

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

+ **W.P. (C.) No.910/2010**

% **Date of Decision: 15.02.2010**

Govt. of NCT of Delhi & Ors. Petitioners
Through Mr. N.Waziri and Ms.Jyoti Singh,
Advocates for GNCTD/petitioner No. 1

Versus

Sh. Mohinder Singh & Ors. Respondents
Through Mr. Anil Singal, Advocate for the
respondent No. 1
Mr. Atul Nanda, Advocate for
respondent No. 2/UOI

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | <i>Whether reporters of Local papers may be allowed to see the judgment?</i> | YES |
| 2. | <i>To be referred to the reporter or not?</i> | NO |
| 3. | <i>Whether the judgment should be reported in the Digest?</i> | NO |

ANIL KUMAR, J.

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The petitioners Govt. of NCT of Delhi and others have challenged the order dated 9th December, 2009 passed by the Central

Administrative Tribunal, Principal Bench in OA No. 1312/2009 titled as Mohinder Singh Vs. Union of India & Ors. allowing the petition of respondent No. 1 holding that there is no justification to initiate the departmental proceedings against respondent No. 1 after 25 years, after 1984 riots especially as the respondent No. 1 had rather been awarded two promotions in the meanwhile.

By order dated 29th April, 2009, a regular departmental inquiry was proposed against the respondent No. 1 on the ground that while posted at PS Srinivaspuri, he failed to exercise effective control in the area where violence had started after the of assassination of Smt. Indira Gandhi in October/November, 1984 riots. The allegation of lack of effective control by respondent No. 1 is based on the affidavits filed by Sardar Santokh Singh dated 9th September, 1985 before Justice Ranga Nath Mishra, Inquiry Commission and the affidavit dated 25th July, 1987 of Sh. Gurdayal Singh which was attested by a notary public which has an apparent extrapolation in respect to name of the respondent no.1.

Along with the order dated 29th April, 2009, alleging that the respondent No. 1 is guilty of gross negligence and dereliction of duty with malafide intention, and conducting himself in a manner unbecoming of government servant and violation of provisions of Rule 3

of the CCS (Conduct) Rules, the name of three witnesses were cited which were Sardar Santokh Singh, Sardar Gurdayal Singh, deponents of two affidavit and MHC (Srinivasपुरi) to prove the FIR No. 369/1984.

The Tribunal while setting aside the order dated 29th April, 2009 ordering departmental inquiry against the respondent No. 1 noted that respondent No. 1 has been awarded two promotions since 1984 and no satisfactory rather no explanation has been given for delay of 25 years.

The respondent No. 1 before the Tribunal denied the imputations made against him. The basis of ordering departmental inquiry against the respondent No. 1 is the affidavit of Sh. Santokh Singh, who was 65 years on 9th September, 1985 when the alleged affidavit was given by him before Justice Ranga Nath Mishra, Enquiry Commission. Sh. Santokh Singh in his affidavit had only deposed about the presence of respondent No. 1 along with the DCP of the area and SHO Ishwar Singh and Ved Prakash, Head Constable. The learned counsel for the petitioners is unable to disclose as to what action has been taken against the SHO Ishwar Singh and other constable Ved Prakash.

This is not disputed that the petitioners have not got it ascertained about Sh. Santokh Singh alleged witness, who was 65 years in 1985 as to whether he is alive or not. The affidavit which is only a

copy obtained from the Commission cannot be relied on even under Rule 16 (iii) of Delhi Police (Punishment and Appeal) Rules, 1980 on the basis of allegations made on behalf of the petitioners. The learned counsel for the petitioners is also unable to give any justifiable reason for not recording the statement of the said witness even for preliminary investigation for the past 25 years for initiating the departmental proceedings now.

Similarly, the affidavit of Sardar Gurdayal Singh dated 25th July, 1987 cannot be considered under Rule 16 (iii) of the Delhi Police (Punishment and Appeal) Rules, 1980 even during regular enquiry. Neither there is any allegation as to what steps were taken to record the preliminary statement of said witness nor anything has been disclosed about the availability of the said witness. Nothing has been shown as to what steps were taken or were proposed for regular enquiry in the past 25 years or why the regular enquiry could not be initiated within reasonable time after the alleged affidavits were given by said witnesses. Apparently the entire basis of regular departmental enquiry is only the affidavits of these alleged two witnesses.

Rule 16 (iii) of Delhi Police (Punishment and Appeal) Rules, 1980 contemplates that as far as possible the witnesses shall be examined directly in the presence of the accused who has to be given opportunity

to take notice of their statements and cross-examine them. Though the inquiry officer is empowered to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such inquiry officer, be procured without undue delay, inconvenience or expense provided the statements are recorded and attested by police officer superior in the rank to the accused.

Admittedly, the affidavits of Sardar Santokh Singh and Sardar Gurdayal Singh were not given to a police officer superior to the respondent No. 1 and in the circumstances, even if the regular inquiry is initiated, on the basis of such affidavits the charges cannot be established against the respondent no.1. No explanation has been given if these two affidavits were given in 1985 and 1987 then why the regular departmental enquiry could not be initiated against respondent within reasonable time. The facts in compliance of requirement of Rule 16 (iii) of Delhi Police (Punishment and Appeal) Rules, 1980 have not even been alleged. In the circumstances the regular departmental inquiry should not be permitted after twenty five years of the alleged incident in the facts and circumstances only on the basis of these two affidavits and nothing else. This is also not disputed that since then respondent no.1 has already been given two promotions. The petitioners have not even alleged as to when they got the copies of affidavits of these witnesses.

This cannot be disputed that on account of this undue delay of 25 years in the facts and circumstances, the respondent No. 1 shall be greatly prejudiced. The respondent No. 1 is on the verge of his retirement and he has already been given two promotions. There was no stay or restriction against the petitioners to initiate the departmental proceedings in view of the alleged two affidavits which were also given about twenty two years ago. Affidavit of Gurdial Singh is notarized and also has extrapolation with different typing ink. In the circumstances, there is no ground disclosed by the petitioner for delay in inquiry of 25 years nor there is any allegation even that the respondent no.1 will not be prejudiced on account of this long and undue delay. No other cogent preliminary evidence has been disclosed by the petitioners for initiating regular departmental inquiry against the respondent no.1.

In the circumstances, the decision of the Tribunal quashing the order dated 29th April, 2009 initiating regular departmental inquiry against the respondent No. 1 for the alleged incident of 1984 without explaining undue delay cannot be faulted. There is no such illegality or irregularity in the order of the Tribunal impugned before this Court which will require interference by this Court in the exercise of its jurisdiction under Article 226 of the Constitution of India.

The writ petition in the facts and circumstances of the case is without any merit and it is therefore, dismissed.

ANIL KUMAR, J.

February 15, 2010
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MOOL CHAND GARG, J.