

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

+ **WP(C ) No.2832/2010**

% **Date of Decision: 28.04.2010**

Chief Secretary of Government of NCT of Delhi & .... Petitioners  
others

Through Ms.Avnish Ahlawat, Advocate.

Versus

Sh.Jai Bhagwan .... Respondent  
Through Nemo.

**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.**

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The petitioner, Government of NCT of Delhi & others, have challenged the order dated 30<sup>th</sup> October, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in T.A.No.718 of 2009, titled as 'ASI Jai Bhagwan v. Government of NCT of Delhi & other', quashing the penalty orders dated 08<sup>th</sup> February, 2008 and the appellate order dated 21<sup>st</sup> May, 2008 and allowing the Original Application filed by the respondent.

Brief facts to comprehend the controversies are that while the respondent was posted at P.S. Moti Nagar, a complaint about a quarrel at Automobiles showroom at A-12 Shivaji Marg, Najafgarh Road, Delhi was received and was entrusted to him for necessary action. The respondent went to the site of quarrel and brought both the parties to the police station and a DD No.33-A dated 12.4.2007 was recorded after some time stipulating that both the parties do not want any criminal action.

The complainant Sh.Manish Gupta was, however, allegedly not satisfied and made a written complaint to the Commissioner of Police which was enquired through P.G.Cell, West Delhi and an FIR No.293/dated 25.04.2007, under Sections 341/506/323 /34 I.P.C. was registered pursuant to the complaint of Sh. Manish Gupta.

Since the F.I.R. was not registered at the instance of complainant on 12.4.2007, it was alleged that the act of the respondent amounted to grave misconduct, negligence, carelessness and dereliction in discharge of official duty and unbecoming of a member of police force which renders him liable to be dealt with in departmental enquiry under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980.

The charges against the respondent were denied by him and a detailed enquiry was instituted. In the detailed enquiry, five witnesses were examined on behalf of the department and four witnesses were examined on behalf of the respondent. On the basis of the enquiry report, the disciplinary authority imposed major punishment of withholding one future increment of the respondent with cumulative effect by order dated 08<sup>th</sup> February, 2008. The appeal filed by the respondent was also dismissed by order dated 21<sup>st</sup> May, 2008, and the major punishment of withholding of one future increment with cumulative effect was upheld.

Before the tribunal, it was contended on behalf of the respondent that prima facie the alleged guilt of the respondent was not made out, and the action has been taken on account of influential individual who had agreed for settlement before the respondent, consequent to which appropriate DD entry was made, and only after going back home, he changed his mind and sent a complaint to the higher authorities. The complainant had gone to the service station to get his car serviced and he was not satisfied with the treatment that was given to him as he was expecting a free service of the vehicle which he had purchased, but the service station staff demanded an amount of Rs.400/- for replacement of an item. According to the complainant, the persons working in the service station had misbehaved with him and his wife and they had

threatened to kill them and so he called a PCR van and thereafter the respondent who was entrusted with the complaint had come to the spot.

The Tribunal has considered the pleas and contentions of the parties in detail as well as the evidence led before the enquiry officer as the allegation was of inferences drawn by the authorities without any cogent evidence and ignoring relevant evidence adduced by the respondent. Considering the evidence of defence witnesses, it was also noticed by the Tribunal that when the complainant was told that the Car could be serviced only pursuant to payment of the cost of the part which was to be replaced, he had refused to get service done and taken away his vehicle outside and he had even thrown stone on the building. From the evidence of the respondent and his witnesses, it was inferred that the possibility of the compromise between the complainant and the opposite parties who had been taken to the police station by the respondent could not be ruled out and in the circumstances, the recording of DD entry by the respondent that the parties had settled their matter and have agreed to take appropriate action in the Consumer Court could not be ruled out. The tribunal also relied on the fact that registering the F.I.R. might have implicated the complainant himself as even he had pelted stone on the service station, and therefore, he agreed not to get an FIR registered, is a very probable

inference which evidence has been completely ignored by the enquiry officer and thereafter the disciplinary authority, and therefore, the punishment order and the appellate authority order are based on no evidence and were interfered with and quashed by the Tribunal.

The learned counsel for the petitioner contended that the Tribunal could not re-appreciate the findings of the disciplinary authority and the appellate authority could not have substituted with its own findings. However, this cannot be disputed that if the relevant evidence is not considered by the enquiry officer, and the case is of no evidence for imputation of charge, then the Tribunal will be justified in interfering with inferences drawn by the enquiry officer and the punishment imposed by the disciplinary authority on the basis of the same. The Tribunal was also influenced by the facts that though an FIR was later on registered, however, what happened to the criminal case has not been considered either by the disciplinary authority or by the appellate authority.

Considering the facts and circumstances, it was held that the possibility that the parties had agreed specially complainant not to get the complaint registered as an FIR was distinctly there because he had also indulged in stone thrown on the Automobiles Workshop. The allegation against the respondent is not that he got some benefits by not

getting the FIR registered. No such evidence has been led before the enquiry officer. The statement of PW-3, Sh. Manish Gupta, complainant, also does not show much culpability of the respondent as it was alleged by him that they wanted to meet to SHO but could not meet as the ASI was busy for about two hours. This is not in dispute that without the ASI, the complainant could go and meet the SHO. If the complainant did not and could not meet the SHO, the respondent could not be blamed for it.

In the circumstances, if the complainant Sh. Manish Gupta agreed not to take the criminal matter any further and to claim the damages from the service station through the Consumer Court cannot be ruled out completely. In the circumstances, it is apparent that the enquiry officer has taken into consideration irrelevant facts and has ignored the relevant testimonies of the respondent's witnesses and his inferences are based on only his assumption.

Though the jurisdiction of the Tribunal in judicial review is limited, yet the enquiry officer has to analyse the evidence and documents to prove the charges without taking into consideration irrelevant facts. The enquiry officer could not reject the relevant testimonies of the witnesses of the defence on the basis of his own surmises and conjectures. In the circumstances, interferences by the

Tribunal with the order of the disciplinary authority and the appellate authority cannot be termed to be such an illegality, or irregularity or the order suffering from such perversity which is to be interfered by this Court .

In any case in exercise of its jurisdiction under Article 226 of the Constitution of India, it has always been the discretion of the Court to interfere, and not to depend upon the facts and circumstances of the case. The Court can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give complete substantial justice keeping in mind the principle of equity. One of the ends of equity is to promote honesty and fair play and in the circumstances, it will not be appropriate to interfere with the order of the Tribunal setting aside the penalty of stoppage of one future increment with cumulative effect on account of alleged non-registration of the FIR though there is a distinct possibility that the parties specially complainant agreed to take appropriate action under the Consumer Protection Act, as he had also indulged in stone pelting on the service station.

In totality of facts and circumstances, there is no ground to interfere with the order of the Tribunal impugned before this Court by

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

**ANIL KUMAR, J.**

**APRIL 28, 2010**  
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**MOOL CHAND GARG, J.**