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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA 1508/1991

Date of decision: 11.05.1993

Shri Girdhari Lal

..Applicant

Versus

Delhi Administration, Delhi & Others

..Respondents

For the Applicant

...Shri Shyam Babu, Counsel

For the Respondents

...Shri Ravinder Dayal, Counsel

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. I.K.RASGOTRA, ADMINISTRATIVE MEMBER

1. To be referred to the Reporters or not? yes

JUDGMENT
(of the Bench delivered by Hon'ble Mr.
Justice S.K. Dhaon, Vice-Chairman(J))

Disciplinary proceedings were initiated against the petitioner, a Constable deputed at the Indira Gandhi International Airport(for short 'IGIA'). On 14.11.1990, the Deputy Commissioner of Police (the punishing authority), passed an order dismissing him from service. On 28.01.1991 the Additional Commissioner of Police dismissed the appeal preferred by the petitioner. On 15.05.1991, the Commissioner of Police dismissed the revision petition preferred by the petitioner. The three orders are being impugned in the present application.

2. A reply has been filed on behalf of the respondents. Counsel for the parties have been heard.

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3. The undisputed facts are these. On or before 19.11.1989, the petitioner was attached with Shift 'B' at the Indira Gandhi International Airport. In the night between 19/20 November, 1989, he was noticed in the premises of the said Airport. At that time, he was off duty. He was seen there at about 00.45 hours. He entered the premises of restricted area. He held a bag in his hand which contained a VCR, a dutypayable article. Neither the bag belonged to him nor was he the owner of the VCR.

4. The Departments case is that at about 00.45 hours, Flight No.KLM-836 landed and the passengers who had come out of the said flight arrived in the hall (left wing), a lady who was a passenger of the said flight handed over a brief-case(bag) to the petitioner and in the said brief-case, a VCR was found. The petitioner had taken the brief-case from the lady passenger to smuggle the VCR out of the Airport without paying any duty. Evidence was led by the Department that there was a nexus between the petitioner and the lady passenger. A number of witnesses were examined before the Enquiry Officer. (Even before, immediately after the petitioner was apprehended at the Airport, a brief-case was found in his hand). The alleged lady passenger, who was later on identified as one Smt. Savitri Devi, was subjected to an examination and her statement was recorded by the officer concerned. She had duly appended her signature under the statement as recorded. The Police Officer who had actually found the petitioner with the brief case in his hand and the VCR contained therein was also examined on the spot when his statement was recorded.

5. The usual procedure was followed in the sense that a formal order was passed by the Deputy Commissioner of Police on 19.01.1990 directing a departmental enquiry against the petitioner. The requisite sanction as required under Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980, (hereinafter referred to 'as the rules') was obtained from the officer incharge to do so.

6. The summary of allegations was prepared by the Inquiry Officer. The material averments therein were: the petitioner attached to Shift 'B' was noticed roaming about by Sub-Inspector Rajiv Nagpal and Head Constable Bhoop Singh on the night between 19/20 November, 1989, while 'D' Shift was on duty at Indira Gandhi International Airport, Terminal-II in Departure Hall though he was off duty. The matter was brought to the notice of AFRRO/ 'D' Shift, who detailed his reader, H.C. Bhoop Singh, to keep an eye on the activities of the petitioner. At the time of arrival of Flight No.KLM 836, the petitioner went to the Arrival Hall(left wing) and took a brief-case from a lady passenger named Smt. Savitri Devi, holder of Passport No.804395 who had disembarked from that flight. A vigil was kept over the petitioner. Inspector Puran Singh apprehended the petitioner and made enquiries about the brief-case. He failed to give a satisfactory reply. On checking the brief-case, it was found that it contained a VCR, make National Model G-30, which the petitioner wanted to take out without paying custom duty.

7. After the examination of the witnesses produced by the Department in support of its case, the Inquiry

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Officer framed a charge on 1.6.1990. The substance of the charge as material was: the petitioner while posted at the Immigration Check/^{post} at the Indira Gandhi International Airport at Terminal-II attached to Shift 'B' was found roaming at Airport Terminal-II in the night between 19/20 November, 1989 though he was off duty on that night. The petitioner took a brief case containing a VCR from one passenger who had arrived by Flight No.KLM 836. On arrival at left wing he attempted to take the brief case up stairs and was caught while taking it towards the lift without paying the taxes at the custom counters .

8. The original record is before us. We have examined the statements of Smt. Savitri Devi as recorded at the Airport as well as the statement given by her before the Inquiry Officer. At the Airport, the statement as recorded and as material was: She held a Passport No.C-804395 on the basis of which she visits Singapore off and on. At Singapore she purchases goods and brings to India for being sold. A few days before, she wanted to go to Singapore but could not secure a confirmed ticket. The petitioner who was working at the Immigration side helped her in getting a confirmed ticket. That is how she developed acquaintance with the petitioner. On 15.11.1989, when she was leaving for Singapore, the petitioner asked her to bring a VCR from Singapore of which he would take possession from her at the Immigration itself and will take out the same. On 20.11.1989 while coming back from Singapore by Flight No.KLM-836 she brought a VCR for the petitioner. He met her on the arrival of the flight at the Immigration and she handed over the brief case containing the VCR to him(the petitioner). Thereafter, she left the Airport after taking other articles. Earlier, the petitioner had helped her in getting the custom duty payable by her reduced.

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9. Before the Inquiry Officer, the statement given by her as material was: she had visited Singapore on 11.11.1989 and she returned from there on the night of 20.11.1989 by KLM 836. The passengers were cleared on the left side of the Airport and on that day she was unwell. She was carrying a suit-case which contained a VCR. She had placed the suit-case where 2 women were sitting and went to the toilet. On return, she found the suit-case missing. She made a complaint regarding the disappearance of her suit-case. Then, a police officer informed her that the suit-case would be found out. She was made to sign on a blank sheet of paper. Her Passport along with the VCR was handed over to the custom officials.

10. The witness was confronted with the earlier statement recorded at the Airport but she denied having made the same. However, she admitted that the alleged statement contained her signature.

11. Puran Singh, Inspector 'D' Shift was examined at the Airport on the night between 19/20 November, 1989. His statement as material was that: on the arrival of KL-836 from Singapore, he found the petitioner standing at the end of the counter. He kept a watch over him. After sometime at about 0.55 he found the petitioner carrying a brief-case in his hand. Girdhari Lal (the petitioner) was followed by the witness and others. The petitioner stopped walking and stood at a particular place. On enquiry from the petitioner about the brief-case, he (the witness) was informed that the brief-case belonged to a lady passenger. However, the petitioner could not reveal the name of the passenger. The passenger could not be traced out, probably she had got herself

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cleared. On opening the brief-case, a VCR was found therein. The petitioner wanted to smuggle the VCR by illegal means. The matter was brought to the notice of AF/D to whom the petitioner and the brief-case were entrusted.

12. Before the Enquiry Officer, Puran Singh substantially gave the same version as at the Airport.

13. The Inquiry Officer framed a charge after examining the witnesses as well as the statement of defence witnesses. He did not accept the defence of the petitioner that he had gone to the Airport on the crucial date in search of his Identity Card. He opined the charge was brought home to the petitioner.

14. The punishing authority passed a detailed order. He referred to the statement of Head Constable Bhoop Singh and the other witnesses and agreed with the finding recorded by the Inquiry Officer. A portion of the order of the punishing authority which we consider material, may be extracted:

"....The plea taken by the defaulter in his defence during the course of the departmental enquiry that he had lost his Identity Card and was searching for the same near the toilets where he found the brief-case unattended is an after thought. His presence at the Airport at odd hours and off duty clearly shows/proves his mala fide intention. If his plea is correct, he should have searched his Identity Card from Immigration area first after obtaining necessary permission from the AFPRO Shift or at least from the Inspector. He did not ask about his Identity Card from the staff of Immigration and hence it is clear that his presence in the restricted area of the Airport during the night hours when he was off duty was for some inexplicable reason".

15. The submission advanced in the forefront on behalf of the petitioner is that there was no material before the Inquiry Officer to enable him to come to the conclusion that the charge had been proved. We

are unable to appreciate this submission. The Inquiry Officer relied upon the statement of various witnesses most of whom were eye witnesses. We cannot reappraise the evidence for the purpose of coming to a different conclusion. The preponderance of probabilities of the case is such that any rational person could have concluded that the petitioner was really guilty of misconduct. The punishing authority dilated upon three aspects, namely, the presence of the petitioner at the Airport when he was off duty at the unearthly hours of the night/morning, his failure to report to the authority concerned that he had lost his Identity Card and his presence in the restricted/prohibited area without any permission of any authority. The fact that the brief-case containing the VCR was in the hand of the petitioner, coupled with the aforementioned circumstances could entitle any reasonable man to infer that the petitioner intended to take out the VCR without paying duty. Such an inference, if drawn, was not perverse. We are not hearing the matter in a court of appeal. Hence, we cannot interfere.

16. It is urged by the counsel for the petitioner that the Inquiry Officer acted in violation of Rule 15(3) which provides, *inter alia*, that the file of the preliminary enquiry shall not form part of the formal departmental record, but statements therefrom be brought on the record of the departmental proceedings when the witnesses are no longer available. It is argued that the statement of Smt. Savitri Devi, as recorded at the Airport, could not be used at all in the departmental proceedings. This in our opinion, is not a correct reading of the Rule. It merely prohibits the use of a statement recorded in the preliminary as substantive evidence. It does not object to the use of such a statement for the purpose of testing the veracity of a particular witness if he or she deposes contrary to

what was alleged to have been deposed by him or her in the preliminary enquiry. The witness deposing before the Inquiry Officer can be confronted with his earlier statement recorded in the preliminary enquiry. Some explanation had to be given by the punishing authority for the apparent conflict between the two versions given by Smt. Savitri Devi. After considering her statements, it came to the conclusion that the witness had taken a somersault and had been won over by the petitioner. For that limited purpose, the deposition of Smt. Savitri Devi, as recorded in the preliminary enquiry could be considered in spite of Rule 15(3).

17. It was faintly argued that the petitioner's appeal having been allowed by the Collector of Customs and CE(Appeal), the bottom of the departmental enquiry stood knocked-off. The limited controversy before the Assistant Collector of Customs(PREV) Indira Gandhi International Airport was whether the petitioner could be punished for either smuggling or attempting to smuggle the VCR. The appellate authority held that since the evidence merely disclosed that the petitioner held a VCR in the Immigration Cell, no question of said VCR being smuggled or an attempt to smuggle the same arose. The finding of the Collector of Customs, has no bearing at all on the findings recorded by the Inquiry Officer as well as the punishing authority.

18. The last submission is that the punishing authority exceeded its jurisdiction in directing that the period of suspension of the petitioner from 20.11.89 to 2.5.90 shall be deemed to be the period not spent on duty. It appears that during the pendency of the disciplinary proceedings, an order of suspension was passed on 20.11.89

and before the termination of the disciplinary proceedings, the said order was revoked on 03.05.1990. It is to be noted that the punishing authority passed its order on 14.11.1990. Therefore, a period of six months elapsed between the order of revocation and the passing of order of punishment.

19. The order dated 3.5.1990 merely provided that the petitioner had been reinstated with immediate effect without prejudice to the departmental enquiry pending against him and the suspension period will be decided later on.

20. Rule 54-B of the Fundamental Rules has relevance. In particular, sub-rules(1) and (6) have to be considered for answering the contention. Sub-rule(1) provides, *inter alia*, that when a Government servant who has been suspended is reinstated, the authority competent to order reinstatement shall consider and make a specific order regarding the pay and allowances to be paid to the Government servant for the period ending with reinstatement and whether the said period shall be treated as period spent on duty. No order under sub-rule (1) was passed in the instant case. It is apparent that the officer while passing the order of reinstatement has to apply his mind then on the requirements of Rule 54-B(1). The transaction of reinstatement and the passing of a specific order of pay and allowances during the period of suspension is one and is inseparable. The process of thinking is also one. In any view of the matter, the officer concerned after passing an order of reinstatement, should act within a reasonable period for the purpose of passing an order regarding the pay and allowances to be paid to the Government servant for the period of suspension. Surely, a period of 6 months cannot

be considered to be a reasonable period.

21. Sub-rule (6) posits that where suspension is revoked pending finalisation of the disciplinary or the court proceedings, any order passed under sub-rule(1) before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5), as the case may be. Again in sub-rule(6), the power is given to review the order passed earlier i.e. under sub-rule(1). The question of reviewing the order arises only if the order exists. In the instant case, no order having been passed, the question of reviewing the same did not arise. Therefore, the punishing authority acted illegally in directing that the period during which the petitioner had been placed under suspension should be treated to be period not spent on duty.

22. We, therefore, direct that the petitioner shall be paid the usual emoluments during the said period on the footing that he continued to be in uninterrupted service during that period.

23. This application succeeds in part. The order of dismissal passed by the punishing authority and as upheld by the appellate and reviewing authority is upheld. That part of the order of the punishing authority which relates to the payment to be made to the petitioner during the period of suspension is quashed. The respondents shall pay to the petitioner the usual emoluments for

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that period within a period of 3 months from the date of presentation of a certified copy of this order by the petitioner to them.

24. With these directions this application is disposed of. There shall be no order as to costs.

Rasgotra
(I.K. RASGOTRA)
MEMBER (A)
11.05.1993

S.K. Dhaon
(S.K. DHAON)
VICE CHAIRMAN
11.05.1993

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