

Central Administrative Tribunal, Principal Bench

Original Application No.235 of 1996

New Delhi, this the 22nd day of November, 1999

Hon'ble Mr. Justice Ashok Agarwal, Chairman  
Hon'ble Mr. R.K. Ahooja, Member (Admnv)

Ex. S.I. Har Swaroop No.D/1471, son of  
Shri (Late) Shri Chander Bhan Sharma, aged  
about 57 years, R/o 1/2866, Ram Nagar, Loni  
Road, Shahdara, Delhi-110032 (Previously  
employed in the Security Branch of Delhi  
Police).

- Applicant

(By Advocate - Shri Shankar Raju)

Versus

1. Union of India / Lt. Governor of N.C.T.  
Delhi (Through Commissioner of Police),  
Police Headquarters, M.S.O. Building,  
I.P.Estate, New Delhi.

2. Addl. Commissioner of Police (Security  
& Traffic) Police Headquarters, M.S.O.  
Building, I.P.Estate, New Delhi.

- Respondents

(By Advocate - Shri Surat Singh)

O R D E R

By Mr. R.K. Ahooja, Member (Admnv) -

The applicant, a Sub Inspector in the Delhi Police, was proceeded departmentally on the allegation that on 14.11.1991 while he was posted in FRRO and detailed for duty at IGI Airport one Shri Paramjit Singh reported to him at the counter for immigration check and the applicant during checking of documents detached the counter foil of customs clearance from disembarkation card and returned the same after accepting Rs.100/- as illegal gratification from the said passenger. The enquiry officer concluded that the charge against the applicant was proved and on that finding after considering the representation of the applicant the disciplinary authority awarded the punishment of forfeiture of three years approved service permanently vide order dated 25.6.1994 (Annexure-A-3). The appeal

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filed by the applicant was also rejected by the Additional Commissioner of Police vide order dated 29.12.1994 (Annexure-2). The applicant filed a revision-petition before the Commissioner of Police who on considering the matter issued a notice on 30.8.1995 (Annexure-A-4) calling upon the applicant to show cause as to why the proposed punishment of dismissal should not be inflicted upon him. After considering the applicant's reply the Commissioner of Police passed the impugned order dated 29.12.1995 (Annexure-A-1) enhancing the punishment from 'forfeiture of three years approved service permanently' to that of 'dismissal from service'. The applicant has now come before the Tribunal both against the order of enhancing of punishment as well as the original order of the disciplinary and appellate authorities awarding the punishment of forfeiture of three years service.

2. The main ground pressed before us by Shri Shankar Raju, learned counsel for the applicant was that there was no evidence before the enquiry officer on which a finding of guilt could be reached. He pointed out that the whole case against the applicant was based on the allegation that he had accepted and returned a bribe of Rs.100/- to the passenger Shri Paramjit Singh. The said witness was also cited amongst the list of witnesses in the departmental enquiry but neither was that crucial witness examined nor the reasons for non-examination were recorded by the enquiry officer or by the disciplinary authority. He has further argued that due to the non-examination of this witness the

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applicant was gravely prejudiced in his defence. Further the testimony of PW2 Mrs. Mary S. Philips, ACIO-II (G), Special Intelligence Cell (Security Control), IGI Airport, Delhi, on which reliance has been placed by the enquiry officer as well as by the disciplinary authority had at no stage mentioned that she had seen the applicant either receiving the amount of Rs.100/- or the said amount being returned to the passenger later on. It was further submitted by the learned counsel that according to the case of the department one Sub Inspector Sanjeev Kumar (PW3) had traced the passenger and had returned to him the sum of Rs.100/- but in his testimony the said Sub Inspector Sanjeev Kumar had totally denied that he was made aware at that time that there was any complaint of taking the money against the applicant or that he had acted as a mediator to return Rs.100/- to the passenger on behalf of the applicant.

3. It was also contended by Shri Shankar Raju that under Rule 8 of Delhi Police (Punishment and Appeal) Rules, 1980 the punishment of dismissal or removal from service shall be awarded only if there is a finding of grave misconduct rendering delinquent official unfit for police service. He pointed out that there was no such finding either by the enquiry officer or by the appellate authority and, therefore, it was not open to the Commissioner of Police as a revisionary authority to inflict such a punishment. Shri Shankar Raju also drew our attention to the decision dated 12.2.1996 of the Hon'ble Supreme Court in SLP (C) No.

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25491 of 1995 Ex. Const. Virendar Singh Vs. Lt. Governor of Delhi & others, wherein the Apex Court observed as follows :

"The appellant was dismissed from service as a result of disciplinary proceedings initiated and conducted against him. It is not disputed that the appellant has put in 30 years of service as a Constable. We are not inclined to interfere with the findings reached by the Enquiry Officer so far as the misconduct of the appellant is concerned. We are of the view that the appellant having served the Department for 30 years he should not be deprived of his right to earn pension. We, therefore, set aside the penalty of dismissal and instead impose the penalty of compulsory retirement. The net result would be that the appellant shall be entitled to pension and other post-retirement benefits. Impugned order of the Tribunal shall stand modified to the above extant."

4. We have also heard Shri Surat Singh, learned counsel for the respondents and have gone through the record of the disciplinary proceedings. In the disciplinary enquiry PW-1 Inspector Jai Narain stated that he had been informed by one I.B. official Mrs. Mary S. Philips, ACIO-II that the applicant had taken some thing from a passenger whereafter the passenger had gone outside the arrival hall. He also deposed that with the help of the IB official he traced out the passenger outside the building and made enquiries from that passenger who later on disclosed that he had dropped Rs.100/- in the drawer of the applicant, who was at the immigration counter in lieu of obtaining the custom clearance. Some time later on he found a note of Rs.100/- in the hand of the passenger and on enquiry he was told by the passenger that he had received back his note of Rs.100/-. The passenger, however, refused to give anything in writing. Thereafter he had reported the matter to the ACP. PW3 Inspector Sanjeev Kumar

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stated that Inspector Jai Narain had asked him to call the applicant as there was a complaint against him, whereafter nothing came to his notice and further that he was not a mediator in returning Rs.100/- to the passenger. PW 5 Shri Sita Ram ACP, who was working as AFRRO at IGI Airport at the relevant time, also deposed that it had come to his knowledge that S.I. Har Swaroop, applicant, had taken Rs.100/- from the passenger for some consideration. He had also received a report to that effect from Inspector Jai Narain. PW-2 Mrs.Mary S.Philips, ACIO-II(G) Special Intelligence Cell was the main witness. She stated that one Sikh person cleared by the applicant was waiting at Arrivals (Right Wing). She was suspicious that as to why that passenger was waiting even after immigration clearance. She then noticed that the said Sikh person went to the counter of the applicant and dropped something into the counter, whereafter the applicant handed over him his custom slip. Thereupon she informed the Incharge Wing, Inspector Jai Narain about the incident who immediately went outside the airport building and called the passenger inside. The Inspector questioned the passenger, who admitted he had given Rs.100/- to the applicant in Indian currency which had been returned to him. She admitted, in cross-examination, that she had not seen as to what was thrown by the passenger into the drawer of the applicant. She also stated that she was not present when the Inspector Jai Narain had a talk with the passenger in his room.

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5. In regard to non-production of the passenger Paramjit Singh as a witness in the disciplinary proceeding the relevant file shows that summons were repeatedly issued to him. The Senior Superintendent of Police Jalandhar, in which district the said Paramjit Singh had given his address, was also contacted and later reminded. Thereafter, the enquiry officer sent one Head Constable Ram Kumar with a summon to Jalandhar to serve the same upon Paramjit Singh on 2.11.1993. The said Head Constable reported in the disciplinary proceedings that there was no such person living at that address. As a result, PW Paramjit Singh was dropped as a prosecution witness.

6. The evidence recorded in the disciplinary proceedings clearly shows that while all the other passengers on the EK-700 flight were cleared, one passenger was kept waiting. That passenger thereafter approached the counter manned by the applicant. He dropped something on to the counter and thereafter he was handed over the custom clearance. It has also come in evidence that the matter was reported to Inspector Jai Narain who then located the passenger and called him inside. There is also evidence available that the matter was reported to the Assistant Commissioner of Police, who was at that very time was working as AFRRO at the IGI Airport. Thus, even though it has not been stated by any witness that it was Rs.100/- which was dropped by the passenger on to the counter manned by the applicant, the circumstantial evidence is sufficient to give rise to a clear inference that money had been given and received. The passenger had been detained but later

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received his customs clearance papers after dropping something on to the counter. On report action was taken to locate the passenger. Later a report was also given to the Assistant Commissioner of Police that the applicant had cleared the passenger in lieu of some consideration. Therefore, it cannot be said that there was no evidence against the applicant or that it was not possible to reach a finding of guilt on the basis of the available evidence.

7. It is true that the passenger, who was supposed to have given the money to the applicant did not participate in the disciplinary enquiry, but efforts made by the enquiry officer and the department to obtain evidence of this witness, however, show that there was no deliberate attempt to sideline the witness. The evidence of PW1 also shows that the passenger was not very cooperative and after stating that he had received back his money had gone away on the pretext that his taxi was waiting outside. Quite possibly for fear of involvement in a police matter he also did not give the correct address. We do not consider that the absence of the passenger in the array of PWs is fatal to the case of the department. It is true, as held by the Hon'ble Supreme Court in Hardwari Lal Vs. State of U.P. and others, JT 1999 (8) SC 418 that non-examination of the complainant could result in a prejudice to the case of the charged official as the impact of the testimony of that complainant on the case of the defendant cannot be

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visualised. But here it was not the passenger who was the complainant; it was in fact the ACIO-II Mrs. Mary S. Philips who had brought this matter to the notice of Inspector Jai Narain and who then intervened and located the passenger. The passenger on the other hand did not wish to lodge a complaint and he disappeared from the scene and left a false address so that he would not be involved in the subsequent enquiries. The failure of the department to produce the passenger Paramjit Singh, therefore, cannot in itself be fatal to the department's case. In our view the available evidence was sufficient to form a basis for the finding arrived at by the enquiry officer and the disciplinary authority.

8. We may now address ourselves to the proposition raised by the learned counsel for the applicant that the disciplinary and appellate authorities having imposed a lesser penalty and thus holding it to be an offence not grave enough to impose penalty of dismissal, it was not open to the revisionary authority to change this finding. The charge against the applicant was that he had accepted Rs.100/- as illegal gratification. We cannot visualise that once a finding is arrived and such a charge is proved, the same cannot be considered as a grave misconduct calling for the penalty of dismissal. The police force is an instrument for enforcing law and not for extracting money. The revisionary authority has enhanced the punishment after due process by affording an opportunity

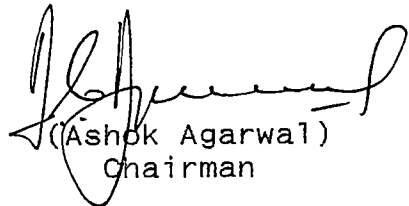
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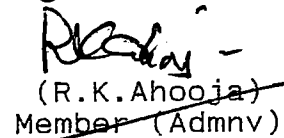


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to the applicant. We, therefore, do not find any violation or contravention of Rule 8 ibid.

9. In the result, finding no merit in the O.A., the same is, therefore, dismissed. No costs.

  
(Ashok Agarwal)  
Chairman

  
(R.K. Ahooja)  
Member (Admnv)

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