

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

+ **W.P.(C) No.2712/2010**

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Date of Decision: 20.05.2010

Ms.Kamlesh Petitioner
Through Mr.K.K.Sharma, Sr.Advocate with
Mr.Rajiv Bakshi, Advocate.

Versus

Government of NCTD & others Respondents
Through Mr.Amiet Andley & Mr.Arun Kumar
Sharma, Advocates.

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 has challenged the order dated 17th November, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A.No.1207 of 2008, titled as 'SI Kamlesh v. Government of NCTD & others', whereby the original application of the petitioner seeking quashing of order dated 11th June, 2007 imposing punishment of forfeiture of two years approved service permanently entailing proportionate reduction in the pay was dismissed.

On the allegation of not discharging the duties as expected of petitioner and others, a common enquiry was initiated against the petitioner and other police officials resulting into punishment order dated 11th June, 2007. The appeals filed by the petitioner and others were rejected by order dated 18th January, 2008. Against the dismissal of appeal, the petitioner filed an original application No.505 of 2008 and another ASI Lal Ji Tiwari filed another original application No.1207 of 2008 which were also dismissed by a common order dated 17th November, 2009 which is challenged by the petitioner/Ms. Kamlesh in the present writ petition.

The Tribunal had rejected the plea of the petitioner that there should have been separate references on the ground that such objections had not been taken up earlier and since the material to be relied on to a great extent were common, therefore, clubbing of the references was not irregular and was permitted by law.

The Tribunal noticed that the charges against the petitioner regarding not registering a case of criminal house trespass on 24th March, 2004; nor making proper enquiries from the occupants of the said property who were in possession, not bothering to peruse the Court order produced by Sh.Satya Pal Singh, the husband of the complainant. The charge against the petitioner was of highhandedness and arrest of the owner of the property, Sh.Satya Pal Singh who was in possession of

the property along with Sh.Rajender Singh Bedi, whereas the father of Rajender Singh Bedi, namely Sh.Joginder Singh Bedi who was the main aggressor was not arrested. The charge against the petitioner was to hush up the matter by recording compromise between both the parties at P.S.Preet Vihar, twisting the facts into a civil matter and Satya Pal Singh was forced to sign the compromise and pursuant to alleged compromise handing over the keys of the property to Shri. Raj Kumar Sharma, a third person alleged to be the President of Mohalla Sudhar Committee. The Tribunal considered the complaint against the petitioner which was recorded pursuant to of DD No.22A received through PCR on 24th March, 2004.

The petitioner had gone to the property and came back with two persons and had registered an FIR and incarcerated them. The allegation against the petitioner was that after reaching the site she did not make enquiry and had brought two individuals to the police station and arrested them and remand them to the judicial custody, but letting off persons, who were involved in the criminal action, and had forced unwilling persons to sign documents, and part with property.

The Tribunal considered the evidence against the petitioner including the facts established that Satyapal Singh, the husband of the complainant had shown paper relating to his possession including the Court Stay Order which were not accepted by the petitioner and she

only asked him to hand over the Central Lock key which was later on handed over to a third person namely Sh.Raj Kumar Sharma. From the testimony of the witnesses before the enquiry officer, it was also inferred that the possession of the Smt.Shama was disturbed and though there was a clear indication of trespass, the petitioner let off the aggressor Sh.Joginder Singh Bedi and arrested the complainant and one Sh.Rajender Singh Bedi. The Tribunal also considered the testimony of the witnesses produced on behalf of the petitioner and held that even those witnesses in place of supporting the case of the petitioner rather suggests that the incident had taken place and the petitioner was involved.

The learned counsel for the petitioner has challenged the order of the Tribunal contending inter-alia that there is no sufficient evidence against the petitioner to establish her culpability. This cannot be disputed by the petitioner that she had gone to the site of incident and had let off Joginder Singh Bedi rather arrested the complainant without bothering to verify whether the complainant is in possession of the property or not? The petitioner even refused to consider the Court order of stay which was in favour of the owner of the property. The complicity of the petitioner in execution of the compromise also cannot be doubted on the basis of evidence produced before the enquiry officer. In any case, the judicial review by this Court can be of the decision making process and not of re-appreciation of evidence. The charges in the

departmental proceedings are not required to be proved like in criminal proceedings beyond any reasonable doubt but the same can be established on analyzing the evidence and documents on the basis of preponderance of probabilities.

This is not the case of the petitioner that the pleas raised by him have not been considered or that irrelevant facts have been taken into consideration by the respondents. The learned counsel for the petitioner has also not been able to show any such relevant facts which have not been considered by the respondent which will shift the burden of proof nor any incident of rejection of relevant testimony has been pointed out. The findings of the enquiry officer and the punishment imposed by the disciplinary authority are also not based on surmises and conjectures. On the basis of preponderance of probability if any inference is possible, the same is not to be substituted by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India exercising the power of judicial review. In (2006) 5 SCC 88, *M.B. Bijlani v. Union of India*, it was held by the Apex Court that the judicial review is of decision making process and not of re-appreciation of evidence. In para 25 of the said decision, the Supreme Court had held as under:

25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some 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, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial

function, who upon analysing the 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 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.

In the circumstances, this Court does not find any ground to interfere with the findings of the enquiry officer and the punishment imposed by the disciplinary authority.

Learned counsel for the petitioner has also contended that there is non compliance of Rule 15(2) Delhi Police (Punishment & Appeal) Rules, 1980 inasmuch as permission from concerning Additional Commissioner had not been obtained. The learned counsel for the respondent Mr.Andley who appears on advance notice, however denies the same and contends that concerned additional commissioner of police had granted requisite permission for the preliminary enquiry.

The learned counsel for the petitioner has thereafter contended that the additional commissioner of police who had granted the prior approval was not the concerned additional police Commissioner.

Perusal of ground of writ petition reveals that the plea taken by the petitioner is that no prior permission of respondents/additional Commissioner of Police had been obtained and not that the permission was not from the concerned additional commissioner.

In the totality of the facts and circumstances, this Court does not find any such illegality, irregularity or perversity in the order of the Tribunal, which would require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition in the facts and circumstances of the case, is without any merit, and it is therefore, dismissed.

ANIL KUMAR, J.

MAY 20, 2010
'VK'

MOOL CHAND GARG, J.