

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

HON. SHRI B.C. SAKSENA, CHAIRMAN
HON. SHRI R.K. AHOOJA, MEMBER (A)

OA NO.2236/94

NEW DELHI, THIS 4th DAY OF JANUARY, 1997. *February* (9)

Ex-Constable SATBIR SINGH (608/P)
s/o Shri Chander Bhan,
r/o Village Kami
Post Office Sonepat
P.S. Gannaur District
Sonepat
HARYANA

...APPLICANT

(By Advocate - SHRI SHYAM BABU)

VERSUS

1. Deputy Commissioner of Police
IGI Airport, New Delhi.

2. Additional Commissioner of Police
(Operations)
Police Headquarters
IP Estate
NEW DELHI

..RESPONDENTS

(By Advocate - SHRI AMRESH MATHUR)

ORDER

R.K. AHOOJA, MEMBER (A)

The applicant who is a Head Constable in Delhi Police is aggrieved by the order of his dismissal as a result of a departmental enquiry and the subsequent rejection order of his appeal.

The facts of the case in brief are that the applicant was posted in June 1992 as a Constable at I.G.I. Airport. Shri M.L. Tufchi, Commercial Manager, Airport, by his letter

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dated 3.6.1992 addressed to the Deputy Commissioner of Police, IGI Airport, sent a copy of the complaint written by Shri Pawan Gupta, alleging that his wife along with their infant son were scheduled to ~~go~~ by IC-479 to Bagdogra. She was however harassed on the ground that her son was of a higher age than what was declared in the ticket. It was alleged that she was brought to the terminal building on this pretext and apart from being abused, she was made to pay Rs.1,000 to the policeman posted there before being permitted to board the aircraft. On the basis of the said complaint, a preliminary enquiry was conducted by Shri Pratap Singh, A.C.P., IGI Airport. Shri Pratap Singh recorded the statement of various persons including Smt. Usha Gupta, the complainant, and submitted his report. Later, a departmental enquiry was ordered on 24.8.1992 wherein summary of allegation was prepared against the applicant and a finding was given against him leading to the impugned orders of dismissal, confirmed by the appellate order.

3. The grounds on which the impugned orders are assailed are that the complaint made by Shri Pawan Gupta did not disclose the name of the applicant as the one who had extorted the money nor such a disclosure was made in the various statements before Shri Pratap Singh who conducted the preliminary enquiry. A perfunctory and irregular identification parade was conducted by Shri Pratap Singh on 11.6.1992 and in the departmental enquiry Mrs. Gupta as PW-11 clarified her statement made in the preliminary enquiry that the face of the applicant resembled the person who had taken the money from her but that the applicant was not that person. As such, there was no basis for the conclusion drawn by the enquiry officer as well as the disciplinary authority. Secondly, the disciplinary authority have arbitrarily rejected

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the statements given by the defence witnesses who were all eye-witnesses of the preliminary enquiry and identification parade. Thirdly, while it is alleged that while the preliminary enquiry was conducted by an officer of the rank of ACP, the departmental enquiry was conducted by an officer of the level of Inspector and the latter could not be expected to have a free mind to give independent finding in such a situation. Fourthly, the enquiry officer has relied upon the preliminary enquiry which is not permissible under rule 15 of the Delhi Police Rules.

4. We have heard the 1d. counsel on both sides and have perused the pleadings on record. Shri Shyam Babu appearing for the applicant argued that the impugned orders were liable to be struck down since this was a case of "no evidence", the conduct of the enquiry was patently against rule 15 of the Delhi Police Punishment and Appeal Rules and punishment was unjustified. As regards the claim of "no evidence", he has submitted that at no point had the name of the applicant been mentioned by the complainant or her husband. Mrs. Gupta had in the departmental enquiry categorically stated that while there was some resemblance between the person who had extorted the money and the applicant, he was not that person. It had also come on record that the complainant Mrs. Gupta had been brought back from one of the aircraft since she had gone to board the wrong flight to Ahmedabad instead of one to Bagdogra, and the applicant was not authorised to go to the security area. He could not therefore have stopped her from boarding the aircraft. It had also come on record that the uniforms worn by the security staff of the Airport Authority were similar to those of Delhi Police, both being KHAKI, and therefore the chances of confusion were very great. There was no other witness of the money being extorted and when the complainant herself denied that the applicant was not the person, clearly

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there was no evidence whatsoever against the applicant. We are however unable to agree with the 1d. counsel on this point. Evidence is available to show that the applicant was on duty on that day at the AB Gate. It has also been stated that ^{when} Smt. Gupta was brought back from the aircraft to Ahmedabad, this was not on ground of the age of her son, and that she was then asked to wait in the security-cleared area for her own flight. There is also the evidence that in an identification parade of whatever hue and colour, the applicant had been pointed out by the complainant. In these circumstances, it cannot be said that there was no evidence to link the applicant to the alleged misdemeanour. Whether such an evidence was sufficient or not to come to the conclusion reached by the enquiry officer/disciplinary authority is not a matter for judicial review.

5. We then come to the main point raised by the 1d. counsel regarding violation of Rule 15 of Delhi Police Punishment & Appeal Rules. Rule 15 deals with preliminary enquiry. Sub-rule 15'iii' provides that the file of criminal enquiry shall not form part of the formal departmental record but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. Rule 16'iii' also provides that the enquiry officer is empowered to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay, inconvenience or expense, if he considers such statement necessary, provided that it has been recorded and attested by a police officer superior in rank to the accused officer or by a Magistrate. The 1d. counsel pointed out that the enquiry officer took note of the statements made by various witnesses in the preliminary enquiry even though they were present in the departmental proceedings. Thus, PW-3, Shri Harender Singh, is stated to have accepted his previous statement, the exhibit PW-3'A to be correct. PW-4 Shri R.

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Rai similarly accepted his earlier statement PW-4/A. PW-6, Inspector Ram Sewak, PW-7 Shri Vijay Pal Singh, PW-10 Shri Pawan Gupta and PW-11 Mrs. Usha Gupta, also confirmed their statements made in the preliminary enquiry. The 1d. counsel relied on the judgement of this Tribunal in JAI SINGH VS. DELHI ADMINISTRATION & ORS. (OA NO.1788/1991) decided on 31.1.1995, in which one of us was also a Member on the Bench. In that, it was held that the enquiry had been vitiated by the violation by the enquiry officer to comply with the statutory rules resulting in introduction of non-admissible evidence.

6. At first glance, the report of the enquiry officer would, as claimed by Shri Shyam Babu, support the contention that there has been a violation of rule 15(iii) of the Delhi Police Rules. A closer scrutiny would however negate this argument. In the Jai Singh case ('Supra'), it was observed that the question was whether the enquiry had been vitiated by the contravention of the statutory provisions of rule 15 and rule 16 and the finding in this respect will depend on the extent to which the evidence of the witnesses given in the preliminary enquiry and wrongly brought on record affected the final outcome of the enquiry. In the present case, we find that all the alleged statements recorded during the preliminary enquiry and brought on the record of the disciplinary enquiry relate to the identification parade. Thus, PW-7 Vijay Pal Singh, ACP, PW-10 Shri Pawan Gupta and PW-11 Mrs. Gupta have referred to the statements before the enquiry officer which are all regarding the identification by Smt. Gupta of the applicant in the identification parade. The mere fact that such identification was conducted during the preliminary enquiry does not exclude it as evidence in the departmental enquiry. It was an important part of the

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case of the respondents that the complainant had pointed at the applicant during the identification parade when asked to identify the person who had extorted the money from her. The question then was whether the prosecution witnesses had seen or participated in the identification parade and whether what had transpired there was correct. For the rest, the other statements which have come as exhibits only relate to the fact of posting of the applicant on duty on the day of the incident at AB Gate for embarkation of passengers. The intention behind excluding the statement of witnesses recorded in the preliminary enquiry is that in case of such statements, the charged officer does not have an opportunity to cross examine the witnesses. In the present case, all the witnesses who referred to their statements in the preliminary enquiry were present and also made a mention briefly of what they had deposed and the charged officer had full opportunity to cross-examine them, which he did in some cases, as for instance, in the case of PW-6 Inspector Ram Sewak. In these circumstances, we do not consider that the mention of earlier statements made in the preliminary enquiry by witnesses who were present during the departmental proceedings affected the outcome of the enquiry.

7. Shri Shyam Babu in this context drew particular attention to the order passed by the disciplinary authority in which he relied on the statement of PW-11 Mrs. Usha Gupta made in the preliminary enquiry. In this regard, he drew attention to the following portion of order:-

"Although Smt. Usha Gupta 'PW-11' in her statement recorded during the D.E. has stated that the face of the defaulter Const. resembles to that of the police officials who had extorted the money but he 'defaulter' was not actually the extorter, but

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interestingly on the other hand ~~she~~ stated that her statement recorded by ACP Shri Pratap Singh on 11.6.92 was correct. It appears that the complainant lady Smt. Usha Gupta 'PW-11' has been won over and as such turned hostile."

8. A copy of the statement of Smt. Usha Gupta before ACP Pratap Singh has been annexed at Annexure 'A' of the OA. In this statement, the witnesses referred to have stated that in the identification parade, she recognised one of the five police constables who had extorted money from her and also that she had then learnt that his name was Satbir Singh. As stated above, the statement regarding the identification parade was relevant to the departmental enquiry and a reference to that could not be faulted on the ground that it contravened rule 15 'iii'.

9. We are therefore of the view that there is no infirmity in the order of the disciplinary authority on account of the fact that the enquiry officer had referred to the statements recorded of various witnesses during the identification parade or that the disciplinary authority had referred to the contradiction in the statement of the complainant regarding the identification parade and her statement before the enquiry officer in the departmental proceedings. The import of rule 15 'iii' cannot be extended to the exclusion of investigation prior to the departmental proceedings. We also do not accept the argument of the ld. counsel that the identification parade itself was conducted in an irregular manner. The departmental proceedings are in the nature of a domestic and inhouse enquiry where the procedures adopted do not have to meet the standards required for criminal trials; what is more important is that the charged officer should have an opportunity to show cause,

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explain his case and to put forth his defence before action is taken against him.

10. Shri Shyam Babu also submitted that the punishment of dismissal was in any case disproportionate considering the case against the applicant was based on surmises and there was a serious doubt on the case of the prosecution since their main witness, the complainant, had during the departmental proceedings stated that the applicant was not the person who had taken the money from her even though there was a resemblance. In the judicial review, we do not consider it proper to go into the question of proportionality of punishment. This again was a matter for the appellate authority which duly examined the case and confirmed the punishment awarded by the disciplinary authority.

In the light of the above discussion, the O.A. is dismissed. No costs.

R.K. Ahuja
(R.K. AHOOJA)
MEMBER (A)

B.C. Saksena
(B.C. SAKSENA)
CHAIRMAN

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