



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

Original Application No.2632 of 2001

This the 22nd day of September, 2011

HON'BLE SHRI JUSTICE V. K. BALI, CHAIRMAN

HON'BLE DR. VEENA CHHOTRAY, MEMBER (A)

Jagdish Chander (D/908),
F-4, PS Kalkaji, New Delhi.

... Applicant

(By Shri Shyam Babu with Shri Shekhar Kumar, Advocates)

Versus

1. Government of NCT of Delhi through its
Chief Secretary, 5 Sham Nath Marg,
Delhi.
2. Joint Commissioner of Police (Operations),
Police Headquarters,
IP Estates, New Delhi.
3. Deputy Commissioner of Police/FRRO,
IGI airport, Palam,
New Delhi. ... Respondents

(By Shri N. K. Rohatgi for Shri Vijay Pandita, Advocate)

ORDER

Justice V. K. Bali, Chairman:

This matter pertains to the year 2001. It was adjourned *sine die* on 17.7.2003 by recording the following order:

"Learned counsel for the applicant states that in O.A. 2349/98, this Tribunal had referred the controversy to a Full Bench with respect to the competence of FRRO to impose the punishment. It is stated further that keeping in view the pending writ petition in the Delhi High Court, the

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Full Bench was adjourned sine die. Since the present controversy pertains to the said dispute that was referred to the Full Bench and is also alive before the Delhi High Court, the present petition is adjourned sine die till the decision on the said controversy by the Delhi High Court or the Full Bench of this Tribunal with liberty to either party to seek revival of the same."

The parties would not inform that the High Court had rendered decision on the point as mentioned in the order reproduced above long ago. However, it came to our notice when old matters were ordered to be listed before one of us (V. K. Bali, Chairman) that the High Court had decided the point, which then was followed by the Full Bench. Shri Shyam Babu, learned counsel representing the applicant, would state at the very outset that the point as regards FRRO has since turned against the applicant by the judgment of the Hon'ble High Court and, therefore, this matter needs now to be disposed of on merits.

2. Facts of the present case reveal that sequel to a departmental enquiry, the applicant who was Sub Inspector in Delhi Police at that time, was inflicted with the punishment of stoppage of increments for a period of five years with cumulative effect, and his suspension period from 12.10.1999 to the date of the order was ordered to be treated as not spent on duty, vide order dated 15.5.2000 passed by the disciplinary authority. The appeal preferred by the applicant against the order aforesaid was partly allowed as the quantum of punishment has been reduced



to that of withholding of increment for a period of two years with cumulative effect. It is against these orders that the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 has been filed.

3. The enquiry officer after recording statements of Const. Rajender Singh (PW-1); HC Ram Avtar (PW-2); W/Inspr. Gulshan Kumari (PW-3); K. N. Rai, AFRRO (PW-4); HC Beg Raj (PW-5) and SI Sultan Singh (PW-6), framed the following charge against the applicant:

"I, ACP Hira Lal, AFRRO, IGI airport, New Delhi the E.O. charge you SI Jagdish Chander, D/908 that while posted in shift 'B' Immigration IGI Airport from 1900 hrs to 0800 hrs on the night between 11/12.10.99, in arrival left wing as C.O. under the direct supervision of W/Inspr. Gulshan Kumari I/C Wing at about 2145 hrs you were directed by her (W/Inspr. Gulshan Kumari) to report in the Ceremonial lounge to attend the flight No.AI-148 by which Czech Republic delegation was coming. You left the wing instantly but did not report in the ceremonial lounge till 1.30 AM despite the arrival of flight at 2314 hrs. Thus you were marked absent vide DD No.21 dated 11/12.10.99. You recorded your arrival vide DD No.22 dated 11/12.10.99, using very indecent language towards W/Inspr. Gulshan Kumari. After this, you came back in the wing and shouted on the W/Inspr., and used very harsh and unparliamentary language. You created a nuisance and embarrassing situation in the wing and behaved in a highly indisciplined manner and insulted a superior officer on duty in the presence of other staff.

The above mentioned act on the part of SI Jagdish Chander No. D/908 constituted gross misconduct showing complete indiscipline and



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insulting attitude towards your superior which renders him unbecoming of a member of the disciplined force in violation of rule 3(i)(iii) of CCS (Conduct) Rules, 1964. Hence you are liable for punishment under section 21 of the D.P. Act, 1978.

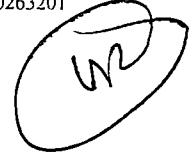
The applicant was given chance to lead evidence in defence, which he availed, and examined SI Ram Lal (DW-1); SI Singhara Singh (DW-2); ASI Jai Pal (DW-3); SI Sunil Kumar (DW-4); SI Pankaj Kumar (DW-5); Ranbir Singh, Safai Karamchari (DW-6); and Smt. Muniamal (DW-7). The enquiry officer noted the points that were projected by the applicant in defence, which are enumerated as 1 to 10, and discussed the said points by observing as follows:

"1) The plea of the defaulter that W/Inspr. Gulshan Kumari was prejudiced and biased has no force because she reported the incident of highly indisciplined act of the SI after making his absent, which happened with her on that night and the same was confirmed by Sh. K. N. Rao, AF/Arrival, while forwarding the report of W/Inspr. Gulshan Kumari which was exhibited as PW-6/A. On this report the PW stated that the defaulter was sent to Ceremonial Lounge to clear the Czech delegation coming by AF-148 at 2145 hrs on 11.10.99 but turned only at 0130 hrs on 12.10.99. I/C Arrival, left wing marked him absent and when he came to know of this he shouted at her and used unwarranted words bordering on indecency and indiscipline. As such stern action is required to be taken against him. Moreover Exh-2/D clearly shows that search was made to trace the defaulter but when he was not found his absent got marked by the W/Inspr. Moreover PW-2 has also deposed about the contents of DD No.21,

22 and 23 exhibited as PW-2/A, B and C which prove the allegations leveled against the defaulter.

Therefore the contentions of the defaulter that W/Inspr. Gulshan Kumari was prejudiced and biased against him are an afterthought.

- 2) Although PW-1 stated that he did not go in Ceremonial Lounge to check the SI and hear nothing between W/Inspr. Gulshan Kumari and the defaulter, yet this PW has proved the absence vide DD No.21 which was got marked by W/Inspr. Gulshan Kumari.
- 3&4) PW-3 W/Inspr. Gulshan Kumari has fully substantiated the allegations against the defaulter as PW-3. Her report dated 12.10.99 along with comments/report of Shri K. N. Rai, AFRRO was received with copies of DD Nos. 21, 22 and 23. In DD No.23 dated 11/12.10.99 it has been clearly mentioned by the W/Inspr. that when the defaulter SI asked her to forward some papers she replied him to take her spectacles and then to sign the same but the defaulter shouted loudly at her and behaved in a highly indisciplined manner and misbehaved with her. Her statement/report has been fully supported/substantiated by PW-4 Sh. K.N.Rai who had forwarded the said report on 12.10.99, immediately after the incident. This PW has confirmed and fully supported the allegations leveled against the defaulter. N cross by the defaulter this PW told that he himself was in his room. He heard the incident with his own ears about the indisciplined behaviour. He also stated that someone was shouting at a lady I/C Wing who was sitting on sofa in front of Doctor's room. The I/C Wing herself came to his room and verbally lodged a complaint against the SI. This PW also confirmed the time between 130 hrs to 140 hrs and that the words were inaudible due to distance. He also stated that he did not make enquiry.
- 5) The statement of PW 5 and PW 6 stated that the defaulter and W/Inspr. were on duty at



that night and that the DE was ordered on the report of W/nspr. Gulshan Kumari, by the DCP/FRRO which is exhibited as PW-6/A.

- 6) Although DW-1 stated that no loudly talk took place between the defaulter and W/Inspr. yet PW 4 Sh. K.N.Rai who was present in his room has fully supported the facts about the misconduct of the defaulter. DW stated that flight had come at 11.30 PM. Moreover the DW has not stated anything about the absence and whereabouts of the defaulter after 1130PM.
- 7) DW 2, 3 and 4 failed to state about the absence and whereabouts of the SI after the flight had come. They also did not say anything about the indisciplined act of the defaulter.
- 8) DW-5 stated that the defaulter came at 1 or 130 AM while the DW 2 and 3 who were also in Ceremonial Lounge have stated that the defaulter came back after his duty in Ceremonial Lounge. As the flight came at 2314 hrs, the statement given by these DWs are contradictory.
- 9) DW-6 although stated that no incident of such hearing was heard by him on the said night yet he stated that he has seen the defaulter after many days. DW-7 also failed to mention the date of incident which creates doubts on their statement."

The evidence was assessed as follows:

"In view of the above discussion it has been revealed that the statements of PW-1, 2, 3, 4, 5 and 6 corroborate the allegations leveled against the defaulter which are supported with documentary proof, as mentioned above. As regards the statements of DWs 1, 2, 3, 4, 6 and 7 the same does not mention about the absence of the defaulter and his whereabouts after the flight had come at 2314 hrs. Moreover there is contradiction between the statements of DW 2, 3,



4 and 5 regarding coming back of the defaulter after the flight had come. Moreover, the statements of DW-6 and 7 also create doubt because DW-6 stated that he has seen the defaulter after many days while the DW-7 failed to mention the date of incident.

Besides no DW stated about the indecent language used by the defaulter towards W/Inspr Gulahsn Kumari and lodged in DD No.22 dated 11/12.10.99. According to rule 11 of Delhi Police (General Conditions and Service Rules), 1980 a police officer shall not comment orally or in writing on the remarks made by a superior officer. If a police officer considers that an erroneous view has been taken of his conduct or of any matter affecting his administration, he may refer the question in writing in a temperate manner through proper channel.

But the defaulter failed to comply the norms of the discipline and the charge leveled against him has been supported by all the PWs examined in the Departmental enquiry against him. Moreover PW-4 Shri K.N. Rai, AFRRO who has heard the incident with his own ear has fully supported the allegations against the defaulter as well as the other PWs also corroborated the allegations against the defaulter."

The charge against the applicant, in view of the discussion of evidence, as mentioned above, was held as substantiated.

4. The disciplinary authority, in the impugned order dated 15.5.2000 inflicting the punishment upon the applicant, as mentioned above, discussed as follows:

"...After going through the evidence on record and also the deposition of defence witnesses I am of the considered opinion that the defaulter has misbehaved and he had no reason to shout at the senior officer and that too when the officer was a lady officer. At the Airport and in the disciplined

service he is, he should have shown restraint which he failed to. Secondly he has no reasons/ authority to write anything in Daily Diary. On both these counts he was found guilty for which he is required to be punished."

The applicant before the appellate authority raised four points which were rejected by a process of reasoning. The points raised by the applicant and the way and manner the same were met reveal as follows:

"1. The first plea of the appellant is that the charge itself is defective because the E.O. in the 9th line of the charge had stated that the appellant was directed to attend the AI-148 (AIR-INDIA-148) flight at Ceremonial Lounge by which Czech Republic delegation was coming. While Czech Republic delegation was coming by flight No.AF-148 (AIR-FRANCE-148).

This plea of the appellant is not tenable as he recorded DD No.22 Immigration IGIA dated 11/12.10.99 against the W/Insp. using very indecent language. He shouted her and created a nuisance. The typographical mistake in the charge regarding flight number/timing of arrival of flight does not minimize the misconduct.

2. The second plea of the appellant is that if appellant had created a nuisance and used indecent & unparliamentary language towards the W/Insp., then a criminal case u/s 354/500 IPC could have been registered and the approval under Rule-15.2 of the Delhi Police (Punishment & Appeal) Rules, 1980 should have been obtained from concerned Addl. C.P. but in this case neither any case was registered nor any approval was taken.

This plea of the appellant is not acceptable as the Rule-15.2 Delhi Police (Punishment & Appeal) Rules, 1980 does not attract in this



case. As such no approval from concerned Addl. C.P. was needed.

3. The third plea of the appellant is that the W/Inspr. was prejudiced & having a biased attitude. The Enquiry Officer while writing the finding did not consider the judicious points & highlight the points which were against the appellant.

This plea of the appellant does not have any weight as there is no evidence on record in support of this plea while examining the case.

4. Next plea of the appellant is that W/Inspr. in her examination in chief herself admitted before the Enquiry Officer that she refused to forward the application of the appellant due to non-availability of her spectacles. If it was true then why she had not written this version in her initial report against the appellant. Thus she had violated Rule-11 of Delhi Police (General Condition & Service) Rules, 1980.

This plea of the appellant is beyond the truth as DD. No.23 Immigration IGIA dated 12.10.99 lodged by W/Inspr. is self explanatory which covers all the points relating to the incident. Hence no violation of Rules."

5. Shri Shyam Babu, learned counsel representing the applicant would urge that despite this being a case of no evidence, the concerned authorities have held the charge as proved, and, therefore, the impugned orders need to be set aside.

6. We have examined the evidence ourselves and even though, there may not be much scope to interfere with the findings of fact in the limited power of courts and tribunals in



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judicial review, we find no merit whatsoever in the contention of the learned counsel representing the applicant as noted above. Const. Rajender Singh examined as PW-1, deposed that on the night of 11/12.10.1999 he was on duty in Arrival Left Wing as G.D. under the supervision of W/Inspr. Gulshan Kumari. At about 10.45 or 11 p.m. he was told to trace SI Jagdish Chander (the applicant). He traced the applicant in all wings, LOC and canteen but could not find him. Then he told the W/Inspr. about this, on which she gave him a slip for marking the applicant absent. He accordingly handed over the slip to ASI Dharambir in refusal room. The PW stated that the applicant met him in the way. HC Ram Avtar examined as PW-2, stated that he was a DD writer in refusal room on the night of 11/12.10.1999 in shift 'B' from 7 p.m. to 8 a.m., and that at about 1.30 a.m. in the night DD No.21 was lodged by W/Inspr. Gulshan Kumari through GD Rajdner Singh, which was exhibited as Ex.PW-2/A, and DD No.22 was exhibited as Ex.PW-2/B, which was lodged by the applicant SI himself. DD No.23 was lodged by Insp. Gulshan Kumari herself at 3.5 a.m. which was exhibited as Ex.PW-2/C. He produced the original DD entries. W/Inspr. Gulshan Kumari examined as PW-3, stated that on the night of 11/12.10.1999 she was I/C Wing in the Arrival Right Wing at Immigration/IGI airport and shri K. N. Rao, AFRRO was looking after the work of AFRRO/Arrival. On that night a VIP Defence Minister, French

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Republic had to come by Air France flight No.AF-148 and was to be cleared in Ceremonial Lounge. SI Jagdish Chander (the applicant) was detailed by her for the said duty, who went at about 2145 hrs for his duty, but did not come back till 0130 hrs, while the flight had arrived at 2314 hrs. The PW stated that the said VIP had not come in that flight. She lodged DD No.21 dated 11/12.10.1999 for absence of the applicant. After this the applicant came to her when she was sitting on a sofa and told her to forward the papers which he was carrying in his hand. She told to take her spectacles, on which the applicant shouted at her and behaved in a highly indisciplined manner with her and insisted to forward the papers. She told him to behave properly but he remarked that she should sit there and write whatever she could against him and that he would write a report against her. Thereafter the applicant left. The PW further stated that on hearing the noise Shri K. N. Rao, AFRRO came there from his room and asked her who was making the noise. She told the incident to the AFRRO, and informed that she was going to lodge a report. She accordingly lodged a report vide DD No.23 dated 11/12.10.1999 at 3.50 a.m. exhibited as PW-3/C. Thereafter she wrote a report against the applicant, which was forwarded by the K. N. Rao. When cross examined, she deposed that after confirming the arrival of AF-147 she lodged the absent of the applicant. She did not lodge the time from when the applicant

was absent and when she had sent him in ceremonial lounge. There is some other cross examination as well, but the same may not be relevant as nothing in that regard has been urged during the course of arguments. Shri K. N. Rai, AFRRO examined as PW-4, stated that he was working as AF/Arrival, shift 'B' at IGI Airport on 11/12.10.1999 and that at 2100 hrs he directed I/C Wing Left W/Inspr. Gulshan Kumari to send a C.O. to ceremonial lounge to clear a Czech delegation headed by Defence Minister, and subsequently I/C Wing detailed SI Jagdish Chander (the applicant) to complete the said task. He stated that the applicant left at 2145 hrs. However, the said delegation did not turn up from the scheduled flight. Meanwhile I/C Wing noticed his absence and got the same registered. The PW stated that on the basis of available records in DD, the incident came to his notice through I/C Wing who submitted an application addressed to FRRO which he forwarded in the morning during duty hours suggesting action for the absence and indisciplined behaviour towards the I/C wing. On cross examination, he stated that he himself was sitting in his room and he heard with his own ears someone shouting at the lady I/C Wing who was sitting on sofa in front of doctor's room. I/C Wing herself came to his room and verbally lodged a complaint against the applicant. He also confirmed the time between 0130 hrs and 0140 hrs, and stated that the words of shouts were inaudible due to distance. He also

stated that he had not made any enquiry in that regard. HC Beg Raj examined as PW-5 produced the duty roster of duties of W/Inspr. Gulshan Kumari and SI jagdish Chander on the night of 11/12.10.1999. The same was exhibited as Ex.PW-5/A. SI sultan Singh examined as PW-6 stated that Shri Dharmendra Kumar, DCP/FRRO ordered a DE on the report of W/Inspr. Gulshan Kumari regarding the misconduct of the applicant.

7. There is no need to refer to the evidence led by the applicant in defence as nothing based thereupon has been urged during the course of arguments.

8. From the evidence as mentioned above, what clearly emerges is that both the applicant and W/Inspr. Gulshan Kumari were on duty on the intervening night of 11/12.10.1999. This fact is not in dispute at all. Presence of Shri K. N. Rai, AFRRO during the time when the incident took place is also proved on records. W/Inspr. Gulshan Kumari has fully supported the case, which stands corroborated by the statement made by PW-4 K. N. Rai. It may be true that K. N. Rai had not himself seen the applicant shouting at W/Inspr. Gulshan Kumari, but he did hear the shouts. The words used in shout by the applicant may be inaudible, but the fact that he had heard the shouts at the same time when W/Inspr. Gulshan Kumari stated that the applicant had shouted at her, in our view, should be sufficient

corroboration to the testimony of the W/Insp, who had no grudge against the applicant. Learned counsel representing the applicant, during the course of arguments, would indeed state that Insp. Gulshan Kumari was biased against the applicant, but the bias is stated to be only because of the incident and not as regards any previous history in that regard.

9. The only other contention raised without much conviction on behalf of the applicant by his counsel Shri Shyam Babu is that the charge of absence from duty has not been proved. We may not labour on this point as the disciplinary authority has not held the applicant guilty of the said charge. The relevant part of the order passed by the disciplinary authority has since already been reproduced hereinabove. There is nothing in the said order to even remotely suggest that the applicant had been found guilty of absence from duty. It is then urged that W/Insp. Gulshan Kumari had not even deposed as regards the words used by the applicant, which were that "Insp. Gulshan Kumari duty dete samai hosh mai hoti hai yaa nashe mai, yeh mujh se koi galat kam karana chahti hai jo yeh khud karti rehti hai". It may be recalled that the applicant has only been held guilty of misbehaviour with the W/Insp who was a lady and senior to him, and not of using words as mentioned above.

10. Learned counsel representing the applicant has not argued, but we find that the disciplinary authority has held the applicant guilty also of writing in daily diary without any reason/authority to do so. The applicant has been punished on two counts, i.e., indiscipline and writing in daily diary without any reason/authority. The second count was not subject matter of charge, but the same has also been held to be proved. Whether it would make a difference on the quantum of punishment, we do not want to give our views.

11. Finding no merit in this Original Application, we dismiss the same, however, with direction to the respondents to re-consider the quantum of punishment to the applicant by considering that the second count on which the applicant has been held guilty was not even subject matter of charge. Except for the direction as mentioned above, this Original Application stands dismissed. There shall be no order as to costs.

Chhotray
(Dr. Veena Chhotray)
Member (A)

V. K. Bali,
(V. K. Bali)
Chairman

/as/