

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

OA No.2693/2002

Date of decision: 08.7.2003

Inspector Umrao Singh

Applicant

(B: Advocates: Mrs. Avnish Ahlawat)

versus

Union of India & Others

Respondents

(B: Advocates: Sh. Harvir Singh)

COPAM:

Hon'ble Sh. Shanker Raju, Member(J)
Hon'ble Sh. S.K.Naik, Member(A)

1. To be referred to the reporter or not? Yes
2. Whether it needs to be circulated to other benches of the Tribunal?

S. Raju

(Shanker Raju)
Member(J)

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Central Administrative Tribunal
Principal Bench

O.A.No.2693/2002

Hon'ble Shri Shanker Raju, Member(J)
Hon'ble Shri S.K.Naik, Member(A)

New Delhi, this the 8th day of July, 2003

Inspector Umrao Singh
No.D/1142 FRRO Unit
Delhi.

... Applicant

(By Advocate: Mrs. Avnish Ahlawat)

Vs.

1. Union of India
through Director (UT)
Ministry of Home Affairs
South Block (U.T. Cadre)
New Delhi.
 2. Lt. Governor of Delhi
5, Raj Niwas Marg
Delhi.
 3. Govt. of N.C.T., Delhi
through Commissioner of Police
Police Headquarter, I.P.Estate
New Delhi.
 4. Addl. Commissioner of Police
(Operations)
Delhi Police
Delhi.
- Respondents

(By Advocate: Sh. Harvir Singh)

O R D E R(Oral)

By Shri Shanker Raju, M(J):

Applicant, an Inspector working in Delhi Police, challenges respondents' penalty order dated 18.7.1994, whereby a major penalty of reduction of three stages in the scale of pay for three years has been imposed upon him. Appellate order dated 13.8.1994, revision order dated 17.7.1998 as well as review order dated 5.10.2001 maintaining punishment have also been assailed. Quashment of the above orders have been sought with accord of all consequential benefits.

2. Applicant along with Sub-Inspector Rajbal Singh was ordered to be dealt departmentally. Summary of allegations was served upon the applicant with the following allegations:

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"It is alleged that on the night between 20/21-7-91 Sub-Inspr. Rajbal Singh No.1307/D and Inspr. Umrao Singh No.D/1142 while posted in 'D' shift of Immigration at IGI Airport were working as clearing officer and in-charge wing respectively. On that night, one Mr. Khan an employee of Lufthansa Airlines produced a passport No.G-564250 dated 12.01.90 issued at Delhi in the name of Smt. Shashi Bhakri to Sh. S.R. Meena, AFRRO/ACP I/C D Shift, to find out its genuineness. Shri S.R. Meena, ACP/AFRRO found the same as forged (photograph replaced) and handed over the said passport to Inspr. Umrao Singh for further checking and for taking necessary action. Inspr. Umrao Singh No.D/1142, instead of complying with the orders of Sh. S.R. Meena, AFRRO, handed over that passport to SI Rajbal Singh, No.1307/D. The SI instead of taking legal action against the passenger (Mrs. Jagdish Kaur), cleared her with immigration stamp No.W-5 which was duly allotted to him as a passenger of flight No.LH-761. Later on, the passenger was off loaded with the intervention of Sh. S.R. Meena AF/Shift and a case FIR No.374 dated 21.7.1991 was registered against the passenger at P.S. IGI Airport, New Delhi. The passenger Mrs. Jagdish Kaur was cleared by SI Rajbal Singh No.1307/D on the authority of forged passport deliberately with ulterior motive and with the active connivance of Inspr. Umrao Singh No.D/1142.

The above act on the part of Inspr. Umrao Singh, No.D/1142 and SI Rajbal Singh No.1307/D amounts to grave misconduct, remissness, dereliction of duty and unbecoming of police officer in discharge of their official duties and hence, renders them liable to be dealt with departmentally under rule 21 of Delhi Police Act, 1978."

3. During the course of the departmental inquiry, after examination of eight prosecution witnesses, a charge was framed against the applicant

on submission of defence evidence as well as defence statement, inquiry officer by following observations established charge against the applicant.

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"The statements of the P.Ws, defence witnesses and written statements of the defaulters clearly shows that they all had doubt about the genuineness of the passport. Inspector Umrao Singh and SI Rajbal Singh were directed to check it. On the contrary, instead of checking the passport properly they had cleared the passenger without obeying the instructions of the A.C.P. and the Airlines staff. It leaves no shadow of doubt that it was done deliberately with ulterior motive and with the connivance of Inspr. Umrao Singh and SI Rajpal Singh. As such the charge stands proved against both the defaulters."

4. On reply, by way of representation, a major penalty has been imposed upon applicant. An appeal preferred against the impugned punishment was rejected by observing that the passenger was cleared with the connivance of the SI Rajbal Singh with ulterior motive. Revision Petition preferred was also rejected as well as review petition, giving rise to the present OA.

5. Though several contentions have been putforth by learned counsel for applicant, Mrs. Avnish Ahlawat to assail the impugned order which includes Rule 16 (iii) of the Delhi Police (Punishment & Appeal) Rules, 1980, wherein a prosecution witness when available is to be examined in the departmental inquiry, and his oral evidence to be recorded in presence of the delinquent officer and only in exceptional circumstances when the witnesses are not available and the inquiry cannot be conveniently held or delayed, a resort can be made to the previously recorded statement. In the aforesaid backdrop, it is

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contended that whereas all the witnesses were available in the inquiry yet the inquiry officer dispensed with their oral examination in the presence of the applicant and rather exhibiting the previously recorded statements treated it as evidence in the departmental inquiry which has greatly prejudiced the applicant as he has been deprived of an opportunity to question the demeanour of the witnesses, in absence of statements of witnesses recorded in the departmental inquiry.

6. An important issue raised by the applicant is that the inquiry officer has held the applicant guilty of alleged connivance with SI Rajbal Singh without any evidence on record and only on the basis of suspicion and surmises on a perverse finding. On applying the test of common reasonable prudent man, the aforesaid finding could not have been arrived at, as such the guilt, which is based on no evidence, can be interfered by this Court in a judicial review to set-aside the impugned orders.

7. In the aforesaid background, it is contended that whereas in the summary of allegation, it has been alleged against applicant that while posted at IGI Airport, ACP S.R.Meena had entrusted passport of one Shri Shashi Bhakri to the applicant to verify its genuineness which was handed over to SI Rajbal Singh, and thereafter the passenger was cleared. Later on, the lady passenger was off loaded with the intervention of ACP S.R.Meena. This according to respondents has an ulterior motive and with an active connivance of Inspector Umrao Singh.

8. Referring to the testimony of ACP S.R.Meena and more particularly to cross-examination, it is contended that when it had been asked from ACP, that whether passport of Smt. Shashi was handed over to the applicant with direction that the same should be checked through clearing officer and to apprise the same, was responded to with a statement that as the passport was given to the ACP by another official as there was suspicion of forgery, directions have been issued to the applicant to get the passport checked through clearing officer and to apprise about the action.

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9. In this backdrop, referring to the aforesaid, it is stated that applicant was immediately called by the ACP in his office to report to the Airport Manager regarding some problem, and while going, applicant had apprised the ACP that passport of Smt. Shashi has been entrusted to SI Rajbal Singh and the position would be apprised to the ACP by SI Rajbal Singh. Referring to the answer to the aforesaid question, it is contended that ACP had stated that the applicant was sent to the Airport Manager and it was apprised to the ACP by applicant, that the passport has been handed over to SI Rajbal Singh who was to inform about its position.

10. While referring to another question as to the fact that the forgery in the passport was detected when the applicant has returned back. In response to the aforesaid, it is stated that while the forgery was detected in the passport, applicant had arrived, who

had been directed by the ACP to interrogate the lady passenger and to get the case registered through another officer than SI Rajbal Singh. As to a specific question asked whether any mala fide intention was apparent? ACP responded that he has not found any evidence which could have shown or infer any mala fide intention.

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11. To another question whether applicant informed the ACP about the decision? ACP responded that as the applicant was directed to meet Airport Manager and by the time he could have apprised, the ACP was informed that lady passenger had already been cleared and was apprehended at custom counter. Thereafter, necessary instructions have been issued to the applicant.

12. In the aforesaid background, it is stated that there is not even an iota of evidence on record which could point out or establish the allegations of mala fide intention or connivance with SI Rajbal Singh in clearing the lady passenger. Accordingly, the finding of the inquiry officer which is based on no evidence and suspicion and surmises and has been mechanically agreed to by the disciplinary authority as well as by the appellate authority, the aforesaid orders referred to above are liable to be quashed.

13. On the other hand, respondents' counsel, Shri Harvir Singh, contested the OA and vehemently opposed the contentions. At the outset, it is contended that in case of connivance though material beyond the departmental inquiry record was available

to hold and prove the connivance of the applicant. Moreover, it is contended that as the connivance is between the SI Rajbal Singh and the applicant availability of evidence to indicate the same is a remote possibility.

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14. In the aforesaid background, it is contended that once the Inspector had been asked to comply with the orders of the ACP, he should have taken a legal action and should have ensured that the passenger should not have been cleared on forged passport. It is further stated that as an Incharge Wing it was mandated upon the applicant to check the personal documents and to advice his subordinates about the action to be taken. Merely on the pretext of assignment of other work, he cannot escape from being a supervisory officer. It is also stated that no procedural illegality has been committed. Applicant was afforded ample opportunity of cross-examination.

15. In the rejoinder, applicant has reiterated the pleas taken in the OA.

16. We have carefully considered the rival contentions of the parties and perused the material on record. At the outset, as a settled position of law, this Court in a judicial review, cannot either reappraise the evidence or reassess the same assuming the role of an appellate authority over and above the findings arrived in the disciplinary proceedings. However, an exception to the aforesaid is that on examination of evidence recorded, if the finding is

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based on no evidence and is perverse, not confirming to the test of a reasonable prudent man then judicial review is permissible.

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17. Apex Court in Kuldeep Singh v. Commissioner of Police, 1999(2) SCC 10, in so far as the judicial review in a judicial proceedings held as follows:

"6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the matter course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this, does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority."

18. If one has regard to the aforesaid in a judicial review of a disciplinary proceedings, interference is permissible if the conclusion arrived at is not based on evidence, in support of finding or the finding recorded could not have been arrived at by an ordinary reasonable prudent man.

19. Keeping in view of the aforesaid ratio, we have read and re-read the evidence adduced during the course of the inquiry in the context of allegations levelled against the applicant. Basically the thrust of the allegations, against the applicant, is his connivance with mala fide intention in clearance of lady passenger with forged documents. In

fact, as per the testimony of PW-7, ACP S.R.Meena, while he was working as AFRRO and Incharge Shift 'D', Mr. Khan, an employee of Lufthansa Airlines produced a passport in respect of Smt. Shashi Bhakri to ACP S.R.Meena who in turn directed Inspector Umrao Singh, i.e., Applicant, to further get it checked from one of his clearing officer as to the authenticity of the passport and to apprise him of follow up action. This is admitted in the statement of ACP Meena.

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20. It is also not disputed that the applicant in turn handed over the passport for verification to his subordinate Clearing Officer SI Rajbal Singh with intimation to the ACP that SI Rajbal Singh to apprise the follow up action.

21. At this juncture, as admitted by ACP S.R.Meena, applicant was directed to report to the Airport Manager and by the time he returned back, the passenger had already been cleared and was apprehended at customs counter. Accordingly, applicant was directed by ACP S. R. Meena to get the case registered and to conduct proper investigation through another officer other than SI Rajbal Singh. This clearly shows that there was hardly any time for the applicant to have prior meeting of mind with SI Rajbal Singh or any mala fide intention to clear the passenger. The ulterior motive has not at all been established. It is not the case of the respondents that the applicant had himself cleared the passenger or directed the SI Rajbal Singh to clear her without checking her passport. It is also established that by

the time the applicant returned, the passenger had already been cleared and was apprehended and follow up action was undertaken by the applicant.

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22. In the aforesaid context and the evidence on record, even in departmental inquiry, though pre-ponderance of probability is a rule and strict rules of criminal law are not applicable, yet the guilt of a delinquent, is to be established through some evidence conclusively pointing out towards his guilt.

23. In so far as the mala fide intention and ulterior motive and connivance with SI Rajbal Singh to clear the lady passenger is concerned, not even an iota of evidence exists on record of the DE which could have established the guilt of the applicant. Rather the bonafide of the applicant has been established beyond doubt from the testimony of ACP S.R.Meena.

24. We have also considered the aspect of lack of supervision, which comes into play only when the applicant has lagged behind and had failed to discharge diligently his duties assigned to him. On direction of the ACP to get the passport of lady passenger checked through the clearing officer, the same was immediately complied with by handing over the passport to SI Rajbal Singh. Lack of supervision cannot be stretched so far as to include those actions which are beyond the purview of duties of a Government servant. Had there been the case despite detecting

forgery on verification by SI Rajbal Singh, the applicant had issued directions to clear, there would have been a mal intention or ulterior motives.

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25. The aforesaid act of the applicant was in discharge of his duties in compliance of the directions of the superior. In so far as the position, to be apprised to the ACP on verification of passport is concerned, applicant had no occasion to apprise as he was assigned another duty and during this interregnum the lady passenger had been cleared.

26. Apex Court in Union of India v. J.Ahmed 1979 SCC(L&S) 157 held as follows:

"However, lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would not themselves constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an interference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty."

27. If one has regard to the aforesaid, mere negligence, without any mala fide intention, would not amount to a misconduct.

28. In the instant case, we do not find any misconduct attributable to the applicant in so far as lack of supervision is concerned.

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29. Taking a holistic view and totality of evidence, the findings arrived at by the inquiry officer as to ulterior motive and connivance is not rested even on a piece of evidence and is an outcome of surmises and suspicion. After applying the test of common reasonable prudent man, the findings of guilt would not have been arrived at. We have no hesitation to hold that the findings of the inquiry officer are perverse and present case is of no evidence.

30. As regards the penalty, appellate, revision and review orders having accepted the perverse finding, cannot stand scrutiny of law.

31. In the result for the foregoing reasons, OA is allowed. Impugned orders are quashed and set-aside. Applicant shall be entitled to all the consequential benefits which should be paid to him within a period of three months from the date of receipt of a copy of this order. No costs.

S.K. Naik
(S.K. Naik)
Member(A)

S. Raju
(Shanker Raju)
Member(J)