

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

+ **W.P. (C.) No.9010/2008**

% **Date of Decision: 16.02.2010**

ASI Raj Pal & Others Petitioners
Through Mr.Sachin Chauhan, Advocate

Versus

Govt. of N.C.T.D. (through Commissioner of Police) Respondents
& Others
Through Mr.Aditya Madan, Advcoate

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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1. The petitioners, an ASI and Constable in Delhi Police, had challenged the order dated 19th August, 2005 ordering departmental inquiry against them and the order dated 1st June, 2006 of the Disciplinary Authority awarding punishment of censure and the

order of Appellate Authority dismissing their appeals by filing an original application being OA No.1502 of 2007 which was dismissed by the Principal Bench, Central Administrative Tribunal, by order dated 4th February, 2008 which is challenged by the petitioners in the present writ petition.

2. The petitioners had joined departmental inquiry initiated against them on the allegation that they were found indulging in mal-practice of collection of illegal money from commercial vehicles. The driver of the truck No.DL 1 LB 4918, Arun Kumar, was though charged Rs.150, however, challan for Rs.100/- was issued to him. The petitioners had told the driver that challan will serve his purpose till 12 mid night. Later on the driver, Arun Kumar, in the office of ACP, PRG had identified the petitioner No.2, Kuldeep, and had told that he had sent him to Seargent, petitioner No.1, and who had asked the driver to pay Rs.50/- in addition to compounding amount. The driver had also identified the petitioner No.1, Shri Raj Pal, who had accepted Rs.150/- though had issued a challan of Rs.100/- only.

3. During the inquiry, five prosecution witnesses were examined and four defense witnesses were examined and the enquiry report was submitted to the disciplinary authority. The disciplinary authority had held that the Inquiry Officer had no reason to disbelieve the senior

officer who had deposed before the enquiry office and, therefore, it was held that the charge against the ZO/ASI Raj Pal, petitioner No.1, and Constable Kuldeep, petitioner No.2, stood proved. The Disciplinary Authority though noted that there was no direct evidence of transaction of money, however, the statement of Assistant Commissioner of Police could not be ignored completely who appeared as a witness and was elaborately cross-examined and after considering the Rule 16(iii) of Delhi Police (Punishment & Appeal) Rules, 1980 and the entirety of the facts and circumstances had issued censure to the petitioners. The Appellate Authority also upheld the issuance of censure to the petitioners and had dismissed their appeal.

4. Before the Tribunal it was contended by the petitioners that the evidence of the ACP is a hearsay evidence and could not be accepted and that the driver who admitted before the ACP about paying Rs.50 extra to the petitioners, denied the same when he appeared before the Inquiry Officer and that ACP had not witnessed the transaction and in the circumstances, there was no evidence for issue of censure against the petitioners. It was further contended by the learned counsel for the petitioners that the evidence of the driver could not be brought on record because the witness himself appeared during the inquiry and referred to Rule 16(iii) of Delhi Police (Punishment & Appeal) Rules,

1980. Learned counsel for the petitioners also relied on *Kuldeep Singh v. Commissioner of Police and others*, JT 1998 (8) SC 603.

5. The Tribunal noted that except the statement of ACP, who appeared as PW5, there was no other evidence against the petitioners who stated that he had visited the area and whatsoever was observed by him has been detailed by him in his report which has been exhibited as PW5/1. In the cross-examination to the question, “Whether driver made any complaint to him?”, he stated that when he stopped the driver of the truck, Arun Kumar, and inquired about the challan, he had disclosed about the overcharging from him by the petitioners. He also stated that only after the complaint was made to him by the driver, Arun Kumar, the identification was done by the driver on 6th June, 2005. The report of surveillance conducted by the ACP on 24th June, 2005 had been considered and noted by the Tribunal and the entire report has been reproduced in the order dated 4th February, 2008.

6. The Tribunal has noted that it is not the statement of the driver recorded in the preliminary statement which is relied on but what has been relied on is the statement of Assistant Commissioner of Police to whom the driver had made the complaint personally pursuant to which he came to know about the misconduct. This is also noted by the

Tribunal that no motive had been attributed against the Assistant Commissioner of Police regarding any hostility towards the petitioners nor any inconsistencies in his statement could be found. Since the Tribunal did not doubt the credibility of the Assistant Commissioner of Police and his report, distinguishing the case of Kuldeep Singh (supra), the Tribunal upheld the penalty of censure given to the petitioners. It has also been noted that in case two views are possible, in exercise of judicial review, it will not be appropriate to substitute the view of the Disciplinary Authority by the view, if any, of the court exercising the power of judicial review and consequently the original application was dismissed.

7. The learned counsel for the petitioner has raised similar contentions and pleas before this Court and has also relied on the Writ Petition (C) No.6503 of 2008, Hari Singh v. Government of N.C.T. of Delhi decided on 5th September, 2008. In Hari Singh (supra), it was held by the Division Bench of this Court there was no evidence against the delinquent Constable and had relied on the fact that when the inspecting team requiring the Constable to empty out his pocket, only one Rs.50/- note had come out whereas according to the statement given to the inspecting team by two tempo drivers, he should have had Rs.100/- in addition to the challan money. The disciplinary authority had imposed the punishment on the delinquent officer, however, the

Appellate Authority though had accepted the appeal of the delinquent Constables, still the penalty of censure was imposed. In these circumstances, it was held that if the appeal was accepted by the Appellate Authority and the punishment awarded by the Disciplinary Authority was set aside, there was no ground for the Appellate Authority to impose the punishment of censure. In contradistinction to the facts of the case relied on by the petitioner, the driver of the truck, Mr.Arun Kumar, during inspection which was being carried out by the ACP on production of challan had disclosed that the extra amount of Rs.50/- was paid by him to the petitioner. Since the ACP had not witnessed the incident of paying extra amount and the complaint was made to him later on, he got the identification done where the driver had identified both the petitioners and consequently the Assistant Commissioner of Police had given his detailed report and appeared also as a witness and proved the record. No suggestion was given to the ACP for implicating the petitioners falsely or settling scores with them for any reason. The petitioners also, in the cross-examination, did not even suggest that the said witness had deposed falsely or the driver, Arun Kumar, had not complained to him later on when he had carried out the inspection and had stopped the vehicle and the challan was shown by the driver which was issued to him earlier by the petitioners. In the circumstances, apparently the ratio of the case of Hari Singh

(supra) is distinguishable and the petitioners cannot place reliance on the same.

8. It is no more *res integra* that the ratio of any decision must be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It must be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without having regard to the fact situation and circumstances in two cases. The Supreme Court in *Bharat Petroleum Corporation Ltd and Anr. v. N.R.Vairamani and Anr.* (AIR 2004 SC 778) had held that a decision cannot be relied on without considering the factual situation. In the judgment the Supreme Court had observed:-

" Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not

interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

In P.S.Rao Vs State, JT 2002 (3) SC 1, the Supreme Court had held as under:

". There is always a peril in treating the words of judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusion in two cases.

In Rafiq Vs State, (1980) 4 SCC 262 it was observed as under:

"The ratio of one case cannot be mechanically applied to another case without having regard to the fact situation and circumstances obtaining in two cases."

9. In Hari Singh (supra) though the appellate authority had set aside the order of the disciplinary authority holding that there was no evidence against the delinquent, yet had awarded censure, which decision was set aside by the Court. Apparently the ratio of Hari Singh (supra) is different and distinguishable. Learned counsel for the petitioners has also emphatically relied on the ratio of the judgment of the Apex Court, Kuldeep Singh (supra) to contend that the statement of the driver recorded during the preliminary investigation could not be relied on as the driver had appeared before the Inquiry Officer.

However, on perusal of the evidence, it is apparent that the finding of misconduct on the part of petitioner is not based on the statement of the driver during the preliminary investigation but after considering the entire evidence and on the basis of preponderance of probability, the Inquiry Officer has not ignored the statement of ACP who had appeared as PW5 and his report as PW5/1. In the cross-examination, no suggestion was even given to the said witness that his report dated 8th June, 2005, which was exhibited as PW5/1, was incorrect or that he has malafide intention against the petitioners or he has falsely implicated them. If some cogent evidence is available to the Inquiry Officer for arriving at an inference, it cannot be held that there was no evidence against the petitioners. In Delhi Transport Corporation Vs Shyam Lal, (2004) 8 SCC 88 it had been held that hearsay evidence can be considered provided it has reasonable nexus and credibility. In Shyam Lal (supra) a Conductor was removed from service on account of collecting money but not issuing tickets during the checking done by other officials concerned. The Supreme Court had held that the statements made by the passengers who had paid excess money to the checking officer were not in the nature of hearsay evidence. In present case though the driver before the ACP later on had told that the extra amount was charged from him, however, he denied the same when appeared as a witness before the Inquiry Officer, however, all the facts were incorporated by the ACP in his report which was produced and

duly proved which was not denied by the petitioners as no suggestion about the report that it was false was given. The ACP has also appeared as a witness and stated that the driver had told him about the role of the petitioners and he had proved his report as Exhibit PW5/1 which had not been challenged by any of the petitioners. In the circumstances, not rejecting the testimony of PW5 and his report completely and relying on the same cannot be held to be illegal and consequent thereto holding that misconduct is made out against the petitioners also cannot be held to be contrary to law. The Tribunal has considered the entire statement of ACP and has also incorporated in its order the entire cross examination of said witness. From the tenor of the cross examination it cannot be held that the testimony of ACP was not reliable or could not be believed. No suggestions were given to the said witness refuting the said report or impeaching his testimony in any manner.. In the circumstances, the testimony of said witness became very relevant in contradistinction to other cases relied on by the petitioners in which the testimony of such an officer was not available.

10. It is not necessary for the High Court in exercise of its writ jurisdiction to interfere in every case where there is violation of some rights. For issuing a writ for any other purpose under article 226 of the Constitution of India, it has always been in the discretion of the High

Court to interfere or not, depending upon the facts and circumstances of each case. Reference in this connection may be made to the decisions of the Supreme Court in *Durga Pershad Vs The Chief Controller of Imports and Exports*, AIR 1970 SC 769, holding that even where there is an allegation of breach of fundamental right, the grant of relief is discretionary and such discretion has to be exercised judicially and reasonably. Constitution Bench of the Supreme Court in *The Moon Mills Ltd. vs M.R.Meher*, AIR 1967 SC 1450 had held that writ is legally a matter of sound discretion and would not be issued if there be such negligence or omission on the part of the applicant to assert his right as taken on conjunction with the lapse of time and other circumstances, which may cause prejudice to the adverse party. Writs so far as they are concerned with the enforcement of the other rights are not issued as a "matter of course." The petitioners did not cross examine the ACP on the relevant aspects nor denied his report and consequently his testimony became reliable. In *Shangrila Food Products Ltd. Vs Life Insurance Corporation of India* (1996) 5 SCC 54, the Supreme Court had held that "the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. The jurisdiction of the High Court, being extra ordinary, is normally exercisable keeping in mind the principle of equity. One of the ends of the equity is to promote

honesty and fair play. If there be any unfair advantage gained by a party, before invoking the jurisdiction of the High Court, the court can take into account the unfair advantage gained and can require the party to shed the unfair game before granting relief.

11. The Tribunal in its reasoning has held that though the verdict of the disciplinary authority is supported by a very slender evidence, nevertheless it is supported and consequently had not interfered with the decision of issuing censure against the petitioners. The Tribunal in para 11 of its order dated 4.2.2008 has held as under:

“11. The argument that placing reliance on the evidence of PW-1, driver of the vehicle, which was stopped by the ACP, is in violation of Rule 16 (iii) of Delhi Police (Punishment & Appeal) Rules, 1980 is not very convincing. The enquiry officer and the disciplinary authority had relied on the evidence of ACP/PRG who has restored by his report exhibit PW 5/1, reproduced above. If reliance had been placed on the evidence of the driver in preliminary enquiry without examining the ACP, it would have been difficult to accept it in view of the provisions of Rule 16 (iii), which has also been quoted. No motives have been attributed to ACP regarding any hostility towards the applicant's. There is no doubt that his methods are unorthodox, yet there are no inconsistencies in his report and is the statement. There are no reasons to doubt his credibility. We have carefully to use the judgment of Honourable Supreme Court in Kuldeep Singh case (cited supra). The facts and circumstances of the case are so different from the instant case that they would not apply to this case. No doubt, the verdict of the enquiry officer and the disciplinary authority is supported by a slender thread, but it is nevertheless supported. Perhaps two

views may be possible in this case, but there are no cogent reasons to substitute the view of the disciplinary authority by a view, which can be taken against it. There are no reasons, in our view to interfere with the impugned orders."

12. In judicial review the jurisdiction of the Court is limited to decision making process and not with re-appreciation of the evidence. In (2006) 5 SCC 88, M.V.Biklani Vs Union of India, the Supreme Court had held at page 95 as under:

95. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

13. Similarly M.L. Jindal v. Delhi Vidyut Board and Ors, LPA No. 444 of 2002, decided on 07th august 2006 had held that factual findings in Department Enquiry would ordinarily not to be subjected to judicial review except when it is of no evidence or are totally perverse or legally

untenable or vitiated on account of non-observance of principle of natural justice.

14. In the facts and circumstances of this case, this Court is not inclined to interfere with the order of the Tribunal dated 4th February, 2008 in OA No.1502 of 2007 titled Assistant Sub Inspector Raj Pal and others v. Government of NCT of Delhi and others, and, therefore, the writ petition is dismissed. Parties are, however, left to bear their own costs.

ANIL KUMAR, J.

February 16, 2010
'ag/Dev'

MOOL CHAND GARG, J.