

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

+ **W.P. (C.) Nos. 3910-12/2005**

% **Date of Decision: 23.09.2010**

GOVT. OF NCT OF DELHI & ORS. Petitioners

Through Mr.Sushil Dutt Salwan, Addl. Standing
counsel.

Versus

BIJENDER SINGH Respondent

Through Mr.S.K.Gupta, Advocate

+ **W.P. (C.) Nos. 5828-29/2005**

GOVT. OF NCT OF DELHI & ANR. Petitioners

Through Mr.Sushil Dutt Salwan, Addl. Standing
counsel.

Versus

INSPECTOR RAM JANAM SINGH & ANR. Respondents

Through Mr.S.K.Gupta, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

MOOL CHAND GARG, J. (ORAL)

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1. These writ petitions have been filed by the Govt. of NCT of Delhi aggrieved against the order dated 19.11.2004 of the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter

referred to as the Tribunal) passed in OA No.577/04 & OA No.827/2004 filed by the respondents of the two writ petitions whereby the Tribunal has been pleased to allow the Original Application(s) filed by the respondents having accepted their plea that once the two persons, namely, Ajay and Jitender who were accused in FIR No.295/1996 under Section 160 of the IPC were convicted by the Metropolitan Magistrate concerned and were sentenced to pay a fine of ₹ 100/- vide order dated 11.01.1999, the allegation of the Department against the respondents having made wrong DD entries and showing arrest of Ajay and Jitender with a view to extract a sum of ₹ 5000/- from them as bribe by falsely implicating them in a case under Section 160 of the IPC falls to the ground.

2. According to the petitioners the order passed by the Tribunal is not well-founded inasmuch in a departmental enquiry held against the respondents, following allegations were levelled against the respondents i.e.:

“I Ram Kumar Verma, charge you, Inspr. Ram Janam Singh No.D-1-291 while posted as SHO at P.S. Gandhi Nagar and HC Bijender Singh No.404/E (Now 387/Sec) posted at P.S.Gandhi Nagar, that on 11.11.1996 at about 10 A.M., you Inspr.Ram Janam Singh went on Govt. Gypsy at the Shop of Jitender Singh s/o Chaman Lal and Ajay Kumar s/o Ramesh both residents of X-743, Chand Mohalla, Gandhi Nagar, who used to run their lottery tickets sale business jointly in a rented shop in Gali No.4 Opp. Anil Bakery Ragubar Pura-II. You Inspr.Ram Janam Singh got picked up the cloth containing lottery tickets worth ₹30,000/- from the counter of Jitender and Ajay and brought both persons alongwith lottery tickets at P.S.Gandhi Nagar. You Inspr.Ram Janam Singh handed over Jitender and Ajay along with lottery tickets to HC Bijender Singh and asked him to register a false case against both the persons.

You Inspr.Ram Janam Singh are also charged for making false DD entries of your departure and arrival in the daily dairy. You had shown your departure from Police Station vide DD No.21-B at 9:40 A.M. for the investigation of case FIR No.292/96 u/s 302 IPC P.S.Gandhi Nagar and made your arrival at 4:30 p.m. vide DD No.56-B, whereas

you were present in the area of Police Station and brought both Jitender and Ajay to the Police Station around 11 A.M. and no investigation of said case was done by you. You Inspr. Ram Janam Singh with connivance of HC Bijender Singh kept the accused Jitender and Ajay in the lock up in a bailable offence and they were released with your permission and knowledge of receipt of illegal gratification.

You HC Bijender Singh in league with Inspr. Ram Janam Singh SHO P.S. Gandhi Nagar acting illegally made a false DD Entry vide DD No.26-B of your patrolling at 10:05 A.M. even though you had just finished the night duty. You HC Bijender Singh fabricated a concocted story to affray between Jitender and Ajay and got registered a false case vide DD No.18-A at 12:45 P.M. vide FIR No.295/96 u/s 160 IPC P.S. Gandhi Nagar. You HC Bijender Singh with connivance of Inspr. Ram Janam Singh kept the accused Jitender and Ajay in the lock up in a bailable offence and released them only after receipt of illegal gratification of ₹5000/-.

The above acts on the part of you Inspr. Ram Janam Singh No.D/1/291 (PIS No.16690116) and You HC Bijender Singh, No.494/E, Now 387/Sec.(PIS No.2880619) are of grave misconduct, negligence and of taking gratification in discharge of your official duties which render you to be dealt with departmentally under the provision of the Delhi Police (Punishment & Appeal) Rules, 1980, read with Section 21 of Delhi Police Act, 1978."

3. It is submitted that since the respondents denied the charge a regular departmental enquiry was held by an enquiry officer. As many as 6 witnesses were examined by the department which included Ajay and Jitender, two of their neighbours mother of Ajay and Jitender and one Constable Niranjan Prasad who appeared as PW-6. All these witnesses have categorically deposed about the role of H.C. Bijender Singh and S.I. Ram Janam Singh in having apprehended Ajay and Jitender solely for no rhyme or reason and in fact to extract bribe money from them. Even though as per DD No.21-B dated 11.11.1996 alleged to have been recorded at 9.40 AM he had departed from the Police station to investigate an FIR bearing

No.292/96 under Section 302 IPC and is stated to have returned back at 4.30 PM. It is submitted that DD entries including the aforesaid on which reliance was placed upon by the Department had all been fabricated by H.C.Bijender Singh at the instance of S.I. Ram Janam Singh with a view to save him. It is submitted that the registration of DD entries goes to show that despite having a night duty H.C. Bijender Singh again went for patrolling is unbelievable and is also an act of fabrication to save S.I. Ram Janam Singh in having arrested Ajay and Jitender from their counter in the morning of 11th November for the purpose of extracting money from them as stated above. This was also with a view to save S.I. Ram Janam Singh who is stated to have gone for investigation of FIR No. 292/96 under Section 302 IPC but in fact was seen having taken Ajay and Jitender in his jeep by Constable Niranjana Prasad who appeared as PW-6.

4. It has been submitted by the learned counsel for the petitioner that all these evidence which is clinching in nature and points out to the actions of H.C. Bijender Singh and also leads to the complexity of S.I. Ram Janam Singh in having Ajay and Jitender falsely with a view to extract a sum of ₹ 5000/- as deposed by their mother who had in fact sent the said amount has simply been ignored by the Tribunal and the Tribunal has not even discussed these aspects while passing impugned order.

5. According to the counsel for the petitioner even though Ajay and Jitender accepted the conviction which was only of fine to pay ₹ 100/- but they appeared as witness in the departmental enquiry and deposed about the role of H.C. Bijender Singh and S.I. Ram Janam Singh. Their mother also appeared and deposed about having paid sum of ₹ 5000/- as bribe. Two neighbours also deposed about apprehension of Ajay and Jitender by S.I. Ram Janam Singh from the spot. It may be true that the DCP concerned should have ordered for cancellation of the FIR but it was possible that he might have taken an action in this regard after the conclusion of the enquiry. It comes

to our notice as a surprise that while the DCP ordered disciplinary enquiry to be initiated against Jitender and Ajay he did not order for the cancellation of FIR in which Ajay and Jitender was implicated. It may be for the reason that by that time the conviction had already taken place though this cannot be said to be desirable.

6. On behalf of the respondents it is submitted that once conviction is there of Ajay and Jitender by a competent criminal Court in the offences for which the FIR had been registered and a DD entry has been made by the duty Constable on a tehrir sent by H.C. Bijender Singh it cannot be said that DD entry or even the implication of Ajay and Jitender were wrong or they were arrested with a view to extract money and therefore the charge of fabrication of record against the respondents cannot be justified.

7. Since we are remanding the matter to the Tribunal, we speak less and simply observe that in this case the fine which has been imposed upon Ajay and Jitender by the competent Criminal Court is only ₹ 100/- That also on the basis of the statement given by H.C. Bijender who was one of the charged official in the departmental enquiry. It is well settled that while the criminal case proceeds on the basis of evidence which is brought before the Court the said evidence may or may not be relevant in a departmental proceedings. The departmental proceedings are to be decided on the basis of preponderance of probability and therefore even if it is presumed for the sake of argument that the complexity of Ajay and Jitender was there, the possibility of fabrication of the record by H.C. Bijender with a view to save S.I. Ram Janam Singh cannot be ruled out inasmuch as per PW-6 Ajay and Jitender has been picked up by S.I. Ram Janam Singh from their counter on the fateful day at about 10 AM. This fact has been deposed by the said witness in the departmental enquiry against H.C. Bijender Singh and S.I. Ram Janam Singh on which there is not much cross-examination so as to prove that he was making a

false statement. Moreover no enmity between Niranjana Prasad and S.I. Ram Janam Singh has been brought on record.

8. It may be noted that much turned on 5 DD entries and the Tribunal has found fault with the fact that the DD entries were not brought on record before the enquiry officer and were not proved. Prima facie the view is incorrect for the reason the respondents did not deny the DD entries. It is trite that at an enquiry only such facts have to be proved which are in dispute and a fact not disputed by the opposite side need not be proved for the reason the best evidence in favour of a party is the admission by the opposite side.

9. We are therefore of the opinion that the Tribunal has fallen in error having brushed aside the entire record which came on record during the departmental enquiry against H.C. Bijender Singh and S.I. Ram Janam Singh to support fabrication of DD entries and findings returned by the Tribunal does not stand to reason.

10. We are of the considered view that the matter should have been adjudicated upon by the Tribunal on the basis of evidence which was brought on record on behalf of the petitioners after discussing the said evidence and just not being influenced by conviction of Ajay and Jitender in the criminal case registered vide FIR No.295/96.

11. With these observations we set aside the order passed by the Tribunal and we restore OA No. 577/2004 and OA No.827/2004 for fresh adjudication before the Tribunal to be decided in accordance with law.

12. No costs.

MOOL CHAND GARG, J.

SEPTEMBER 23, 2010
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PRADEEP NANDRAJOG, J.