

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
#21.

+ W.P.(C) 870/2007

% ***Date of Decision:19.08.2010***

UOI THR. SECY M/O DEFENCE Petitioner
Through: Mr.H.K.Gangwani,Adv.

versus

MANJEET SINGH Respondent
Through: Mr.S.K.Gupta, Adv.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

: **PRADEEP NANDRAJOG,**(Oral)

1. Minor penalty of withholding next increment of pay for a period of one year has been inflicted upon the respondent by the disciplinary authority. The Appellate Authority has agreed with the penalty levied. Vide impugned order dated 06.07.2006, allowing O.A.No.1335/2005, the Tribunal has set aside the penalty on the ground that Rule 14(18) of the CCS (CCA) Rules 1965 was not followed, in that since the charged officer did not examine himself in defence, the circumstance appearing against him were to be put to him by the inquiry officer. Additionally, finding fault, the Tribunal has held that the report of Station Security Officer relied upon by the inquiry officer was not permissible for the reason the Station Security Officer had not been examined as a witness.

2. A stitch in time saves nine, is the adage which we had been hearing since childhood. Had the disciplinary authority been alive to this and put one stitch in time the problem at hand would not have arisen.

3. A charge memo for a minor penalty, expressly stating that it was issued under Rule 16 of the CCS (CCA) Rules 1965, was issued against the respondent with the imputation of misconduct being as under:

“Shri Manjeet Singh, MTD PA No 38254 was detailed of driven vehicle No 95 B 55952 Amb car on 22 Aug 2003. After taking over the charge of the vehicle he was doing Daily Inspection (DI) part one when he was checked by Sgt. Sharma BR, SNCO IC MT Detail (Sgt Sharma is detailed to check the DI all the vehicles). Sgt Sharma observed Shri Manjeet Singh was cleaning the vehicle and the bonnet cover was half open. On seeing Sgt Sharma Shri Manjeet Singh tried to close the bonnet cover. On being suspicious of the act of Shri Manjeet Singh, Stg Sharma, called JWO SC Singh, who was present nearby and asked Shri Manjeet Singh to open the bonnet cover. When Shri Manjeet Singh reluctantly opened the bonnet cover they found a 2 liter pet bottled filled with petrol wrapped in a piece of cloth hidden between radiator and left light assembly. The matter was immediately reported to Sqn Ldr S Gupta, STO (MT) and MWO SK Roy, MTO. However in the meantime Shri Manjeet Singh took the pet bottle and threw it outside the fence. JWO SC Singh shouted and tried to stop him from throwing the bottle as it was apparent from his action but did not succeed in stopping Shri Manjeet Singh. The pet bottle was later brought back by the JWO SC Singh from outside the fence.”

4. Suffice would it be to state that the charge was that Motor Vehicle No. 95 B 55952 was entrusted to the respondent as the driver thereof and that Sgt. Sharma observed that the respondent was cleaning the vehicle with the bonnet cover half open. On seeing Sgt. Sharma the respondent tried to close the bonnet cover which roused suspicion of Sgt. Sharma, who called Junior Warrant Officer (JWO) S.C.Singh. The respondent was asked to open the bonnet cover. With reluctance he opened the cover. They found a bottle containing two liter petrol wrapped in a piece of cloth and hidden between the radiator and the left light assembly. Matter was reported to

Sqn.Ldr.S.Gupta and in the meanwhile the respondent removed and threw the bottle containing petrol outside the fence.

5. The reply filed by the respondent to the charge against him was as under:

“It is submitted that on 22.08.2003 I was detailed by Sgt.B.R.Shrama to perform the duty. I collected the key went near to the Ambassador Car No.95-B-55952 and while I was dusting the car. From behind Sgt. B.R.Sharma and JWO S.C.Singh came near the car and asked me to open the bonnet of it. I, on their order pulled the lever of bonnet of it. I, on their order pulled the lever of bonnet and one of them opened the bonnet. I again started dusting the car, both shouted and asked me how this bottle lying in the car. I said I do not know I have not yet carried out the D.I. of the car. Both went to guardroom. I also left the place for cleaning my hand and eyes as I was suffering from eye flew. When I came back to the said car there I found said Sgt., JWO and S.T.O were standing there and started making false allegations about pilferage of petrol for which I have specifically denied.”

6. With reference to the reply it may be highlighted that the respondent never denied being entrusted with the car in question as driver thereof. He did not dispute that Sgt.B.R.Sharma and JWO S.C.Singh came near the car and asked him to open the bonnet. He did not dispute having opened the bonnet. He did not dispute that a bottle with petrol was found as alleged had he took the defence that he did not know as to how the bottle was kept so.

7. For unexplainable reasons the disciplinary authority decided to appoint an inquiry officer and conduct an inquiry. The disciplinary authority was oblivious to the fact that the charge sheet alleged pertained to a minor penalty expressly so stated in the charge sheet. The inquiry officer remained oblivious to the fact that the car being under the custody of the respondent and the bottle containing petrol being found after the bonnet of the car was opened was not a fact in dispute. The only question was whether the justification given by the respondent was a plausible justification, requiring the same to be accepted. We are a little baffled as to why at all the inquiry officer was appointed.

8. Be that as it may, the inquiry officer proceeded to hold an

inquiry and submitted a report indicting the respondent and during the inquiry proceedings did not examine Sgt.Sharma but examined JWO S.C.Singh.

9. The question which would arise for consideration would be whether for a minor penalty proceedings an inquiry would be subject to the rigors of the various sub-Rules of Rule 14 of the CCS (CCA) Rules, 1965, which Rule applies to major penalty proceedings.

10. The answer has to be in the negative for the reason the strict procedure contemplated by Rule 14 is in place for the reason the indictment relatable thereto is severe and attracts major penalties. It is settled law that graver is the charge, stricter should be the scrutiny. Lesser is the charge, lesser would be scrutiny.

11. Thus notwithstanding an inquiry officer being appointed, we are of the opinion that since the charge memo related to a minor penalty proceedings, the procedure prescribed by Rule 14 would not be attracted and as long as the required fair play of procedure was followed by the inquiry officer, the same would be fine.

12. The first ground on which the Tribunal has found fault is accordingly held against the respondent and in favour of the petitioner.

13. As regards the second, suffice would it be to state that in the absence of Sgt.Sharma testimony of JWO S.C.Singh is sufficient.

14. With reference to the charge memo and the response, the only thing which had to be decided was whether there was reasonable ground to infer that the bottle containing petrol was placed as alleged by the respondent.

15. Suffice would it be to state that conduct of a person is fairly relevant and more often than not proves the guilt or otherwise. If the respondent had nothing to do with the bottle we see no reason why he threw it away. This conduct brings out the guilt and at a domestic enquiry, relatable to a minor penalty proceedings, no more is required.

16. Noting that the penalty levied upon the respondent would deny him higher wages only for one year and thereafter would have no

effect whatsoever, we allow the writ petition and set aside the impugned order dated 06.07.2006 and as a consequence dismiss O.A.No.1335/2005 and restore the order levying penalty upon the respondent.

17. No costs.

PRADEEP NANDRAJOG, J

MOOL CHAND GARG, J

AUGUST 19, 2010

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