

IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P. (C.) No.152/2010

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Date of Decision: 12.01.2010

Govt. of NCT of Delhi & Others Petitioners
Through Mr.Manjit Singh, Advocate

Versus

HC Rohtas Singh Respondent
Through Mr.Anil Singal, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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

ANIL KUMAR, J.

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The petitioner is aggrieved by the order of the Central Administrative Tribunal, Principal Bench, New Delhi dated 30th June, 2009 in OA No.94 of 2007 titled Shri Rohtas Singh v. Government of NCT by which the order of disciplinary authority dated 17th February, 2001 and modified order dated 17th June, 2003 was set aside holding that there was no evidence to punish the respondent and that the order of the appellate authority dated 9th September, 2005 was a non-speaking order in which the contentions raised by the respondent have

not been considered and thus setting aside the punishment imposed upon the respondent.

The respondent as a Head Constable after an inquiry was awarded punishment of forfeiture of three years approved service permanently for a period of three years and not to earn increment of pay during the period of reduction by order dated 17th February, 2001. The allegation against the respondent was that he along with Constable Shyam Sunder, though were posted at Lampur Chowk, however, they were found conducting unauthorized checking at Vishal Bagh, i.e away from their actual place of duty and the respondent had also realized compounding amounts of Rs.800/- from eight challans in violation of instructions of senior officers and that he had made incorrect entries in Challan No.L-243766 of two-wheeler scooter and he also realized compounding amount of Rs.100/- in challan No.L-150394 on 7th December, 1999 and challan No.L-244562 on 10th December,1999 but deposited these amounts in Circle Office on 13th December, 1999.

The disciplinary authority had relied on the testimony of PW7, the driver of the tempo, from whom the alleged amount of Rs.100/- was illegally demanded by Constable Shyam Sunder and accepted by him. The said witness, however, denied in his statement that any such transaction had taken place and that any demand was made to him and

the amount was paid by him. The complainant rather deposed that no one stopped his tempo and no money was demanded.

Learned counsel for the petitioner had tried to rely on the statement of the complainant recorded before the alleged preliminary inquiry, however, in view of the fact that the statement was made by the said witness before the inquiry officer before whom the respondent was also allowed to cross examine the said witness, therefore the statement made before the PRG Team could not be relied on and could not be the basis for awarding punishment to the respondent.

The Tribunal has not accepted the testimony of PW7 as nothing was deposed by him against Constable Shyam Sunder and the cross-examination done by the inquiry officer had been held to be contrary to Delhi Police (Punishment and Appeal) Rules. Learned counsel for the petitioner has contended that Rule 16(v) permits the inquiry officer to also frame questions which he could put to the witnesses to clear ambiguity or to test their veracity. The Tribunal has noted that in view of the specific statement of PW7/complainant, neither there was any ambiguity nor there was any occasion to test the veracity of the witness and in the circumstances the questions put by the inquiry officer were nothing but the cross-examination which is not permissible under Rule 16(v) of Delhi Police (Punishment & Appeal) Rules, 1980.

Learned counsel for the petitioner is unable to justify, in the facts and circumstances, that the inquiry officer was entitled to cross-examine the witness, PW7. Learned counsel for the petitioner is also unable to justify introduction of PW5, Constable Rakesh Kumar, who was not in the list of witnesses. In case the testimonies of PW7 and PW5 is not considered, there is no evidence against the respondent which will entail any penal consequences against him.

In the circumstances, the inference of the Tribunal that the order of the disciplinary authority and the appellate authority are not based on cogent evidence against the respondent cannot be faulted on any of the grounds as raised by the learned counsel for the petitioner.

The writ petition, in the facts and circumstances, is without any merit and it is, therefore, dismissed.

ANIL KUMAR, J.

January 12, 2010

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MOOL CHAND GARG, J.