

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A No. 2145/ 1999

New Delhi this the 26th day of February, 2009

Hon'ble Mr. Justice M. Ramachandran, Vice Chairman (J)
Hon'ble Mr. N.D. Dayal, Member (A)

Ex.W/Sub Inspector Vandana Sehgal
No. 1867/D,

W/o Mr. Rajeev Chandok, aged 33 years,
Previously employed in Delhi Police,
R/o 281, Satya Niketan,
New Delhi-110025.

... Applicant

(By Advocate Shri Sachin Chauhan)

VERSUS

1. Union of India through its.
Secretary,
Ministry of Home Affairs,
New Delhi.
2. Addl. Commissioner of Police,
Police Control Room & Communication,
Police Head Quarters, I.P. Estate,
M.S.O. Building, New Delhi.
3. Addl. Dy. Commissioner of Police,
Police Control Room,
Police Head Quarters, I.P. Estate,
M.S. O. Building, New Delhi.
4. Foreigner Regional Registration Officer,
Deputy Commissioner of Police,
Hans Bhawan, I.T. O. Delhi.

... Respondents

(By Advocate Shri Vijay Pandita)

ORDER

(Hon'ble Mr. Justice M. Ramachandran, Vice Chairman (J):

At the time of filing the application, the applicant was Sub
Inspector in the Delhi Police. The application challenged Annexure

A-2 dismissal order issued by the Addl. Deputy Commissioner of

Police. The Appellate order dated 14.9.1999 (Annexure A-3), confirmed the decision of the disciplinary authority. It is also under challenge.

2. The disciplinary action came to be initiated in the following context. Applicant had put in more than 10 years of service in the Delhi Police by 1995. She had been deputed for work in the office of Foreigner Regional Registration Officer (for short FRRRO), and had gained experience over three years by that time. There arose a circumstance that on three different occasions viz., on 6/7.8.1995, 14/15.8.1995 and 23.9.1995, persons holding forged passports had got immigration clearance from the IGI Airport, but the applicant failed to detect the forgery. This was alleged as negligence in discharging her duties.

3. In respect of one Jaswant Singh, he had been carrying a forged British passport issued at G.B.R. In the course of her duties after examining the passport, she had cleared him. But the Singapore Immigration Authority had straightway deported the person finding that he was carrying a forged passport. In respect of incident of 14/15.8.1995, one Dipika Sen was holding passport issued at Nagpur and the applicant had cleared her for departure, but the lady was intercepted at Paris and she had been deported and brought back to India. FIRs had been registered against them. Likewise On 23.9.1995 one Baldev Singh holding forged Britain Passport had disembarked at IGI Airport. He had reported to the applicant but she could not detect the fake passport in spite of

scrutiny carried out by her and he had been given immigration clearance. As a matter of fact, it was later on revealed that he was holding a forged passport and had been using it often which was detected on 23.9.1995 when he in the course of one of his journeys, ~~he~~ had been detained by passport immigration authority at Paris. The order dated 25.1.1996 was to initiate disciplinary action. In respect of 3rd incident, in addition to the lapse of negligence, it had been alleged that the applicant had acted deliberately. This was perhaps noticing that in the statement of the apprehended person he had divulged that a sizeable sum had been expended for the forged passport.

4. Due enquiry had been held and after recording the evidence, formal charge was framed against the officer. Ultimately, the impugned order had come to be passed dismissing her from service.

5. On 28.9.2000 a Bench of this Tribunal had upheld the plea of the applicant that the authority who passed the impugned order, was incompetent to come with the order. This was for the reason that the FRRO had been given the power of Disciplinary Authority only after 29.1.1998 and since the proceedings had been initiated earlier, it constituted a basic defect. Reliance had been placed on an earlier decision rendered by the Tribunal in OA 2145/1999 for the proposition. For the above reason the impugned orders were set aside and the respondents were directed to reinstate the applicant in service and grant her all consequential benefits in a time bound manner. The intervening period was to be regularized by grant of leave *of the kind due to the applicant*.

6. However, it is evident that the view taken by the Bench did not find favour with the High Court. By judgment in WP (C) No.1115/2001 the decision had been upset holding that there was no jurisdictional defects in the dismissal order, and it was to be treated valid for all purposes.

7. The applicant at that point of time had preferred Review Petition No. 392/2008 pointing out that since contentions had been raised on the merits as well, and since the decision of the Tribunal was rested on a technical point only and that too in her favour, in view of the findings entered into by the High Court, it was a case where the contentions of the Original Application on merits required to be gone into in the interest of justice and fair play. By order dated 5.12.2008, the RA had been allowed. Consequently Tribunal was required to consider ~~any~~ other issues that the applicant had raised. The OA got reposted for hearing in the aforesaid circumstances.

8. Mr. Chauhan, on behalf of applicant submits that consequent to the directions of the Tribunal earlier, the applicant had been put back in service, as early as in the year 2000 had earned promotion, and is recognized as putting an exemplary service. Of course this might not be strictly relevant, but simultaneously the circumstance cannot be considered as wholly irrelevant.

9. The parties had addressed us on merits. Taking notice of the totality of the circumstances, we felt that if possible, a relaxed standard had to be adopted, especially because of the situation

now available that the applicant had been reinstated in service and her work thereafter had been found generally acceptable. The question is whether the charges as had been alleged against the applicant had been proved satisfactorily by the evidence that had forthcome.

10. We find that the allegation against the applicant is that it was not possible for her to find out the forgery in the passports concerned. The incidents as such is not disputed or disputable. The defence is that forgery had been done in such a fine manner that it was not possible to be deducted by a cursory examination with naked eyes. It is also highlighted that in respect of the 3rd incident concerned, Baldev Singh, he had used the passport without being doubted at least on three more occasions in India and abroad. Evidently, the passport was scrutinized by other officers and none of them could find any defect there. No other persons who might be situated identically with the applicant had been subjected to any proceedings. In short the plea is that it was a case ^{where} ~~when~~ ordinary prudence had been employed, but the clever manipulations were undetectable and there was, therefore, no carelessness or actionable negligence.

11. In support of submissions made, Mr. Chauhan had invited our attention to the evidence that had forthcome. Passengers coming were embarked in groups and cursory examinations alone could have been possible to be followed and when the forgery was not possible to be detected by naked eyes it should not have been possible to allege negligence.

12. We feel that the circumstances pleaded and highlighted cannot be ignored. During the relevant period sophisticated equipments to scan the passport were not available, but by better equipments installed at Paris Airport and Singapore Airports they could come across the super imposition. The evidence indicates that there was super imposition of images, done with expertise. The Disciplinary Authority proceeds on the basis that in case of doubt, the applicant should have consulted the superior and ought not have taken responsibility by herself exposing her to disciplinary action. But the fact remains that there was no reason for the applicant to doubt the genuineness or suspect the passport because of expertise in the forgery. and therefore, there was no necessity felt by her for consultation. After the evidence was let in by the prosecution charges had been framed against the applicant (Annexure A-4 (pages 44- 48). Although there was allegation that the applicant cleared the third passenger deliberately, this part of the allegation is not seen to have been followed up and the charge alleged is negligence and carelessness. This discloses a shift from the earlier stand, and the culpability is drastically watered down.

13. In spite of the evidence that has been brought by the prosecution, in the peculiar circumstances of the case, allegation of negligence could not have been successfully established. Of course, we note that as an officer, on special duty, applicant was expected to closely scrutinize travel documents but the circumstances reveal

that human error could not have been ruled out and perhaps that is the reason why the work later on had been got carried out through the help of sophisticated equipments.

14. According to us the dismissal order is not sustainable for one other reason as well. It is suggested there that even later on in her career (1996-97) she had exhibited indiscretion in that she had unnecessarily harassed and detained a US citizen without granting immigration clearance. This disclosed incorrigible conduct. But we do not find any justification for the opinion recorded in the order that these were circumstances justifying a remark that she belonged to a rotten lot, and, therefore, completely unfit to be part of the Department. Under Rule 10 of the Delhi Police (Punishment and Appeal) Rules, 1980 what is to be taken notice of is the previous records of the individual and incorrigibility or unfitness for police service. The issue was required to be objectively looked into, while capital nature of punishment was imposed. The Rule further required that what is relevant was fitness for a particular rank and if not the person was to be reduced to a lower rank. We are referring to this rule only to show how the system is to work.

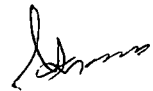
15. Totally of the circumstances appeal to us that a grave punishment as imposed was not warranted. A minor penalty might not have been out of place, but the passage of time makes it now irrelevant. The impugned orders are set aside, and the appellant will be entitled to a declaration that she will be treated as having no

disablement as arising out of the disciplinary proceedings which happened to be initiated against her, as highlighted in the OA.

We make no order as to costs.



(S. D. Dayal)
Member (A)



(M. Ramachandran)
Vice Chairman (J)

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