

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

+ **WP(C) No.10056/2009**

% **Date of Decision: 12.04.2010**

Radhey Shyam Petitioner
Through Mr. Bhawani Shankar Sharma, Advocate

Versus

Government of NCT of Delhi and others Respondent
Through Ms. Anjum Jawal and Mr. Ali Afser,
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, an ASI with Delhi Police has challenged the order dated 5th November, 2008 passed by the Central Administrative Tribunal, Principal Bench in OA No. 17/2008 titled as Radhey Shyam Vs. Govt. of NCT of Delhi, dismissing his original application filed against the imposition of a penalty of forfeiture of one year approved service by the order dated 29th June, 2006 and dismissal of his appeal by the order dated 9th March, 2007.

The respondent had received the information of acceptance of 'illegal money' by traffic staff of North, Central and New Delhi districts from commercial vehicles and on 3rd April, 2004 sufficient evidence regarding involvement of the petitioner was collected and received.

The evidence against the petitioner included a statement of the lorry driver with whom there had been confrontation with the petitioner. The lorry driver had paid more money than the receipt which was given to him and in the circumstances, the allegation of intimidation were made against the petitioner and receiving the money on account of intimidation. It had also transpired that the petitioner had been carrying out intimidation and collecting illegal money at places other than to which he had been deputed for duty. The respondent considered the acts of the petitioner as misconduct and appointed an inquiry officer, who examined six witnesses and came to the conclusion after the witnesses were cross-examined and after considering the statement of the petitioner as no other witnesses were produced on behalf of the petitioner, that misconduct was made out against the petitioner.

The disciplinary authority after considering the report of the inquiry officer, awarded the penalty of forfeiture of one year approved service which was up held in the appeal, which was also dismissed by order dated 9th March, 2007.

Before the Tribunal, it was contended on behalf of the petitioner that the provision of Rule 15(2) of Delhi Police (Punishment and Appeal) Rules had been violated as no order was passed indicating whether to initiate prosecution or departmental inquiry against the petitioner. The learned counsel for the petitioner also contended before the Tribunal that there was no evidence establishing the culpability of the petitioner.

The counsel for the petitioner also contended violation of Rule 16(3) of Delhi Police (Punishment and Appeal) Rules on the ground that statement of some of the witnesses examined in the preliminary inquiry were relied upon without making efforts to secure their presence which was contrary to the tenor of Rule 16(3).

After considering the respective pleas, the Tribunal had held that the competent authority had taken a decision on 7th April, 2004, deciding to initiate a regular departmental inquiry and it was decided not to register a criminal case against him and in the circumstances, there was no violation of Rule 15(2) of Delhi Police (Punishment and Appeal) Rules as has been alleged by the petitioner.

The Tribunal also relied on the evidence of the driver of vehicle DL 1LD 5229, Sh. Ganesh who was examined as PW 4 to support the case of the prosecution and from his statement it can be inferred

without any doubt that the petitioner had been acting dishonestly. PW-4's evidence is sufficient to implicate the petitioner, who has indicated in clear terms that the money was demanded from him and receipt for a lesser amount was issued. The evidence of Sh. Ganesh was construed to be sufficient by the Tribunal and, in the circumstances, it was held that the plea on behalf of the petitioner that there was no evidence against him could not be sustained. The statement of PW-4 was corroborated by other official witnesses, who were present on the occasion and therefore, the Tribunal had held that it could not be inferred that the entire incident was concocted. The discrepancies regarding the description of the car in which the party had travelled and absence of some of them were held to be minor discrepancies. It was held that inferences drawn by the inquiry officer and the disciplinary authority could not be faulted and were possible on the basis of evidence adduced before the enquiry officer. The Tribunal also noted that the strict rules of hearsay evidence, being not admissible, could not be insisted upon.

The Tribunal also noted that the petitioner was unable to give any cogent reason as to why he was at a place other than the place to which he was deputed for his duty and also disbelieved the theory of enmity of the team of inspection with the petitioner.

The learned counsel for the petitioner has raised similar pleas before this Court in the present writ petition. Regarding the violation of Rule 15(2), the learned counsel for the petitioner has not been able to refute the order dated 7th April, 2004 whereby, it was decided to proceed with the departmental proceedings and not to file any criminal case against the petitioner in compliance with Rule 15(2) of Delhi Police (Punishment and Appeal) Rules. In the circumstances, it cannot be held that there is violation of Rule 15(2) of above stated Rules.

Regarding violation of Rule 16(3) of the Delhi Police (Punishment and Appeal) Rules, though there does not appear to be sufficient evidence in respect of some of the witnesses regarding ascertaining their non availability, however, if the evidence which can be relied on and which is not contrary to provision of Rule 16(3), the inferences drawn and a punishment imposed cannot be refuted can be based on the same.

The plea of the learned counsel for the petitioner that there was no evidence against the petitioner stands negated by the statement of Sh. Ganesh-PW 4 who has been categorical in implicating the petitioner and establishing his culpability. Perusal of the statement of PW-4 reflects that he was categorically about the payment of money and the receipt issued to him for the lesser amount. The learned counsel for the

petitioner has also not been able to refute that the statement of PW-4 Sh. Ganesh which also stood corroborated by the official witnesses.

In the circumstances, it cannot be held that the case against the petitioner is of no evidence as has been tried to be contended by learned counsel for the petitioner. There is sufficient evidence against the petitioner and, in the circumstances, on the ground that there is no evidence, the punishment imposed upon him by order dated 29th March, 2006 of forfeiture of one year approved service and the dismissal of appeal dated 9th March, 2007 cannot be interfered with.

The learned counsel for the petitioner has very emphatically contended that the Punjab Police Rules are applicable to the officials and the personnel of Delhi Police and Rule 22(48) contemplates making entries in the daily diaries in case a person deputed at some place goes to another place.

Though, the entries in the daily diary were made but that does not justify and give sufficient reason to the petitioner to go to a place other than to which he was deputed. In the circumstances, the counsel is unable to show any cogent reason and justification for going to another place other than the place where he was deputed.

In the circumstances, the implication of the petitioner to the acts which amounts to misconduct cannot be doubted and the learned counsel for the petitioner has failed to show any such illegality or irregularity in the decision of the Tribunal which would entail any interference by this Court. In the facts and circumstances, the writ petition is without any merit and it is therefore dismissed.

ANIL KUMAR, J.

APRIL 12, 2010

‘rs’

MOOL CHAND GARG, J.