

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

+ **WP(C) No.2626/2010**
%

Date of Decision: 20.04.2010

Govt. of NCT of Delhi Petitioner
Through Mr. Rattan Lal, Advocate

Versus

Ct. Gyanender Singh Respondent
Through Ms. Menu Maini and Mr. Anil Singhal,
Advocates

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 |

ANIL KUMAR, J.

*

The petitioner, Govt. of NCT through Commissioner of Police has challenged the order dated 11th May, 2009 of Central Administrative Tribunal, Principal Bench in OA 2264/2008 titled Constable Gyanender Singh Vs. Govt. of NCT of Delhi allowing the original application of the respondent and setting aside the order dated 17th August, 2007 of the

Disciplinary Authority imposing a major penalty of forfeiture of one year approved service and also setting aside the order dated 16th July, 2008 rejecting the appeal of the respondent.

The respondent was proceeded in departmental inquiry on the allegation that on 7th/8th July, 2006, while posted in Karol Bagh Traffic Circle and detailed for night duty at Faiz Road-DBG Road Crossing. At that place Head Constable had allegedly, taken bribe from the truck driver in the guise of entry fee and at that time since, the respondent was also present, therefore, it was alleged that he had also connived with others, though the charge of conniving with other and demanding and accepting bribe was not framed against the respondent. On the basis of the inquiry report, Disciplinary Authority passed an order dated 17th August, 2007, imposing a major penalty of forfeiture of one year approved service and an appeal filed against the said order was also dismissed by the Appellate Authority by order dated 16th July, 2008.

The respondent had challenged the major penalty imposed upon him on the ground that the case against the respondent was a case of no evidence and the Disciplinary Authority had found the respondent guilty of connivance with other police officials in demanding and accepting the bribe, which was not the charge leveled against the respondent.

The respondent contended that he could not be punished for a charge which was not framed against him and in the circumstances, imposition of penalty on the charge which was not framed is in denial of the principal of natural justice and is also contrary to Rule 16 (ix) of Delhi Police (Punishment and Appeal) Rules, 1980.

The petition was contested by the petitioner on the ground that if the respondent was present where the Head Constable had taken the bribe, then a valid presumption in law will arise that the respondent had also connived and had accepted the bribe. It was also asserted that finding of Disciplinary Authority is on the basis of presence of police officials and thus the punishment imposed on the respondent was justifiable.

The Tribunal, after considering the respective pleas, held that though the hearsay evidence may be admissible in certain circumstances, however, after considering the entire evidence, it was held that there is no evidence recorded that any demand was made by the respondent or the bribe was accepted by him or on his behalf. It was held that merely because a person was present at a particular place where some other person had taken bribe will not demonstrate the

culpability of the respondent that the bribe was accepted on his behalf and he would have shared the bribe unless it is alleged specifically that there was connivance between the respondent and other police personnel.

The Tribunal, relying on Union of India Vs. HC Goyal, AIR 1964 SC 364 and Kuldeep Singh Vs. Commissioner of Police, JT 1998 (8) SC 603, also held that mere suspicion and surmises would not take place of the proof and in absence of any evidence, no misconduct could be inferred or punishment can be imposed even on the basis of preponderance of probability.

The evidence relied on by the Tribunal was that the driver Sh. Tribhuwan and the labourer Sh. Sunil Kumar did not identify the respondent and the evidence only show that the respondent was present, however, nothing else had been deposed against him and in the circumstances, the inferences, as had been drawn by the Inquiry Officer and the Disciplinary Authority were found to be perverse and the findings based on no evidence.

Learned counsel for the petitioner has very emphatically contended that if the respondent was present at the spot then he must have connived with the Head Constable against whom there is ample

evidence of demanding and accepting the bribe. According to him since the respondent was present, a valid presumption can be drawn against him.

The learned counsel for the petitioner is, however, unable to show that any such presumption can be raised in law. In the absence of any specific charge against the respondent that he had connived with the other police official and the demand was made on his behalf also and he had accepted the part of bribe, the findings could not be given against the respondent as the same would be in denial of the principle of natural justice. No specific charge was framed against the respondent that he connived with others to demand the bribe.

The jurisdiction of the Tribunal in judicial review is limited. Disciplinary proceedings, however, being quasi-judicial 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 is also unable to show any evidence on record, which would show that there was a demand or acceptance of bribe against the respondent. The learned counsel is also unable to show that any witness has implicated the respondent except deposing that the respondent was present there. The driver Sh. Tribhuwan and labourer Sh. Sunil Kumar have rather not identified the respondent nor deposed anything against the respondent.

In the circumstances, it is inevitable to infer that there was no evidence against the respondent and in the circumstances, the Tribunal and the Appellate authority committed a grave error in imposing a punishment of forfeiture of one year approved service as the same was based on no evidence.

The learned counsel for the petitioner, in the circumstances, is unable to show any illegality or irregularity or such perversity in the

order of the Tribunal, which will necessitate interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

The writ petition is without any merit, and it is, therefore, dismissed.

ANIL KUMAR, J.

APRIL 20, 2010
'rs'

MOOL CHAND GARG, J.