

14

In the Central Administrative Tribunal
Principal Bench: New Delhi

OA No.2128/90

Date of decision: 4.1.1993.

Shri Hari Singh.

...Petitioner

Versus

Delhi Administration & Another

...Respondents

Coram:-

The Hon'ble Mr. I.K. Rasgotra, Member (A)

The Hon'ble Mr. Maharaj Din, Member (J)

For the petitioner

Shri J.P. Verghese, Counsel.

For the respondents

Shri V.K. Rao, Counsel.

1. Whether Reporters of local papers may be allowed
to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

15

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(Judgement of the Bench delivered by Hon'ble
Mr. I.K. Rasgotra, Member (A))

The petitioner, Shri Hari Singh No.D/5039, in this Original Application has challenged the order of the disciplinary authority dated 17.11.1989 imposing a penalty of stopping five future increments of the petitioner with cumulative effect permanently and the order of the appellate authority dated 11.6.1990, confirming the penalty imposed by the disciplinary authority. Shri J.P. Verghese, the learned counsel who appeared for the petitioner referred to the summary of allegations (page 27 of the paperbook) and submitted that the charge against the petitioner was vague inasmuch as the relevant portion reads as under:-

"It is also alleged that the S.I. was reluctant to give immigration clearance to Shri Sidharth Bahadur but when he managed to get something from the passenger and tried to provide a cover by recording a note"

2

The learned counsel stated that there is nothing in the charge to define "something". Thereafter the learned counsel made us travel along with him through the findings of the enquiry officer and referring to evidence of PW-5 Shri Murari Lal, ACP/AFPRO/^{Shri Verghese} submitted that the enquiry officer has placed heavy reliance on the preliminary enquiry conducted by PW-5. A copy of the preliminary enquiry report, however, was not furnished to the petitioner and, therefore, the inquiry stands vitiated. The third point taken by the learned counsel was that the petitioner filed a detailed appeal to the appellate authority against the order of the disciplinary authority. The appellate authority, however, rejected his appeal without giving any reasons and without dealing with the various points raised by the petitioner. Lastly, the learned counsel submitted that this was a case of 'no evidence'. The learned counsel further submitted that the charge against the petitioner was further modified as is evident from the report of the enquiry officer in the course of enquiry and, therefore, the petitioner had no chance to prepare his evidence to meet the modified charge. The modified charge reads as under:-

"You, S.I. Hari Singh No.D/5039 are hereby charged that while on duty in immigration at IGI Airport, N.Delhi in Right Wing Departure side on the night between 15/16-5-87, you gave emigration clearance to Sh.Sidharth Bahadur S/o Sh.Krishan Bans Bahadur, an Indian National, holder of passport No.W-231653 dt.25.7.84 issued at New Delhi. This passenger was cleared by you with ulterior motive in the



absence of POE clearance from the concerned office and enabled him to leave from IGI Airport, New Delhi on 16.5.87 by Flight No.TK-573. In order to avoid detection, you recorded a note on your own 'The pax has return ticket and his wife has ECNR from Delhi. The Pax left for conference with R.B.I. permit. Case sent to Inspr. Incharge and been cleared.' On the back of the Embarkation No.3420040 which is not supported by the Inspr. Incharge on duty.

The above acts on your part amounts to grave misconduct, lack of absolute integrity, dereliction of duty, unbecoming of police officer in violation of Rule 3.1(i)(ii) and (iii) of CCS (Conduct) Rules, 1964 and is punishable U/s 21 of Delhi Police Act, 1978."

The learned counsel stated that in the charge above the phrase used 'he managed to get something' ^{on the summary of allegation} has been dropped. This has acted to the prejudice of the petitioner, as he had prepared his defence to meet the charge of having managed to get 'something' from the passengers which implied dishonesty on his part.

2. The learned counsel further submitted that the petitioner acted in a bonafide manner. He cleared the passengers Shri Sidharth Bahadur and his wife as the passenger had the return ticket and his wife who was accompanying him possessed ECNR (emigration check not required). However, the petitioner had nothing to hide and it was for this reason that he recorded on the back of the Embarkation Card that "the pax has return ticket and his wife has ECNR from Delhi. The Pax left for conference with R.B.I. permit. Case sent to Inspr. Incharge and been

2

cleared." It was averred that not only this proves the bonafide of the petitioner but also shows that he used his discretion. The learned counsel further stated that even if it is assumed that PEO clearance in such a case was required from the higher authority the petitioner only exercised his discretion. On a query from the Bench whether use of discretion by the petitioner when he had none would be tantamount to exceeding his authority, the learned counsel stated that he admits exercise of discretion on the part of the petitioner.

3. The learned counsel, however, laid considerable emphasis on the aspect of dropping the charge of dishonesty which was a vague charge and the dropping of the aspect of dishonesty from the charge acted to the detriment of the petitioner, as his defence was attuned to meet that charge.

4. Shri V.K. Rao, learned counsel for the respondents referred us to Rule 15 of Delhi Police (Punishment and Appeal) Rules, 1980. Rule 15 (1) provides that "A preliminary enquiry is a fact finding enquiry. Its purpose is (i) to establish the nature of default and identity of defaulter(s), (ii) to collect prosecution evidence, (iii) to judge quantum of default and (iv) to bring relevant documents on record to facilitate a regular departmental enquiry." There is no provision under the rules that a preliminary enquiry report was required to be furnished to the delinquent official. He further stated that the revised charge, ^{ad} reproduced in the enquiry report (Page 41 of 4 the papers- book) was framed on 15.2.1989 whereas the enquiry was finalised on 12.6.1989. The argument that the petitioner did not have adequate time to prepare for his defence does not hold the ground. The

learned counsel further submitted that the very fact that the petitioner ~~did not~~ have the authority to clear the passengers in question from the imigration angle is obvious from the fact that he tried to cover his action by recording a note on the back of Embarkation Card No.3420040. The pre-ponderous of the evidence in the enquiry report clearly proves that the petitioner was guilty and, therefore, the findings of the enquiry officer cannot be found fault with. By referring to the report of the enquiry officer the learned counsel pointed out contradictions in the statement of the defence witnesses in contradistinction with the consistency in the evidence of the prosecution witnesses. Five prosecution witnesses and four defence witnesses appeared before the enquiry officer. Admittedly, the PW-4's statement varies from the other four PWs and is more in line with the evidence of the defence witnesss. This, however, cannot conceal the apparent fact that even the evidence of PW-4 is at variance with the evidence of defence witnesses. Regarding the charge of vagueness the learned counsel referred to **AIR 1959 SC 1315 Abdul Rahim v. State of Bombay** and submitted that the vague charge would mean a charge which is not capable of being understood by the person concerned. The charge framed in this case is very clear and there is no vagueness about it.


5. We have heard the learned counsel of both the parties and considered the matter carefully. We have also perused the records on the judicial file. We are of the opinion that there is no vagueness about the charge. The charge is clearly framed and there is no room for any abmiguity. It is evident that the petitioner had no authority to clear the passengers ^{in the present situation} without obtaining the approval of his superior. He failed to do so. It is not


disputed that the note recorded on the back of the Embarkation Card does not have the initial or approval of the superior authority. Further the superior authority has denied giving any such approval to the petitioner. In the circumstances, we are not persuaded to fault with the findings of the enquiry officer. The findings of the enquiry officer can be interfered with only if it has been conducted in a manner inconsistent with rules or in violation of principles of natural justice or proceedings are found to be perverse. We do not find any such infirmity in the enquiry. The enquiry has been conducted in accordance with the Delhi Police (Punishment & Appeal) Rules, 1980. A point was made on behalf of the petitioner that the appellate authority has not dealt with each ground taken in defence by the petitioner nor has it given any reasons for rejecting his appeal. On a perusal of the record we observe that while a copy of the appellate order has been placed on record, a copy of the appeal filed by the petitioner has not been brought on record. On a query from the Bench the learned counsel for the petitioner submitted that the appeal of the petitioner is not on record nor the same was available with him. In absence of the relevant material we are unable to take the view that the appellate order is in any manner arbitrary and made without application of mind. In fact it is a fairly detailed order even though the appellate authority agreed with the findings of the enquiry officer and the order passed by the disciplinary authority for the reasons given by him. The last point raised by the learned counsel for the petitioner was that this was a case of 'no evidence'. This appears to be based on the fact that the evidence of the passengers was not recorded. This ground also lacks merit, as there is the evidence of 5 prosecution witnesses and four defence witnesses. This evidence has been appraised and

2

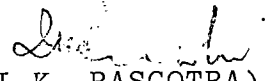
discussed by the enquiry officer before coming to his conclusion. Besides, it is an undisputed fact that the petitioner exercised his discretion in clearing the passengers while he had none instead of obtaining the orders of his superior authority which was located not far from him. The note recorded on the back of the Embarkation Card seems to be an afterthought, as it is not initialed or signed in token of having given the order to the petitioner by his superior..

6. In the facts and circumstances of the case we are of the opinion that this is not a case which merits judicial interference. Accordingly the O.A. is dismissed.
No costs.


(MAHARAJ DIN)
MEMBER(J)


(I.K. RASGOTRA)
MEMBER(A)

Pronounced by me in the open court today.


(I.K. RASGOTRA)
MEMBER (A)