

8

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1276/1991

28/8/95

New Delhi this the 31<sup>st</sup> Day of August 1995.

Hon'ble Mr. A.V. Haridasan, Vice Chairman (J)

Hon'ble Mr. K. Muthukumar, Member (A)

Shri Raghbir Singh  
(Ex-Sub Inspector of Delhi Police)  
No. 1708/D,  
Son of Shri Hans Ram  
Resident of WZ-41, Manohar Park,  
Punjabi Bagh,  
Delhi.

Applicant

(By Advocate: Shri Rishi Prakash)

Vs.

1. Union of India,  
through the Chief Secretary,  
5 Shamnath Marg,  
Delhi.
2. Additional Commissioner of Police (Operations),  
Police Headquarters, IP Estates,  
New Delhi.
3. Deputy Commissioner of Police (FRRO),  
Police Headquarters, MSO Building,  
I.P.Estates,  
New Delhi.

.... Respondents

(By Advocate: Shri S.K.Gupta proxy counsel  
for Shri B.S. Gupta)

O R D E R

Hon'ble Mr. A.V. Haridasan, Vice Chairman (J)

The applicant Shri Raghbir Singh while working as a Sub-inspector of Police under Delhi Administration was posted at Immigration Wing Check Post in Shift 'C' at Indira Gandhi International Airport as Clearing Officer in arrival side (left wing) and Computer No. 91 on 3.8.1991. On a report of Woman Inspector Smt. Krishna Dwivedi, the Assistant Commissioner of Police, AFRRO, placed him

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under suspension by Order dated 3.8.1989 pending contemplation of disciplinary proceedings. This was followed by an order of the respondents dated 4.8.1989 for a Departmental Enquiry against the applicant under 15(2) of the Delhi Police (Punishment and Appeal) Rules 1980. In the summary of allegations it was alleged that the applicant on 3.8.1989 while posted at Immigration Check-post, IGI Air Port, New Delhi as Clearing Officer in the Left Wing Arrivial side demanded and accepted 70 Francs (French Currency) notes of 50 Francs bearing No. 064468 and one of 20 Francs note bearing No. 456493 respectively from one Shri Gurmukh Singh, an Indian National holder of Passport No. X-885649 dated 23.6.1986 issued at Paris, who arrived from Paris at 0810 hours, by flight No. AI-144 as illegal gratification for clearing the passenger that he was caught by one Woman Inspector Smt. Krishna Dwivedi and that he admitted the acceptance of illegal gratification and had produced the currency notes before the Woman Inspector which were seized by her preparing a seizure memo and this amounted to grave mis-conduct for which he is liable to be proceeded against under Delhi Police (Punishment and Appeal) Rules 1980. The applicant had denied the allegations against him and an enquiry was held. The Enquiry Officer after examining six witnesses in support of the allegations and also taking on record the documents and on a consideration of the evidence framed the following charges against the applicant.

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"You, SI Raghbir Singh No. 1708/D are hereby charged that on 3.8.89 while on duty in immigration in Shift 'C' at IGI Airport, New Delhi as Clearing Officer in Left Wing, Arrival side, you gave clearance to one Gurmukh Singh, an Indian National holder of Passport No. X/885649 dated 23.6.86 issued at Paris, who arrived by Flight No. 3.8.89 after accepting 70 Frances (French Currency) from him as illegal gratification as per detail given below:

France - 50 bearing No. 064468

France - 20 bearing No. 456493

You produced the money to W/Inspr. Krishna Dwivedi who was on duty there in that Wing on her enquiry and she seized the said currency vide her seizure memo. dated 3.8.1989.

The above acts on your part amount to grave misconduct, lack of absolute integrity, dereliction of duty, unbecoming of police officer violation of Rule 3.1(i)ii) and (iii) of CSS (Conduct) Rules, 1965 and is punishable u/s 21 of the Delhi Police Act, 1978".

The applicant in his written statement dated 27.2.1990 denied the allegations. Though he cited four witnesses in a list submitted by him on 27.2.1990, he examined only three out of them. After examination of the defence witnesses and after consideration of the evidence on either side, the enquiry officer held the charge proved. The disciplinary authority on receipt of the enquiry report and the defence statement submitted by the applicant after giving him an opportunity of personal hearing on consideration of the entire evidence and the report of the enquiry officer agreeing to the findings that the applicant is guilty issued a show cause notice for dismissal by his order dated 13.3.1990.

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Thereafter, after taking into account the replies submitted by the applicant and after hearing him in person, the disciplinary authority, the Deputy Commissioner of Police, by his Order dated 26.10.1990 imposed on the applicant a punishment of dismissal from service. Aggrieved by that the applicant filed an appeal to the Additional Commissioner of Police who vide his order dated 15.2.1991 upheld the disciplinary authority's order dismissing the applicant from service. The applicant has now filed this application challenging the order dated 26.10.1990 of the Deputy Commissioner of Police as also the appellate order dated 15.2.1991 of the Additional Commissioner of Police . . . praying that these orders be set aside and respondents be directed to reinstate the applicant in service forthwith. <sup>In reality</sup> ~~praying~~ that despite the impugned order the applicant continue to be in service with all consequential benefits.

2. The applicant has alleged in the application that the officer who placed him under suspension was not competent to do so, that the sanction of the Additional Commissioner of Police was not obtained before initiating the disciplinary proceedings against the applicant <sup>and</sup> that the enquiry officer had brought on record the Statements of Witnesses which is not permissible in accordance with the provisions contained in sub-rule 3 of Rule 15 of the Delhi Police (Punishment and Appeal) Rules 1980,

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12

for this reason the enquiry is vitiated and that the finding that the applicant is guilty is not based on any conclusive evidence, that the defacto complainant namely Shri Gurmukh Singh who is alleged to have paid illegal gratification to the applicant has not been examined, that non-examination of the most material witnesses is fatal to the disciplinary proceedings, that even if it is assumed the guilt of the applicant is established, the disciplinary authority has gone wrong in awarding to the applicant the penalty of dismissal from service as the mis-conduct alleged against him was only of a trivial nature, the punishment was grossly disproportionate to the mis-conduct, that the appellate authority also did not apply his mind to the ground that raised by him in his appeal memo and therefore the impugned orders are liable to be set aside.

3. The respondents in their reply have contended that the disciplinary proceedings were initiated against him strictly in accordance with the rules, that the officer who placed the applicant under suspension was competent to do so, that the disciplinary proceedings were initiated against the applicant by serving <sup>on</sup> him a summary of allegations after the approval of Additional Commissioner of Police as required by rules, that the witness Shri Raghbir Singh could not be examined as he was not available in India, that the statements of witnesses were brought on record as is provided under the

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rules, that the enquiry officer has come to the finding only after a dispassionate consideration of the evidence on record, that the finding of guilt is supported by legal evidence, that the disciplinary authority have considered all the points raised by the applicant in his defence statement that as the penalty of dismissal from service was passed by the disciplinary authority and the same was confirmed by the Appellate Authority having regard to the entire facts and circumstances of the matter and after due application of mind the orders are not liable to be interferred with.

4. The applicant has filed a rejoinder in which he has reiterated the contention raised by him in his application.

5. We have carefully gone through the pleadings in this case. We have also seen the record relating to the disciplinary proceedings made available for our perusal by the learned counsel for the applicant. The arguments of Shri Rishi Prakash learned counsel for the applicant and Shri S.K. Gupta, proxy counsel for Shri B.S. Gupta for the respondents were also heard at length.

6. Shri Rishi Prakash mainly pressed the following points in his arguments.

a) Before initiating the disciplinary proceedings against the applicant under Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules 1980, the approval of the Additional Commissioner of Police was not taken and for that reason the entire proceedings are vitiated.

b) Sub-rule 3 of Rule 15 of the Delhi Police (Punishment and Appeal) Rules 1980 prohibit the bringing on record the statements of witnesses recorded at the preliminary enquiry in the regular disciplinary enquiry except when such witnesses are not available for examination and as the statements of witnesses recorded at the preliminary enquiry have been brought on record in the disciplinary enquiry in contravention of the above provision, the disciplinary proceedings and the order passed pursuant thereto are vitiated.

c) Since the defacto complainant Shri Gurmukh Singh, the passenger from whom the applicant was alleged to have received illegal gratification has not been examined, as the testimonies of the witnesses examined are in consistent with their earlier statements and as the witnesses examined in defence have established the innocence of the applicant, the finding of the disciplinary authority that the applicant is guilty is not supported by evidence at all and therefore the impugned orders based on such findings are unsustainable.

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Neither the disciplinary  
d) authority nor the appellate authority  
has applied its mind to the facts  
revealed in evidence, and the  
contentions of the applicant and  
therefore the orders being non-speaking  
and cryptic are liable to be set aside".

8. We shall consider these points in succession.

The contention of the applicant that the disciplinary proceeding is vitiated as the approval of the Deputy Commissioner of Police has not been taken before commencement of the disciplinary proceeding against the applicant, is untenable because in the order dated 4.10.1989 of the Deputy Commissioner of Police ordering departmental disciplinary proceeding against the applicant, it has been specifically mentioned that this was done with the prior approval of the Additional Commissioner of Police (Operational) Delhi as required under Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules 1980. Further at the time of argument the learned counsel for the respondents produced for perusal the approval granted by the Additional Commissioner of Police for initiating disciplinary proceedings against the applicant.

9. We shall now examine whether the enquiry officer has in contravention of the provisions of the Rules brought on record the statements of witnesses made during preliminary enquiry and if so

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done whether the enquiry and the order pursuant thereto are liable to be struck out as vitiated. Sub-rule 3 of Rule 15 of the Delhi Police (Punishment and Appeal) Rules 1980 reads as follows:

"The suspected police officer may or may not be present at a preliminary enquiry but when present he shall not cross-examine the witnesses. The file of preliminary 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. There shall be no bar to the Enquiry Officer bringing on record any other documents from the file of the preliminary enquiry, if he considers it necessary after supplying copies to the accused officer.....".

It is evident from the above extracted provisions that only in a case where the witnesses are not available for examination their statements recorded in the preliminary enquiry can be brought on record in the departmental enquiry. Now going through the report of the Enquiry Officer as also the proceedings of the enquiry, it is seen that statements of some of these witnesses in the preliminary enquiry have been brought on record and were marked as PW 2a, 3a, 4a and 5a. Thus this is not in conformity with the provisions contained in Rule 15(3) of the Delhi Police (Punishment and Appeal) Rules 1980. The statement of Gurmukh Singh, the passenger stand on a different footing from the statements of other witnesses in as much as Gurmukh Singh's statement could be validly brought on record because at the time when the regular enquiry commenced the witnesses having left India was not available for examination. However, bringing on record of the

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statements of other official witnesses was against the provisions contained in Rule 15(3). The crucial question is whether this has resulted in any prejudice to the applicant in the disciplinary enquiry against him. Having gone through the entire testimonies of PW 1 to 6, we find that all the witnesses have in chief examination stated in detail what transpired on 3.8.1989 and therefore the findings of the Enquiry Officer that the applicant was guilty was not based mainly on the statement recorded at the preliminary enquiry but on the evidence tendered by the witnesses at the regular departmental enquiry. Hence in as much as the finding is based on the actual statements tendered by the witnesses in the regular enquiry and as the witnesses were all cross-examined by the applicant, in detail, we are of the considered view that the mere placing the statements of the witnesses recorded at the preliminary enquiry in the regular enquiry has not caused any prejudice to the applicant at all and that therefore the enquiry proceedings or the orders pursuant to cannot be held to be vitiated. Mere irregularity in procedure will not vitiate the proceedings unless it is established that the irregularity in procedure has resulted in miscarriage of justice or substantial prejudice to the employee so there is no merit in this contention.

10. Coming to the next point, the learned counsel for the applicant argued that Gurmukh Singh, the defacto complainant from which the applicant was alleged to have received illegal gratification alleged to have been preliminary having not been examined, and his statement alleged to have been recorded behind the back of the applicant having been used against the applicant the proceedings are vitiated. .... .... We

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do not find any force in this argument. Shri Gurmukh Singh, the passenger from whom the applicant had allegedly received illegal gratification was not available for examination in the regular departmental enquiry, he having left India by that time. The rules provide that the statement of such witness can be brought on record. However, if the finding of guilt was solely based on the statement of the passenger, who was not examined the same could not have been upheld because there would have been no possibility of the statement being corroborated by any other evidence and as there was no opportunity for testing the veracity of the statement. Here the enquiry authority has based its finding, on the evidence tendered by PW 1 to 6 who were examined in a regular enquiry. The case against the applicant attempted to be established through the examination of PW 1 to 6 was that the applicant who was on duty in the Immigration Wing in Shift 'C' at the IGI Airport on 3.8.1989, had given clearance to one Gurmukh who arrived by Flight No. AI-144 on 3.8.1989 from Paris, only after accepting 70 Francs as illegal gratification, that finding that there was some confusion at his counter, Woman Inspector Smt. Krishna Dwivedi went there, that then the applicant was taken to the room of Smt. Krishna Dwivedi, that he admitted to have received 70 Francs from the said Gurmukh Singh, that the currency notes were produced by the applicant, that Shri T.N. Pandey, PW 3 who was at the same cabin reported to Smt. Krishna Dwivedi that the applicant threw some papers

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alongwith currency note of 20 France in his drawer, that the currency notes for 70 France were recovered by preparing a seizure memo in which the applicant Harbhajan Singh PW 6 and other witnesses signed and that the fact that the applicant had accepted illegal gratification was established by the statements of witnesses of the applicant himself as also a complaint given by Gurmukh Singh. The testimonies of PW 4 Smt. Krishna Dwivedi and PW 6 Harbhajan Singh and the seizure memo which contains the signatures of the applicant established the guilt of the applicant conclusively. There is no case for the applicant that his signatures in the seizure memo was obtained under coercion. No complaint has been made by him to any superior officer immediately after 3.8.89 stating that his statement and signature in the ~~ce~~asure memo were obtained under coercion. A reading of the enquiry report, and the order of the disciplinary authority clearly shows that the finding of the guilt was based on cogent and convincing evidence. Learned counsel for the applicant tried to point out some unimportant and minor contradiction in the testimony of the witnesses. It was pointed out that while in the seizure memo it was recorded that the currency notes for 50 Franc~~s~~ and 20 Franc~~s~~ were produced by the applicant himself, Smt. Krishna Dwivedi, PW 4 stated that in fact the applicant produced 50 Franc~~s~~ notes and that 20 Franc~~s~~ notes was placed on her table by PW 3. This and such other minor contradiction in the testimonies of witnesses do not ..... . . . . .

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make their evidence unbelievable because they are only minor contradiction and they lend only more credibility to their versions than making them unbelievable. In a proceeding of this nature a re-appropriation of the evidence is not warranted. If there is some evidence on the basis of which it could be reasonably concluded that the guilt has been established, the Tribunal would not sit as an Appellate Forum for reassessing the evidence and to weigh the sufficiency of the evidence. We are therefore of the considered view that finding of guilt arrived at by the enquiry officer cannot be faulted as the same was arrived at on an overall assessment of the evidence and circumstances brought out in the regular departmental enquiry. The disciplinary authority has again considered in detail the evidence recorded at the enquiry, the finding of the enquiry authority, and the circumstances of the case in the light of the defence offered by the applicant in his defence statement as also in the testimonies of DWS 1 to 3 and has come to an independent finding that the guilt of the applicant has been established. The enquiry authority as well as the disciplinary authority have rightly rejected the contradictory statements of DWS 1 to 3. Under these circumstances we do not find any force in the argument of the learned counsel of the applicant that the finding is perverse and is liable to be struck down.

11. The disciplinary authority has considered in detail every aspect of the case in the light

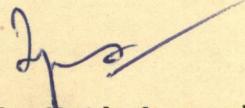
of the evidence recorded at the enquiry and the case of the applicant in his defence statement and has given a detailed and speaking order. The order, therefore, cannot be termed as cryptic. The appellate authority also has perused the entire file and has rightly agreed with the view of the disciplinary authority. Therefore, the arguments that the orders are cryptic has no rules at all.

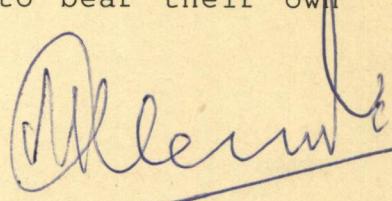
12. The last limb of the arguments of the learned counsel for the applicant is that even if the misconduct of the applicant is presumed to have been established, the disciplinary authority has gone wrong in awarding to him the penalty of dismissal from service. Considering <sup>the</sup> 133 years of service rendered by the applicant, he could have been awarded any other penalty than the capital penalty of dismissal from service argued by the learned counsel. We find little merit in this argument. Once the guilt of the delinquent government servant is established in an enquiry duly held in conformity with the relevant service rules, and the provisions of Article 311 of the Constitution, the quantum of penalty is exclusively within the domain of the disciplinary authority to determine. The Tribunal will not substitute its view in regard to the quantum of penalty. Further the misconduct proved to have been committed by the applicant being of a grave nature, we are of the view that the penalty of dismissal from service cannot be considered shockingly disproportionate to the misconduct. The disciplinary authority has rightly awarded the

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penalty of dismissal from service to the applicant.

13. In the ~~conspectus~~ facts and circumstances as discussed above, we do not find any merit in this application and, therefore, we dismiss this application leaving the parties to bear their own costs.

  
(K. Muthukumar)  
Member (A)

  
(A.V. Haridasan)  
Vice Chairman (J)