

Central Administrative Tribunal
Principal Bench

(AI)

OA 2349/1998

New Delhi, this the 25th day of April, 2007

**Hon'ble Mr. Justice V.K. Bali, Charman
Hon'ble Mr. V.K. Agnihotri, Member (A)**

Sub-Inspector Ram Singh Yadav No.D/2614,
S/o Shri Prabhati Lal,
R/o RZ-F/582,
Raj Nagar-II,
Palam Colony,
Delhi – 45.

...Applicant

(By Advocate: Shri Sachin Chauhan)

Versus

Union of India,

1. Through its Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Commissioner of Police,
Police Head Quarters,
I.P. Estate, M.S.O. Building,
New Delhi.
3. Addl. Commissioner of Police,
Operations, Police Head Quarters,
I.P. Estate, M.S.O. Building,
New Delhi.
4. F.R.R.O./Dy. Commissioner of Police,
Hans Bhawan, I.T.O.,
New Delhi – 2. ...Respondents

(By Advocate: Shri Ajesh Luthra)

O R D E R

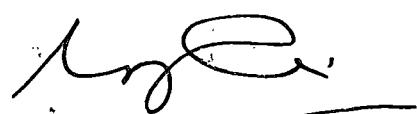
By Mr. V.K. Agnihotri, Member (A):



(A2)

In this OA the applicant has sought quashing and setting of the orders of the Disciplinary Authority dated 13.11.1997 (Annexure A-1), Appellate Authority dated 18.02.1998 (Annexure A-2) and Revisional Authority dated 04.05.1998 (Annexure A-3) along with the findings of the Enquiry Officer (EO, for short) dated 27.06.1997 (Annexure A-4), as a consequence of which three years of his approved service was forfeited permanently for three years entailing reduction in his pay from the stage of Rs. 6725/- to Rs. 6200/-. It was also ordered that he will not earn increments of pay during the period of reduction and on the expiry of this period, the reduction will have the effect of postponing his future increments of pay.

2. The bare facts of the case, which, since its inception in 1998, has had a long and checkered history, are that the applicant was enrolled as Constable in Delhi Police on 03.01.1979 and was later appointed as Sub Inspector on 03.10.1988. While posted as Clearing Officer in the Departure Left Wing on 23.11.1995, the applicant cleared a passenger (the pax, for short), allegedly in possession of a British Passport in the name of Mukesh Ram Jiwan alias Munaf Ismail Nalbum. However, when the pax reached U.K., the British Immigration Authority, upon detecting a forgery in the passport, deported the pax back to India on 27.11.1995. A case in FIR No. 529/1995 was registered under



(AB)

Sections 419/420/468/471 I.P.C. and under Section 12 of the Passport Act against the pax. A disciplinary enquiry was, thereafter, initiated against the applicant. The EO, after examining five PWs, framed the following charge dated 12.09.1996, which was served on the applicant on 23.10.1996:-

“You, SI Ram Singh, No. D/2614 are hereby charged that on 23.11.95 while you were deployed as a clearing officer in departure left wing at Immigration, IGI Airport, New Delhi and stamp No. W.11(D) was issued to you, one pax namely Mukesh Ram Jiwan @ Munaf Ismail Nalbhum R/o VPO Fateh Ganj, Tehsil and Distt. Barala, Gujarat, holding forged British Passport No. 0041062244 dated 29.11.91 issued at London in the name of one Anil Kara, approached at your counter (Counter No. 1) as a pax of flight No. EX-701 bound for London. You, SI Ram Singh, No. D/2614, instead of detecting the forgery, gave Immigration Clearance to the said pax without asking even a single question although the photo on the passport was replaced. However, the forgery was detected by British Immigration Authority who deported the pax back to IGI Airport. The pax disclosed in his disclosure statement that one travel agent namely Dhanesh Bhai took Rs. 1 Lac from him and directed him to go through Counter No. 1.

The above act on the part of you SI Ram Singh, No. D/2614 amounts to gross misconduct and negligence and dereliction in the discharge of your official duties which renders you liable to be dealt with departmentally u/s 21 of Delhi Police Act, 1978.”





3. The applicant denied the charges and produced four DWs. On 15.05.1997, the applicant submitted his written defence statement. The EO thereafter submitted his findings on 27.06.1997, a copy of which was served on the applicant on 08.07.1997 with a direction to submit his representation, which the applicant accordingly submitted on 30.09.1997. The applicant also appeared in O.R. on 06.11.1997 before the Disciplinary Authority. Thereupon, the Disciplinary Authority issued the impugned order dated 13.11.1997 (supra). Thereafter, the applicant submitted his appeal, which was rejected by the order of the Appellate Authority dated 18.02.1998 (supra). The applicant then submitted a Revision Petition, which too was rejected by the order of the Revisional Authority dated 04.05.1998 (supra). Hence the OA.

4. During the pendency of the OA, this Tribunal, in its order dated 19.02.2001, decided as follows:-

“3. The first point raised by applicant's counsel is that the Deputy Commissioner of Police/FRRO did not have the competence to issue the impugned order dated 13.11.97, because at that time the FRRO was not conferred the power of DCP to act as the Disciplinary Authority, and the aforesaid power was conferred on him only by Gazette Notification dated 29.01.98 under Section 8 of the Delhi Police Act. Reliance in this connection is placed on several rulings of the Tribunal including the other order dated 22.12.2000 in OA-1804/98 (SI Dharam Pal Vs. Commissioner of Police & Ors.).



4. However, Sh. Rajinder Pandita invites our attention to the order dated 15.09.2000 in OA-1093/98 (Const. Davinder Kumar Vs. U.O.I. & Ors.) passed by a co-ordinate Bench of the Tribunal which has noticed a Notification issued by Government of India on 01.02.1992 which reveals that a police officer can function as FRRO and on that basis it has been held that the FRRO was competent to deal with the proceedings.

5. As there is a conflict on decisions on this issue, Registry is called upon to place the matter before the Hon'ble Chairman for constitution of a Larger Bench to adjudicate on the following issue:-

Whether the FRRO had competence in jurisdiction to act as the Disciplinary Authority under the Delhi Police Act prior to the issue of Gazette Notification dated 29.01.98?"

5. The Larger Bench constituted accordingly gave the following directions on 28.05.2001:

"2. We find that this matter, is also substantially in issue in C.W.P. No. 3030/99 before the Delhi High court against the Tribunal's order dated 10.12.98 in O.A. No. 2598/96 Const. Brahm Prakash Vs. Union of India & Ors.

3. We are informed that the aforesaid Tribunal's order dated 10.12.98 has been stayed by the Delhi High Court and rule nisi has been issued and the matter is to be taken up for hearing.

4. Under the circumstances this reference is adjourned sine die giving liberty to either party to move for revival of the same upon receipt of orders of the Delhi High Court.

(Ab)

5. Meanwhile it will be open to either party to consider making a prayer before the Delhi High Court for early hearing of the matter."

6. Subsequently, the applicant filed MA No. 2465/2005 seeking revival of OA No. 2349/1998 stating that he would not press for arguments on the issue of FRRO in respect of which cases were pending before the Hon'ble Delhi High Court. When the matter came up before this Tribunal on 05.07.2006, learned counsel for the respondents pointed out that in the related OA No. 2075/2002, a similar request made by the applicant therein had already been rejected. The applicant thereupon requested that the matter may be placed before the Hon'ble Chairman for constituting a Larger Bench to consider his application for appropriate orders. The Tribunal accordingly directed that the matter may be placed before the Hon'ble Chairman in his administrative capacity for necessary orders.

7. While the matter stood thus, the Hon'ble High Court of Delhi in WP (C) No. 12103/2006, vide order dated 28.07.2006, refused to entertain the request of the applicant for revival of the adjourned OAs and directed the petitioner (applicant herein) to approach the Tribunal for necessary orders. The matter was accordingly placed before a Full Bench which, in its order dated 07.09.2006, released the matter from Full Bench and directed





that it may be listed before appropriate Division Bench. This OA has been thus heard by this Division Bench.

8. The applicant has contended that list of witnesses provided along with the Summary of Allegation does not contain the brief details of the evidence to be led by the witnesses. The applicant has further stated that PW3, Janak Raj, had stated that the pax had not stated that any money was paid to the Clearing Officer. Assistant Commissioner of Police/FRRO has clearly deposed that the pax had not disclosed about any money and also about the identity of the Clearing Officer. The pax was, however, not examined during the course of the departmental enquiry and no sincere efforts have been made to ensure his presence. There is absolutely no evidence to show that the applicant had demanded money from the pax and as far as pointing out of the counter to the pax by the agent is concerned, the said agent was also not examined in the enquiry. The applicant in his defence had produced 4 DWs, who had clearly deposed that the applicant had put questions to the pax and he had no *mala fide* intention. Witnesses had also stated that it is very difficult to detect forgery in an old British passport. The forgery appearing in the photograph was impossible to be detected even after requisite training. In fact, the only method to detect forgery on the photograph is by using an ultra violet lamp where the photograph





glows but in the old passports the said procedure cannot be used and, therefore, it is impossible to detect forgery. No training was given to the applicant for security features of British Passport and it was, therefore, simply a case of human error.

9. It has also been contended that the allotment of counter to a Clearing Officer is not done in advance but on the very day he reports for duty and it is very difficult to indicate the counter at which a passenger shall be cleared. No counter numbers are displayed at the Immigration and, as such, it could never have been pointed out to the pax by his agent. The said pax was thoroughly interrogated but no *mala fide* or ulterior motive was proved against the applicant. The EO had not at all gone into the defence of the applicant and without any evidence held the applicant guilty of the charges whereas if it is found that the act was done in good faith, no penalty can be imposed upon a police officer, as provided in Section 138 of the Delhi Police Act, 1978. It has been further stated that the impugned order of punishment, Appellate Order, Revisional Order and the findings of the EO are illegal, arbitrary, *mala fide*, without jurisdiction and the same are in violation of principles of natural justice and laid down departmental rules. The Appellate Authority has not recorded reasons in support of its order and has neither discussed nor





considered or controverted the contentions taken by the applicant in his appeal.

10. The respondents have stated that the contention of the applicant that he had been dealt with a P.E. conducted by ACP/FRRO is wrong. In this case, no preliminary enquiry was conducted against him. The plea put forth by the applicant that there is no evidence against him is totally baseless and denied. PW-3, ASI Janak Raj, in his statement, had proved the deposition of the pax made during interrogation. PW-4 Sh. Yashbir Singh, ACP/FRRO had also deposed that on 30.11.1995, the I.O. of case FIR No. 529/95 P.S. IGI Airport produced one Munaf Ismail Nalbhum before him who was interrogated. The PW has further deposed that during interrogation the accused pax told him (PW-4) that the agent left him outside the airport with the direction to reach counter No. 1 and the Immigration Officer at Counter No. 1 did not enquire any facts from the accused. The above version of PW-4 has also been corroborated by PW-5, ASI Meer Singh, the I.O. of the case FIR No. 529/95 P.S. IGI Airport, in his statement recorded during the course of departmental enquiry. The plea of the applicant that the forgery in old British Passport is not easily detectable and is not convincing in this case. The photo was replaced in the passport and Clearing Officer should have examined the passport in detail before clearing the passengers. In





in this case the applicant did not take pains to detect the forgery in the passport, which he could have detected easily and in case of doubt referred the issue to the senior Inspector/Incharge of the departure wing. The plea taken by the applicant that the pax was not examined, has no force. The pax could not be examined as his correct address was not available. At the given address, summons remained un-served upon him. All the officers posted in Immigration are imparted intensive basic training in the detection of forgery etc. before deploying them as Clearing Officers. Refresher courses are also being regularly organized for the immigration officers to develop the expertise in the checking of documents correctly and expeditiously. It is the primary duty of an immigration officer to ensure that no passenger with forged travel documents or somebody else's documents is given immigration clearance. He is also required to detect the forgery etc. by minutely checking the passport and other travel documents, but the applicant miserably failed to do so. The respondents have further contended that the EO has carefully gone through the statements of PWs/DWs recorded during the course of departmental proceedings and the other material in the light of facts and circumstances of the cases and has submitted his findings after giving due weightage to the statements of PWs/DWs as well as the defence statement given by the defaulter SI. The orders passed by the Appellate Authority are legal and

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fully justified. The plea put forth by the applicant that the order passed by the Appellate Authority is illegal, is wrong and baseless. The Appellate Authority has rejected the appeal after going through the appeal, evidence on record and after hearing the applicant in O.R. on 23.01.1998.

11. In his rejoinder, the applicant has reiterated the averments made in the main application and denied the contentions of the respondents.

12. In the course of oral arguments, Shri Sachin Chauhan, learned counsel for the applicant, stated that the order of the Disciplinary Authority is defective insofar as it imposes multiple punishments inasmuch as the Disciplinary Authority has ordered that the reduction of pay "will have the effect of postponing his future increments of pay". In this context, he cited the judgment of the Hon'ble High Court in the case of **Shakti Singh etc. v. Union of India & Ors. etc.**, 2002 VIII AD (DELHI) 529 wherein it was held that Rule 8(d)(ii), in terms of which the above mentioned punishment was awarded, was bad in law. This ruling has been subsequently followed by this Tribunal in several orders [**Ct. Sheel Bahadur v. Secretary, M/o Home Affairs & Ors.**, OA No. 2256/2003 decided on 12.05.2004; **Constable Manoj Kumar v. Union of India & Ors.**, OA No. 3076/2002 decided on 24.06.2003; **Constable Dharmender Kumar v. Union of India &**



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Ors., OA No. 2920/2002 decided on 11.04.2003; and **Ct. Pritam Chand v. Union of India & Ors.**, OA No. 2714/2001 decided on 27.02.2003].

13. Learned counsel further contended that the applicant had been given some training to detect forgery in Indian passports but he had no expertise at all in detecting forgery in old type of British passports. He further stated that there was not even an iota of evidence that the applicant had accepted any bribe for clearing the pax. As a matter of fact, there was no evidence against the applicant regarding any connivance or collusion. There was only hearsay evidence which, in the light of various judgments of the Hon'ble High Court and Supreme Court, could be considered only if preliminary evidence was not available. Moreover, hearsay evidence could be considered provided it had a reasonable nexus and credibility. However, in the present case, statement of the pax made to the prosecution witness could not be considered credible insofar as PW3, in his deposition before the Trial Court, had stated that the pax could have knowingly told a lie with regard to his real name [**Narinder Mohan Arya v. United India Insurance Co. Ltd. & Ors.**, 2006 (3) AISLJ 211; **M.V. Bijlani v. Union of India & Ors.**, 2006 (3) AISLJ 184; **Capt. P.S. Thapar v. Delhi Development Authority & Ors.**, 2006 (2) AISLJ 219; and **State of Haryana & Anr. v. Ratan Singh**, 1977 AISLJ 408].





14. Learned counsel further argued that in the evidence recorded in the criminal case, no collusion on part of the applicant has been established. Even in the hearsay evidence recorded during departmental enquiry, no definite evidence has been recorded in relation to the charge. At no point of time, the tout/agent (Dhanesh Bhai) is reported to have told the pax that the tout had 'fixed' the applicant.

15. Shri Ajesh Luthra, learned counsel for the respondents, stated that it was undisputed that the pax had been cleared by the applicant and that the passport was forged to the extent of the photograph having been affixed. He further drew our attention to the provision of the Delhi Police Manual, which reads as follows:-

"20. Standard of evidence in departmental enquiries.- (1) Officer conducting departmental enquiries are not bound to follow the provision of the Code of Criminal Procedure or Indian Evidence Act. They may admit any evidence which they consider relevant and should exclude evidence which is irrelevant to the charge specified under the enquiry or which is introduced merely to prejudice the opposite party or to cloud (sic) the issues."

16. He further contended that, even according to the judgments cited by the learned counsel for the applicant, hearsay evidence was admissible in departmental enquiries because the standard of proof therein was one of preponderance of probability and not beyond a reasonable doubt. He cited judgments of the Hon'ble





Supreme Court to argue that Evidence Act was not applicable in the strict sense in departmental enquiries and certain type of evidence, which was not admissible in criminal cases, such as, evidence of co-accused/co-conspirator, was admissible in departmental enquiries [**Vijay Kumar Nigam (dead) through LRs.**

V. State of M.P. & Ors., 1997 (1) SLR 17; **Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi & Ors.**, 1991 (2) SCC 716; **J.D. Jain v. The Management of State Bank of India & Anr.**, AIR 1982 (SC) 673; and **Bhagwandas Keshwani & Anr. vs. State of Rajasthan**, 1974 (4) SCC 611].

17. The learned counsel further cited the judgment of the Hon'ble Supreme Court in **Orissa Mining Corporation & Anr. v. Ananda Chandra Prusty**, 1996 (11) SCC 600 to argue that in departmental enquiries the onus of proof does not always lie upon the department but it dependents on nature of charges and the nature of explanation.

18. We have heard the learned counsel for the parties and perused the material on record, including the English transcript of the evidence of PWs in the criminal case as well as the citations, so helpfully, provided by both the counsels.



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19. In the peculiar facts and circumstances of the case, we appreciate that it would not have been possible for the respondents to provide primary evidence by making either of the two accused in the criminal case to appear and depose against themselves in the departmental enquiry. Therefore, as clearly enunciated by the Hon'ble Supreme Court in the case of **State of Haryana & Anr. v. Ratan Singh** (supra), there is nothing wrong if hearsay evidence is taken in a departmental enquiry, provided it has a reasonable nexus and credibility. However, in our opinion, the respondents have neither been able to establish a reasonable nexus nor is the hearsay evidence of the accused, in view of the observation of PW3 in the criminal case, could be called credible.

20. The applicant has very convincingly argued that, in the first place, the Counter allotted to the Clearing Officer is not decided in advance but on the very day on which the duty is assigned. He has also stated that no Counter numbers are exhibited in front of the Counters, which would have enabled the tout/agent to tell the pax that he should go to Counter No. 1 and that the pax could then follow his instruction. This is, in fact, at the root of the decision of the Disciplinary Authority to punish the applicant insofar as the impugned order states as follows:-

"Apart from the disclosure of the pax that he had been asked to go to Counter No. 1 where no questions were asked from him by the Clearing Officer, there is no other direct



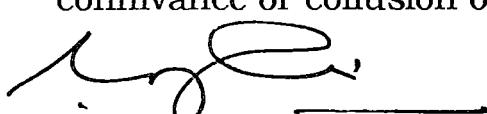
(56)

evidence proving that the Clearing Officer was in connivance with the pax and his agent because of which I am inclined to take a lenient view..."

In their counter, the respondents have not specifically rebutted the aforementioned contentions of the applicant as can be seen from their replies to paras 4 (iv), 4 (vii) and 5 (xv).

21. The applicant has again contended that it was very difficult to detect forgery in old type of British passports with the naked eye. According to him the only method to detect forgery in a photograph is through the use of an ultra violet lamp but this procedure is not applicable to old passports. In any case, he had not been given any training for the purpose. The respondents have not been able to establish that it was indeed possible for the applicant to detect the forgery with the naked eye. It is indeed very strange that no forensic or other expert was examined either in the criminal case or in the departmental enquiry to establish that it was indeed possible for the applicant to detect the forgery relating to the replacement of the photograph with the naked eye.

22. Taking the totality of facts and circumstances of the case into consideration, we come to the inevitable conclusion that this is a case of 'no evidence' and, therefore, open to judicial interference. The respondents have not been able to establish any connivance or collusion on the part of the applicant either through





primary evidence or through credible hearsay evidence. Since we are inclined to quash the impugned orders on these grounds by themselves, we do not consider it necessary to record our findings on certain other pleas taken by applicant regarding holding of Preliminary Enquiry, multiple punishments, non-speaking order of the Appellate Authority etc.

23. In the result, the OA is allowed. The impugned orders dated 13.11.1997 (Annexure A-1), 18.02.1998 (Annexure A-2) 04.05.1998 (Annexure A-3) and findings of the EO dated 27.06.1997 (Annexure A-4) are quashed and set aside. The respondents are directed to defray the consequential benefits to the applicant within a period of three months from the date of receipt of a certified copy of this order. There will be no order as to costs.

24. Before parting with the case we would like to place on record our appreciation for the excellent assistance we received from the learned counsel for both the parties.



(V.K. Agnihotri)
Member (A)



(V.K. Bali)
Chairman

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