

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

+ **WP(C) No.3332/2010 & CM No. 6699/2010**

% **Date of Decision: 25.05.2010**

Hari Om Petitioners
Through Mr. Harish Malhotra, Sr. Advocate with
Mr. Tanuj Khurana, Advocate

Versus

Govt. of NCT of Delhi & Ors. Respondent
Through Mr. Anjum Javed, Advocate

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, who is a head constable in Delhi Police, has challenged the order dated 22nd May, 2009, passed by the Central Administrative Tribunal, Principal Bench in OA 2134/2008 titled as Sh. Hari Om Vs. Govt. of NCT of Delhi through its Chief Secretary & Ors., dismissing his Original Application filed by the petitioner challenging the punishment of forfeiture of one year's approved service permanently awarded to him and treating the suspension period from 14th December, 2005 to 18th January, 2006 as 'not spent on duty' by order dated 20th June, 2007 and dismissal of his appeal by order dated 30th June, 2008.

Brief facts to comprehend the disputes raised by the petitioner are that he was posted at Police Station, IGI Airport, New Delhi during 2005. On 14th December, 2005, Inspector Dharambir Singh Joshi, SHO/IGIA called SI (Record) and other staff including the petitioner for ascertaining certain information relating to the references which were pending with Record Branch. Inquiries were also made about the PO register, pending dossiers and other papers. It was alleged that the response and behavior of the petitioner was atrocious as he claimed to be the busiest person and stated that he could not perform his duties. It was also alleged that, his general attitude was as whenever any duty was assigned to him, he posed himself to be the busiest person despite being cautioned by the SHO/IGIA to complete the job on priority. However, there was no change in his behavior rather the petitioner told the SHO that he could take whatever action he felt appropriate against him but he would do things according to his pace and convenience, which amounted to gross indiscipline and insubordination.

In view of the specific allegations against the petitioner, the disciplinary proceedings were initiated by order dated 10th February, 2006 and an inquiry was held and after examining five witnesses for the prosecution, the inquiry officer held that the charge leveled against the petitioner was made out. During the inquiry, the petitioner did not produce any witness for his defense nor did he examine himself. The inquiry officer, in his report, held that the charge against the petitioner

was made out. On the basis of the inquiry report and the reply by the petitioner, the disciplinary authority awarded the punishment of forfeiture of one year's approved service permanently and the suspension period as 'not spent on duty', which was affirmed by the Appellate Authority.

The petitioner had challenged the punishment alleging, inter alia, that the inquiry officer relied on the report given by PW-1, whose copy was not given to the petitioner, which was to his prejudice inasmuch as even the Disciplinary Authority has relied on the said report. It was also contended that the charge comprised of two allegations that his attitude and behavior towards his superior officers was atrocious and the second charge was that despite the caution there was no change in his behavior and that he asked the SHO/IGIA to take whatever action he felt appropriate against him. It was contended that according to the inquiry officer, the charge of atrocious behavior was made out and regarding no change of behavior, that charge was not made out and in the circumstances, only a part of the charge was made out and in the circumstances, there was no application of mind by the disciplinary authority.

The pleas and contentions were contested by the respondents contending, inter alia, that the charge was composite and atrocious behavior can be culled from his responses to the SHO and no change in his behavior despite caution given by the SHO. Rather the petitioner

confronted his superior officers and challenged them to do whatsoever they felt appropriate but he was not to change his way of working or his attitude.

The Tribunal, after considering the pleas and contentions repelled the plea of the petitioner that the charge comprises of two elements and only one of the elements of the charge was made out whereas other element of the charge was not made out. The Tribunal also repelled the plea of the petitioner that he had been prejudiced because the copy of the report of Inspector Dharambir Singh Joshi, the first witness (PW-1), was not given to the petitioner while the Inquiry Officer and the Disciplinary Authority relied on it. The Tribunal relied on the fact while repelling the contention that the alleged report had not been exhibited as a document and the said witness had only stated that he had informed about the episode to the ACP. The reliance was also placed on the fact that the petitioner had not asked about the report in his cross-examination, although the opportunity was given to the petitioner.

The Tribunal considered the order of the Disciplinary Authority stipulating that though the version of Inspector Dharambir Singh Joshi, SHO/PS-IGIA was not supported/corroborated by any other PWs examined during the course of the departmental inquiry but the statement of officer of the rank of Inspector could not be ruled out lightly. It was noticed that he had called SI (Record) and other staff

including the petitioner for ascertaining the position of official papers pending relating to replies to be sent to senior officers. The Categorical statement of PW-1 in this respect about the petitioner that he told the Inspector that he is very busy with other work and cannot perform his duties and when he asked to behave properly and take up the work on priority, the petitioner replied that he cannot do and challenged the Inspector to do whatsoever could be possible for him to do against him. In the circumstances, on the basis of preponderance of probability, the Tribunal has upheld the version of the respondents is more probable and has held that there was no illegality in the order of the Disciplinary Authority and the Appellate Authority imposing the punishment on account of the charge made out against the petitioner.

The learned senior counsel Mr. Harish Malhotra has very vehemently argued that the case against the petitioner is of no evidence. He has referred to the statements of PW 2, 3 & 4 to contend that on the basis of the statements of PW-2 SI Narpal Singh Rathore, PW-3 HC Hawa Singh and PW-4 HC Trilok Singh and other witnesses, it cannot be held that the allegations against the petitioner stood corroborated as they have categorically denied the version of the Inspector alleging that the petitioner had challenged the SHO that he can do whatsoever he like and take whatsoever action he has to take against the petitioner but he will do work according to his own pace and convenience.

Though, the statements of other witnesses had not corroborated the version of Sh. Dharambir Singh Joshi (Inspector), SHO/IGIA Airport, however, even the Tribunal has noticed this that the statement of the SHO though has not been corroborated but he had categorically deposed about the behavior of the petitioner and the rudeness shown by him when he was cautioned and asked to work efficiently and the challenge thrown by the petitioner to the Inspector Dharambir Singh Joshi, to do whatsoever he felt appropriate against the petitioner and take whatsoever action he deemed appropriate. The Disciplinary Authority has relied on statement of the Inspector on the ground that he is a senior Inspector and his statement could not be brushed aside and every statement does not require corroboration for reliance. This is not disputed that no malafide has been alleged by the petitioner against the SHO/Inspector. Perusal of the cross-examination of Sh. Dharambir Singh Joshi by the petitioner reveals that it had not been even suggested by him to the Inspector that the allegations made by him against the petitioner were incorrect. The cross-examination was restricted to whether any DD entry was made regarding the mistakes of the petitioner earlier and whether the dossier and PO Register were maintained earlier or not and whether any of the staff has lodged a written complaint against him.

This Court has perused the statement of Sh. Dharambir Singh Joshi and the statement of other witnesses also, though, in exercise of

the power of judicial review, this Court does not have to re-appreciate the evidence nor has to arrived at its own finding of the facts and substituted the findings arrived at by the Disciplinary Authority.

Learned counsel for the petitioner was categorically asked that if the version of the Inspector was not correct, then how the queries raised by the Inspector was replied by the petitioner and what is his version and what had been disclosed before the Inquiry Officer. The learned counsel is unable to show any such plea taken on behalf of the petitioner. This is not the case of the petitioner that though, Inspector Dharambir Singh Joshi had asked him to complete the work, but he did not refuse that or did not speak rudely or that he had told him that he would be able to complete the work after completing other pending work. Rather different version of the episode has not been given by the petitioner and in the circumstances, on the basis of preponderance of probability, the only inference which can be reached is that the version given by Dharambir Singh Joshi is correct and if that be so, then the charge against the petitioner is made out. Merely because other staff has not made any complaint against the petitioner would not reflect that the complaint by the SHO against the petitioner would not be correct. The Disciplinary Authority has also held so and this inference of the Disciplinary Authority has also been sustained by the Tribunal.

In the circumstances, it cannot be held that the case against the petitioner is of no evidence so as to entail any interference by this

Court. The Inquiry Officer and the Disciplinary Authority have analyzed the evidence, and on the basis of preponderance of probability, has held that the charge against the petitioner is made out. While doing so, they have not taken into consideration any irregular fact nor have refused to take into consideration of the relevant facts nor their inferences are based on any assumptions nor had they rejected the relevant testimony of witnesses on the basis of any surmises and conjectures.

In the circumstances, the learned counsel for the petitioner has failed to make out any such illegality, irregularity or any perversity in the order of the Tribunal, which will necessitate or require any interference by this Court under Article 226 of the Constitution of India.

The writ petition, in the facts and circumstances, is without any merit and it is, therefore, dismissed. All the pending applications are disposed and the parties are left to bear their own costs.

ANIL KUMAR, J.

MAY 25, 2010

‘rs’

MOOL CHAND GARG, J.