

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

+ **W.P. (C.) No. 3689/2010**

% **Date of Decision: 07.07.2010**

BALRAJ SINGH Petitioner

Through Mr. Sachin Chauhan, Adv.

Versus

COMMISSIONER OF POLICE AND ORS Respondents

Through Mr. Anjum Javed, Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (ORAL)

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1. At a departmental enquiry, the enquiry officer returned a finding of guilt against the petitioner and co-delinquent employees Constable Krishan Pal and Kanwar Pal.

2. After complying with the procedures of the law and considering the response of the petitioner to the report of the enquiry officer, the disciplinary authority inflicted the penalty of withholding of one increment for a period of 5 years permanently.

3. The Appellate Authority rejected the appeal filed and hence the petitioner approached the Central Administrative

Tribunal.

4. From the pleadings before the Central Administrative Tribunal and the impugned order dated 16.12.2008, it is apparent that the case of the petitioner before the Tribunal was that there was no legally admissible evidence against him to return the verdict of guilt. The said stand was predicated on the fact that PW-5 Rajesh Kumar did not support the case of the prosecution. But, two prosecution witnesses namely S.I. Anil Kumar (PW-1) and Inspector Sukhram (PW-2) stood their ground, but, with reference to their testimony, the case of the petitioner was that their testimony was hearsay.

5. To appreciate the contentions urged, suffice would it be to note that the indictment against the petitioner was that he along with co-delinquents indulged in the malpractices of demanding and accepting illegal entry money from commercial vehicles on the pretext of checking the non-destined vehicles. The case of the department was that complaints were received pertaining to Police officers indulging in such kind of malpractice and to verify the authenticity of the information special team comprising Inspector P.P. Singh, Inspector Sukhram (PW-2) and S.I. Anil Kumar (PW-1) was formed under the supervision of ACP Satyavrat. On the night intervening 03/04.09.2005, the time being 11.00 PM, the aforementioned team member reached near Toll Plaza at Ghazipur Border and observed that there was a Toll Tax Booth under the flyover on the service road, which is parallel to the flyover. Some commercial vehicles were found making entry into Delhi via this road. It was noted that the incoming commercial vehicles from the state of U.P. on NH-24 were not using the flyover but were, at a distance of about 500 meters

from the flyover, taking a detour. It was further noted that a truck bearing registration No. HR-38-K-1762 entered into Delhi. Its driver was Rajesh Kumar (PW-5). As per the indictment, Rajesh Kumar told the Police officers that he has bribed the petitioner as well as co-delinquents to make an illegal entry into Delhi notwithstanding that the goods under carriage as per invoice documents were to be delivered in Mumbai. It is the further indictment that Rajesh Kumar was brought back along with his truck to the Toll Booth in question where one out of the three delinquent employees threw something in the bushes on the side of the road and on recovery was found to be containing Rs.2700/- which was seized and a seizure memo was drawn up. It was the further indictment that the statement of Rajesh Kumar (PW-5) was recorded during preliminary enquiry in which he indicted the petitioner.

7. At the enquiry, Inspector Sukhram (PW-2) and S.I. Anil Kumar (PW-1) fully stood by the indictment and proved the various memos which were drawn at the spot as also the recovery of Rs.2700/- from the bushes nearby. Rajesh Kumar (PW-5) the driver of the truck admitted his signatures on his statement which was recorded but claimed that his signatures were obtained on a blank paper which was later on used to draw out his statement. But, relevant would it be to note that Rajesh Kumar did not refute that he did drive the truck in question and entered the Union Territory of Delhi from Ghaziabad side.

8. In view of the aforementioned evidence the Tribunal has returned a finding that it is not a case of no evidence as was sought to be urged.

9. The Tribunal has held and, in our opinion correctly, that

sufficiency and insufficiency of evidence to sustain an indictment cannot be gone into by the Appellate Tribunal. Indeed the weightage to be attached to evidence and its nature to sustain a verdict varies depending upon the type of enquiry and its nature. It is the highest at a criminal trial. It assumes lower standards of probability to be achieved at a civil trial. At a domestic enquiry it is the lowest.

10. We may only add that notwithstanding PW-5 turning hostile the indictment certainly stands established through the testimony of PW-1 and PW-2. It is not a case, as is being projected that the enquiry officer has returned a verdict of guilt on the basis of the statement of PW-5 recorded during preliminary enquiry from which he resiled regular enquiry.

11. No case is made out to interfere. The writ petition is dismissed in limine.

PRADEEP NANDRAJOG, J

MOOL CHAND GARG, J

JULY 07, 2010

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