

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

Judgment Reserved on: 30<sup>th</sup> May, 2011

% Judgment Pronounced on: June 03, 2011

+ **WP (C) No. 903/2011**

COMMISSIONER OF POLICE ..... Petitioner  
Through: Ms.Nandita Rao, Adv. on behalf of  
Ms.Veronica Mohan, Adv.

Versus

HARCHARAN VERMA ..... Respondent  
Through: Mr. M.M. Sudan, Mr.Vinod Tyagi  
and Mr.Pushp Gupta, Advs.

**CORAM:**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE SANJIV KHANNA**

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|---|-----------------------------------------------------------------------|-----|
| 1 | Whether reporters of the local papers be allowed to see the judgment? | Yes |
| 2 | To be referred to the Reporter or not?                                | Yes |
| 3 | Whether the judgment should be reported in the Digest?                | Yes |

**DIPAK MISRA, CJ**

Invoking the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, the petitioner, namely, the Commissioner of Police has called in question the legal validity of the order dated 6<sup>th</sup> April,

2010 passed by the Central Administrative Tribunal, Principal Bench (for short 'the tribunal') in OA No. 2425/2009 whereby the tribunal has quashed the punishment of censure imposed on the respondent.

2. The brief resume of facts are that a show-cause notice dated 17<sup>th</sup> March, 2008 was issued to the respondent who was functioning as the SHO, Police Station, Connaught Place at that time. The relevant part of the show-cause notice reads as follows: -

“During the inspection conducted at Palika Bazar by the independent sources on 12.03.2008, it has been found that the sale purchase of 'Blue' and 'X-rated' films on C.Ds was being carried openly in Palika Bazar Complex besides, active solicitation by sales boys was also being done. Pirated CDs and pornographic video CDs were freely available from Rs.35 to Rs.200 per CD in a large number of shops. It shall be the personal responsibility of the SHO/Connaught Place to ensure that no pornographic material is sold in Palika Bazar but he failed to do so, which is a serious lapse on his part.

The above act on the part of Insp. Har Charan Verma, No.D-1/629, SHO/Con. Place amounts to gross misconduct, negligence, carelessness and dereliction in the discharge of his official duties, which renders him liable for disciplinary action under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980.”

3. On the basis of the aforesaid show-cause notice, the respondent filed a reply stating, inter alia, that 34 cases under Section 292 of IPC/Copyright

Act had been prosecuted by him and the cases were being tried in the courts; that he had written to the NDMC, the authority allotting the shops in the Palika Bazar, for cancellation of allotment of shops peddling obscene material; that there had been raids conducted by the other agencies of Delhi Police such as the Crime Branch/Special Staff Vigilance Branch in Palika Bazar during his tenure; that he had issued instructions to the officials of the police station to pay special attention to shops selling pornographic material; and that he had taken all steps to stop these kind of activities.

4. The plea of the respondent was rejected and the disciplinary authority passed the following order: -

“This plea carries no weight as sale/purchase of CDs of ‘Blue and ‘X’ rates films was going on openly in Palika Bazar.”

5. The respondent being grieved by the order of punishment, the respondent preferred an appeal and in the memorandum of appeal, it was put forth by him that in 30 years of his unblemished career he had won 90 commendation cards/Rolls with cash reward of more than Rs.50,000/- and there was no justification to impose the punishment.

6. The appellate authority dismissed the appeal on the ground that the show-cause notice was issued in March, 2008 and the respondent-officer had not registered any case under the Copyright Act in 2008.

7. The respondent, grieved by the aforesaid order, invoked the jurisdiction of the tribunal on many a ground. He also produced the documents that had been produced before the disciplinary authority and the appellate authority. It also indicated that under the Copyright Act he had registered FIRs on 10.1.2008, 29.1.2008, 11.2.2008, 24.2.2008, 4.3.2008, 6.3.2008, 11.3.2008, 13.3.2008 and 31.3.2008 and on certain dates there are more than one FIR. It was urged that the same were not taken into consideration by the authorities as a consequence of which he has been visited with the punishment. The tribunal in paragraph 5 of the order has opined thus –

“5. The Applicant has placed on record several and multiple actions taken by him to control the crime of sale of obscene CDs and DVDs. He has taken action against several culprits by registering FIRs against them. He has sensitized the shopkeepers and beat constables about such offences and organized a meeting with the shopkeepers’ representatives. The disciplinary and appellate authorities have merely dismissed these pleas on the ground that regardless of these steps taken by the Applicant, the sale of offending material had nevertheless continued. They have not said as to what

other steps he could have taken. If in spite of so much action taken by the Applicant, he could still be punished because the problem had not entirely been rooted out, even the senior officers of Delhi Police, including the disciplinary and appellate authorities, could be held responsible for sale of pornographic material and be punished. We are of the considered opinion that there is no misconduct on the part of the Applicant and that there is lack of application of mind by the disciplinary and appellate authorities. The impugned orders cannot be sustained."

Being of this view, it quashed the order of punishment.

8. It is urged by Ms.Nandita Rao, learned counsel for the petitioner that the tribunal could not have appreciated the factual matrix in the manner it has done, as that is beyond the scope of jurisdiction of the tribunal. It is urged by her that the illegal activities continued unabated in the Connaught Place, Police Station area, which was admittedly under the authority of the applicant during the relevant period and he miserably failed to achieve the desired result.

9. Learned counsel for the respondent supported the order passed by the tribunal.

10. The question that emerges for consideration is whether the tribunal could have appreciated the facts in the manner which it has done. In this context, we may refer to the decision in *Secretary to Government, Home*

*Department & Ors. v. Srivaikundathan, (1998) 9 SCC 553* wherein the

Apex Court has held thus –

“3. The Tamil Nadu Administrative Tribunal has re-examined the entire evidence which was led before the Enquiry Officer and has come to the conclusion that the Enquiry Officer erred in holding the respondent guilty without examining the exact role of the respondent in respect of the escape of the prisoner. The Tribunal was not sitting in appeal over the findings of the Enquiry Officer, nor was the Tribunal required to examine the nature of the evidence which was led as if it were a criminal trial. Unless the findings were perverse, or unless it was found that there was no evidence whatsoever before the Enquiry Officer, the Tribunal could not have set aside the findings of the Enquiry Officer merely by expressing dissatisfaction with the evidence which was led. In the present case, there was a clear evidence pointing to the guilt of the two employees who had not merely allowed the prisoner who was entrusted to their custody to escape, but had also lodged a false complaint in that connection. The Tribunal was not justified in setting aside the findings of the Enquiry Officer and remitting the matter as it did (see in this connection *State of Haryana v. Rattan Singh, (1977) 2 SCC 491 : 1977 SCC (L&S) 298*).”

11. In view of the aforesaid, the manner in which the tribunal has scanned the material brought on record is not correct and justified and, therefore, the order passed by the tribunal is not sustainable and, accordingly, we quash the same.

12. The writ petition is allowed and the order passed by the tribunal is set aside. There shall be no order as to costs.

**CHIEF JUSTICE**

**JUNE 03, 2011**  
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**SANJIV KHANNA, J.**