

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

OA-1149/2001

New Delhi this the 2nd day of August, 2002.

Hon'ble Dr. A. Vedavalli, Member(J)
Hon'ble Sh. Govindan S. Tampi, Member(A)

ASI Bishan Chand,
S/o Sh. Ram Singh,
R/o A-4/4-73, Amer Colony,
East Gokul Pur,
Delhi-94. Applicant

(through Sh. Sachin Chauhan, Advocate)

Versus

1. Union of India through
its Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

2. Addl. Commissioner of Police,
Special Branch,
Police Headquarters,
I.P. Estate,
New Delhi.

3. Dy. Commissioner of Police,
Special Branch,
Police Headquarters,
I.P. Estate,
MSO Building,
New Delhi. Respondents

(through Sh. Ashwani Bhardwaj, proxy for Sh. Rajan
Sharma, Advocate)

O R D E R

Hon'ble Dr. A. Vedavalli, Member(J)

The applicant Bishan Chand, an ex-ASI of
Delhi Police is aggrieved by his dismissal from
service. He has challenged (i) the Disciplinary
Authority's order dated 18.07.2000 (Annexure A1), (ii)
the Appellate Authority's order dated 31.10.2000
(Annexure A2), (iii) the finding of the Enquiry Officer
dated 29.05.2000 (Annexure A3).

AB

(12)

2. Facts of this case briefly are as under:-

The applicant while posted in North East Zone//SB was entrusted with the verification of personal particulars of an applicant for passport, Gurpal Singh S/o Sh. Tarsem Singh, r/o 1/3510, Ram Nagar, Shahdara, Delhi dated 11.1.2000 received in the office of the respondents on 13.1.2000. The applicant verified the stay of the passport applicant Gurpal Singh at the above address for more than one year. A clear report dated 31.1.2000 was sent to the RPO office. Thereafter, a D.O. letter dated 12.2.2000 was received from RPO Delhi requesting for re-enquiry about the stay of the passport applicant Gurpal Singh at the aforesaid address since he did not turn up for collecting his passport though he had requested for issuance of his passport under "Tatkal Scheme". The matter was, therefore, got re-enquired by Inspector R.K. Budhiraja. The said enquiry allegedly revealed that the verification done by the applicant Bishan Chand was totally false/bogus as neither Gurpal Singh the passport applicant nor the referees cited by Bishan Chand ever resided in the given/verified address. The owner of the above House No.1/3510 at Ram Nagar allegedly denied the stay of Gurpal Singh at his house and also any acquaintance with him. The evidence collected by the applicant Bishan Chand i.e. photocopy and the ration card was also found bogus.



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3. A departmental enquiry was initiated against the applicant for alleged misconduct. The Enquiry Officer after conducting the enquiry submitted his report/findings dated 29.05.2000 i.e. the 3rd impugned order (Annexure A3) concluding that the charge against the defaulter applicant stands proved. A copy of the said report was served upon the applicant and he submitted his representation against the same to the Disciplinary Authority.

4. The Disciplinary Authority after considering the above enquiry report, the applicant's representation and other relevant records on the DE file and after hearing the defaulter in OR on 11.7.2000 gave his findings and held that the defaulter applicant has committed a grave misconduct. The applicant was dismissed from force with immediate effect by the 1st impugned order dated 17.07.2000 (Annexure A1).

5. Aggrieved by the aforesaid order of the Disciplinary Authority the applicant submitted his appeal against the said order to the Appellate Authority. The appeal was rejected by the Appellate Authority by the second impugned order dated 31.10.2000 (Annexure A2).

6. The Appellate Authority after considering the appeal and other records etc. and after hearing the applicant in OR rejected the appeal by the second impugned order dated 31.10.2000 (Annexure A2).

(A)

7. The present OA has been filed by the applicant on 03.05.2001 impugning the aforesaid three orders.

8. Heard the learned counsel for both the parties. The material papers and documents placed on record have been perused. We have taken up the Appellate Authority's order dated 31.10.2000 (Annexure A2) for consideration first.

9. Learned counsel for the applicant Sh. Sachin Chauhan submitted that the Appellate Authority has not taken into consideration the proportionality of punishment keeping in view the fact that the action taken by the applicant was in good faith on the basis of official documents produced by the passport holder while imposing the extreme penalty of dismissal from service and has considered extraneous matter relating to passport verification done by him during the period from 26.03.1999 to 01.03.2000 which never formed part of the charge in the departmental enquiry. He further contended that the Appellate Authority's order is, therefore, perverse and is also violative of the specific provisions of Rule 16 (xi) of the Delhi Police (Punishment & Appeal) Rules, 1980. He submitted that the aforesaid order, therefore, deserves to be set aside.

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10. Learned proxy counsel for respondents' counsel Sh. Ashwani Bhardwaj in reply submitted that the applicant himself admitted before the Disciplinary Authority when he was heard by him in OR on 11.7.2000 that he never visited the addresses given in the PP form and simply conducted the enquiry by sitting at a particular tea shop. It was further submitted that the applicant himself pleaded in OR before the Appellate Authority to take a lenient view in view of the past conduct during the period from 26.03.1999 to 01.03.2000 and after his request only his past conduct was considered. Even otherwise also the applicant had not denied the truthfulness of the allegation against him and hence is deemed to have been admitted the same. It was further contended that no extraneous matter as such has been considered by the Appellate Authority and hence his order is not violative of the aforesaid provisions of the Delhi Police (Punishment and Appeal) Rules, 1980 as contended by the applicant. He prayed that the OA may be dismissed with costs as it is devoid of any merit.

11. We have given our careful consideration to the matter. The charge framed against the applicant is as under:-

"I, S.K. Sharma, ACP/E.O. charge you ASI Bishan Chand, No.1196/D (PIS No.29650085) that while posted in North-East Zone/SB you were entrusted with the verification of personal particulars of passport applicant Sh. Gurpal Singh S/o Sh. Tarsem Singh, r/o

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1/3510, Ram Nagar, Shahdara, Delhi bearing RPO's File No. A-000838 dated 11.1.2000 received in this office vide APP Branch Dy. No. 1546-A dated 13.1.2000. You verified the stay of the above applicant as more than one year at the above address. Accordingly, a clear report was sent to RPO office vide No. 2558-A dated 31.1.2000.

Later on receipt of a D.O. letter No.A/000838/2000 dated 12.2.2000 from RPO, Delhi, requesting therein for re-enquiry about the stay of the above applicant at the given address as he did not turn up to collect his passport though he had requested for issuance of Passport under Tatkal Scheme.

On this, the matter was got re-enquired by Insp. R.K. Budhiraja, Hindu Section/SB which revealed that the verification conducted by you was totally false/bogus as neither the above applicant for passport nor the referees cited by you during verification ever resided at the given/verified addresses. The owner of H.No.1/3510, Ram Nagar, Shahdara, Delhi on which you verified the stay of the applicant totally denied about the stay of the applicant there and even any acquaintance with the applicant. The documentary evidence collected by you during verification i.e. photo copy of Ration Card was also found bogus.

The above facts indicates that you have conducted false/bogus verification with an ulterior motive without visiting the given address the real facts would have been detected at the initial stage and a negative report would have been sent to R.P.O. office in this case.

The above act on your part amount to gross negligence, carelessness and unbecoming of a Govt. servant in the discharge of your official duties which renders you liable to be dealt with departmentally under the provision of Delhi Police (Punishment & Appeal) Rules, 1980."

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12. Rule 16(xi) of the Delhi Police (Punishment and Appeal) Rules, 1980 is reproduced below:-

"If it is considered necessary to award a severe punishment to the defaulting officer by taking into consideration his previous bad record, in which case the previous bad record shall form the basis of a definite charge against him and he shall be given opportunity to defend himself as required by rules.

13. The relevant portion of the impugned Appellate Authority's order dated 31.10.2000 (Annexure A2) is extracted below:-

"I have carefully gone through the appeal and other relevant records placed on file. The pleas of appellant that he had no knowledge about the verification job due to his minor education ability, that he took it as procedural way to send such reports as directed by the Insp. /North-East Zone, that he was pressed by the Insp. and ACP/North-East Zone not to explain these facts before the enquiry officer during the course of departmental enquiry, that the Insp. and ACP/North-East Zone were also equally responsible for this fault by forwarding such bogus reports to the quarter concerned and that the D.E. has been initiated against him in partial manner because the Insp. and ACP/N.E. Zone who had forwarded the bogus report has been cited as Prosecution Witness in the said D.E. are untenable. The appellant being an Upper Subordinate was fully responsible to conduct the passport verification properly and to submit his correct report based on the facts/evidence collected by him during the course of verification. On the basis of the report submitted by the Enquiry Officer, the cases are referred to R.P.O's

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office duly forwarded by Insp. and ACP of the concerned Zone. If the appellant claims himself to be less educated, he could have requested for his posting to some other unit from the Zone. Besides, the E.O. has conducted the D.E. as per the laid down procedure and the appellant was given full opportunities at every stage during the course of D.E. proceedings. The appellant had clearly admitted his fault and requested for leniency vide his representation dated 19.6.2000.

The appellant had also been heard in O.R.. He pleaded for leniency as he has to support and bring up the wife and children of his son who has left the house in the year 1996 and did not return thereafter. He (appellant) was due to retire in Dec., 2001 but he would not get any pension in case his dismissal was not revoked. He pleaded that he may be demoted to the rank of Head Constable and allowed to earn his pension. He is not even high school pass and he did not understand the implications of passport verifications. He had further stated that he did not cast any aspersions or insinuations on the conduct of Area Inspector or the ACP.

In view of his pleadings in the O.R., the matter has been further examined. The appellant had remained posted in the North-East Zone from 26.3.1999 to 1.3.2000. During this period he had conducted 463 passport verifications and sent them up as correct. However, during reverification, 72 out of 463 had been found to be bogus. The detailed verification had been ordered on receipt of complaints from the offices of RPO and FRRO. This indicates the magnitude of his misconduct and corrupt practices indulged in by ASI Bishan Chand, No.1196/D, the appellant. As such he does not deserve any mercy or leniency. Under the circumstances, the appeal is hereby rejected.

(emphasis added)

14. On a perusal of the above, it is evident that the Appellate Authority, inter alia, has taken into consideration the extraneous material relating to

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applicant's previous record during the period from 26.03.1999 to 01.03.2000 while rejecting the appeal against the Disciplinary Authority's order dated 18.07.2000 imposing the extreme penalty of dismissal from service on the applicant (Annexure A1) without making the same as the basis of a definite charge against the applicant and after giving him an opportunity to defend himself as required under the rules. The concerned averment in the counter filed by the respondents and contention of the learned counsel for the respondents that the said misconduct was taken into consideration at the request of the applicant in the OR before the Appellate Authority, in our view, does not justify the non-compliance of the specific provisions of Rule 16(xi) of Delhi Police (Punishment and Appeal) Rules, 1980 by the Appellate Authority. In the circumstances, we find that the aforesaid Appellate Authority's order is clearly violative of the specific provisions of Rule 16(xi) of the Delhi Police (Punishment and Appeal) Rules, 1980 and hence cannot be sustained under the law.

15. In the view which is taken by us as above, we do not think it is necessary for us to go into the question of sustainability of the other two impugned orders.

16. In the facts and circumstances of this case and in view of the foregoing discussion, the



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Appellate Authority's order dated 31.10.2000 (Annexure A2) is quashed and set aside. The case is remanded back to the Appellate Authority. He is directed to consider the appeal submitted by the applicant on its merits afresh after giving him a personal hearing and dispose of the same in the light of our order as above in accordance with law and intimate the same to the applicant within three months from the date of receipt of a copy of this order.

17. O.A. is disposed of as above. No costs.

Govindan S. Tampi)
Member (A)

A. Vedavalli
21/8/2002
(Dr. A. Vedavalli)
Member (J)

VV/

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