

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.2075/2000

This the 3rd day of April, 2008

HON'BLE SHRI JUSTICE V. K. BALI, CHAIRMAN
HON'BLE SHRI L. K. JOSHI, VICE-CHAIRMAN (A)

Charan Dass

... Applicant

(By Shri Anil Singal, Advocate)

Versus

Govt. of NCT of Delhi & Others.

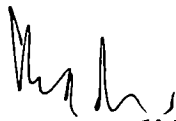
... Respondents

(By Ms. Rashmi Chopra, Advocate)

1. Whether to be reported?

Yes

2. Whether to be circulated to other Benches?


(V. K. Bali)
Chairman

(49)

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HON'BLE SHRI JUSTICE V. K. BALI, CHAIRMAN

HON'BLE SHRI L. K. JOSHI, VICE-CHAIRMAN (A)

Charan Dass S/O Kishan Singh,
R/O 32-C, Staff Quarters,
P.S. Kalyan Puri, Delhi-110091.

... Applicant

(By Shri Anil Singal, Advocate)

Versus

1. Government of NCT of Delhi through
Chief Secretary, 5 Sham Nath Marg,
Delhi-110054.
2. Commissioner of Police,
Police Headquarters,
I.P.Estate, New Delhi.
3. Addl. Commissioner of Police Ops.),
Police Headquarters, I.P.Estate,
New Delhi.
4. F.R.R.O.,
Hans Bhawan, I.P.Estate,
New Delhi.

... Respondents

(By Ms. Rashmi Chopra, Advocate)

ORDER

Justice V. K. Bali, Chairman:

Sequel to a regular departmental enquiry, Charan Dass, then Sub Inspector in Delhi Police, the applicant herein, has been held guilty of the charge framed against him and vide order dated 7.4.1998 (Annexure A-4) passed by the disciplinary authority inflicted with the punishment of forfeiture of ten years' approved

service permanently entailing reduction in his pay from the stage of Rs.6375/- to Rs.5500/- per month in the time scale of pay from the date of issue of the order, with the stipulation that he would not earn increments of pay during the period of reduction and on expiry of such period, the reduction would have the effect of postponing his future increments of pay. This order has since been confirmed by the appellate authority vide order dated 27.10.1998 (Annexure A-5). Challenge in present Application filed under Section 19 of the Administrative Tribunals Act, 1985 is to the enquiry report dated 28.12.1997 (Annexure A-3) returning a finding of guilt against the applicant, and the orders dated 7.4.1998 and dated 27.10.1998 passed by the disciplinary and appellate authorities respectively. This Application was filed way back in 2000 and appears to be the oldest case pending in this Tribunal. The records of the case reveal that in OA No.2349/1998 in the matter of **SI Ram Singh Yadav v Union of India & Others**, the Tribunal referred the following question for adjudication by a Full Bench:

“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?”

Inasmuch as, one of the points involved in the present case was the same as referred to the Full Bench, present case was tagged up with the OA mentioned above. The case referred to the Full Bench was, however, adjourned *sine die* for the sole reason that the same matter was substantially in issue in CWP No.3030/1999 before the

Delhi High Court against the order of the Tribunal dated 10.12.1998 in OA No.2598/1996 in the matter of **Const. Brahm Prakash v Union of India & Others**. We are informed, and the various interim orders passed also reveal that the Writ Petition involving the question referred to the Full Bench is still pending before the Hon'ble High Court. The applicant has superannuated in 2004. He moved an application for de-linking this case from the Full Bench by specifically pleading that he would not press the point referred to the Full Bench for decision and would rather choose to have decision of the case on its merits. Vide order dated 7.9.2006 this matter was released from the Full Bench and was ordered to be listed before appropriate Division Bench.

2. Facts of the case culminating into the impugned orders in the context of limited controversy raked at this stage reveal that the applicant faced a joint departmental enquiry with his co-delinquent HC Umed Singh, even though separate charges came to be framed against both. Insofar as, the applicant is concerned, he faced departmental enquiry on the following revised charge:

"I, Hari Singh Khinchee, ACP/AFFRO 'B' Shift hereby charge you SI Charan Dass No.D/764 that on 31.1.96 two Swedish Police Officers along with a deportee namely Paramjeet Singh disembarked at IGI Airport by flight No.SK-967 and handed over 3 passports to Duty Officer SI Arun Kumar No.D/3109 in Arrival Left Wing and in the same wing you were detailed as Clearing Officer. The Duty Officer gave three passports to HC Umed Singh No.11/F(GD) and directed to him to hand over the passports to ACIO-I D.P.Singh, I/C Wing. Instead of handing over the passports to the I/C Wing the Head Constable gave the PPs of deportee to you, SI Charan Dass No.D/764 and two

passports of escort police officers to W/SI Vidhu Bala Sharma, No.D/104. HC Umed Singh No.11/F knowingly handed over the passport to you SI Charan Dass No.D/764 with some mala fide intention, otherwise it was his duty to hand over the passport of the deportee as well as of two police officers to the I/C Wing. Similarly, this is the gross negligence on your part SI Charan Dass No.D/764 that you did not thoroughly check the travel documents of the deportee and gave immigration clearance though it was clearly mentioned in the passports that "Holder of this passport is being deported on Swedish Govt. expenses as he entered Swedish illegally. The validity of this passport is for one month only for return to India". Thus, connivance of you, SI Charan Dass No.D/764 and Head Constable in clearing the deportee cannot be ruled out.

The above act on the part of you SI Charan Dass No.D/764 amounts of gross misconduct, remissness, mal-intention, ulterior motive and connivance and hence renders you SI Charan Dass No.D/764 liable to be dealt with departmentally u/s 21 of Delhi Police Act, 1978."

Before framing the charge, the enquiry officer recorded statements of SA/G Nanda Vallabh (PW-1); SI Rattan Kumar (PW-2); SI Kishan Kumar (PW-3); W/SI Vidhu Bala (PW-4); D.P.singh, ACIO-I(G) (PW-5); D.P.Pandey, ACP/FRRO (PW-6); and SI Arun Kumar (PW-7). The applicant was given opportunity to lead evidence in defence. Availing the said opportunity, he examined Paramjit Singh as DW-1, who *inter alia* stated that on 31.1.1996 he arrived at the IGI Airport from Sweden by SAS flight accompanied by two Swedish immigration officers. On reaching Delhi Airport, the Swedish officers who were having his passport, handed him over to SAS Airlines staff, who in turn handed over him as well as his passport to Indian immigration duty officer. The duty officer further handed over him and his passport to another police officer and asked that

police officer to take the passport and the passenger to any counter and get him cleared. That police officer took him to the counter of the applicant and asked him to clear the pax (the witness). The applicant asked his name and checked his passport carefully and cleared him after having stamped. The witness further stated that applicant was not knowing anything about him as deportee, and also nobody told the applicant about his being a deportee, and further that neither the applicant nor anybody else demanded anything, i.e., money etc., nor he gave anything to any immigration officer. He then stated that he was deported from Sweden on account of overstay, as his passport was valid only for a month, and that he had been to Sweden in 1993 on ten days Swedish visa. He arrived in India on his passport No.P852453 from Sweden. The date of issue of the passport was 25.1.1996 and the place of issue was Embassy of India, Stockholm. He produced the same before the enquiry officer and asked for receipt of the same. The passport was seized and copy of receipt was given to him against receipt. There was no cross examination adverted to this witness at all.

3. Shri Anil Singal, learned counsel representing the applicant, without controverting the factual position stated in the revised charge reproduced above, however, vehemently contends that even though, the applicant might have made a mistake in not checking the passport of Paramjit Singh and that it may be an act of negligence or carelessness in duty on his part, but there is no evidence whatsoever to pin him down with any kind of connivance

with his co-delinquent HC Umed Singh, nor even a whisper that he cleared the pax on account of extraneous considerations, and, therefore, the part of the charge making general allegations of mal-intention, ulterior motives and connivance, mentioned in the last paragraph of the revised charge, is wholly unsubstantiated and cannot, thus, be held to have been proved.

4. With a view to appreciate the contention raised by the learned counsel, it would be first useful to find out the seriousness of the issue of clearing Paramjit Singh, a deportee from Sweden. The admitted facts in that context either spelled by the department or by the applicant, and the material witness Paramjit Singh examined as DW-1, who was not even cross examined, clearly reveal that Paramjit Singh, a resident of Ludhiana had arrived at IGI Airport on 31.1.1996 from Sweden by SAS flight. He was accompanied by two Swedish immigration officers. On reaching Delhi Airport, the Swedish officers who were having his passport handed him over to SAS airlines staff, who in turn handed over him as well as his passport to Indian immigration duty officer. Paramjit Singh for clearance ultimately went to the applicant, who cleared him. It may be, as was indeed mentioned in the passport of Paramjit Singh, that he was a deportee. In what circumstances, however, he was deported is not known and no evidence on that count came to be recorded. Having heard the arguments in the case, we reserved the judgment on 25.3.2008, but while preparing the judgment, we thought it better to get the position clarified from

the counsel representing the parties. The matter was thus fixed for re-hearing. During the course of re-hearing, Ms. Rashmi Chopra, learned counsel representing the respondents, has shown to us the passport of Paramjit Singh issued by the Embassy of India, Stockholm. It is indeed a limited validity passport. It was issued on 25.1.1996. Its validity is only for return to India up to 24.2.1996. It is mentioned at 4th page of the passport that "Holder of this passport is being deported on Swedish Govt. expenses as he entered Sweden illegally. The validity of this passport is for one month only for return to India". To a specific question put to Ms. Rashmi Chopra as to whether Paramjit Singh held a valid passport issued by the Government of India when he went from India, there is no answer forthcoming. To yet another question as to whether Paramjit Singh was prosecuted for any offence, as he ought to have been under the Passports Act, 1967 (hereinafter to be referred as the Act of 1967) if he was travelling without a passport, the reply, on instructions, is that it is not known. We may only mention at this stage that as per provisions of section 3 of the Act of 1967, no person shall depart from, or attempt to depart from, India unless he holds in this behalf a valid passport or travel document. Section 12 of the Act deals with offences and penalties. It is stated by Ms. Rashmi Chopra that if Paramjit Singh was travelling without a passport, his case for offences and penalties would be covered by sub-section (1) (a) of Section 12, as contravention of provisions of Section 3 is penal, which may result in punishment of imprisonment for a term which may extend to two years or fine

which may extend to five thousand rupees, or both. From the records made available to us, it appears that Paramjit Singh had a valid passport when he left India, as from the records available with the respondents it appears that Paramjit Singh had first gone to Russia and then to Sweden. Reference in this connection may be made to a communication dated 19.7.1996 available on the records produced by the respondents from Embassy of Sweden, New Delhi to Office of the FRRO, New Delhi. It was mentioned in his passport that his entry in Sweden was illegal. That could be for the reason that he lost his passport, as he so stated while appearing as a defence witness. As mentioned above, no cross examination whatsoever was adverted to Paramjit Singh when he made his statement. Paramjit Singh also stated that he had gone to Sweden in 1993 for a period of ten days. If Paramjit Singh would not have had a valid passport ever issued, he would have certainly contravened the provisions of Section 3 and ought to have been prosecuted. If he was prosecuted, there is bound to be evidence available for the same, and the fact that the respondents are unable to confirm as to whether Paramjit Singh was prosecuted or not, would suggest that he was not prosecuted. The respondents were given time to verify the fact aforesaid, but as mentioned above, are unable to come up with a clear answer. We are of the considered view that if Paramjit Singh was prosecuted, a definite information ought to have come. If he had a valid passport when he left India and had lost the same when he went to Sweden, he could not be prosecuted, as his case would not fall in any of the

other provisions mentioned in Section 12 of the Act of 1967. In the circumstances, as mentioned, what favour the applicant was doling out to Paramjit Singh by clearing him, has not been mentioned nor even clarified during the course of arguments nor could be made out from the facts and circumstances of the present case. What we have observed above is fortified from the statement of Shri D.P.Singh, ACIO-I(G), examined as PW-5. He *inter alia* stated that generally a deportee pax is cleared after the flight is cleared and all formalities are also completed. Shri D.P.Pandey, ACP/FRRO, PW-6 who made on the spot enquiry also stated that a deportee who had come by SK flight was cleared as a normal passenger. All that thus appears is that the applicant, if at all, favoured Paramjit Singh, it was only in clearing him before other passengers and before other formalities were completed. It is not a case where Paramjit Singh might have been in soup and was trying to get clear of the same for which he may seek favour. It is no doubt true that some times people may extract money from others by showing small favours, but as mentioned above, there was hardly any occasion for Paramjit Singh to seek favour, as the only consequence of his being cleared earlier is that he would have saved on some time, like an hour or so. It is in this context that the contention raised by the learned counsel has to be appreciated.

5. The very reading of the charge as re-framed against the applicant would show narration of facts and the only allegation culled out therefrom is that the applicant did not thoroughly check

the travel documents of the deportee, and gave him immigration clearance. Other allegations mentioned in the revised charge pertain to co-delinquent of the applicant, HC Umed Singh, with which we are not concerned, but for the connivance of the applicant with him. As mentioned above, the last paragraph of the charge is omnibus and makes mention of misconduct, remissness, mal-intention, ulterior motive and connivance. The department, in our considered view, cannot go beyond deriving a presumption of connivance of the applicant with his co-delinquent HC Umed Singh, in the narration of facts mentioned in the charge. If perhaps, the matter would have rested at that, there could be some arguments raised on behalf of the respondents that the applicant had connived with HC Umed Singh, but we find from the records that there was positive evidence to the contrary, and if that be so, presumption cannot be given precedence over the positive evidence. Insofar as PWs 1 to 3 named above are concerned, concededly, they were formal witnesses. W/SI Vidhu Bala, examined as PW-4, stated in her examination in chief that she handed over the passports to HC Umed Singh and directed him to show the same to I/C Wing, and later on it came to her notice that a deportee had been cleared by the applicant. Except this, she stated, she knew nothing. In the cross examination adverted to her, to a specific question as to whether when both the foreigners' passports were given to her and on seeing that the passports did not bear Indian visas, did she have any talk with the foreigners, she replied that she did not talk to them. To another specific question as to whether after that, to

which officer did she take the passports and what did she explain to the officer about the passports, she replied by stating that she returned both the passports to HC Umed Singh. D.P. Singh, ACIO-I(G), examined as PW-5, in his examination in chief, *inter alia* stated that he asked the Swedish officers with regard to purpose of their visit and their not having Indian visas to enter India, upon which they told that they were escorting one deportee Indian national. He asked them as to where the deportee was, to which they replied that he had already been cleared by one immigration officer. He went through the case and found that one pax Paramjit Singh was deported by the Swedish Government due to illegal stay, and immediately brought this fact to notice of AF/B Shri D.P.Pandey, who immediately came to the Wing and made detailed enquiry. The police officer disclosed that he had handed over all the three passengers to duty officer SI Arun Kumar along with the deportee. He further stated that neither the duty officer nor the clearing officer or HC Umed Singh informed him regarding one deportee pax. He checked all the DE cards of SK flight and found the DE card of the deportee pax, Paramjit Singh, who was cleared by the applicant as a regular pax. In the cross examination adverted to him, to a specific question as to whether had any deportee been cleared before the passengers, he replied that generally the deportee pax is cleared after the flight is cleared and completing all the formalities. The most important witness in the case Shri D.P.Pandey, ACP/AFRRO, who had conducted on-the-spot enquiry and appeared as PW-6, stated that on 31.1.1996 at

about 9.15 a.m., Shri D.P.Singh, I/C Wing Arrival, requested him to come to the Wing, and when he reached there, he came to know that a deportee who had come by SK flight had been cleared as a normal passenger. He immediately made enquiries and found that HC Umed Singh who was working as GD in the Wing, brought the deportee on the counter of the applicant and told him that it was a courtesy. Due to this, the deportee was cleared as a normal pax. During enquiry he recorded the statements of ACIO-I D.P.Singh, S.C.Sakhuja, S.I. Charan Dass (the applicant), W/SI Vidhu Bala, ACIO-II Arun Kumar and HC Umed Singh and concluded that due to negligence of HC Umed Singh the passenger was cleared as a normal pax instead of deportee pax. In the cross examination adverted to him, to a specific question as to whether as per procedure, the passengers are cleared first or the deportee, he answered that normal pax are cleared first and the deportee pax later. To another question put to him as to whether on 31.1.1996 when he recorded the statements regarding clearance of deportee, had anybody stated about the transaction of money, his specific reply was that the passenger was not cleared as deportee, and that he had recorded statements and nothing about transaction of money came to notice. To another question put to him as to whether the enquiry made by him had revealed anything about the applicant's *mala fide* intention, his specific reply was that no *mala fide* intention came to notice. To another question that could any C.O. overlook any observation given on the passport of the deportee in the name of courtesy, his reply was that in the name of courtesy,

the C.O. tries to clear the pax as early as possible, but it would not be justified to overlook the endorsement on the passport, and the applicant did not look for the endorsement being in a hurry. The statements of PWs-7 and 8 are, once again, formal and no arguments based thereon have been raised before us. What clearly transpires from the evidence, which, we may say, has not been looked into either by the enquiry officer or by the disciplinary and appellate authorities, is that a deportee, as per procedure, would be cleared at the end of all passengers, whereas on account of courtesy, it is clarified to us during the course of arguments by the learned counsel representing both sides, if someone makes a recommendation, the pax is to be cleared as early as possible. We are conscious of our limitation of reappraising the evidence, but that limitation would be only when the concerned and relevant evidence has been discussed and a finding returned thereon, but as mentioned above, none of the authorities took into even consideration the plea of the applicant that he had no mal-intention in clearing Paramjit Singh, even though he admits his mistake that he did not check the entry of his illegal stay in Sweden, mentioned in the passport.

6. Ms. Rashmi Chopra, learned counsel representing the respondents, in her endeavour to take a view by us in tune with the report of the enquiry officer and the concerned authorities, would refer to discussion made by the enquiry officer in his report dated 28.12.1997. The learned counsel has drawn our attention to

discussion made by the enquiry officer on the statement of PW-6, which reads as follows:

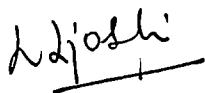
"PW-6 Sh. D.P.Pandey, ACP/AFRRO has stated that on the request of I/C Wing Sh. D.P.singh he went to arrival right wing and found that a deportee who came by SK flight has been cleared as a normal passenger. During inquiry it was found that H.C. Umed Singh got the deportee cleared from S.I. Charan Dass C.O. saying that it is a courtesy and the pax was cleared as a normal pax. He recorded the statement of ACIO-I D.P.Singh, ACIO-I S.C.Sakhuja, S.I. Charan Dass, W/SI Vidhubala, ACIO Arun Kumar and H.C. Umed Singh, and found that due to the negligence of H.C. Umed Singh, the deportee pax was cleared as normal pax instead of deportee. He submitted a report Ex-PW-6/1 to HAP/FRRO in this regard. During cross examination by S. I. Charan Dass defaulter, this pax has stated that deportees are cleared after the normal passenger as per the procedure. As per the statement, recorded on 31-1-96 by him, there was no mention of taking and giving money to anybody as the pax was not cleared as deportee and no malafide intention of S.I. Charan Das was noticed. On the cross examination by the defaulter H. C. Umed Singh, the PW stated that his report was based on the statement and not on any record as did not think its necessary. None except S. I. Charan Dass has alleged that H. C. Umed Singh got the deportee cleared as a courtesy direct at the counter at S. I. Charan Dass and other C.Os were busy in clearance. In the name of courtesy, none should overlook any endorsement on the passport. S. I. Charan Dass did not pay any attention to the endorsement due to carelessness. To inform about the details of the deportee records with the duty officer, but in this case as the duty officer has directed H. C. Umed Singh to inform the I/C Wing after getting him all the documents, rest with the G. D. H. C. Umed Singh also."

We are surprised as to how the aforesaid statement made by PW-6 and the conclusion arrived would advance the case of the respondents. The finding based upon the statement of PW-6 is of

carelessness and not of any ulterior motive with the connivance of co-delinquent of the applicant, HC Umed Singh. It rather fortifies the contention raised by the learned counsel representing the applicant that no *mala fides* were involved in the case. We are of the firm view that this aspect of the case was not properly examined by any of the authorities, and that has indeed made a difference in the quantum of punishment inflicted upon the applicant. It may be recalled that the applicant has been visited with the penalty of forfeiture of ten years of approved service, which may not have been so severe if the charge against the applicant with regard to connivance and *mala fides* would have been held unsubstantiated. Surely, what punishment should be awarded is normally, in the first instance, in the domain of the concerned authorities. We would not embark on that exercise and would rather leave it to the concerned authorities to do the same.

7. In the light of discussion made above, we are of the firm view that even though, it stood clearly established that the applicant, at the most, was negligent in ignoring or not even reading the endorsement on the passport to the effect that Paramjit Singh had been deported, and even though, it was a case of courtesy, he ought to have seen the passport, but he could not be held guilty of *mala fides* or conniving with his co-delinquent, HC Umed Singh. In the circumstances mentioned above, while quashing the impugned orders dated 7.4.1998 (Annexure A-4) and dated 27.10.1998 (Annexure A-5) passed by the disciplinary and

appellate authorities respectively, we remit the case to the disciplinary authority for having a fresh look at the quantum of punishment that may be inflicted upon the applicant in the light of observations made above. There shall, however, be no order as to costs.



(L. K. Joshi)
Vice-Chairman (A)



(V. K. Bali)
Chairman

/as/