

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

+ **WP(C) No. 7174/2009**

% **Date of Decision: 19.02.2010**

Govt. of NCT of Delhi & Anr. Petitioners
Through Ms. Aruna Tikku, Advocate

Versus

Rajni Dobhal Respondent
Through Nemo

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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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? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

ANIL KUMAR, J.

The respondent was awarded punishment of forfeiture of two years approved service permanently entailing reduction in her pay from Rs. 7075/- per month to 6725/- per month vide order dated 27th February, 2006 by the Disciplinary Authority and by order dated 13th September, 2006 by the Appellate Authority pursuant to a complaint by Ms. Sonia Panwar, admittedly a woman of easy virtue and a blackmailer on the allegation that the respondent had demanded her to settle the

matter with the accused in a rape case and to share the money with the respondent. The alleged conversation was allegedly recorded by the said complainant, Ms. Sonia Panwar.

The respondent had challenged the orders dated 27th February, 2006 passed by the Disciplinary Authority which was confirmed by the Appellate Authority by order dated 13th September, 2006 by filing an OA 1837/2007 titled WSI Rajni Dobhal Vs. Govt. of NCT of Delhi and Anr. Which was allowed by order dated 5th September, 2008 which is challenged by the Govt. of NCT of Delhi in the present petition under Article 226 of the Constitution of India.

The petitioners have contended that the Tribunal should not have considered the character and antecedents of the complainant, Ms. Sonia Panwar, on whose sole testimony the punishment was awarded as none of the other witnesses on behalf of the petitioners and the respondent had deposed anything so as to bring the charges exclusively against the respondent.

The petitioners contended that the demand by the respondent to the complainant Ms. Sonia to settle the matter with the accused to share the money with her amounted to misconduct in discharge of her official duty and therefore, the punishment was awarded to her in accordance with the Rules and could not be set aside. The petitioners

also impugned the action of Central Administrative Tribunal, Principal Bench in perusing the details of the criminal case initiated against the accused and consideration of the antecedents of complainants in exercise of its power under Section 22 of Administrative Tribunal Act, 1985.

The Tribunal has considered the deposition of all the witnesses in detail along with the charges framed against the respondent. The Tribunal noticed that the basis of accusations against the respondent was recorded conversation between the complainant and the respondent where it was alleged that the respondent had demanded share of money from the complainant. The Tribunal also considered and noted the relevant portions of the enquiry report in the order impugned before this Court. The inquiry officer was satisfied that the complainant Ms. Sonia Panwar is a lady who is habitual of threatening the police officers and had been making efforts to use police officer in her favor by pressurizing tactics. It was also observed by the enquiry Officer that the other police officers in other cases had also recorded against her and brought it to the notice of senior officer. It was also inferred that as she could not use the investigating officer/respondent in her favor, she alleged that she will produced the tape in the Court and got the news published in the News papers. Some portions of the inquiry reports which have been considered and relied upon by the Tribunal are as under:-

“ The defaulter W/SI produced two DWs in her defence. Both these DWs namely SI Virender Prakash No.D-3486 and W/ASI Kailash No.D-4721 have stated regarding FIR No.16 dt.12/10/04 under Section 376 IPC & 4 of Dowry Prevention Act, P.S.Sarojini Nagar, Delhi and about the conduct of complainant Sonia Panwar. During the deposition of these DWs and from defence statement of defaulter W/SI it is revealed that **complainant Sonia Panwar is a lady who is habitual of threatening the Police officers and in making efforts to use Police Officers in her favour by pressurizing tactics. The reports have also been recorded against her by the different Police Officers and facts brought in the notice of senior officers also.** The reputation of the lady in the neighbourhood also is not found good and complaints were received against her in this regard. **She is habitual of getting the cases of rape registered and had got Rs.80,000/- from accused party in other case of her alleged rape.**

In the present case also **she was found not interested in the investigation of case and never reportedly joined the investigation by visiting the Police Station. She was interested only that accused may not be granted bail and was reportedly contacting them also about compromise of the case. To tape the conversation of defaulter W/SI, was also a part of blackmailing the I.O., for using her in her favour.** As she could not use the I.O in her favour so she produced the tape in the court and got the news appeared in the paper. She herself has deposed that she became annoyed with I.O as she did not inform her well in advance about the bail matter of the accused. But it does not mean that the tape of the conversation of the defaulter W/SI is wrong. The defaulter W/SI could write reports and bring facts in the notice of senior officers, as was done by her defence witnesses produced by her in the DE, if her interest could have been different then the alleged one, but she failed to do so.

The Tribunal has also considered the assumptions made by the Disciplinary Authority. This is not disputed that during the inquiry the complainant Ms. Sonia Panwar, woman of easy virtue and a black

mailer, had requested to withdraw her complaint and had stated that she does not want any action against the respondent. The Disciplinary Authority assumed that the respondent had again tried to win over the complainant by getting a written statement in her favour and the conversation recorded in the tape and produced before the Court could not be doubted.

The findings of the Disciplinary Authority and the Appellate Authority which weighed with the Tribunal are as under:-

“ The E.O has proved the charge on the basis of the material evidence which has come on record during the D.E. proceedings. The statement given by the complainant in favour of the defaulter W/SI regarding her request to withdraw her complaint and that she does not want any action against the W/SI does not help her in any way, at this stage. It is **possible** that the defaulter W/SI had again tried to win over the complainant by getting a written statement in her favour. The conversation between the complainant and the defaulter W/SI recorded in the tape and produced before the Hon’ble Court cannot be doubted.

The Tribunal considered the testimonies of the DE proceedings and on considering the entire evidence has reached the conclusion that there is no evidence against the respondent as the conversation allegedly recorded was not even remotely mentioned and the conversation on the tape was not even played and in the circumstances, there was no reckoning to the alleged statement of Smt. Sonia that the respondent had asked her to compromise with the accused and share

the amount with her. The relevant portion of reasoning of the Tribunal in setting aside the order of the Disciplinary Authority and the Appellate Authority is as under:

“11. We are conscious that we are not dealing with the criminal case against Nepal and others. We are only referring to the conduct of Sonia Panwar with the sole purpose of deciding the present case. In fact, the past conduct of Sonia in falsely alleging her rape against persons of prominence and extracting money from them is already proved and so held by the enquiry officer. We are only mentioning some of the additional facts which support the findings of the enquiry officer to the extent as mentioned above. **The evidence in defence led by the applicant would further show that Sonia was not only extracting money from her alleged rapists, but also threatening some police officers who were conducting investigations.** In the earlier case registered by her against Munish and his family members, both the investigating officers unequivocally stated that she had threatened them that complaints would be made against them and she would get them dismissed from service. So much so, one of the investigating officers even recorded a DD entry to that effect as well. Once, it is proved to the hilt that Sonia, far from being virtuous, is actually a lady of easy virtue and extracting money from different persons by implicating them in false rape cases, and further that she would not spare even the investigating officers, if they would not toe her line, it would not be safe to rely upon her sole testimony in holding the applicant guilty of the charge who also happens to be a woman, and has an unblemished service record.

12. Before we may part with this order, we may only mention that the enquiry officer as also other authorities have made mention of the tape recorded conversation, transcript whereof was produced before the enquiry officer, having prayed in Court. **In which court such tape recorded conversation was played, and whether there was any finding that the conversation so recorded was between the applicant and Sonia Panwar, has not been remotely mentioned.** To a question put to the learned counsel representing the respondents as to in which Court the tape recorded conversation was played and whether there was only

finding or even an observation that the conversation was between the applicant and Sonia Panwar, no reply at all is forthcoming.

It is true that the jurisdiction of the Tribunal in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some cogent and reliable evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, but it cannot be lost sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the evidence and documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot make his own assumptions. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

The learned counsel for the petitioner has not denied that considering the entire evidence led before the enquiry officer, his inferences are based solely on the testimony of the complainant. The findings of the enquiry officer is also that when the complainant failed to use the IO/respondent in her favour, she allegedly tape recorded the

conversation. From the report of the enquiry officer, the disciplinary authority and Appellate authority it is apparent that none of them even heard the tape-recorded conversation. It has not been established that the recorded conversation allegedly taped by the complainant is between her and the respondent. In the circumstances inference of the Tribunal that it is the case of no evidence against the respondent appears to be correct and the learned counsel for the petitioner has not been able to show any cogent evidence against the respondent on the basis of which it could be inferred that the charge made against the respondent was made out.

The enquiry officer while analysing the evidence and the documents in order to draw inferences based on the preponderance of probability cannot take into consideration the irrelevant facts nor can refuse or reject the relevant facts. The testimony of the complainant that he wanted to withdraw the complaint against the respondent has been ignored on the assumption that “ it is **possible** that defaulter SI had again tried to win over the complainant by getting a written statement in her favour”. Which is the first instance when the respondent had tried to win over the complainant, cannot be inferred from the testimonies recorded before the enquiry officer? The enquiry officer could have asked the complainant during the enquiry proceedings whether she has been tried to be win over. But it was not done and then on an assumption that the complainant might have been

won over the relevant testimony of the complainant has been rejected. The enquiry officer has himself stated in the enquiry report ' it is possible that the complainant has been won over'. This is nothing but rejection of the testimony of the complainant in favour of respondent on surmises and conjectures. The enquiry officer very conveniently without any rational and the cogent reason has also not considered his own inference that when the complainant failed to pressurise the respondent, she got the conversation recorded from her sister. The alleged contents of the tape-recorded conversation has not been established and discussed except that the conversation was recorded. The respondent has not admitted the alleged conversation which was allegedly recorded. In the circumstances it has not been established on the basis of any cogent evidence that the conversation recorded by the complainant was between her and the respondent. In the circumstances there cannot be a doubt that the enquiry officer has made assumptions and has rejected relevant testimony of the complainant in favour of respondent on surmises and conjectures and in the entirety of the facts and circumstances, therefore, it is a case of no evidence against the respondent as has also been held by the Tribunal. If that be so then the order of the Tribunal cannot be faulted in the present facts and circumstances of this case.

The learned counsel for the petitioner has also contended that the Tribunal had considered in detail the entire testimonies. According to

her while exercising the power of judicial review, it could not be done by the Tribunal. It is true that the jurisdiction of the Tribunal in judicial review is limited, however, within the limited jurisdiction, in order to ascertain whether the case is of no evidence and whether the enquiry officer has made assumptions and has rejected relevant testimony on his own surmises and conjectures, the entire evidence had to be perused. In these circumstances perusal of evidence by the Tribunal in order to ascertain whether it was the case of no evidence and assumptions were made by the enquiry officer, cannot be faulted on the grounds as raised by the learned counsel for the petitioner.

For the foregoing reasons, this Court does not find any illegality or such irregularity in the order of the Tribunal which shall necessitate any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. In any case in exercise of its jurisdiction, it has always been in the discretion of the High Court to interfere or not depending upon the facts and circumstances of the case. In *Shangrila Food Products Ltd. Vs Life Insurance Corporation of India* (1996) 5 SCC 54, the Supreme Court had held that " the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. The jurisdiction of the High Court, being extra ordinary, is normally exercisable keeping in mind the principle of

equity. One of the ends of the equity is to promote honesty and fair play. Therefore, in the facts and circumstances there are no grounds to interfere with the order of the Tribunal impugned before us. The writ petition is therefore, dismissed, however, parties are left to bear their own costs.

ANIL KUMAR, J.

FEBRUARY 19th , 2010
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MOOL CHAND GARG, J.