

(2013) 07 DEL CK 0003
In the Delhi High Court
Case No : Writ Petition (C) 1550 of 2012

UOI and Another

APPELLANT

Vs

Shri Chander Bhan Singh

RESPONDENT

Date of Decision : 17-07-2013

Acts Referred:

Citation : (2013) 07 DEL CK 0003

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : V.S.R. Krishna and Mr. Abhishek Yadav, for the Appellant; Jayasree Narasimhan, Ritam Khare and Mr. Sudershan Rajan, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J

1. Having heard learned counsel for the parties we are setting aside the impugned order dated January 28, 2011 and simultaneously restoring OA No. 2272/2009 for fresh adjudication. The reason is that notwithstanding the Tribunal having correctly understood the law declared by the Supreme Court in the decision reported as Moni Shankar Vs. Union of India (UOI) and Another, . has applied the same in a very perfunctory manner.

2. In Monishankar's case the Supreme Court held that a mere violation of paras 704 and 705 of the Indian Railway Vigilance Manual would by itself not be sufficient to negate the findings of guilt returned at a domestic inquiry. But, in conjunction with other infirmities, errors or discrepancies, violation/non-adherence to the said paragraphs of the Vigilance Manual would have to be cumulatively taken into account and the conclusion drawn.

3. In the impugned decision we find expressions such as "certain aspects of the evidence adduced", which expressions to say the least do not guide a Writ Court as to which aspects were in the mind of the Tribunal. It may be true that after said loose expression has been used the Tribunal has noted 3 aspects pertaining

to the evidence, but in what manner they would ultimately affect the report of the Inquiry Officer has not been highlighted by the Tribunal.

4. It appears that the Tribunal was annoyed at the fact that an earlier Original Application filed by the respondent had resulted in the matter being remanded to the Appellate Authority to take a fresh decision with an opinion expressed by the Tribunal that the Appellate Authority would pass a speaking order taking note of the discrepancies/deficiencies alleged by the respondent and at the remanded stage the Appellate Authority passed an order which did not measure up to the expectation of the Court.

5. In such situation it would become the duty of the Tribunal to re-appreciate the evidence with reference to the discrepancies pointed out; and we clarify, the Tribunal is not to sit as an Appellate Authority. The re-appreciation of the evidence has to be as was done by the Supreme Court in Monishankar's case.

6. The reason was that the requirements of a statutory Railway Manual not being complied with was opined by the Supreme Court to be by itself not enough to set aside an inquiry. The law declared was that in said circumstance the non-adherence to the Vigilance Manual has to be kept in mind and thereafter evidence reappraised with reference to other deficiencies alleged.

7. We clarify. We have not commented upon the merits of the controversy.

8. Such facts which we have noted hereinabove are limited for our opinion pertaining to the matter being remanded.

9. The writ petition stands disposed of quashing the impugned order dated January 28, 2011. OA No. 2272/2009 is restored before the Tribunal for adjudication on merits keeping in view the directions issued by us in the present decision. Parties shall appear before the Registrar of the Tribunal on August 05, 2013 who shall list the Original Application before the Roster Bench.

10. No costs. DASTI.