

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

% Judgment Reserved On: 18th October, 2010
Judgment Delivered On: 21st October, 2010

+ **WP(C) 5450/2005**

JAI BHAGWAN ...Petitioner
Through : Mr. Shyam Babu, Advocate

Versus

COMMISSIONER OF POLICE & ORS. ...Respondents
Through: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. The charge framed against the petitioner, HC Jai Bhagwan reads as under:-

"I, Inspr. Anil Dureja, DE Cell, Delhi charge you HC Jai Bhagwan, No.1212/Commn. that while discharging Operator Duty at Radio at Radio Station PS Patel Nagar on the intervening night 28/29.7.2001 from 2000 hrs to 0800 hrs. Inspr. Harjeet Singh who was Night Checking Officer, approached for checking at the door of Wireless Cabin at 0035 hours. The cabin was found locked from inside. The Inspector knocked the door many a times to get the door but no response was received. When he knocked the door with little force, you HC Jai Bhagwan shouted from inside in a very undisciplined manner 'KYA DARWAJE KO TOREGA BE'. You were also found in plain clothes and when asked the reasons for the same you

replied that you would like this only. You also refused to give the log-book, when asked to do so snatched the log book from him which the later had picked up from the table. You also made irrelevant transmission on District Net at 0130 hours which aggravated your misconduct.

The above act of insubordination misbehavior and misconduct on the part of you HC(AWO) Jai Bhagwan No.1212/Commn. renders you liable for punishment under Section 21 DP Act read with Delhi Police (Punishment and Appeal) Rule, 1980."

2. The petitioner denied the charge and this necessitated an inquiry officer to be appointed.

3. At the inquiry, Smt.Indermohan Kaur PW-1, performing duty at the West District Control Room from 8:00 PM till 8:00 AM on the intervening night of 28th and 29th July 2001, deposed that she had logged transmissions over the wireless made by the petitioner at 01:03 hours. She proved the entry in the log book, Ex.PW-1/A. She deposed that she had logged verbatim.

4. SI Sudershan Singh PW-2 deposed that duty roster Ex.PW-2/B was issued by him as per which Inspector Harjeet Singh was detailed to perform night checking duty and that ACP Sh.Madan Gopal had issued the order Ex.PW-2/C directing Inspector Harjeet Singh to perform surprise checks at the various wireless establishments in the intervening night of 28/29.7.2001. SI Mahender Pal Puri PW-3 deposed that in the intervening night in question he was on duty at the IC Control Room and at 02:20 hours Inspector Harjeet Singh informed him that when he went to check wireless staff at PS Patel Nagar, the door of the wireless section was found bolted from inside and was opened by the petitioner after 10 minutes of

continuous knocking. He deposed that Inspector Harjeet Singh further told him that the petitioner had behaved in an undisciplined manner and in respect whereof Inspector Harjeet Singh had already lodged a report at 00:45 hours. HC Sanjeev Kumar PW-4 deposed that he was on duty with Inspector Harjeet Singh and when the two reached PS Patel Nagar at 00:35 hours they found the door of the wireless cabin bolted from inside. The door was opened after ten minutes of continuous knocks at the door. That the petitioner was in plain clothes and when Inspector Harjeet Singh asked whether he was sleeping and why was he not in uniform, petitioner replied in a very indecent way that he was not sleeping and told rudely that he always keeps the door locked from inside. When Inspector Harjeet Singh demanded the log book, petitioner refused to give the same. When Inspector Harjeet Singh started looking at the log book which was lying on the table, petitioner snatched the same. At that, petitioner told Inspector Harjeet Singh that he i.e. the petitioner knows that he would be suspended but he i.e. the petitioner would also ensure that Inspector Harjeet Singh is also suspended. HC Sanjeev Kumar deposed that he reported the matter to the superior officer vide report Ex.PW-4/D. On being cross-examined he denied that Inspector Harjeet Singh kicked the door of the wireless room, much less with force. He admitted that even Inspector Harjeet Singh had used filthy language but denied having uttered the words '*Chura*', '*Chamar*' and '*Ghoru*' (meaning in Haryanavi language a stupid person). He admitted that the petitioner had shown a medical slip in respect of dress excuse and that the petitioner had stated that he was not sleeping. Inspector Harjeet Singh PW-5 deposed

that he was on night checking duty of Control Rooms in the intervening night of 28/29.7.2001 and after checking some police stations he reached PS Patel Nagar at 00:35 hours and found the door of the wireless cabin bolted from inside. He knocked the door repeatedly but got no response. After constant knocking the operator inside shouted very rudely '*Kya darwaje ko todega be*'. The operator opened the door after ten minutes and was found to be in plain clothes. When he wanted to know the reason why was the operator sleeping and why did he take ten minutes to open the door, the operator shouted at him telling him that he could do whatever wanted. He demanded the log book from the operator who refused to give the same. He saw the log book on the table and when he started checking the same, the operator snatched it from his hands. From the log book he could note that the name of the operator was HC Jai Bhagwan Sharma. He immediately wrote the report on SOD regarding the misbehaviour and after writing the report he departed at 00:45 hours and later on learnt that the petitioner logged irrelevant transmission at 01:03 hours. As he learnt about the illegal transmission he narrated the incident to the DCP Communication and submitted a detailed report Ex.PW-5/C.

5. This then is the evidence led by the prosecution.

6. Petitioner examined three witnesses in defence. Dr.Ram Kishan DW-1, CMO, CGHS Ayurved Dispensary Kingsway Camp, Delhi deposed that the prescription Ex.DW-2/A had been issued by him to the petitioner pertaining to treatment for skin allergy and since the petitioner was suffering from skin allergy he had advised dress excuse for two weeks. It may be noted that the date of the prescription is

26.7.2001. Const.Radhey Shyam DW-2 deposed that posted at PS Anand Parbat he had gone to PS Patel Nagar to deliver dak in the intervening night of 28/29.7.2001 and when he was handing over dak to HC Resham Pal he heard loud noise from the wireless cabin and saw Inspector Harjeet Singh and heard him abusing the petitioner: *'Tum Haryana Ke Ghoru, Kahan Se Akar Bharti Ho Gaya. Tum Chure Chamaraon Ne Department Ko Kharab Kar Rakha Hai'*. He deposed that the petitioner was standing silently and was saying sorry. Rahul Sharma DW-3, a TSR driver deposed that he had dropped a passenger at PS Patel Nagar at 12:15 AM on 25.5.2001. The fare was ₹25. The passenger had a currency note in denomination ₹100. As he had no balance to return ₹75 to the passenger, the passenger told him to wait outside the police station. The sentry objected to his presence and he entered the police station where he found Harjeet Singh abusing a person in filthy language.

7. The Inquiry Officer submitted a report indicting the petitioner, in which he has discussed the evidence led and has accepted the testimony of SI Sudershan Singh PW-2, SI Mahender Pal Puri PW-3, Sanjeev Kumar PW-4 and Inspector Harjeet Singh PW-5.

8. It may be noted that as usual, a preliminary fact finding inquiry was conducted pertaining to the incident and more so for the reason the petitioner had lodged a complaint with the Hon'ble Minister of Social Welfare in which he had alleged that Inspector Harjeet Singh had made casteist remarks against him, which complaint was forwarded by the Ministry to the Police Department. The DCP Communication had conducted a fact finding inquiry and had submitted a

report to the Minister concerned in which it was reported that the version of the petitioner was false. The said report is not a part of the inquiry proceedings conducted by the inquiry officer, Inspector Anil Dureja, but he has referred to the same in the following words:-

“During DE proceedings HC(AWO) Jai Bhagwan stated that he had moved an application for action against the Insp. regarding use of unparliamentary language to the Hon’ble Minister of Social Welfare who has already forwarded the same for enquiry and report from worthy commissioner vide his letter No.F.8(H)/2001 MSN/5256 dt.22.8.01. In this regard it is revealed that enquiry report has already been sent to the concerned Ministry and copy of the same is annexed herewith. The contents of the report are as under:-

With reference to Govt.of Delhi’s letter No.5255 dated 27.8.2001 on the subject cited above I am directed to say that enquiry into the complaint of HC(AWO) Jai Bhagwan No.1212/Comn has got conducted through DCP/Comn, who revealed that the allegation leveled by HC(AWO) Jai Bhagwan No.1212/Comn against Inspector (Tech) Harjeet Singh, No.D-1/653 are false, fabricated and far from the truth.”

9. Before we discuss the arguments which were advanced, it would be useful for us to note the immediate complaint lodged by Inspector Harjeet Singh, which as per his deposition was recorded by him in the SOD register as also the report lodged by him, as deposed to by him, after he learnt at 01:35 hours that the petitioner had sent irrelevant transmissions over the wireless. The first report reads as under:-

“HC Jai Bhagwan 1212/com. Found on duty. But he was found without uniform and took ten minutes to open the door. When asked why he took so much time and also he has not supposed to lock inside the

cabin he with an in disciplinary manner shouted and said he would do and whatever you do you can do when checked log it was found no call received or transmitted in the log after 0019 hrs. The behavior of the operator towards his senior is very indisciplined and deserves for severe punishment."

10. The second report reads as under:-

"I was night checking officer on 28/29.7.2001 vide letter No.858 59/ICI/DCP. Com dated 27.7.2001. After checking different stations. I reached at 0035 hrs. on 28.7.2001 at PS Patel Nagar where I found Wireless Cabin was locked from inside. The door was knocked many times but no response received. When I knocked with little force the operator from inside shouted in a very different way "Kya Darwaja Ko Torega Be". I repeatedly said to open the door but the operator did not care. After about ten minutes he opened the door and I found him in plain clothes. I asked him why he did not open the door, whether he was sleeping and also he was not wearing uniform. The operator on duty with an insubordinate manner shouted he would do like this. You may do whatever you like. When I asked him to show log & SOD of the station, he refused to give. Then I checked the table and found log and SOD of the station and started to check. He immediately snatched the log and SOD from my hands and said in a very insubordinate manner that he would talk to DCP/Comm. Then I again got the SOD and log from him. While checking I found his name HC Jai Bhagwan, 1212/Comn who was deputed for duty from 2000 hours to 0800 hours from the date 28/29.7.2001. There I lodged the report in SOD of his misbehavior, misconduct and insubordinate to his Senior disobey the orders of worthy DCP/Comn to wear proper uniform while on duty. On checking the West Distt C/Room it had come to my notice that HC Jai Bhagwan, 1212/Comn made irrelevant transmission on Distt. net at 0130 hours "Inspr.Harjeet Singh Aai Unhone Aate Hi Darwaje Par Lat.""

11. Taking a serious view of the incident and holding that insubordination in an armed force had to be curbed with a

heavy hand, the Disciplinary Authority imposed the penalty of dismissal from service vide order dated 29.10.2002. Appeal filed was rejected vide order dated 9.1.2003. The challenge to the penalty before the Central Administrative Tribunal was unsuccessful when OA No.966/2003 filed by the petitioner was dismissed vide impugned order dated 16.4.2004.

12. Let us note the contentions urged by Sh.Shyam Babu, learned counsel for the petitioner. It was firstly urged that the preliminary inquiry conducted by the DCP Communication, which has been relied upon by the Inquiry Officer, relevant extract noted by us in para 8 above, was never supplied to the petitioner and thus the inquiry report is vitiated. Learned counsel urged that a specific ground to this effect was urged being Ground No.12 in the OA filed by the petitioner, grievance made was that the Tribunal had not even considered the same. Second contention urged was that Inspector Harjeet Singh had improved upon his version evidenced by the fact that the first report lodged by him, contents whereof have been noted by us in para 9 above, was substantially improved upon when he lodged the second report, contents whereof have been noted by us in para 10 above. The third contention urged was that the DCP Communication could not act as the Disciplinary Authority inasmuch as it was he who had conducted the fact finding inquiry. Learned counsel urged that since the DCP Communication had, in the fact finding report, reported against the petitioner, he would obviously have a bias. Fourth contention urged was that the testimony of DW-1 proved that the petitioner was medically advised exemption from dress due to skin allergy and the testimony of DW-2 and DW-3

proved the defence. Fifth contention urged was that nobody saw the petitioner sleeping inside the wireless cabin and thus the assertion of Inspector Harjeet Singh that the petitioner was sleeping inside the wireless cabin was not only unproved, but an exaggerated version of the incident. The sixth submission urged was that as held in the decision reported as 1995 (6) SCC 157 Ram Kishan vs. UOI & Ors. using abusive language against the superior officer does not warrant the punishment of dismissal as the same would be very harsh.

13. Pertaining to the first contention urged, we have extracted in para 8 above the quote from the preliminary inquiry report submitted by the DCP Communication to the department. It may be noted that the Inquiry Officer has referred to the report while dealing with the contention of the petitioner that he had moved an application to the Hon'ble Minister of Social Welfare in which he had alleged that Inspector Harjeet Singh had used unparliamentary language and that the Minister of Social Welfare had forwarded his complaint for inquiry and report to be submitted by the Commissioner Police. It appears that the petitioner was wanting the Inquiry Officer to defer his report and in response thereto, the Inquiry Officer has referred to the fact that the report in question has already been forwarded to the Ministry concerned and that the report was that the complaint lodged by the petitioner was found to be factually incorrect. Suffice would it be to state that the Inquiry Officer has referred to the said report in the narratives of his report and has not discussed the report while discussing the evidence. The report has not been used as evidence. Thus, the argument that the preliminary report has been relied upon by the inquiry officer

is misdirected. There is a difference in a narrative contained in an order or an inquiry report and the discussion of evidence in an order or an inquiry report.

14. Pertaining to the second contention urged, the Tribunal has dealt with the same by opining that a bare reading of the initial and the subsequent report lodged by Inspector Harjeet Singh (contents whereof have been noted by us in para 9 and 10 above) are similar in sum and substance. The latter one is a little more in detail. We may only add that when the first complaint was lodged in the SOD register the alleged act of the petitioner of sending irrelevant transmissions had yet not been done and thus the same could not find a mention in the first report. Affirming and concurring with the reasons of the Tribunal on said issue raised, as discussed by the Tribunal in para 8 and 9 of the impugned judgment, we reject the second contention urged.

15. As regards the third plea urged, learned counsel for the petitioner conceded that the plea has been raised for the first time in the writ petition and was never urged before. The plea urged is not a question of law which can be permitted to be urged at any time. That apart, nothing prohibits a Disciplinary Authority to itself conduct a preliminary inquiry. It is a matter of convenience for the Disciplinary Authority to delegate function of conducting an inquiry to somebody else. Thus, assuming that the DCP Communication who was the Disciplinary Authority, had conducted the preliminary fact finding inquiry would not mean that he would be biased. The third contention urged is accordingly rejected.

16. Pertaining to the fourth contention urged, it is settled law that a Court exercising judicial review power would

not re-appreciate evidence and the findings of fact returned and it is sufficient if there is some evidence to sustain a finding. Thus, it would not be within our domain to appreciate the credibility of the defence evidence vis-à-vis the evidence led by the prosecution. However, we cannot but hold ourselves back to note that Rahul Sharma DW-3 is a most uninspiring person. His version as to how he entered the police station is most uninspiring. As regards Const.Radhey Shyam DW-2, suffice would it be to state that his presence as claimed by him has not been put to any of the prosecution witnesses. It is also relevant to note that Const.Radhey Shyam DW-2 has produced no documentary evidence to establish that he was at PS Patel Nagar at the relevant time. It is true that DW-1 has proved that the petitioner was suffering from some skin ailment and for which he had prescribed exemption from dress. But, procedures of the law have to be followed. Petitioner has not proved that he gave the prescription in question to his superior officer and obtained exemption from being in dress.

17. Let us have a bird's eye view of the evidence for the same brings out a very important circumstance which shows that the petitioner sent illegal transmissions as a cover up action.

18. As noted by us in para 3 above, Smt.Indermohan Kaur PW-1, on duty at the West District Control Room deposed that she had logged transmissions over the wireless made by the petitioner at 01:03 hours. As noted by us in para 4 above Inspector Harjeet Singh had lodged the report against the petitioner at 00:45 hours. As noted by us, Inspector Harjeet Singh deposed that he had reached PS Patel Nagar at 00:35

hours. He deposed that after lodging the report he departed at 00:45 hours. The circumstance of the petitioner sending transmissions at 01:03 hours shows that he had 18 minutes to ponder over and thus it can reasonably be inferred that the petitioner contrived a strategy. In this connection it would be interesting to note that the petitioner never denied having locked the door of the wireless cabin. Learned counsel for the petitioner conceded during arguments that a wireless operator at a police station is not supposed to lock the door of the wireless cabin but pleaded that the reason why petitioner did so is the one stated in para 4 of the writ petition. We reproduce the same. It reads: *'There is a menace of monkey in the Patel Nagar area particularly near the Police Station Patel Nagar. Monkeys frequently enter the rooms and dismantle the apparatus and take away dresses and tear the same.'* It is apparent that the argument was that due to monkey menace the petitioner had locked the door. Now, this is a plea raised for the first time before us. If other rooms in the police station had their doors open, it is apparent that the petitioner was doing monkey business by closing the door of the wireless room. There is another controversy: whether the door was simply shut or was locked from inside. The testimony of SI Mahender Pal Puri and the testimony of HC Sanjeev Kumar and the testimony of Inspector Harjeet Singh establishes that the door was opened by the petitioner after it was knocked at for about 10 minutes. The version of the petitioner, which finds a mention in the cross-complaint lodged by the petitioner, is that Inspector Harjeet Singh kicked the door repeatedly. This itself proves that the door was so secured that it could not be opened by a mere push. Now, this

would normally happen when a door is locked from inside. A very interesting version has been pleaded by the petitioner in para 5 of the writ petition and we reproduce the same (with the grammatical and syntax errors). It reads as under:- *'The petitioner was on duty at 0:35 hours midnight of 28/29th July 2001. Inspector S.Harjeet Singh (Hereinafter called as 'the respondent No.4') came on checking the wireless room and banged the closed door. Due to the rainy season the door of the wireless room could not be with little force, respondent No.4 kicked the door with full force and doors of wireless room became jammed and fixed. It took three to five minutes to open the door because the petitioner and the respondent No.4 were using force in pulling and pushing from the opposite directions.'*

19. We may only state that the version merits no consideration for the simple reason a door opens in only one direction except where it is a revolving door and there is no evidence that the door of the cabin was a revolving door. A door which opens only in one direction would not ever be subjected to countervailing pulls and pressures if two persons on the opposite side of the door are using their energies to open the door. It is apparent that one would pull the door and the other would push the door.

20. Not only is the version of the witnesses of the department more plausible but we find the same being contemporaneously recorded in the first report lodged by Inspector Harjeet Singh at 00:45 Hours. The fact that the petitioner sent transmissions over the wireless at 01:03 hours, i.e. after 18 minutes leads to an inference that the petitioner contrived of a strategy. It would be not out of place to note

that HC Sanjeev Kumar PW-4 has stated that when the incident took place the petitioner threatened Inspector Harjeet Singh that since the petitioner knows that he would be suspended he would ensure that even Inspector Harjeet Singh is suspended.

21. As regards the issue whether the petitioner was sleeping inside the cabin, the issue is not relevant for the reason the indictment against the petitioner is not of sleeping while on duty. But, we would be failing not to note that if the door of the cabin had to be knocked at for 10 minutes before it was opened, it is apparent that the petitioner was taking a snooze inside.

22. That requires the last submission to be dealt with. It is not a case of simple insubordination and using foul language against a superior officer. Not only has the petitioner used unparliamentary language against a superior officer but prevented the superior officer to check the log book. We have come across large number of cases when sitting on the Criminal Division and dealing with serious penal offences such as murder, rape and dacoity, where it is noted that there is an undue delay in a wireless message transmitted by the Police Control Room to be recorded at a Police Station. More often than not the delay results in not only the culprits running away from the spot as the police responds late, but even the case of the prosecution being dented as the defence starts building its defence on delay in registration of the FIR. A Police Officer on duty at the wireless equipment in the wireless room in a police station commits, in our opinion, a grave and a serious misconduct if he is not found responsive on duty.

23. Evidence has proved that it took ten minutes before the petitioner responded and opened the door of the wireless

room. It is apparent that the petitioner, if not taking a deep slumber, was not responsive and active. The petitioner had no business to close the door of the wireless cabin. Evidence establishes that the petitioner did not allow Inspector Harjeet Singh to check the wireless logs. Evidence establishes that the petitioner used unparliamentary language and probably got some complimentary comments in return from Inspector Harjeet Singh. Evidence establishes that the petitioner sent illegal transmissions to cover up his misdeeds and tried to play the caste card. Noting incidents of gross indiscipline on the rise in the armed forces, we do not find the penalty imposed upon the petitioner being disproportionately shocking. The decision of the Supreme Court relied upon i.e. Ram Kishan's case (supra), shows that the only indictment was of using abusive language against the superior authority and in said circumstance penalty of dismissal from service was found to be disproportionate. The gravamen in the instant case is much severe.

24. We find no merit in the writ petition which is dismissed but without any orders as to costs.

**(PRADEEP NANDRAJOG)
JUDGE**

**(SIDDHARTH MRIDUL)
JUDGE**

**October 21, 2010
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