

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

+ **W.P. (C.) No.170/2010**

% **Date of Decision: 13.01.2010**

SI Sobhan Baraik Petitioner
Through Mr. Shyam Babu, Advocate.

Versus

Government of NCT of Delhi & Ors. Respondents
Through Ms. Jyoti Singh, 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 a Sub Inspector of Delhi Police has been dismissed from service after enquiry on the allegation that in a case of rape, the petitioner demanded Rs.50,000/- from the accused of the rape to favor him and also indulged in unwarranted conversation with the daughter of the accused, Rashmi and her grandfather. The incident of the demand of Rs.50,000/- from the daughter of the accused was also recorded by media "Aaj Tak" and on realizing that his illegal demand and unwarranted conversation was being recorded, the petitioner had run away from the scene leaving his vehicle at the site.

The punishment order dated 3rd April, 2006 which was upheld in appeal by order dated 11th August, 2006 was challenged by the petitioner before the Central Administrative Tribunal, Principal Bench in O.A No.2066/2006 titled SI Sobhan Baraik v. Government of NCT of Delhi which original application was also dismissed by the Tribunal by order dated 18th February, 2009 which is challenged by the petitioner in the present writ petition.

The learned counsel for the petitioner has very emphatically contended that the original CD and the recording equipment was not produced during the enquiry and, therefore, no reliance can be placed on the copy of the compact disc produced against the petitioner. Mr. Shyam Babu Advocate, learned counsel for the petitioner has also asserted that the alleged unwarranted conversation was with the accused's daughter and her grandfather, however, the grandfather was not produced and the daughter has not stated anything about any demand made by the petitioner and so there was no evidence against the petitioner. In the circumstances it is contended that there is no reliable evidence against the petitioner.

The petitioner has also asserted that the copy of the preliminary report relied on by the enquiry officer which was produced by PW5 was not given to him and thus the principle of natural justice has been

violated and the findings against him cannot be substantiated nor on the basis of the report of the enquiry, punishment of dismissal from the service can be awarded.

The Tribunal has noted that since the Inspector of CBI who was to depose about the preliminary enquiry did not do so and, therefore, the preliminary enquiry report is not relied upon. If the preliminary enquiry report was not relied upon, a copy of which was allegedly not supplied to the petitioner, the plea that the principle of natural justice has been violated and the petitioner has suffered the prejudice cannot be accepted. Consequently, on this ground the petitioner cannot succeed in getting the enquiry proceedings declared as bad being in violation to the principles of natural justice.

The plea of the learned counsel for the petitioner that since the original media on which the incident was recorded was not produced during the enquiry, therefore, the copies produced during the enquiry also cannot be relied on, cannot be accepted in the facts and circumstances. Strict principles of the Evidence Act are not to be applied while assessing the evidentiary value of the documents produced before the enquiry officer. PW10, Principal Correspondent of "Aaj Tak" was examined. He deposed that the petitioner had come on the scooter and had demanded money from the daughter/children of the accused of rape and he had also threatened them. In view of the

categorical deposition of the correspondent, the copy of the media on which the incident was recorded cannot be ignored on the ground that the original media on which the incident was recorded had not been produced. It has also been categorically disclosed that the original media with the recording of the incident of demand of money had been destroyed. In the circumstances, the copy which had been produced also by “Aaj Tak” in view of the statement of PW.10, Principal Correspondent will have evidentiary value as secondary evidence and cannot be rejected.

The plea of the learned counsel for the petitioner that in absence of the preliminary evidence regarding recording of the incident there is no evidence in support of the charge against the petitioner also cannot be accepted. The daughter namely Rashmi, of the accused of the rape Sh.Baljit Singh has categorically deposed about the incident. Not using the word “demand” by the daughter Rashmi in the facts and circumstances does not negate the charge of unwarranted conversation with her with a view to demand Rs.50,000/- from them. The Tribunal has also relied on and has given emphasis to the fact that the petitioner ran away from the scene after realizing that his illegal demand and conversation was being recorded, even leaving behind his own scooter. Though the Tribunal was not to interfere with the findings of facts before the enquiry officer and appellate authority nor had to re-appreciate the evidence of the parties during the enquiry proceedings,

however, the Tribunal has reconsidered the evidence and has inferred that the guilt of the petitioner has been established. The findings of the enquiry officer are based on evidence and the case of the petitioner is of not of no evidence against him and consequently imposition of punishment of dismissal imposed by disciplinary authority and dismissal of appeal later on cannot be faulted.

The Tribunal has also noted that daughter of Baljit Singh, Rashmi had clearly deposed that the compact disc was obtained by her from “Aaj Tak” channel and that the petitioner has failed to prove any deficiency or defect in it or give proof in support of his own version. Even the enquiry officer had noticed and considered all likelihood of editing and dubbing of the compact disc and relied on the recorded version. The previous conduct of the petitioner was also noticed as he had been punished six times with minor punishments and twice major penalties had been imposed upon the petitioner. In the circumstances the inference of guilt of the petitioner cannot be interfered in the facts and circumstances of this case.

In the totality of facts and circumstances we do not find any illegality or such irregularity in the order of the Tribunal which would entail interference by us against the said order in exercise of jurisdiction under Article 226 of the Constitution of India.

The writ petition is without any merit and it is, therefore,
dismissed.

ANIL KUMAR, J.

JANUARY 13, 2010
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MOOL CHAND GARG, J.