diary No.1126, was apparently in different handwriting and ink. It has also been found that no one else but the applicant could have benefited from the said entry. We have ourselves gone through the statements of all the PWs and are of the view that the findings recorded by the enquiry officer, as reproduced above, are well merited. Even though, as per settled law, this Tribunal would not interfere with findings of fact unless the same be an outcome of misreading or non-reading of the evidence, or be perverse, but in the present case we are absolutely convinced that no other finding on the basis of the evidence was possible. The circumstances pointed out by the enquiry officer do clearly indicate manipulation of entry No.1127. The learned counsel has not been able to show any misreading or non-reading of the evidence. Even though it may be true that the two entries immediately above and below the disputed entry 1127 are by the same person, which should have normally come to notice of the person who made the same, but that would have been the position if the disputed entry was inserted on 27.3.2001 before recording the next entry bearing No.1128. It is the positive case of the department that this entry was inserted sometime in September, 2002. Insofar as the contention of the learned counsel that the concerned record was all through in the possession of the department and, therefore, the applicant would have no occasion to make the entry is concerned, suffice it so say that it is not the case of the department that the applicant had himself maneuvered the entry in question. The allegation against the applicant was that he had manipulated the same and that being so, the fact that the concerned record was in possession of the respondents would be of no consequence.”

10. It is apparent that no other person would have been benefited by the Manipulation of records regarding filing of the appeal except the petitioner inasmuch as it is the petitioner who raised an argument for the first time before the Tribunal in the course of hearing of O.A. No.65/2003 that he had filed an appeal against the order dated 13.03.2001 till the matter came up for hearing before the Tribunal on 09.01.2003. This only goes to show that the plea was taken only to seek an opportunity to address his grievances before the department and to somehow get away from the order passed by the disciplinary authority. However, no such appeal was found to be in existence and on scrutiny, it was found that there was manipulation of records. The evidence was led on behalf of the department during the second inquiry initiated where as many as six witnesses were examined on behalf of the respondents while two witnesses were examined on behalf of the petitioner but still the petitioner failed to bring on record that he had filed an appeal. No counsel or any other person on his behalf has appeared as witness to depose that such an appeal was drafted and filed on behalf of the appellant as pleaded by him. The plea of the petitioner is not that he had himself drafted his appeal.

11. The Tribunal rightly observed that the efforts to bring on record an entry in the diary register at serial No.1127 maintained in the office of RI/RND/T was manipulated must have been managed by the petitioner only because it was the petitioner only who could have

benefited by it but no evidence to disprove the allegation of the department was placed on record by the petitioner.

12. Having heard the arguments made on behalf of the petitioner and going through the judgment passed by the Tribunal and also taking into consideration the delay caused by the petitioner in approaching this Court against the impugned order which is more than two years and his conduct, we are satisfied that it is not a case where any interference is required by this Court while exercising its power under Article 226 of the Constitution of India qua the order dated 26.07.2007 passed by the Tribunal in O.A. No.2287/2006. Accordingly, the writ petition is dismissed with no orders as to costs.

MOOL CHAND GARG, J.

MARCH 08, 2010
'anb'

ANIL KUMAR, J.