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

% Date of Decision: 6th July, 2010

+ **W.P.(C) 3876/2010**

DTC Petitioner
Through: Mr.Sarfaraz Khan, Advocate

versus

SATISH CHAND Respondent
Through: None

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

Caveat No.110/2010

In spite of being served, the caveator has not appeared. Hence the caveat is discharged.

CM No.7783/2010

Allowed subject to just exceptions.

W.P.(C) No.3876/2010

1. The petitioner is aggrieved by the impugned order dated 11.3.2010 passed by the Central Administrative Tribunal allowing O.A.No.2254/2009.

2. Satish Chand, the respondent was the applicant before the Central Administrative Tribunal and was aggrieved by the fact that the Disciplinary Authority had passed an order removing him from service after an inquiry was held and the Appellate Authority had rendered him partial justice by

modifying the penalty imposed and replaced the same by directing that two increments would be withheld without cumulative effect and the period Satish Kumar remained under suspension would be treated as “no work no wages” i.e. the result was that the period spent on suspension resulted in only subsistence allowance flowing to the coffers of Satish Chand and not salary.

3. The procedure prescribed by law for imposition of penalty was ostensibly followed and it is not a subject matter of issue whether compliance with the procedure of law was made or not.

4. The issue raised was whether the report of the inquiry officer was vitiated on account of material evidence being ignored and the parameters adopted to evaluate oral testimony were misdirected.

5. The Tribunal has found it to be so.

6. The report of the inquiry officer has been placed before us and is at pages 39 to 51 of the writ record.

7. Having perused the same it becomes important that the Department examined 3 witnesses and in defence 1 witness was examined.

8. Des Raj, the complainant, was the first witness of the prosecution. Sanjay is the second witness of the prosecution and Bholu Ram is the third witness of the prosecution. Inderjeet is the witness of the defence.

9. To understand what they have deposed and the approach to be adopted to their testimony and the conclusions to be drawn, it may be noted that Satish Chand i.e. the respondent was served with a charge memo on the basis of a complaint lodged by Des Raj who is an employee of DTC. As per Des Raj on 3.9.2006 he had boarded a DTC bus being driven by Satish Chand and that Satish Chand deviated from the prescribed route. When the bus reached near Sachdeva School

at Sector 13, he required Satish Chand to ply the bus on the prescribed route at which Satish Chand assaulted him.

10. Admitting to a quarrel between the two, defence taken by Satish Chand was that Des Raj compelled him to deviate from the prescribed route. He told him that the Deputy Manager was his relation and if he i.e. Satish Chand would not comply with the same, he would see that harm is caused to Satish Chand. As per Satish Chand since he was compelled to do something which would be an unauthorized act, he refused to do so and as a result a quarrel ensued between the two.

11. It is thus apparent that a quarrel having taken place was not the subject matter in issue. What was in issue was as to who provoked the quarrel and whether the quarrel took place in the circumstances as alleged by Des Raj or as stated by Satish Chand. It also was an issue whether Satish Chand deviated from the route.

12. Needless to state, appearing as a witness of the Department, Desraj deposed facts in harmony with his complaint.

13. Sanjay, another employee of DTC simply stated that a quarrel took place and threw no light as to the place or circumstance under which the quarrel took place.

14. Bhola Ram supported what was deposed to by Des Raj.

15. However, it becomes relevant to note that Bhola Ram admitted being the brother of complainant Des Raj.

16. It is not in dispute that when Satish Chand was driving the bus, Inderjeet was deputed as a conductor. He was examined as a defence witness. He deposed facts in favour of Satish Chand and stated that it was Des Raj who was wanting Satish Chand to deviate from the prescribed route and that Des Raj was the aggressor.

17. The inquiry officer has totally eschewed consideration

to the testimony of Inderjeet. The inquiry officer has not adverted to the fact that Bhola Ram was the brother of Des Raj.

18. It is apparent that the inquiry officer is oblivious to the legal principle that where it is shown that a witness is an interested witness, his testimony needs to be scrutinized with care. The inquiry officer has shown his ignorance to another legal principle that where a disinterested and independent witness deposes, his testimony has to be given due credence and unless found to be tainted or wanting, subject to the norm of reasonable acceptability, must get precedent over the ocular version of those who are interested witnesses.

19. This is the taint which has been found by the Tribunal, though not stated in said terms.

20. We supplement the reasons of the Tribunal.

21. The contention of learned counsel for the petitioner that it is not within the domain of Service Tribunals to re-appreciate evidence and hence the impugned order needs to be set aside is rejected by us for the reason it is not a case of re-appreciation of evidence but a case of applying correct legal norms pertaining to appreciation of evidence which have been ignored by the inquiry officer.

22. Finding no merit in the petition, we dismissed the same in limine.

CM No.7782/2010

Since the writ petition has been dismissed in limine, the instant application which seeks stay of the impugned order pending hearing of the writ petition is dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MOOL CHAND GARG, J.

JULY 06, 2010/mm

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