

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 153/98

New Delhi, this the 19th day of May, 1999

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

Krishan Singh,
Statistical Officer,
O/o the Dev. Commr.,
Development Deptt.,
Under Jt. Director (Agri)
Govt. of NCT of Delhi and
R/o B-4/75, Johri Pur,
Delhi.

.....Applicant

(by Advocate: Shri K.C.Mittal)

Versus

1. Chief Secretary,
Govt. of NCT of Delhi,
5, Sham Nath Marg,
Delhi 110 054.

2. Lt. Governor,
National Capital Territory of Delhi,
Rajniwas, Rajpur Road,
Delhi.

...Respondents

(By Advocate: Shri B.S.Gupta through Sh. S.K. Gupta, proxy).

J U D G M E N T

Hon'ble Shri T.N.Bhat:

The applicant who was at the relevant time working as Statistical Officer in the Transport Department of Govt. of N.C.T. of Delhi and had been given the charge of Motor Licensing Officer (MLO, for short) was served with a chargesheet on 5.1.1994. A brief resume of the charges is as follows:-

Article: (I) That the applicant on 11.6.1991 while working as Incharge of Licensing Branch and Polaroid Unit at

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Transport Department was found guilty of gross negligence and lack of supervision when some polaroid cards were found to be forged. This also showed doubtful integrity of the applicant which is unbecoming of a government servant.

Article: (II) That the applicant on 11.6.1991 while functioning as aforesaid issued 6 driving licence under his signatures which were later found in his possession and on scrutiny of which it was found that the records did not tally with the particulars given in those polaroid cards. From the above it was clear that the 6 driving licence were issued by him with ulterior motive and in connivance with some unscrupulous elements and the staff of Polaroid Unit.

Article : (III) That the applicant on 11.6.1991 while functioning as aforesaid issued 263 commercial licences, but on checking all the application forms for renewal and for issuance of duplicate driving licences, 46 application forms were found short. The applicant did not make available those 46 application forms including 6 relating to the aforesaid Polaroid cards and from this it was clear that the applicant had issued these driving licences without any application form.

Article:(IV) That on the aforesaid date 6 bogus driving licences were found in possession of the applicant while he was working as Incharge of the Licensing Branch and the Polaroid Unit. As per practice the driving licences were to be delivered to the concerned licence holders immediately after preparing the driving licences which the

applicant had failed to do and this showed that he in connivance with the staff of Polaroid Unit had prepared these bogus driving licences.

2. The disciplinary authority appointed one Shri Vinod Khanna, Commissioner for Departmental Enquiries ^{as EO.} who conducted the enquiry and submitted his report, as ^{at} Annexure A-XX. Agreeing with the report of the Enquiry Officer the disciplinary authority passed the impugned punishment order dated 7.1.1998 imposing the punishment of removal from service upon the applicant with immediate effect.

3. Aggrieved by the aforesaid punishment order the applicant has filed this O.A. seeking the following reliefs:

(i) Setting aside the impugned order dated 7.1.1998;

(ii) Declaring that the applicant continues in the service of the respondents, with all consequential benefits;

(iii) Awarding cost of the proceedings; and

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(27)

(iv) Passing any other order or direction which this Tribunal deems fit and proper in the facts and circumstances of the case.

4. The main ground agitated in the OA is that the findings of the Enquiry Officer and the order passed by the disciplinary authority are perverse and are based on 'no evidence' against the applicant. It is further contended that the original documents listed in the chargesheet never saw the light of the day during the course of the enquiry these were never shown either to the enquiry officer or to the applicant nor were copies of the same got proved through any of the prosecution witnesses. It is also contended that one witness, namely, Smt. Achala Singh, the then Deputy Director, was not originally listed as a witness and even so the enquiry officer summoned and examined her as an additional witness and this was done with the sole purpose of filling up the gaps in the proceedings, thus causing prejudice to the applicant.

5. Another important point raised by the applicant is that the signatures on the polaroid cards were never got compared with the admitted signatures of the applicant through a Hand Writing Expert so that it could be established beyond doubt that the signatures on the polaroid cards were those of the applicant. In this regard it is contended that on the very first occasion when the forgery came to light the applicant had pointed out that the polaroid cards have been forged and his signatures had not been obtained on them. But, according to the applicant,

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(24)

Shri Vishwanath, Head Clerk had played mischief and had manipulated the whole case in order to save himself as also the persons belonging to the Polaroid Unit from punishment. The applicant, it is contended, had no control over the staff posted in the Polaroid Unit and, therefore, the charge of lack of supervision could not be levelled against the applicant.

6. The respondents have resisted the O.A. on the ground that there was sufficient evidence produced before the enquiry officer on the basis of which all the four charges could be said to have been established. It is contended that on 11.6.1991 while taking over the records of polaroid cards Shri Vishwanath, Head Clerk found that 19 cards were short and it was later found that 6 cards were kept in the register maintained by the applicant himself which were not properly cancelled. As regards Smt. Achala Singh, it is contended that her examination as an additional prosecution witness was necessary as she had conducted the preliminary investigation of the case. It is also stated that the signatures of the applicant were got verified from other witnesses who had been working under the applicant at the relevant time and that, therefore, there was no necessity to get the signatures verified from a Hand Writing Expert.

7. The applicant has filed rejoinder to the counter filed by the respondents in which it is re-iterated that the applicant has been falsely implicated in the matter. As regards preliminary objection of the respondents that the applicant had not exhausted the departmental remedies the applicant has stated that the OA was



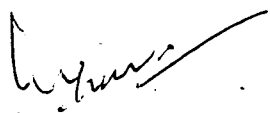
entertained by the Tribunal in the extra ordinary circumstances of the case and had also later been admitted. As such the preliminary objection could not be sustained.

8. We have heard the learned counsel for the parties at length and have perused the material on record.

9. During the course of arguments the learned counsel for the applicant also produced before us the copy of the applicant's letter dated 24.6.1991 addressed to the then Deputy Director, namely, Smt. Achala Singh in which his version of the incident has been given. This letter was infact sent as a complaint.

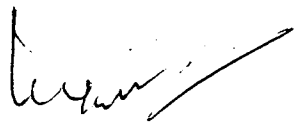
10. The learned counsel for the applicant also extensively read the enquiry officer's report in his bid to demonstrate that the enquiry officer had contradicted himself at several places and had given perverse findings. We have also carefully gone through the report of the Enquiry Officer which consists of as many as 35 pages. It clearly appears that the enquiry officer has contradicted himself on material particulars and the entire report is a bundle of contradiction. The disciplinary authority also, in his turn, has done no better.

11. The first point that falls for determination is as to whether the applicant did at all have any control over the staff of the Polaroid Unit. Under the heading ANALYSIS OF EVIDENCE the Enquiry Officer at page 6 of his report states that the applicant who was a Statistical Officer, while functioning as Incharge of Licensing Branch and 'Polaroid unit' at Transport Department had been



assigned the duty for issuing of duplicate and renewed driving licences after proper checking and verification of all the relevant documents. It is further stated that on 11.6.1991 one Shri Prahalad Kumar, L.D.C. in the Polaroid Unit submitted 423 polaroid cards to the Licensing Branch for safe custody, as is the usual practice, after winding up the day's work. However, it was found that in the entries in the issue register of the Polaroid Unit a mention had been made of 442 polaroid cards having been issued. Hence, 19 polaroid cards were found short. It was further found that 6 of these 19 polaroid cards had been kept separately in the above said register which had not been stamped as cancelled. It is also stated that Shri Prahalad kumar, LDC later stamped those polaroid cards in the presence of the applicant.

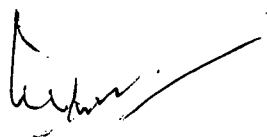
12. Making a mention of the procedure to be followed for issuing of the duplicate licences the enquiry officer states in para 6 of his report that the applications presented for issuance of such licences are got verified by the concerned clerk as also the Headclerk and finally by the M.L.O. The Polaroid Branch issues the polaroid card after verifying the contents of the application from the old records, writing on the left side of the polaroid card, in manuscript the particulars of the old card as verified by the Licencing Branch. On the right hand side the Polaroid Branch writes in manuscript the number of the old license and put their initials. After doing that the Polaroid Branch hands over the application to the persons applying for the same directing him to go to the MLO or Inspector for his signatures.



13. In para 7 of the enquiry report the enquiry officer states in so many words that the Polaroid Branch is under the control of Polaroid Officer who, in turn, is under the administrative control of Director, D.E.D.A. and not under the Transport Department. It is also further conceded that the Polaroid Branch is not even subject to any inspection by any officer of the Transport Department. As a matter of fact the Polaroid Officer Incharge of the Polaroid Branch was at the relevant time of the same grade and scale as that of the MLO. The enquiry officer, thereby demolishes the main contention of the prosecution that the applicant was Incharge of not only the Licensing Branch but also the Polaroid Branch. This takes away the wind from the main sail of the prosecution case.

14. Proceeding further, the enquiry officer, in para 9 of the report, admits that when the applicant herein entered the Licensing Branch he found six polaroid cards being stamped as cancelled by Shri Prahalad Kumar and on seeing those polaroid cards the applicant found that the same did not bear his signatures and that the signatures on those cards had been forged. It is also further admitted that the applicant asked the Headclerk to keep the polaroid cards in safe custody so that the applicant could submit a report in the matter to the Deputy Director the next day.

15. The enquiry officer also gives the details of the manner in which Shri Vishwanath, Head Clerk had conducted himself and states in para 10 of the enquiry report that Shri Vishwanath had given a blatantly distorted version in the complaint given to the Deputy Director. Not only that but also did the Head Clerk compel the other



officials to put their signatures on the complaint Ex S-1. Even during the course of the enquiry the witnesses had admitted that it was at the instance of Sh. Vishwanath, Head Clerk that they put their signatures on Ex S-1 even though they did not have personal knowledge of the contents of that document.

16. Again, in para 11 of the report the enquiry officer has admitted that Shri R.P.Jain, SW-3, had in his deposition stated that the applicant herein had in the presence of all the staff present, which included the Head Clerk, stated that the six polaroid cards did not bear his signatures and the same were forged.

17. It is also admitted in para 13 of the report that the applicant had reported the matter to the Deputy Director on the very next day but that before he did so the Head Clerk had already 'mischievously' given a distorted version to her while handing over the six polaroid cards and licenses.

18. More significantly, in para 14 of the report, it has been admitted that there was no mechanism by which the Licensing Branch would be in a position to determine and verify the number of polaroid cards issued by the Polaroid Branch on a particular day and that, therefore, there was nothing in the evidence to show that on 11.6.1991 the Polaroid Branch had in fact issued 442 polaroid cards. It is further admitted in this regard that there was no evidence to suggest that the applicant was responsible in any way for the safe custody of polaroid cards either in the Polaroid Branch or in the Licensing Branch and that the Head



Clerk was the overall Incharge of the office in the Licensing Branch and the keys of the office were also kept by the Head Clerk.

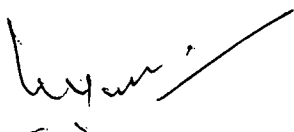
19. Even so the enquiry officer, by use of strange logic held in para 15 of the report that from the evidence on record it emerged that the MLO was the Incharge of the overall supervision for issuance of licenses. At the same time it is admitted that the Polaroid Officer was the overall Incharge of the Polaroid Unit. It appears that the enquiry officer has drawn an adverse inference against the applicant only on the ground that he had not called for the explanation of Prahalad Kumar, L.D.C. in the Polaroid Unit and had not probed the matter further nor had he questioned Prahalad Kumar regarding misplacement of the remaining 30 polaroid cards. When admittedly the applicant had on the first opportunity questioned the genuineness of the polaroid cards and had entrusted the forged polaroid cards to Shri Vishwanath, Head Clerk with an understanding that the matter would be referred to the higher officer, namely, the Deputy Director on the next date, there was no point in holding an enquiry or probing the matter further on 11.6.1991 itself late in the evening.

20. As regards the original polaroid cards the same were admittedly handed over to the Deputy Director by the Head Clerk on 12.6.1991 along with his own version of the incident. After that date, despite the lapse of several months the polaroid cards could not be found. The enquiry officer seems to draw an inference from the aforesaid fact that it was the applicant herein who had caused disappearance of those cards. We do not find anything in

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the evidence to even remotely connect the applicant with the disappearance of the polaroid cards. As a matter of fact the applicant's complaint is that neither the original polaroid cards nor even their photostat copies were ever subjected to comparison with the admitted signatures of the applicant even though he had made a request for the same. The enquiry officer states that since the Deputy Director had in her deposition recorded by the enquiry officer identified the signatures of the applicant on the polaroid cards, there was no necessity to get the disputed signatures and the admitted signatures compared by an examiner of questioned documents. We are afraid this contention cannot be accepted. Indeed, the crux of the charge against the applicant was that he had signed those polaroid cards which fact was emphatically denied by the applicant. In these circumstances, it was all the more imperative that the enquiry officer ought to have got the signatures compared by an Expert. The solitary deposition of the Deputy Director would not be sufficient.

21. That brings us to the question as to what would be the evidentiary value of the deposition made by the Deputy Director, namely, Smt. Achala Singh. According to the enquiry officer she had conducted the preliminary enquiry in the matter immediately after receiving a report about the same. She would, therefore, be the most important witness. But even so she was never included in the list of witnesses. It was only during the course of the enquiry when there were several gaping holes in the story of the prosecution that the enquiry officer abruptly called her to make her deposition and recorded her statement. It is interesting to note that in her deposition dated 10.1.1997



Smt. Achala Singh has stated that she had retained the licences/polaroid cards and kept them in safe custody and on her transfer she had handed over the licences to her successor. She, however, conveniently washes her hands of the incident by stating that she does not know what happened to those licences later.

22. In answer to a question put to her the said witness has admitted that on receipt of the complaint from the Head Clerk she did not immediately start any investigation or enquiry but referred the matter to the Joint Director. It was only after receiving instructions from the Joint Director (Admn) that she started investigations. If the learned enquiry officer holds the applicant guilty of the alleged misconduct on the basis that he did not immediately probe the matter how can he rely upon the deposition of the Deputy Director that she did not immediately hold any enquiry or probe?

23. That apart, the Deputy Director admittedly held a detailed enquiry and examined the officials who had the knowledge about the alleged incident but there is nothing on the record to indicate that copies of the enquiry report or that of the depositions made by the witnesses during the course of the said enquiry held by the Deputy Director were ever given to the applicant. Learned counsel for the applicant emphatically denies that any such copies were given to the applicant. The learned counsel for the respondents has also not been able to seriously dispute this assertion.

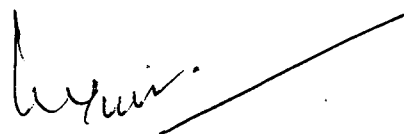
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24. We further notice that in the enquiry report the enquiry officer has repeatedly stated that the alleged forged polaroid cards/licences had been recovered from the possession of the applicant. This is manifestly a false statement because admittedly these cards were in the possession of Shri Vishwanath, Head Clerk who produced the same before the Deputy Director on 12.6.1991. It has also come from the deposition of the prosecution witnesses that one Vinod Malik had come with six driving licences and gave the same to the applicant but at the instance of Shri Vishwanath, Head Clerk the applicant handed over these licences to Shri Vishwanath. By no stretch of reasoning can it be said that these licences were in possession of the applicant. As regards the polaroid cards it is the admitted position of both the parties that the same were in possession of Shri Prahalad Kumar. Shri Vishwanath, prosecution witness states in his deposition that on seeing the six unstamped polaroid cards the applicant herein had stated that the same do not bear his signatures and are forged and thereafter the applicant handed over the said polaroid cards to the Head Clerk for sending a report to the Deputy Director the next day. To the same effect is the deposition of R.P.Jain, witness.

25. It is interesting to note that even the star witness of the prosecution, name]y, Sh. Vishwanath, Head Clerk against whom the enquiry officer has also commented adversely has in his deposition admitted that the Polaroid Branch works under the Polaroid office who is under the administrative control of Director, DEDA, while the Head Clerk and the MLO are under the administrative control of the Transport Department.



26. Reverting back to the question as to whether the applicant was granted adequate opportunity to defend himself, we may refer to Annexure A-VIII and a list of documents annexed thereto. By the aforesaid application the applicant had sought copies of some relevant documents which included the original driving licences, the original polaroid cards and other documents so that he could inspect the same and prepare his defence. As already stated, all these documents were relevant and were meant to disprove the allegation made by the prosecution against the applicant. It is not disputed that these documents or their copies were never furnished to the applicant. In reply to the aforesaid application of the applicant the Vigilance officer of the Transport Department had sent a reply, as at Annexure A-X, that the original documents are not readily available as the officer concerned is out of the country and that the said original documents can be supplied for inspection on her return from abroad. We are told that Smt. Achala Singh was the 'officer concerned' but as already observed, she has stated in her deposition that she had handed over all the original documents to her successor. Needless to say that those documents never saw the light of the day. Surprisingly, the enquiry officer has drawn an adverse inference against the applicant even on the ground that the original documents were not traced out later. This inference, in our considered view, is most illogical. The report of the enquiry officer becomes even more perverse for the aforesaid reason.



27. Last but not the least circumstance to be noted is the letter dated 3.4.1991 which according to the enquiry officer was sent by the Deputy Director, namely, Smt. Achala Singh to the applicant directing him to keep all the applications for renewal for commercial licences in safe custody and that no application form along with the supporting documents should be destroyed from that day onwards. The enquiry officer seems to have passed this letter into aid to support the contention that the applicant had flouted the instructions contained in this letter. The applicant has taken the plea before the enquiry officer that he had never received this letter and the enquiry officer has not believed him. On a careful perusal of this letter we find that this letter was not at all addressed to the applicant but the same was addressed to the M.L.O. Mall Road while the applicant was working in Hill Road. Therefore, by no stretch of reasoning can it be said that there were any such instructions issued to the Hill Road office of Transport Department. Interestingly, a copy of that letter has been endorsed to Shri Vishwanath, Head Clerk even though he had never worked in Mall Road office.

28. We are convinced that each finding recorded by the enquiry officer contradicts another finding recorded by himself in the earlier part of his report.

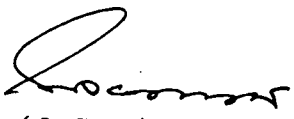
29. We may also deal with the objections raised by the respondents in their counter which were re-iterated by their counsel during the course of his arguments. This relates to non-availing of departmental remedies available to the applicant. In the peculiar facts and circumstances of this case we consider the case to be one where the

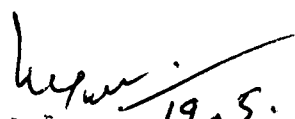
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requirement of exhausting the departmental remedies need not be insisted upon. This is particularly so in view of the fact that after hearing the parties the Tribunal had admitted this O.A.

30. In view of all that has been held and discussed above we find the case against the applicant to be one of no evidence and the findings recorded by the enquiry officer to be perverse. We accordingly allow this O.A. and quash the impugned order of punishment of removal from service awarded to the applicant. We direct that the applicant shall be re-instated in service forthwith. However, as regards the back wages we leave it to the respondents to pass an appropriate order in this regard as also in regard to the question as to how is the intervening period to be treated. But on the question of continuity of service we direct that the intervening period shall not be treated as a break in the applicant's service.

31. With the above order, the OA is disposed of, leaving the parties to bear their own costs.


(S.P. Biswas)
Member (A)


19.5.99.
(T.N. Bhat)
Member (J)

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