

-12-

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.672/89

New Delhi this the 24th August, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Sh. C.J. Roy, Member (J)

Kamikar Singh
R/o Village & P.O. Pamel,
Tehsil & Distt. Ludhiana,
Punjab.

...Applicant

(By Advocate Sh. A.S. Grewal, though none appeared)

Versus

1. Lt. Governor of Delhi
through Chief Secretary,
Delhi Administration,
Delhi.
2. Commissioner of Police Delhi,
Delhi Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi.
3. Addl. Commissioner of
Police (Operations),
Delhi Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi.
4. The Foreigner Regional
Registration Officer,
Hans Bhawan, I.P. Estate,
New Delhi.

...Respondents

(By Advocate Sh. Arun Bhardwaj)

ORDER(ORAL)

Hon'ble Mr. N.V. Krishnan:-

The applicant, a Police official, who has since retired, has filed this O.A., challenging the disciplinary proceedings held against him and has sought the following reliefs:-

"i) The orders of F.R.R.O. New Delhi treating the suspension period from 1.12.1982 to 30.6.1983 as non-duty vide order No.110008-70-/FOR/HAP dated 11.7.1986 be quashed (Annexure 'G').

ii) The order of the Appellate Authority vide order No.239-41/P.Sec.(Ops.) Dated 23.4.1987 (Annexure 'H') be also quashed.

iii) The order of the Commissioner of Police Delhi No.20335-36/CR-I dated 29.11.1988 (Annexure 'J') be also quashed."

ii) Secondly, it is contended that though the penalty has been reduced by the appellate authority yet, multiple penalty has been imposed on the applicant, which amounts to double jeopardy and, therefore, it is bad in law.

4. The learned counsel for the respondents has produced for our perusal the record of the case. The record shows that on 26.11.82 the said Robert Taylor gave a typed complaint to the F.R.R.O. Delhi Airport, which contains the following information:-

"UPON ARRIVAL AT THE DELHI AIRPORT ON THE MORNING OF 25 NOVEMBER 1981, I was told that WITHOUT A VISA MY WIFE CAMILLE TAYLOR AND I WOULD NOT BE ALLOWED ENTRY INTO INDIA.

WE WAITED IN LINE FOR MORE THAN ONE HOUR AND AGAIN WERE TOLD THAT WOULD NOT BE ALLOWED ENTRY INTO THE COUNTRY. I WAS TOLD THAT IF I PAID THE SUM OF FIFTY US DOLLARS, I WOULD BE ALLOWED ENTRY, I REFUSED, STILL WE WAITED. I BELIEVE WE MUST HAVE WAITED AT LEAST ONE MORE HOUR, AT THIS TIME I WAS TOLD THAT TWENTY US DOLLARS WOULD BE ENOUGH. BY THIS TIME MY WIFE WAS QUITE UPSET, AND I CONSENTED TO PAY THE TWENTY DOLLARS TO ENTER INDIA.

THAT OFFICER THAT I PAID THE TWENTY DOLLARS TO, HAD TWO STARS ON HIS SHOULDER, HE USED A PAIR OF BROWN READING GLASSES, WAS OVER WEIGHT, AND HAD A KHAKI TURBEN ON HIS HEAD. THE OFFICER THAT TOOK THE TWENTY DOLLARS DID SO AT HIS COUNTER, HIS POSITION WAS ON THE EXTREME RIGHT AS WE ENTERED THE AIRPORT BUILDING.

MY WIFE AND I WERE NOT HAPPY ABOUT THIS MATTER, AND SO INFORMED THE FRRO OFFICE ON November 26, 1982."

cc

2. The brief facts of the case are that it is alleged that on the night between 24 and 25.11.82 the applicant, who was on duty at the Palam Airport extorted 20 Dollars from a foreigner Rober Taylor stating that this amount is required for issuing immigration visa. Subsequently, on 27.11.82 the foreigner, Robert Taylor, accompanied by other police officials came to the Airport again and indentified the applicant as the person who had demanded and taken 20 Dollars from him. It is on this basis that the summary of allegation was framed against him and after proper enquiry the applicant was initially dismissed from service. However, on an appeal, the punishment was reduced to forfeiture of four years' approved service entailing corresponding reduction in his pay with a direction that the period from the date of dismissal to the date of reinstatement will not be treated as duty.

3. The applicant has challenged this O.A. on the grounds mentioned in para-5 of his O.A. During the arguments it was pointed out and admitted that initially there was a irregularity in the commencement of the disciplinary proceedings which was subsequently rectified by the competent authority after obtaining the necessary sanction. In the circumstances, in so far as the irregularity relating to the initiation of the disciplinary proceedings is concerned, we do not find any merit in the objections raised in the O.A. The two points pressed by the applicant are:-

i) That there is no evidence against him because the complainant was not examined in this case.

12

What is note worthy is that this complainant has taken care to specify in the complaint the marks of identification on the person who, he alleged, has taken 20 Dollars from him.

5. Subsequently, on 27.11.92, the same Robert Taylor identified the applicant as the person who had taken the money from him and this was confirmed by him in writing by his report of the same day, which reads as follows:-

"ON THE 27 OF NOVEMBER 1982, I WENT TO THE DELHI AIRPORT IN THE COMPNAY OF OFFICIALS OF THE FRRO OFFICE. I VISITED THE AIRPORT AT ABOUT 8 PM AND VOLUNTARILY IDENTIFIED THE OFFICER THAT TOOK THE TWENTY DOLLARS FROM MY WIFE AND I. THIS WAS THE OFFICER THAT GAVE US THE FIVE DAYS ON OUR PASSPORT WHEN WE ARRIVED IN INDIA.

HIS NAME WAS TOLD TO BE KAMIKAR SINGH. THE THREE STAR OFFICER THAT WAS AT THE AIRPORT THE NIGHT WE ARRIVED WAS NOT PRESENT. AT THE ARRIVAL NOR THE DEPARTURE SIDE OF THE AIRPORT, AT THE TIME I INDENTIFIED OFFICER KAMIKAR SINGH.

ONE OTHER ITEM THAT I WISH TO ADD AT THIS TIME IS THIS, OFFICER KAMIKAR SINGH TOLD US THAT IF WE DID NOT PAY HIM THE MONEY WE WOULD NOT BE ALLOWED TO ENTER INDIA, BUT MUST RETURN TO LONDON, ENGLAND."

As the Inquiry Officer felt that there cannot be any question ^a ~~for~~ summoning him for being examined, the other witnesses to the incident, particularly, about the identification have been examined.

6. We have considered the matter. We are of the view that the applicant has not been able to show any

17

reason as to why a foreigner would make an unfounded allegation against him without any rhyme or reason. We are also satisfied that non-examination of this complainant does not by itself vitiate the enquiry, particularly, because summoning of this witness would not only entail costs but also involve additional time and the witness himself may not be interested in taking the trouble to coming down to India for this small purpose. But, that does not in any case reduce the gravity of the applicant's delinquency.

7. In the circumstances, we are of the view that the charge has been proved against him though the complainant was not examined.

8. In so far as the punishment is concerned, the learned counsel for the applicant states that the power to punish is conferred by Section 21 of the Delhi Police Act, 1978. 7 punishments have been specified therein, including forfeiture of approved service and reduction in pay and it is stated that a competent authority "may award to any Police officer of subordinate rank any of the following punishments." He, therefore, contends that only one of the punishments may be imposed in a disciplinary proceeding, as is clear by the word 'any' qualifying the punishment that can be imposed. In the present case the final punishment imposed upon the applicant is forfeiture of approved service and reduction in pay, i.e., two punishments mentioned in (d) and (e) of Section 21 have been mentioned. It was pointed out to him that the Act does not say that only "any one" of the punishments may be imposed and that, therefore, more than one punishment may be imposed, if it is

✓

required by the circumstances of the case. He contended that the expression "any" in this context can have only one meaning viz. any one.

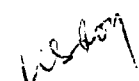
9. We do not want to decide this matter on merits because in so far as the present case is concerned, we are satisfied that the objections raised by the learned counsel for the applicant have no merit for the reasons given by the learned counsel for the respondents, who has drawn our attention to Rule 8 of the Delhi Police (Punishment and Appeal) Rules, 1980. Clause (d) thereof refers to the penalty of forfeiture of approved service and reads as follows:-


"(d) Forfeiture of approved service.-- Approved service may be forfeited permanently or temporarily for a specified period as under:-

(i) For purposes of promotion or seniority (Permanent only).

(ii) Entailing reduction in pay or deferment of an increment or increments (permanently or temporarily)."

It is pointed out that approved service can be forfeited for purposes of promotion or seniority (permanent only) or it can be forfeited entailing reduction in pay or deferment of an increment or increments permanently or temporarily. It is under this provision that the appellate authority has directed that the forfeiture for approved service will entail corresponding reduction in pay. We, therefore, find that the rules authorise imposition of such penalty. The rules have not been questioned in this O.A. In the circumstances, the O.A. is dismissed. No costs.


(C.J. Roy)
Member(J)


(N.V. Krishnan)
Vice-Chairman(A)