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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of Decision: 3rd June, 2011*

+ W.P.(C) 7901/2003

JAI PAL Petitioner
Through: Mr.Arun Bhardwaj, Advocate with
Mr.N.D.Kaushik, Advocate

versus

UOI & ORs. Respondents
Through: Mr.S.P.Sharma, Advocate with
Mr.Ashwani Bhardwaj, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.(Oral)

1. After holding an inquiry, post service of a charge memo dated 18.7.2001, vide order dated 1.5.2002 penalty of termination from service has been inflicted upon the petitioner. Said order is under challenge.

2. Since petitioner had a right to file a statutory appeal against the aforesaid order, he did so. It resulted in the order dated 16.12.2002 being passed. The appeal was rejected.

3. Petitioner had a further remedy by way of Revision, which he exercised. The Revision has been rejected vide order dated 9.4.2003.

4. These orders are also under challenge.

5. At the outset, we may note that there are typographic errors in the writ petition. There are translation errors in the annexures. Even in the prayer clause there is a wrong reference to the date of the orders. But we note that the record of the respondent would show that the date of the order passed by the Disciplinary Authority is 1.5.2002. Date of the Appellate order is 16.12.2002 and that of the Revisional order is 9.4.2003.

6. As per the charge memo, it was alleged against the petitioner that while working as a Head Constable with CISF and attached to the 7th Battalion he was posted at Delhi on internal security duty and that on 4.7.2001 at about 08:30hrs. he used abusive language and gave fist blows on the face of his Platoon Commander, SI K.C.Yadav. As per Article 2 of the charge it was alleged that the petitioner was habitual to misconduct, use of bad language and there were past instances of his quarreling with senior officers.

7. Needless to state Article 2 of the charge was an intimation to the petitioner that pertaining to Article 1 of the charge memo, his past conduct would be considered.

8. At the inquiry 7 witnesses were examined by the prosecution. Petitioner examined one witness in defence.

9. Discussing the evidence led, the inquiry officer has held that the statement of Inspector Tilak Raj PW-1 proved that contemporaneous with the incident SI K.C.Yadav PW-7, the person allegedly assaulted by the petitioner, informed that petitioner had assaulted him and that Inspector Tilak Raj's preliminary inquiry evidenced that the petitioner had assaulted SI K.C.Yadav. The Inquiry Officer has held that the testimony of Ct.Babu Lal PW-2 established that what led the petitioner to

assault SI K.C.Yadav, a version deposed to by SI K.C.Yadav, was petitioner refusing to perform duty at a place under the direction of SI K.C.Yadav and when SI K.C.Yadav insisted that the petitioner should obey his command, petitioner assaulted SI K.C.Yadav. The Inquiry Officer has further held that the testimony of Ct.R.S.Yadav PW-3 as also Ct.R.R.Swami PW-5 establish that it was the petitioner who gave fist blows on the face of SI K.C.Yadav as a result whereof blood started oozing from the lips of SI K.C.Yadav.

10. With respect to the evidence pertaining to petitioner also having suffered injuries and in respect whereof petitioner alleged that it was SI K.C.Yadav who first assaulted him with a knife, since petitioner had given no such written complaint contemporaneous with the point of time when the incident took place, the Inquiry Officer has held that the defence version was not to be accepted, notwithstanding petitioner having produced certain medical reports pertaining to his injury.

11. The Disciplinary Authority, Appellate Authority and the Revisional Authority have agreed with the report of the Inquiry Officer.

12. It being settled law that exercising power under Article 226 of the Constitution of India, a writ court cannot re-appreciate evidence as if it is sitting in appeal, we proceed to consider the evidence on record within the narrow confines of writ jurisdiction.

13. What are the narrow confines within the writ jurisdiction for a writ court to have a re-look at the evidence?

14. If not more, at least to see whether relevant evidence has been ignored by the authorities concerned. If it is found

that relevant evidence had been ignored it would be a case of an erroneous exercise of jurisdiction or it would be a case of perversity in the exercise of jurisdiction. It is the duty of a statutory authority to consider all relevant evidence. Further, if it is found that admissions made by witnesses have been ignored or explanations given by a witness are patently absurd, absurdity being of a kind that no reasonable person would accept an explanation with respect to an admitted fact, the writ court can interfere. Since in the instant case these two narrow grounds are being intended to be considered with respect to a re-look at the evidence led, we complete the present paragraph with the caveat, being that, the two circumstances referred to by us with respect to a writ court having re-look at the evidence should not be construed as if we have exhaustively penned down the circumstances under which a writ court can re-look at the evidence.

15. The record of inquiry would reveal that the petitioner had produced 2 medical certificates. One issued by the CGHS dispensary at R.K.Puram which shows that soon after the incident the petitioner was given medical aid with respect to incised injury at the web between the thumb and the forefinger on the right hand (dorsal aspect). The second was an MLC dated 4.7.2001 issued at Safdarjung hospital showing that the wound was 2-3 cm. in length.

16. We have noted hereinabove that the Inquiry Officer has found corroboration to the testimony of SI K.C.Yadav, the superior officer stated to have been assaulted by the petitioner, with respect to the testimony of Tilak Raj PW-1, Ct.Babu Lal PW-2, Ct.R.S.Yadav PW-3, Ct.Babab Mishra PW-4 and R.R.Swami PW-5.

17. Let us have a look to the testimony of SI K.C.Yadav as also his explanation with respect to the admitted injury on the right hand (dorsal aspect). SI K.C.Yadav PW-7 deposed that he was the Platoon Commander and on 4.7.2001 at about 08:30 hrs. he went to the petitioner and told him that on 3.7.2001 he had been told not to do duty at DCCA and that instead duty should be performed at Sena Bhawan at which petitioner told him that he would push a stick up his back side. When he said so, Ct.R.R.Swami, Ct.Baban Mishra, Ct.R.S.Yadav and Ct.Malkeet Singh were sitting. He told them to pay heed to what the petitioner was speaking. At that petitioner got up and punched him on his face 3 to 4 times due to which petitioner suffered abrasion on his hand when petitioner's fist hit his teeth. He informed the superior officer and went to Safdarjung hospital for treatment.

18. On being cross-examined by the petitioner SI K.C.Yadav explained the injury on the hand of the petitioner by saying that it resulted when petitioner punched him on his face.

19. We would highlight here and now that the explanation by SI K.C.Yadav PW-7 had to be evaluated by the authorities below with reference to the version of the petitioner that as deposed to by SI K.C.Yadav, petitioner was assigned duties at DCCA and that he was told to perform duties at Sena Bhawan w.e.f. 4.7.2001. As per the petitioner since he had been given orders in writing to perform duties at DCCA he had requested SI K.C.Yadav to issue him a written order requiring him to perform duties at Sena Bhawan for the reason petitioner did not want to be embroiled in any controversy should a superior officer not find him at DCCA. Petitioner did not want that if

this happened and he told that SI K.C.Yadav verbally told him to perform duties at some other place and SI K.C.Yadav refusing to so acknowledge. As per the petitioner when he insisted on a written order, SI K.C.Yadav abused him. He paid back the complement in the same language. SI K.C.Yadav took out a knife to hit him. The petitioner took a defensive position. SI K.C.Yadav lunged forward with the knife in his hand. Petitioner blocked. This resulted in the petitioner suffering an incised injury on the web between the thumb and the forefinger (dorsal aspect) of the right hand.

20. The medical evidence produced by the petitioner which we note is a contemporaneous record of the treatment first taken by the petitioner at the CGHS dispensary, R.K.Puram and then the MLC at Safdarjung hospital would reveal that a 2-3 cm. cut cannot be the result of the fist blows statedly inflicted by the petitioner on the face of SI K.C.Yadav.

21. If we factor in the medical evidence the irresistible conclusion which we reach is that the manner of having received injuries as explained by SI K.C.Yadav is palpably false. Medical evidence shows that injuries were caused by a sharp edged object and thus version of the petitioner has to be accepted.

22. It is apparent that the Inquiry Officer as also the Disciplinary Authority and the Appellate and Revisional Authority have ignored the medical evidence produced by the petitioner which has a story to tell about how petitioner received the injuries. The story belies the claim of SI K.C.Yadav and supports the version of the petitioner.

23. Inspector Tilak Raj PW-1 is not an eye witness. He simply deposed that SI K.C.Yadav telephonically informed him

that the petitioner had assaulted him. Ct.Babu Lal PW-2 disclaimed having seen the fight but simply stated that when he left, a verbal altercation was on between the petitioner and SI K.C.Yadav pertaining to petitioner being required to perform duties at Sena Bhawan.

24. Ct.R.S.Yadav, Ct.Baban Mishra and Ct.R.R.Swami deposed of not being a witness to either the petitioner assaulting SI K.C.Yadav or vice-versa. All of them deposed that when they heard noises they rushed in and separated SI K.C.Yadav and the petitioner and saw blood oozing from the mouth of SI K.C.Yadav and from the hand of the petitioner.

25. We note that Ct.Malkeet Singh PW-6 simply stated that there was a conversation going on between the petitioner and SI K.C.Yadav when he left for the toilet and when he returned he saw none.

26. The Inquiry Officer is completely wrong in holding that the testimony of the other prosecution witnesses corroborated the version of SI K.C.Yadav. As noted by us hereinabove, the version of the others simply is that when they heard noises they rushed in and separated the petitioner and SI K.C.Yadav and saw blood oozing from the mouth of SI K.C.Yadav and from the hand of the petitioner. Testimony of none is relevant to break the deadlock vis-à-vis the version of the petitioner and SI K.C.Yadav.

27. The reasoning of the Inquiry Officer that the petitioner did not contemporaneously report the incident and thus an adverse inference has to be drawn against the petitioner is a faulty reasoning in the facts of the instant case inasmuch as the version of the petitioner had to be considered with reference to the fact that the witnesses of the prosecution

have stated that when they separated the petitioner and SI K.C.Yadav they saw blood oozing from the hand of the petitioner. This shows that contemporaneous with the point of time when the quarrel took place, petitioner was injured. With reference to the medical record, we have found that the same conclusively established that the injury was caused by a sharp edged object and cannot be the result when petitioner gave a fist blow to SI K.C.Yadav or gave multiple fist blows on the face of SI K.C.Yadav.

28. In view of the evidence hereinabove reflected upon by us and noting that the Inquiry Officer as also authorities have ignored material evidence in the form of medical evidence produced by the petitioner and that the medical evidence pertaining to the injury on the right hand of the petitioner conclusively establish the same being caused by a sharp edged weapon and completely rules out the injury being the result when a person gives a fist blow on the face of the other person, we conclude by holding that it is a case where material evidence has been ignored and factoring in the said relevant evidence the inevitable destination of the inference being that the version of the petitioner was correct.

29. We do not know whether petitioner was the first one to have assaulted SI K.C.Yadav or whether it was SI K.C.Yadav who first assaulted the petitioner. SI K.C.Yadav has denied having assaulted the petitioner at all, a version which we disbelieve and thus we are left with no option but to believe the version of the petitioner that he retaliated when SI K.C.Yadav assaulted him.

30. We dispose of the writ petition quashing the orders dated 1.5.2002 and as a result we direct that petitioner be

reinstated in service. Petitioner would be entitled to all consequential benefits save and except we restrict actual wages to 25% of the salary payable and this we do for the reason, while hearing arguments we had asked the petitioner who was present in Court as to how he has managed his affairs, post he being dismissed from service. Petitioner said that he had found petty employment from time to time in respect whereof he had not maintained a record.

31. Arrears be paid to the petitioner within a period of 10 weeks from today.

32. No costs.

PRADEEP NANDRAJOG, J.

JUNE 03, 2011
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SURESH KAIT, J.