

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

+ **W.P. (C.) No. 13212/2009**

% **Date of Reserve : 17.08.2010**
Date of Decision : 19.08.2010

SAT PAL BABBAR Petitioner
Through Mr. Shyam Babu, Advocate

VERSUS

GOVT. OF NCT OF DELHI & ORS. Respondents
Through Mr. Sushil D. Salwan, 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.

1. A departmental enquiry was held against the petitioner on the following charges:-

"I, Insp. Prem Chand, E.O./D.E. Cell charge you HC Sat Pal, No. 257/SW (Now 10174/DAP) (PIS No. 28780266) that while you were posted to PS Dabri, enquiries were made on the complaint of Shri Attar Singh Meena R/o RZ-18-A/347, Gali No.1, Jagdamba Vihar Sagar Pur, New Delhi which revealed that you acted in a partial manner giving favour to Constable Vinod Kumar who was caught red-handed while climbing the grill of the balcony of Shri Attar Singh on the night of 5/6.10.1996. You HC Sat Pal, No. 257/SW (Now 10174/DCP(I.O.)) attended the call of PCR received in PS Dabri vide DD O. 6/A, dated 5.10.96 and inspite of taking action against the offender Constable Vinod Kumar you got registered a false case against Attar Singh and arrested three

persons who were the witnesses of the real occurrence and roughed up the complainant. You applied section 341/323/34 IPC to make out a cognizable offence against Attar Singh and other instead of taking appropriate action against constable Vinod Kumar whose act had made out the clear offence of criminal trespassing.

The above act on the part of you HC Sat Pal, No. 257/SW (Now 10174/DAP) amounts to gross misconduct, negligence unbecoming of a Govt. Servant in the discharge of your official duties, which renders you liable for punishment under the provisions of Delhi Police (Punishment & Appeal) Rules 1980."

2. After holding the enquiry, penalty was imposed upon the petitioner vide order dated 08.11.2000. An appeal filed by the petitioner against this order was dismissed vide order dated 20.04.2001. The petitioner, thereafter, filed OA NO. 1146/2002 which was allowed vide order dated 06.01.2003 on the ground that the documents demanded by the petitioner were not supplied to the petitioner.
3. The petition succeeded and the Tribunal directed that fresh inquiry be held after supplying the necessary documents to the petitioner. The documents were statements recorded during preliminary inquiry of various persons.
4. At the remanded stage it was found that the statements of persons recorded during preliminary inquiry were not available. But, the said persons were tendered as witnesses of the prosecution and deposed by way of examination in chief and were cross-examined. The petitioner was indicted by the inquiry officer and agreeing with the report the disciplinary authority inflicted the penalty of permanent forfeiture of one year's approve service. Order dated 2.6.2005 passed by the disciplinary authority was upheld by the appellate authority vide order dated 24.6.2006.
5. Being aggrieved of the orders dated 2.6.2005 and 24.6.2006, the petitioner filed OA No. 1830/2007 contending that the charge itself is wrong since it cannot be said that a false case was registered

against Attar Singh as it was not the petitioner who filed the FIR and further that the non-supply of the statements of the PWs vitiated the enquiry since the same precluded the petitioner to make a fruitful defence.

6. The Tribunal dismissed OA No. 1830/2007 vide order dated 18.02.2009 by holding that the charge against the petitioner for having registered a false case against Attar Singh, the complainant, is the creation of the petitioner himself inasmuch as, the FIR was registered against Attar Singh on the basis of rukka sent by the petitioner. As regards the submissions of the petitioner that the documents were not supplied, it has been observed by the Tribunal that the petitioner had been given the full opportunity to cross-examine all the witnesses who appeared before the enquiry officer and whose statements were recorded during the course of preliminary enquiry. Since the statements recorded during the course of preliminary enquiry were not available, non-supply of those documents does not in any way cause any prejudice to the petitioner.

7. Assailing the aforesaid order passed by the Tribunal, the learned counsel appearing for the petitioner has reiterated his submissions made before the Tribunal by reiterating that failure of the enquiry officer to supply the copies of the previous statement of witnesses on record has caused serious prejudice to the case of the petitioner inasmuch as he has been denied the reasonable opportunity to defend himself during the enquiry which amounted to violation of Article 311(2) of the Constitution of India.

8. It is also submitted that the petitioner as a Head Constable was justified in filing a case against Attar Singh, who had beaten up Constable Vinod Kumar

9. Having perused the record, we are not convinced by the submissions made by the petitioner to interfere with the order of the Tribunal in this matter. We find that the order passed by the Tribunal shows that the case of the respondents against Attar Singh was fool

proof. Despite opportunity granted to the petitioner to cross-examine each and every witness, no infirmity was found. Some observations made by the Tribunal in this regard are reproduced hereunder:-

25. Perusal of above evidence shows that all the PWs have stated in one voice that Sh. Vinod had climbed the balcony of Sh. Attar Singh in the night at around 01:30-2:00 AM in 1996 and there was a scuffle between Sh. Vinod and Sh. Attar Singh whereupon he fell down or was brought down and was beaten by the public. The slight contradictions as to whether Vinod had jumped down from the balcony or was brought down would not make much difference. The fact remains number of neighbours had seen all this but this part was not even investigated by HC Satpal, even though applicant was deputed at the scene to investigate the complaint lodged by Sh. Attar Singh.

26. From above, it is absolutely clear that this is case, which is full of evidence against Constable Vinod Kumar yet the applicant, who had gone as an investigating officer on the complaint of Sh. Attar Singh, instead of taking the statements of Attar Singh or other neighbours and taking action against Sh. Vinod Kumar, got the case registered against Shri Attar Singh and others for beating Sh. Vinod Kumar. It is thus clear that the applicant did favour Constable Vinod Kumar and did not perform his duties in taking action against Sh. Vinod Kumar, the thief, who was caught red-handed by the complainant and his neighbours. In these circumstances, if disciplinary authority or appellate authority have imposed punishment on the applicant on the basis of evidence, which has come on record, as referred to above, it cannot be interfered with. Hon'ble Supreme Court has repeatedly held that so long there is some evidence available on record in a disciplinary case, courts should not interfere even if there is some extraneous material.

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32. In the instant case as we have already noted above, the applicant has not been able to demonstrate any such irregularity, which has caused prejudice to him, therefore, merely because the case against Attar Singh is still pending in a court of law would not make any difference because ultimately that would be decided on the basis of evidence, which is led in the court. In the instant case, we are only concerned with the fact whether applicant had acted in an impartial manner or tried to favour the alleged thief, who happened to be a Constable in Delhi Police.

33. From the facts as narrated above, it is absolutely clear that the applicant wanted to favour Constable Vinod Kumar against whom complaint was filed. The charge against applicant is fully proved by the evidence, which has come on record, therefore, according to us this case calls for no

interference. The OA is accordingly dismissed. No order as to costs."

10. Suffice would it be to state that as per the decision reported as 1993 (4) SCC 727 Managing Director ECIL vs. B.Karunakar the law has got well crystallized that unless it is shown that non supply of a document has caused prejudice at a domestic inquiry, the finding at a domestic inquiry would not be interfered.

11. Thus, we find no infirmity in the order passed by the Tribunal. Accordingly, we dismiss the writ petition with no order as to costs.

MOOL CHAND GARG, J.

AUGUST 19, 2010
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PRADEEP NANDRAJOG, J.