

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

+ **CM No. 1126/2011 in W.P.(C) No.7012/2009**

% ***Date of Decision: 06.04.2011***

Govt. of NCT of Delhi & Anr. *Petitioners*

Through Ms. Avnish Ahlawat and Ms. Urvashi
Malhotra, Advocates

Versus

Virender Kumar *Respondent*

Through Mr. G.D. Bhandari, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MS. JUSTICE VEENA BIRBAL

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

ANIL KUMAR, J.

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CM No. 1126/2011

This is an application by the respondent/applicant seeking vacation of stay of order dated 20th February, 2009 passed in the above noted writ petition.

The notice of the application was issued on 28th January, 2011 and was accepted by the counsel for the petitioner and the time was

sought to file the reply. Time was granted to the petitioner to file the reply within four weeks and the matter was adjourned to 3rd March, 2011. On 3rd March, 2011 last opportunity was granted to file the reply within four weeks as the reply had not been filed.

Till today the reply has not been filed by the petitioners/non-applicants. The right of the petitioners to file the reply to the application is, therefore, closed.

The applicant has contended that he was employed as a driver in Tihar Jail and pursuant to the disciplinary proceedings he was dismissed from service on 29th August, 2002. The respondent had challenged the order of his dismissal, which was set aside, however, liberty was granted to the petitioners to conduct a fresh inquiry. On fresh inquiry, the respondent was again dismissed.

The petitioner, Govt. of NCT of Delhi has challenged the order dated 1st October, 2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA 1635/2007.

In the writ petition Rule DB was issued on 20th February, 2009 and the order dated 1st October, 2008 was stayed. On 19th May, 2009, the counsel for the respondent was present and in his presence the

interim stay of order dated 20th February, 2009 was made absolute and the application for stay was disposed of.

Thereafter, the respondent had filed an application for early hearing, which was dismissed on 3rd March, 2010. Yet another application being CM No. 12587/2010 was filed on behalf of the respondent for early hearing which was also dismissed by order dated 20th December, 2010. Thereafter the respondent has moved the above noted application for vacation of the stay order passed by this Court after Rule DB was issued.

The applicant has contended that in his case, there was no evidence before the Inquiry Officer and consequently, the report of the Inquiry Officer holding that the charges were made out against the respondent, is without any evidence and basis and the Disciplinary Authority could not have dismissed the petition and the order of the Tribunal cannot be held to be illegal or unsustainable.

The respondent was appointed as Jail Warder and he was promoted as Vehicle Driver. On 29th May, 1999, a bag containing 200 packets of tobacco was recovered from the respondent while he was deployed in an ambulance Van bearing No. DBL 9925 and he was on duty of transporting 191 bread packets from Jail No. 2 to Jail No. 4.

The statement of the respondent was recorded under the orders of the Superintendent of Jail No. 4 and seizure memo was also prepared.

The pleas raised on behalf of the petitioner were considered and Rule D.B. was issued. Thereafter, the operation of impugned order dated 1st October, 2008 passed by the Central Administrative Tribunal, Principal Bench was also stayed. Besides making averments regarding the merits of the case, no grounds have been disclosed by the respondent for vacation of the stay order granted by this Court. In case, the said order is vacated then pursuant to order of Tribunal, he would be entitled for reinstatement. In case, this Court allows the writ petition, the respondent would be liable for dismissal pursuant to the disciplinary action taken against him. This will cause multiplicity of proceedings. In case, the order of the Administrative Tribunal is sustained and the respondent is re-instated, even if he is retired, he would be entitled for all the benefits in accordance with the order.

For the foregoing reasons, this Court does not find any ground to vacate the stay order dated 20.02.2009 which was made absolute on 19.05.2009 and Rule D.B. was issued.

The application is, therefore, dismissed.

W.P.(C) No.7012/2009

List the writ petition in the category of “Regular matters” at its own turn.

ANIL KUMAR, J.

APRIL 06, 2011
'rs'

VEENA BIRBAL, J.