

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

+ **W.P.(C) 11440/2009**

% **Date of Decision: 07.07.2010**

GOVT. OF N.C.T. OF DELHI & ORS .... Petitioners

Through Ms. Avnish Ahlawat, Mr. Nitesh Singh,  
Ms. Latika Chaudhary, Advs

Versus

BISHAN SINGH CHAUHAN .... Respondent

Through Ms. Priyanka M. Bhardwaj, 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. Rule DB.
2. Heard for disposal.
3. Learned counsel for the petitioner urges that in view of the findings returned by the Central Administrative Tribunal vide impugned order dated 02.02.2009 the matter needed to be remanded before the Disciplinary Authority and no finding could be returned that it is a case of no evidence.
4. We find merit in the submission urged by learned counsel for the petitioner.
5. A perusal of paragraphs 17, 18 & 19 of the impugned decision shows that what has been found to be faulty with the report of the enquiry officer is the fact that certain evidence which is beneficial to the charged officer has been totally ignored to be considered by the

enquiry officer and as a result thereof the report stands tainted.

6. In view of para 17 to 19 of the impugned decision, it cannot be said that instant case is one of no evidence. Instant case is one where enquiry officer has ignored material evidence.

7. It is settled law that where material evidence is ignored by the Disciplinary Authority the correct thing to do while exercising the power of judicial review is to direct the Disciplinary Authority to re-decide the matter by directing the Disciplinary Authority to consider such evidence as has been found to be relevant and material.

8. Under the circumstances, we modify the impugned order dated 02.02.2009 by setting aside the direction issued that the charge sheet is quashed and the respondent would be reinstated and would be entitled to consequential benefits.

9. We clarify. We sustain the impugned order in so far it has set aside the report of the enquiry officer and the order passed by the Disciplinary Authority

10. We remand the matter before the Disciplinary Authority to reconsider the matter and while so doing we direct that the Disciplinary Authority would take note of the findings returned by the Central Administrative Tribunal in para 17, 18 & 19 of the impugned decision, meaning thereby, evidence found to be material and relevant for the defence would be considered by the Disciplinary Authority. A reasoned and speaking order would be passed clearly evidencing that in the context of evidence found to be incriminating against the charged officer, evidence mitigating the rigorous thereof or found to be exculpatory in favour of the charged officer would be considered. Meaning thereby, competing evidence would be clearly evaluated and conclusions drawn thereafter.

11. This exercise would be conducted by the Disciplinary Authority within a period of 8 weeks from today.

12. Needless to state if the order passed by the Disciplinary Authority is to the detriment of the charged officer he would be

entitled to the statutory remedy of appeal and if further aggrieved resort to action contemplated by law.

13. No costs.

**PRADEEP NANDRAJOG, J**

**MOOL CHAND GARG, J**

**JULY 07, 2010**

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