

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

+ **WP(C) No.1989/2010**
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Date of Decision: 22.03.2010

Delhi Transport Corporation Petitioner
Through Mr.Hanu Bhaskar, Advocate for the
Petitioner/DTC.

Versus

Sh.Sri Chand 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? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner, Delhi Transport Corporation, has challenged the order dated 25th September, 2009 passed in T.A. No.142/2009, titled as 'Sh. Sri Chand v. Delhi Transport Corporation and another' by the Central Administrative Tribunal, Principal Bench, New Delhi, allowing the original application filed by the respondent, and quashing the

punishment of removal from service and directing reinstatement of the respondent, however, declining grant of back wages to him.

The respondent was appointed as Security Guard with the petitioner and he was charged with demanding money for wine from Sh.Shiv Dayal, ASI and on refusal to give him money to beat him up, and thereafter demanding money from Sh.Shiv Charan, ASI and also beating him under influence of intoxication. Pursuant to the charge sheet dated 12.01.1993, an enquiry was conducted in September, 1993. The petitioner had produced Sh.Pratap Singh and Sh.Ved Pal Singh as its witnesses in support of the allegations made against the respondent of demanding money from Sh.Shiv Dayal and Sh.Shiv Charan, both ASI, and on their refusal beating them.

Despite the statements by Sh.Pratap Singh and Sh.Ved Pal Singh, prosecution witnesses that nothing as alleged in the charge memo had happened, The enquiry officer had held the respondent guilty and the Disciplinary Authority, the Chief Security Officer issued a show cause notice dated 22nd September, 1993 proposing punishment of removal from service.

The notice proposing removal from service was challenged by the respondent by filing a writ petition being W.P.(C) No.4805/1993 on the ground that the Chief Security Officer was not competent to issue show

cause notice proposing punishment, as according to the respondent the power was with the General Manager (CMD) and not the Chief Security Officer. The writ petition was, however, dismissed but the respondent was given permission to reply to show cause notice and to challenge the order, if any, passed by the Disciplinary Authority.

After considering the reply to show cause notice given by the respondent, order for removal from service dated 07.01.1997 was passed against the respondent by the Chief Security Officer. The respondent challenged the same in writ petition filed before the High Court, which was transferred to the Central Administrative Tribunal. Before the Tribunal the respondent challenged his order of removal on the ground that the Chief Security Officer lacked original jurisdiction to pass an order of removal and also on the ground that there is no evidence to implicate him or to show culpability of the respondent in respect of memorandum of charge issued against him.

The Tribunal has held that the Chief Security Officer had been delegated the power of the Chief Manager, and consequently, he has jurisdiction to pass appropriate order considering the reply to the show cause notice which was given to the respondent.

Regarding the order of Disciplinary Authority and the evidence led before the enquiry officer, the Tribunal after considering the statement

of Sh.Pratap Singh and Sh.Ved Pal Singh, prosecution witnesses held that there is no evidence on behalf of the prosecution to implicate the respondent. The tribunal not only appreciated the evidence, but also reproduced the relevant evidence in its order dated 25th September, 2009 impugned before us which categorically reflect that both the witnesses of the prosecution/petitioner denied any incidence taking place on 04.01.1993 when the respondent allegedly under the influence of liquor demanded money from Sh.Shiv Dayal and Sh.Shiv Charan, and on their refusal beat them. Even defense witnesses Sh.Kapur Chand, S/Hav and Sh.Raj Kumar, S/Guard denied that they were called by the respondent or they quarreled with Sh.Shiv Dayal, ASI or used any abusive language.

The Tribunal also noted that no FIR was lodged, nor there is any medical treatment taken by Sh.Shiv Dayal and other ASI to show that any injury was sustained by them on account of alleged beating given to them by the respondent. The Tribunal also noted absence of any medical evidence to show that on 04.01.1993 the respondent was under the influence of liquor or he was intoxicated.

The tribunal also considered the statement of Sh.Shiv Dayal, ASI and the complaint lodged by him in the concerned Depot register which was signed by Sh.Pratap Singh and Sh.Ved Pal Singh both of whom had denied all the incidents as had been alleged against the respondent. The

Tribunal also considered the assumption propounded on behalf of the petitioner that both the prosecution witnesses may have recoiled under pressure denying having seen the incident.

Considering the lack of any evidence against the respondent and mere assumption, surmises and conjectures were held to be insufficient for the inferences of the Enquiry Officer and the Disciplinary Authority and the orders lacked on any material and could not be sustained and the order imposing the punishment of removal from service was quashed.

The learned counsel for the petitioner before us has emphatically referred to the statement of Sh.Shiv Dayal. The learned counsel, however, has not been able to deny that the complaint which was lodged by Sh.Shiv Dayal in the Dept. Register was witnessed by Sh.Pratap Singh and Sh.Ved Pal Singh. This also cannot be denied that Sh. Pratap Singh and Sh.Ved Pal Singh who were prosecution witnesses have denied happening of such an incidence for which the charge memo was issued against the respondent. Even the defense witnesses have denied happening of any such event as has been alleged in the memo of charge that the respondent was intoxicated and he had beaten up two ASIs.

The learned counsel has also failed to show cogent evidence from which it can be inferred that incident had taken place. Mere statement of the complainant without any other evidence cannot be sufficient to hold that there is evidence against the respondent, and in the circumstances, the inferences of the Tribunal that the charges alleged against the respondent are based on no evidence, cannot be faulted.

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 enquiry officer had held the respondent guilty of charge merely on the suspicion which could not be allowed and the Tribunal was justified in not upholding such an inference which was not based on preponderance of probability but was based on mere surmise and conjectures. The learned counsel for the petitioner has also not been able to justify about the punishment of removal from service of the respondent who has been in service for 20 years and the alleged incident had occurred in the year 1993, therefore, such punishment which was based only on one incident of the complainant which has also been contradicted by his own witnesses would not be justifiable in the fact and circumstances.

In the circumstances, it is apparently a case where the punishment of removal from service has been awarded merely on assumption and surmises and conjectures ignoring not only the prosecution witnesses which absolved the respondent from the charges made against him, but even the other witnesses Sh.Kapur Chand and Sh.Raj Kumar also did not support the version of the complainant.

For the foregoing reasons, this Court does not find any such illegality, or irregularity in the order of the Tribunal, setting aside the order of the removal, however, reinstating the respondent without back wages which will entail any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. There are no

grounds to interfere with the order of the Tribunal. The writ petition therefore, in the facts and circumstances is without any merit and is dismissed.

ANIL KUMAR, J.

MARCH 22nd , 2010
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MOOL CHAND GARG, J.