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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.O.A.1441/87

Date of decision 28/03/1989

Shri Azad Singh

.....Petitioner

Vs.

The Delhi Administration
and Others

.....Respondents

For the Petitioner

.....Shri R.K. Dahiya,
Counsel

For the Respondents

.....Shri B.R. Parashar,
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporters or not?

JUDGMENT

(The judgment of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice Chairman(J))

The applicant, who was working as a Constable in the Delhi Police and posted at the Foreign Regional Registration Office, Palam Air Port New Delhi (FRRO) filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying that the impugned order dated 15.12.1986 whereby he was dismissed from service (Annexure A-II) and the impugned order dated 14.9.1987 whereby the appeal filed by him was rejected (Annexure A-III)

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be quashed. He has also sought other reliefs including reinstatement with full back wages, full pay and allowances for the period of his suspension and all other consequential benefits.

2. The application was admitted on 23.10.1987.

On 22.12.87, another Bench of this Tribunal passed an interim order whereby the dispossession of the applicant from the Government accommodation allotted to him was stayed subject to the applicant paying the licence fee/market rent as per the rules of the Estate Office. The said interim order was continued by the subsequent orders passed by the Tribunal.

3. The applicant was appointed as a Constable in the Delhi Police with effect from 15.2.1975. He was transferred to the FRRO in March, 1979. He was placed under suspension with effect from 21.6.1985 (Annexure A-IV) pending enquiry into his misconduct. On 16.9.85, Shri Trilok Singh Thapa, Inquiry Officer/AFRRO Immigration served upon the applicant a charge-sheet (Annexure-V) together with the summary of allegations, list of witnesses and list of documents.

According to the summary of allegations, it was alleged that 4 Indian passengers namely S/Shri Sukhdev Singh, Surjit Singh, Sarabjit Singh and Lakhwinder Singh had reached the Immigration Checkpost, Palam Air-Port, New Delhi on 20.6.85 for boarding Kuwait Airways Flight No. KU-382 at about 6.30 A.M. All of them appeared at a counter, which was being manned by Sub-Inspector, Rajbir Singh of Shift 'B'. Shri Sukhdev Singh told Sh. Rajbir Singh, the Clearing Officer that they had collectively paid

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Rs.400/- to an officer on his demand for their smooth clearance and also requested for early clearance to be given to them. On an enquiry by Shri Rajbir Singh as to whom and why they had paid money while their travel documents were quite in order, Sukhdev Singh told that the officer who had earlier demanded and subsequently accepted Rs.400/- was wearing name plate, "Azad Singh" and he had gone some where prior to their clearance.

4. The applicant did not plead guilty before Shri Thapa, the Enquiry Officer. After thorough examination of the evidence adduced during the enquiry, the Enquiry Officer submitted his report dated 25.3.86 finding that the charge does not stand proved beyond doubt.

5. The Disciplinary Authority did not agree with the findings of the Enquiry Officer. He issued a show cause notice dated 11.8.86 calling upon the applicant to show cause as to why he should not be dismissed from service for his act involving moral turpitude and also for treating the suspension period from 21.6.85 till the date of dismissal as not spent on duty. (Annexure A-I).

6. On 28.3.86, the applicant submitted his reply in response to the show cause notice. After considering the same, the Disciplinary Authority passed the impugned order dated 15.12.86 (vide Annexure A-2) dismissing the applicant from the force with immediate effect and directing that his suspension be not treated as spent on duty.

7. The applicant preferred an appeal on 8.1.87 to the



Additional Commissioner of Police (Operations) (Annexure A-XI). The appeal was rejected by the impugned order dated 14.9.1987 (Annexure A-III).

8. The applicant has, inter alia, alleged that the findings of the Disciplinary Authority are perverse, that the show cause notice and the order of dismissal are in violation of Rule 16(III), (IX), (X), (XI) and (XII) of the Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter referred to 1980 rules), that there is no finding on record in terms of Rule 16(III) of the 1980 Rules showing that the alleged complainant and his companions were ^{not or} available to depose before the Enquiry Officer, that the alleged complaint shows that the signatures of some persons have been obtained on blank paper on its extreme left side and not under the alleged statement and it is also not known as to who has written and ^{or} the alleged complaint, that the applicant was not at all concerned with the clearance of the passengers as the same was being done by the Clearing Officer, i.e., the Sub-Inspector on duty. The applicant has stated in Para.7 of the application that he has exhausted all the remedies available to him under the relevant service rules.

9. The respondents has stated in their counter affidavit that the applicant is not entitled to any relief and that the punishment of dismissal is justified in the facts and circumstances of the case.

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10. As to the question whether the applicant has exhausted remedies available to him under the service rules, the respondents have stated in their counter affidavit that "revision petition lies to the C.P. Delhi, vide P.P.R. No.16.32." (vide page 120 of the Paper Book)

11. We have carefully gone through the records of the case and have heard the learned counsel of both parties. In this case, the Enquiry Officer has pointed out in his report that "the P.W.s as well as the D.W.s have said in their statements that they did not see the applicant talking to any other passenger, checking any passport, demanding and accepting any money from any person. The Inspector of his shift admitted of having received no complaint against him. It is a fact that the complaint was recorded by Inspector, Shri K.N. Passi, who got the same signed from the 4 passengers." According to Rule 16.23 of the Punjab Police Rules, 1934, "such complaint could be made a record of the departmental proceeding for the purpose of corroboration and contradiction but cannot be admitted as a substantive piece of evidence in the absence of cross-examination of the complainants whose evidence could not be procured being at a far distance from the place of enquiry. The complainant had left India on the day of complaint. There are instructions that such complaints which make the record of the Departmental Enquiry should be recorded by a Gazetted Officer and attested

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thereafter but in the instant case, the complaint has been recorded by Inspector, Shri K.N. Passi leaving a little weight to believe the same of all the probabilities. The mere fact mentioned that the officer who demanded and accepted Rs.400/- in the name ^{of} ~~the~~ ^{be} was wearing name plate/of 'Azad Singh', cannot/be believed in the absence of specific identity because such name plates were being displayed by the members of the other staff like custom, Palam Air-Port Polce and Air Line Staff. The better course was to get the culprits identified there and then, which was not done. Thus in the absence of cross-examination of the complainants, who were generally decoy witnesses and identification of the defaulter, it creates a reasonable doubt of demanding and accepting of Rs.400/- from the complainants and the benefit of which goes to the defaulter." (vide pages 25-26 of the Paper Book)

12. The complaint of the 4 passengers which is the basis of the Departmental Enquiry against the applicant is at Annexure A-7B at page 76 of the Paper Book. It is a statement of Shri Sukhdev Singh, one of the 4 passengers, who concludes with the following words, "I have read and understood the above statement and signed it." However, in the left hand margin not only Sukhdev Singh, but his three other colleagues have also signed. The handwriting of the statement clearly indicates that it is not that of Sukhdev Singh. The statement has been attested by Shri Passi, Inspector Immigration.

13. The Enquiry Report has stated that "since the statement of the complainants written by Inspector Shri K.N. Passi indicates as to be a statement in respect of one

complaint but after the same had been counter signed by others, it lost its value as a statement in an enquiry, where it should have been recorded individually and independently and not jointly as per laid down procedure." (vide page 26 of the Paper Book)

14. The Disciplinary Authority did not apply his mind to the aforesaid findings of the Enquiry Officer before disagreeing with the same. The Appellate Authority also did not apply his mind to the aforesaid findings of the Enquiry Officer. One of the points raised by the applicant in his appeal was that the order of dismissal relates to moral turpitude and the Punishing Authority has ignored the findings of the Enquiry Officer. The applicant had also relied upon the decision of the Punjab and Haryana High Court in Gurdev Singh Vs. the State of Haryana & Others, 1976(2) SLR 442. In that case, the petitioner had contended that he was not liable to the proposed penalty of dismissal in view of the provisions of 16(2)(1) of the Punjab Police Rules, 1938 which reads as follows:-

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" Dismissal shall be awarded only for gravest act of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award, regard shall be to the length of service of the offender and his claim to pension."

15. The Appellate Authority has observed that the aforesaid judgment is not applicable in the case of the applicant as he was not having "so much length of service to consider his claim for pension." To our mind, this is

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misconceived as pensionary benefits are admissible to temporary Government servants who have put in 10 years of service.* The applicant had put in 12 years of service from 15.2.1975.

16. The respondents have admitted that the applicant has not exhausted the remedies available to him under the service rules and has relied upon the provisions of Rule 16.32 of the Punjab Police Rules, 1934. The ^{inter alia, ~} said rule provides that "an officer whose appeal has been rejected is prohibited from applying for a fresh scrutiny of the evidence. Such officer may, however, apply, within a month of the date of despatch of appellate orders to him, to the authority next above the prescribed Appellate Authority for revision on grounds of material irregularity in the proceedings or on production of fresh evidence and may submit to the same authority a plea of mercy."

17. In the facts and circumstances of the case, we are of the opinion that the applicant should be given an opportunity to apply to the Commissioner of Police with a revision petition bringing out all the points in his defence and praying for appropriate reliefs. We, therefore, order and direct as follows:-

(i) The applicant shall prefer a revision petition to the respondents (Commissioner of Police) within one month of the communication of the copy of this judgment.

* Vide Government of India, Department of Personnel & Administrative Reforms O.M. dated 30th December, 1980 and 14th April, 1987.

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(ii) The respondents shall consider the revision petition on the merits and without taking the plea that it was not preferred within the period stipulated in the rules. While doing so, the respondents shall also duly consider the observations made hereinabove.

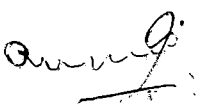
(iii) The respondents shall pass a speaking order on the revision petition as early as possible, but not later than 2 months from the date of receipt of the revision petition by them.

(iv) In case the applicant is aggrieved by the order passed on the revision petition, he will be at liberty to file a fresh application, in accordance with law, if so advised.

(v) The respondents are directed not to dispossess the applicant from the Government accommodation allotted to him till a decision on the revision petition is taken and communicated to him. The applicant shall be liable to pay the licence fee etc., as per the rules of the Estate Office.

(vi) There will be no order as to costs.


(D.K. CHAKRAVORTY)
ADMINISTRATIVE MEMBER


(P.K. KARTHA)
VICE CHAIRMAN(J)