

R-70

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

Date of Decision: September 30, 2015

+ W.P.(C) 1149/2003

RAJIV ANHAL Petitioner

Through: Mr. Ankit Jain, Advocate

Versus

MCD & ANR. Respondents

Through: Mr. Vijay Sharma & Ms. Swati,
Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Penalty of removal from service has been inflicted upon petitioner, who was working as Cashier in Division-XII in Engineering Department of respondent No.1- MCD from 9th December, 1985 upto 10th September, 1986. Impugned Award of 3rd January, 2002 (*Annexure P-18*) answers reference against petitioner. The reference made under the Industrial Disputes Act, 1947 was as under:-

'Whether the removal from service of Sh. Rajiv Anhal is illegal and/ or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?'

There were seven Charges in respect of which departmental

proceedings were conducted. The first Charge was of petitioner misappropriating a sum of ₹4,193.45 while he was working as Cashier in the aforesaid Division. Along with petitioner, the Divisional Accountant had also faced the departmental proceedings and the Charge against him was that he did not properly check the cash receipt books, treasury challans, cash book etc. maintained by the Cashier and had thus, performed his duty in negligent manner.

The second Charge against petitioner was of missing of three treasury challans (*as detailed in Annexure-I*) and the third Charge was of short/ excess amount in five treasury challans (*as detailed in Annexure-II*). The fourth Charge against petitioner was regarding loss of duplicate copy of the four G-8 receipts. The fifth Charge was in respect of late deposit of fifty two G-8 receipts in the Municipal Treasury and the delay was of 126 days (*as detailed in Annexure –III*). The sixth Charge was of cutting/ overwriting in sixty seven G-8 receipts, which did not bear the initials against the cuttings/ overwriting (*as mentioned in Annexure-IV*). The seventh Charge was of not maintaining cash books properly.

In the Inquiry Report (*Annexure P-6*), deposition of five witnesses of respondent-MCD is spelt out and the stand taken by petitioner in the Inquiry proceedings is also noted in detail. The solitary issue framed by the trial court, as noted in the impugned Award, is as under:-

‘Whether the management conducted a fair and proper departmental enquiry against the workman, if so, its effect?’

The Inquiry Officer in the Inquiry Report (*Annexure P-6*) has concluded as under:-

'I take the case of Shri Rajeev Anhal, Cashier. A perusal of the record exhibited through the various PWs reveal that the factum of the charges/ allegations leveled upon him are established beyond any reasonable doubt which he could not rebut during the proceedings. His request to allow to deposit ₹1402/- at this belated stage also reflects on his integrity.

Shri Gulati, Accountant who has been charged on identical charges in his capacity as immediate supervisor of Shri Rajeev Anhal, Cashier but his responsibility to the extent that he failed to personally call for and examine the cash book and the G-8 receipts is proved. No other charge against him can be proved because he is not the immediate / direct custodian/ keeper of the record and could only process such matters as and when comes to his knowledge through any source.'

Penalty of *dismissal from service* has been awarded to petitioner whereas to his co-accused, Mr. Gulati, who was the Accountant at the relevant time, *penalty of stoppage of one annual increment without future effects*, was inflicted upon him. Upon petitioner's Representation, the *penalty of dismissal from service* was converted into '*removal from service*' vide order of 12th December, 1990 (*Annexure P-9*) by the Disciplinary Authority.

In the impugned Award, it is noted that the departmental inquiry was conducted in a proper and fair manner and there was no requirement of interfering with the order of Disciplinary Authority and thus, the

penalty awarded has been affirmed.

The challenge to the impugned Award by learned counsel for petitioner is basically on four counts. The first count on which the impugned Award and Inquiry Officer's Report (*Annexure P-6*) is assailed is that the Report of the Inquiry Officer is bereft of reasons. The second count is that the documents were not supplied to petitioner and so, petitioner was deprived of effective cross-examination of witnesses. The third count is that petitioner was not permitted to be represented by a Defence Assistant of his choice and the fourth count is that penalty of '*removal from service*' is not warranted in the facts and circumstances of this case.

At the hearing, learned counsel for petitioner had drawn attention of this Court to the Inquiry Officer's Report (*Annexure P-6*) to point out that it merely reproduces the evidence recorded, the stand taken by both the sides and it does not indicate as to how the charges levelled against the petitioner stand proved. It is vehemently submitted that the Inquiry Officer's Report (*Annexure P-6*) is devoid of any reasons and the impugned Award erroneously upholds it. To submit so, reliance is placed upon decisions in *Anil Kumar Vs. Presiding Officer & ors.* AIR 1985 SC 1121; *Roop Singh Negi Vs. Punjab National Bank & ors.* (2009) 2 SCC 570 & *Rajbir Singh Vs. DTC* 201 (2013) DLT 279.

It was submitted by learned counsel for petitioner that the supply of documents to co-delinquent would not suffice, as the charges against petitioner and his co-delinquent were different. It is submitted that petitioner suffers prejudice on account of non-supply of documents, list

of witnesses, etc.. Regarding not permitting petitioner to have Defence Assistant of his choice, it was submitted by learned counsel for petitioner that the Presenting Officer, who had represented respondent was a Law Officer of respondent- MCD and petitioner ought to have been permitted to engage a Lawyer for making an effective defence. It was submitted that it was quite unfair to direct petitioner to have a Defence Assistant from the department only. Lastly, it was submitted that the *penalty of removal from service* is gross disproportionate, as petitioner had not misappropriated the amount of ₹4,193.45/- and infact the said amount was kept in the almirah and the stand of petitioner of forgetting to deposit amount of ₹4,000/- odd and of clerical mistake / lapses in respect of remaining Charges does not amount to gross misconduct to justify imposition of extreme penalty of *removal from service*. Thus, it was submitted that the impugned Award as well as Inquiry Officer's Report (*Annexure P-6*) deserves to be set aside.

On behalf of respondent, it was submitted by learned counsel for respondent that removal of petitioner from service was fully justified, as Inquiry Officer has taken into consideration the evidence recorded and so, it cannot be said that the Inquiry Officer's Report (*Annexure P-6*) is without any basis. It is pointed out that the impugned Award does not disclose any non-application of mind, as it has been rightly held in the impugned Award that no objection was raised by petitioner that he was not given list of prosecution witnesses, documents etc. and if petitioner was serious, he could have obtained it from his co-delinquent. Regarding petitioner not being permitted to be represented by a Defence Assistant of

his choice, it is submitted that petitioner had not expressed any choice of Defence Assistant and so, on this count petitioner suffers no prejudice. It is pointed out by learned counsel for respondent that petitioner had inspected the records on 23rd September, 1988 and on 1st August, 1989 and opportunity was granted to petitioner to prepare himself for cross-examination and so, no material prejudice is caused to petitioner. Lastly, it was submitted by learned counsel for respondent that the contentions raised by petitioner are already considered in the impugned Award in the light of applicable case law and so, this petition deserves to be dismissed.

Upon considering the submissions advanced, impugned Award, Inquiry Officer's Report, material on record and the decisions cited, I do find that the Inquiry Officer's Report (*Annexure P-6*) is deficit in reasoning. However, it cannot be said that there is non-application of mind by the Inquiry Officer because in the Inquiry Report (*Annexure P-6*), the evidence recorded has been considered and the charges framed have been duly noticed. Simply because charge-wise findings have not been given, would not render Inquiry Officer's Report (*Annexure P-6*) suspect, as the conclusion drawn by the Inquiry Officer on the basis of evidence is plausible one. Therefore, reliance placed by petitioner's counsel upon decision in *Anil Kumar (Supra)* is of no avail. Similarly, Apex Court's decision in *Roop Singh Negi (Supra)*, does not come to the rescue of petitioner because it cannot be said that the inferences drawn by Inquiry Officer are not supported by the evidence on record. Since it cannot be said that the Inquiry Officer did not apply his mind to the evidence recorded, therefore, reliance placed by petitioner's counsel upon

decision in *Rajbir Singh (Supra)* is also of no avail. Such a view is being taken because it cannot be said that there is no link between evidence recorded and the finding of '*guilt*' returned by the Inquiry Officer.

Regarding inquiry being vitiated on account of non-supply of documents, this Court finds that petitioner was given sufficient opportunity to cross-examine the witnesses and inspection of record was also done by petitioner before cross-examination. Even at that stage, no grievance of non-supply of documents etc. was made by petitioner. Simply because documents were not supplied to petitioner would not be a ground to hold that inquiry stands vitiated because all the documents were supplied to the co-delinquent and had petitioner been earnest, then he could have obtained these documents from his co-delinquent. Mechanical observance of the principle of natural justice would be counterproductive and a practical approach needs to be adopted. Trial court in the impugned order has done so.

In the considered opinion of this Court, non-supply of documents to petitioner would not vitiate the departmental proceedings and the impugned Award rightly holds that the departmental inquiry was conducted against petitioner in a fair and proper manner, as petitioner had not raised any objection about non-supply of documents to him during the course of inquiry.

It is matter of record that petitioner had a Defence Assistant, who had defended him in the inquiry proceedings. Even if it is taken that petitioner was told that he has to choose Defence Assistant from his department itself, even then, it cannot be held that the inquiry was not

conducted in a fair manner. Such a view is being taken because it is not disclosed by petitioner as to who had told him so and it is not the case of petitioner that he had brought it to the notice of the Inquiry Officer that he wanted to be represented by a Lawyer or that such a request was made and declined by the Inquiry Officer. So, on this count also, departmental inquiry does not stand vitiated.

The fourth and the last submission of petitioner was regarding the penalty of *removal from service* being highly disproportionate. Except the self serving statement of petitioner, there is no material on record on the basis of which it can be reasonably concluded that petitioner had kept the embezzled/ misappropriated amount of ₹4,000/- odd in his *almirah* and had forgotten to deposit it. Infact, after petitioner was caught, he had deposited the said amount with the Municipal Treasury.

The evidence recorded apparently justifies the finding of guilt returned against petitioner in respect of other Charges as well. Dereliction of duty is evident from the fact that three treasury challans were missing, four duplicate copy of G-8 receipts were lost and from late deposit of fifty two G-8 receipts in the Municipal Treasury. Evidence on record sufficiently justifies the penalty awarded to petitioner. Such a view can be reasonably taken because the cuttings and over writings on sixty seven G-8 receipts without initials and of failing to maintain the cash books properly amply justifies the penalty awarded.

This Court finds that petitioner cannot claim parity with his co-delinquent, who has been awarded lesser punishment because the charges levelled against petitioner are of grave nature, whereas it is not so in the

case of co-delinquent.

Finally, this Court concludes that the departmental proceedings conducted against petitioner do not suffer from any material or procedural irregularity nor the Inquiry Officer's Report (*Annexure P-6*) can be said to be irrational. Impugned Award does not suffer from any apparent error on the face of it.

No case to interfere with the impugned Award is made out. Hence, this petition is dismissed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

September 30, 2015

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