

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

+ **W.P.(C) No.841/2000**

% **19th November, 2013**

KARAMVIR TYAGI

..... Petitioner

Through: Mr. Keshav Dayal, Senior Advocate
with Mr. Prahlad Dayal, Advocate.

Versus

DELHI AGRICULTURAL MARKETING BOARD

...Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition, the petitioner impugns the orders passed by the departmental authorities; of the disciplinary authority dated 11.1.1999 and the appellate authority dated 2.12.1999; which have imposed the punishment of dismissal from services upon the petitioner.

2. Petitioner was a Sub-Inspector of the respondent No.1/Delhi Agricultural Marketing Board and was working at NFM Gate at Azadpur, New Delhi when he was found guilty of over charging the driver of vehicle No.HR-47/2531 to whom gate pass No.1925/49 was issued. Instead of charging Rs.8, Rs.15 was charged from the driver. Petitioner was

accordingly issued the chargesheet dated 2.12.1997 and thereafter departmental proceedings took place. In the departmental proceedings, petitioner in spite of repeated opportunities being given, did not cross-examine the witnesses of the respondent No.1/Management, led no evidence and did not even step into the witness box to deny the charges against him. The conduct of the petitioner in seeking to delay the departmental proceedings on one count or the other is noted in the report of the enquiry officer dated 6.10.1998. The relevant portion of the report of the enquiry officer shows that petitioner first took repeated adjournments, thereafter went on leave, then did not cross-examine the witnesses of the respondent No.1, also did not file his list of witnesses and finally did not bring these witnesses for being examined. The relevant portion of the report of the enquiry officer in this regard reads as under:-

“The undersigned has started the preliminary enquiry from 27.04.1998. Sh. Karamvir Tyagi, C.O. denied to accept the charges framed against him vide memorandum No.F.190/APMC/VIG-97/750 dated 02.12.1997. He was also informed to take the services of Defence Asstt. He was asked to submit the particulars of Defence Asstt upto 20.05.1988. He also requested for additional documents by 20.5.1998.

Next date of hearing was fixed for 28.05.1998. Charged official Sh. Karamvir Tyagi, failed to submit the particulars of Defence Asstt. even upto 28.05.1998 and he was also failed to submit list of additional documents as requested by him during proceeding on 27.04.1998. C.O. also clearly stated/informed to the undersigned in the presence of P.O. that he does not require the services of D.A. He has also given in writing that he does not require any D.A. in the case.

The file was inspected by the C.O. in the presence of I.O. C.O. further requested to supply him documents which may be given to him. He also

requested to provide the copy of the statement of witnesses. After examination of his request on the same day during the proceedings, I decided to provide the copy of statement of driver to the C.O. on the next date of hearing i.e. 11.6.1998. Regarding the statement of state witnesses it was not possible to provide because no separate statement were given and the inspection report in detail was submitted by the officers i.e. Sh. I.A. Khan DS & Sh. Raj Singh D.S.to the authority.

On 11.06.1998, P.O. attended but C.O. informed vide application which was received on 09.06.1998 that he is unable to attend the proceedings on 11.06.1998 because he is on leave. He was required to attend the enquiry proceedings of 11.06.1998 and he should not take the plea of leave. He should have been present during the enquiry. However, to give proper opportunity to the CO. the next date was fixed for 25.06.1998.

On 25.06.1998 P.O. attended the proceedings but C.O. did not attend and even intimation was not given in time. He informed the I.O. on 26.06.1998 at 2.20 P.M. showing him unable to attend the proceedings. It was decided to call the state witnesses i.e. Sh. Raj Singh, D.S. and Sh. I.A. Khan, D.S. only to complete the enquiry in time bound manner and to avoid delay as the delay tactics were being adopted by the C.O. by not attending the proceedings unnecessarily. Next date was fixed for 29.06.1998 to call the state witnesses to record their statements. Accordingly both the SW, C.O. and P.O. were informed. The preliminary enquiry were completed on this day.”

3. Respondent No.1 in the departmental proceedings examined two witnesses, namely Sh. I.A. Khan and Sh. Raj Singh, both of whom were part of the raiding party, and to whom the driver of the vehicle No.HR-47/2531 identified the petitioner as having taken illegal gratification. As already stated above, both the witnesses were not cross-examined by the petitioner and who did not even file his list of witnesses or bring his witnesses. The enquiry officer has thus held the petitioner guilty in view of the fact that two members of the raiding party appeared as

witnesses in the departmental proceedings who were not cross-examined and the petitioner not leading any evidence.

4. Before referring to the arguments urged on behalf of the petitioner, it is at this stage relevant to state that scope of hearing a petitioner under Article 226 of the Constitution of India challenging the departmental proceedings is limited. It is settled law that this Court does not sit as an Appellate Court to re-apprise the findings and conclusions of the departmental authorities. This Court can only interfere if findings are perverse or are against the rules of the organization/law or in violation of the principles of natural justice. It is also settled law that in the departmental proceedings the case has to be proved like in a civil Court on preponderance of probabilities and not beyond reasonable doubt as in a criminal case. In a case where the chargesheeted official leads no evidence the arguments urged before the Court necessarily will have to be limited because once the department proves its case by leading evidence, and the chargesheeted official does not appear, normally the orders of the departmental proceedings have to be necessarily upheld unless there exists grave and perverse reasons to set aside the same.

5. On behalf of the petitioner, following arguments are pressed before this Court:-

(i) The disciplinary authority in the present case, namely Sh. V.P. Rao, Administrator who issued the chargesheet, was the complainant, and hence the order of the disciplinary authority is hit by violation of the principle of natural justice that no one can be a judge in his own cause i.e a person cannot at the same time be a complainant/witness and the Judge/disciplinary authority.

(ii) The departmental proceedings have wrongly concluded guilt of the petitioner although evidence led does not show that any recovery was made from the petitioner, the relevant gate pass was not proved and driver of the vehicle from whom bribe was taken was not examined.

(iii) Proceedings against the petitioner are hit by the violation of the principles of natural justice because petitioner was denied the defence assistant on the second occasion though on the first occasion he did not want a defence assistant.

(iv) Enquiry officer was biased against the petitioner because petitioner was the President/Member of the Trade Union.

6(i) So far as first argument urged on behalf of petitioner is concerned, there is no dispute as regards the proposition of law that a person cannot be a judge in his own cause. Obviously therefore ordinarily a person cannot be a complainant/witness and at the same time be the

judge/disciplinary authority. It is argued in the present case that since admittedly the disciplinary authority namely Sh. V. P. Rao was part of the raiding party therefore he could not have been the disciplinary authority.

(ii) The argument urged on behalf of the petitioner appeared to have substance at the first blush because admittedly Sh. V.P. Rao was member of the raiding team, however, it transpires that Sh. V.P. Rao was not part of the raiding team in the sense that he prepared and signed the report on 7.6.1997 when the petitioner was guilty of taking bribe, and he only accompanied the team. The report dated 7.6.1997 has only been prepared and signed by the two witnesses, namely Sh. I.A. Khan and Sh. Raj Singh, who appeared as the witnesses on behalf of the management. I specifically put to learned senior counsel for the petitioner as to whether Sh. V.P. Rao was a signatory to the report dated 7.6.1997, and to which no response could be given for denying that Sh. V.P.Rao did not sign the report dated 7.6.1997, and that the report was only signed by the two witnesses who appeared on behalf of the management, and thus only these two persons would be the complainants. I may note that the report dated 7.6.1997 is not filed by the petitioner, and it must be because the said report would not bear the signatures of Sh. V.P. Rao. Admittedly Sh. V.P.Rao has not appeared as a witness in the case. Therefore, merely because Sh. V.P. Rao

accompanied the raiding team will not make Sh. V.P. Rao as the complainant in the present case. The complainant would be the two witnesses who prepared and signed the report against the petitioner on 7.6.1997 and pursuant to which departmental proceedings were initiated against the petitioner. Therefore, once Sh. V.P. Rao was neither the complainant nor the witness in the case, I do not think that the orders of the departmental authorities have to be set aside on the ground that principles of natural justice are violated because the disciplinary authority was a judge in his own cause. The first argument urged on behalf of the petitioner is therefore rejected.

7. The second argument urged on behalf of the petitioner that respondent No.1 failed to prove its case before the enquiry officer is an argument without substance because even if driver of the vehicle No.HR-47/2531 was not examined, however both the witnesses who were part of the raiding team were examined, and they have deposed with respect to the incident and also the fact that petitioner was specifically identified by the driver as having taken bribe from the petitioner. As already stated above, the charges are proved against the chargesheeted official not on the principle of proof beyond all reasonable doubt as in a criminal case, but only on preponderance of probabilities like in a civil case, inasmuch as it is

the latter principle which applies to departmental proceedings and not the former principle. It may be noted that not only respondent No.1 led evidence of both the members of the raiding team who prepared the report dated 7.6.1997, these witnesses were not cross-examined and in the absence of cross-examination there is no reason why the deposition of these two witnesses should not be believed, and thus the enquiry officer was in my opinion justified in holding the petitioner guilty on the basis of the statement of two witnesses of the respondent No.1. It is not necessary that in a case such as the present actual recovery of money should be proved or the gate pass had to be filed and proved, once the petitioner did not choose to cross-examine the witnesses of the management. In fact the petitioner if he had the conviction for his stand/case, at least ought to have appeared in the witness box to deny the charges, however, the petitioner failed to appear in the witness box to deny the case of the respondent No.1. Obviously, the petitioner failed to appear as his own witness because he knew that he may not be able to stand the test of cross-examination. Once a person such as the petitioner has no courage of conviction to stand the test of cross-examination, there is no reason why the charges against him should not be held to be proved once the management has led the evidence of the relevant witnesses.

8. Even the argument as urged on behalf of the petitioner that in the record no excess payment was found, is a very naive argument to say the least because surely one cannot expect that the amount taken as bribe would be put on the official record or in the official cash box. Therefore, I hold that respondent No.1 has otherwise proved its case in the departmental proceedings as per the principle of balance of probabilities and therefore it is not possible for the petitioner to contend that the case against him is not proved before the departmental authorities.

9. The next argument which is urged on behalf of the petitioner is that petitioner is prejudiced because he was denied a defence assistant and therefore the orders of the departmental authorities are hit by violation of the principles of natural justice. Even this argument in my opinion lacks substance for the reason that I have already reproduced above the relevant portion of the enquiry officer's report which shows that repeatedly adjournments were taken by the petitioner, and there were clear cut tactics to unnecessarily delay the departmental proceedings. Once the petitioner chooses not to have a defence assistant, thereafter at a later stage i.e much after the statements of the witnesses of the management are recorded, and opportunity given to cross-examine them not utilized, and thereafter on the adjourned date if a defence assistant is asked for and denied, this cannot

mean that principles of natural justice are violated. It is settled law that principles of natural justice are not like an unruly horse or they are inflexible hidebound rules. These rules are necessarily are dependent on facts of each case. In the present case, I do not find any violation of principles of natural justice because the fact of the matter is that even if the request of the petitioner was valid, he ought to have brought the defence assistant on the adjourned date i.e 21.7.1998 so that the petitioner could have examined his witnesses, however, neither was list of witnesses filed nor did the petitioner bring his witnesses nor the petitioner brought his defence assistant and did not say that which person will be the defence assistant who will cross-examine the witnesses of the respondent No.1 and also lead evidence and take other steps on his behalf. In fact, it may be noted that the brief synopsis filed on behalf of the respondent No.1 as per the request of the petitioner were given to him, and the petitioner in writing responded by giving his written arguments . I therefore reject the arguments and hold that in the facts of this case there is no violation of principles of natural justice because at a later stage a right of defence assistant was denied to the petitioner. The principles of natural justice are not made to enable persons to make strategies to delay the disposal of the departmental proceedings.

10. The final argument which is urged on behalf of the petitioner was that enquiry officer against the petitioner was biased and therefore the order of the disciplinary authority should be set aside. For the purpose of arguing this case on bias, the following letter written by the petitioner dated 26.2.1998 is relied upon and which reads as under:-

“To
The Administrator,
A.P.M.C.,
Azad Pur,
Delhi.

Sub:- For change of I.O.

Sir,

With reference to letter No.F.192/APMC/97/Vig/7, dated 8-1-98 I am to submit that Sh. R.S. Solanki has been appointed I.O. in my case.

I believe that justice will not be restored to me from Sh. R.S. Solanki.

It is therefore requested that same other officer may be appointed in place of Sh. R.S. Solanki.

Thanking you.

Yours faithfully,

(KARAMVIR TYAGI)”

11. In my opinion, this argument urged on behalf of the petitioner also is totally without merit because this bland letter lacking any particulars whatsoever of any bias cannot mean that the enquiry officer should be held to be biased against the petitioner much less because the petitioner was a president/member of the Union. In fact, I may note that this issue of bias argued before me of the petitioner being

president/member of a Union and therefore the enquiry officer being biased is not even stated in this letter dated 26.2.1998 written by the petitioner. Also as stated above no particulars are at all furnished and mere bland allegations cannot mean that the same are correct. In any case, even assuming for the sake of argument that there was bias, however, I fail to understand how the issue of bias can in any manner change the conclusion in the present case because once necessary evidence is led by the department and the charge against the petitioner is proved, and the petitioner is found guilty, yet it cannot mean that the charges against the petitioner should be held not to be proved although they are duly proved in accordance with law of preponderance of probabilities allegedly on account of bias. This argument also is therefore rejected.

12. In view of the above, there is no merit in the petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

NOVEMBER 19, 2013
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VALMIKI J. MEHTA, J.