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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,  
NEW DELHI.

O.A.No. 2353/91

New Delhi: this the 23<sup>rd</sup> day of August, 1996

HON'BLE MR.S.R.ADIGE, MEMBER(A).

HON'BLE DR.A.VEDAVALLI, MEMBER(J).

Shri Mohinder Singh,  
S/o Shri Mohan Singh,

R/o 297, Pocket II, Janta Flats ,

Paschim Vihar,

New Delhi-63

..... Applicant.

By Advocate: Shri B.S.Charya.

Versus

1. Commissioner of Police,  
Delhi Police, Police Hqrs.,  
MSO Building, I.P.Estate,  
New Delhi- 2
2. The Addl. Commissioner of Police,  
(Operations)  
Delhi Police, Police Hqrs.,  
I.P.Estate,  
New Delhi.
3. Union of India,  
Ministry of Home Affairs,  
Govt. of India,  
New Delhi ( through its Secretary).

..... Respondents.

By Advocate: Shri B.S.Gberoi.

JUDGMENT

BY HON'BLE MR.S.R.ADIGE, MEMBER (A).

In this application, Ex.HC (Min) Mohinder Singh, Delhi Police has challenged the dismissal order dated 22.1.91 (Annexure-P9) and the appellate order dated 3.9.91 (Annexure-P12).

2. From the summary of allegations (Annexure-P2), it appears that an enquiry under Rule 15(1) Delhi

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Police (Punishment & Appeal) Rules, 1980 was conducted by Shri K.K.Vyas, ACP/AFRRO, on the basis of information received that illegal gratification was accepted in the course of discharge of their duties by Inspector Tikam Chand Goel, S.I. Rajpal Singh and HC (Min) Mohinder Singh (applicant). It was alleged that the money was demanded and accepted for clearing a passenger namely Jasbir Singh S/o Joginder Singh/Jagseer Singh s/o Joginder Singh. During the course of enquiry, it was established that one passenger namely Jasbir Singh S/o Joginder Singh who wrote his name as Jagseer Singh S/o Joginder Singh in his dis-embarkation card, was cleared by CO, SI Rajpal Singh on the advice of Wing Incharge Inspector Tikam Chand Goel. The passenger was cleared inspite of the fact that there was a clear contradiction in details as given in the passport and disembarkation card, as filled in by the passenger. The name Jasbir Singh which the passenger had stated in his dis-embarkation card, figured in the LOC list. A joint interrogation should have been done in the above matter, which was not done. Similarly, HC Mohinder Singh who was a Typist and was not supposed to interfere in such matters, was present there and was seen talking to the passenger which showed his connivance too and lent credence to the charge of accepting illegal gratification in connivance with each other.

3. On the basis of the above summary of allegations, a departmental enquiry was conducted jointly against Inspector Tikam Chand Goel, SI

(17)

Rajpal Singh and HC Mohinder Singh applicant.  
The Deputy Commissioner of Police, DE Cell,  
Vigilance, Delhi was entrusted with the enquiry  
who after recording statements of PWs drew up  
the charge against the three officials named above,  
which is extracted below:

"You, Inspector, Tikam Chand Goel, No.D/479  
and SI Rajpal Singh No.D/5292 are hereby  
charged that while posted at immigration,  
IGI Airport, Terminal-II, New Delhi and  
detailed for duty in shift 'B' in the  
arrival right wing on the night between  
27/28.10.89 both of you, in collusion,  
connived with HC (Min.) Mohinder Singh  
No.56/F who was also posted in immigration  
and managed the clearance through Immigration  
Check Post of a LOC subject Jasbir Singh  
Jagseer Singh s/o Joginder Singh arrived  
from Bangkok by Flight No.KU/382 although  
there were clear contradictions in the  
disembarkation Card and the passport. This  
gives credence to the allegation that you,  
did this unwarranted act for some ulterior  
motive."

You, HC (Min.) Mohinder Singh, No.56/F are  
also charged that while posted in the  
immigration at IGI Airport you connived with  
Inspector Tikam Chand Goel and SI Rajpal  
Singh in getting the above said passenger  
cleared for some ulterior motive."

The above act on your part amounts to gross  
misconduct which renders you, Inspector Tikam  
Chand Goel, No.D/479, SI Rajpal Singh  
No.D/5292 and HC (Min.) Mohinder Singh No.56/F  
liable for the punishment under Section 21  
of Delhi Police Act, 1978."

4. In his findings, the Enquiry Officer held  
that the charges levelled against all the three

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defaulters had been substantiated beyond doubt. Tentatively agreeing with the findings submitted by the Enquiry Officer, a show cause notice provisionally proposing the punishment of dismissal from service was issued to the applicant together with a copy of the findings. After considering his reply and the record of the departmental enquiry, the impugned punishment was inflicted by the Addl. Commissioner of Police vide order dated 22.1.91 (Annexure-P9) which was upheld in the appeal vide impugned order dated 3.9.91 (Annexure-P12) against which this OA has been filed. Meanwhile, Inspector Tikam Chand Goel was separately retired prematurely under FR-56 J w.e.f. 6.10.91 while SI Rajpal was repatriated to his parent department BSF and the relevant documents were sent for taking necessary action against him.

5. We have heard Shri B.S.Charya for the applicant and Shri B.S.Oberoi for the respondents. We have perused the materials on record and have given this matter our careful consideration.

6. The first ground taken is that the allegations made in the summary of allegations are unfounded, vague, ambiguous and untenable, and there are clear contradictions between the summary of allegations on the one hand and the charge framed subsequently on the other hand. A perusal of the contents of the summary of allegations as well as the charges show that there is no contradiction between the two. No doubt in the summary of allegations a reference has been

made to the enquiry conducted by the ACP/AFRO on the basis of information received by him that illegal gratification was accepted in the course of discharge of their duties by Inspector Tikam Chand Goel, SI Rajpal Singh and HC (Min) Mohinder Singh applicant, while there is no mention of acceptance of illegal gratification in the charge sheet, and in its place what has been stated is the applicant had done an unwarranted act by allowing Jasbir Singh @ Jagseer Singh to enter the country with some ulterior motive, but merely because there is no mention of acceptance of illegal gratification in the charge sheet, <sup>it</sup> cannot be construed to mean that there is any contradiction between the summary of allegations and the charge sheet. Furthermore the charges are neither vague nor ambiguous, but on the other hand are specific and pointed. Hence this ground fails.

7. The second ground taken is that neither PW1 nor PW2, nor PW3 had stated anything to incriminate the applicant with the clearance of the passenger. In his statement, before the EO, PW1 Shri Jai Kishan SI had drawn attention to the Disembarkation Card where the name of the passenger Jasbir Singh had been cut and the name Jagseer overwritten. PW2 Shri K.K.Vyas in his statement has categorically stated that he had received an anonymous telephonic information sometime between the last week of October, 1989 and 3.11.89 regarding the complicity of SI Rajpal Singh, Clearing Officer; Inspector



Tikam Chand Goel, Wing I/C and applicant HC Mohinder Singh in the clearance of Jasbir Singh @ Jagseer Singh after taking orders of Inspector Tikam Chand Goel inspite of a clear contradiction in the name as written in the disembarkation card and that given in the passport, when that name was on the lookout list at that point of time. This testimony has not been shaken in cross-examination. It is not denied that Jasbir Singh @ Jagseer Singh did arrive on the night of 27/28.10.89 from Bangkok by Flight No KU/382 and was cleared by SI Rajpal Singh upon orders of Inspector Tikam Chand Goel inspite of the abovenoted contradiction and despite his name being on the lookout list, SI Rajpal Singh in his statement admitted that despite the discrepancy in the name he had cleared the above passenger on the instruction of Inspector Tikam Chand without checking the names on the computer, and this has been corroborated by the statement of Inspector Tikam Chand himself, although the prescribed procedure required the passenger to be properly interrogated before he was cleared.

8. In so far as the applicant's complicity is concerned, Shri Vyas has stated that the applicant had no business to get in touch with incoming passengers on that flight as he was on type-duty as per his own statement. The Enquiry Officer in his findings has recorded that the applicant had himself admitted his presence in the arrival Right Wing but

(2)

could not justify his presence there. He was posted as a typist and had nothing to do with the clearance of the passengers, but despite that he was found present in the arrival Right Wing and was seen talking to said Jagseer Singh. Thus, the telephonic tip off received by ACP Shri Vyas of the complicity of Inspector Tikam Chand Goel, SI Rajpal Singh and applicant Mohinder Singh of allowing a LOC subject Jasbir Singh @ Jagseer Singh to enter the country; the actual arrival of Jasbir Singh @ Jagseer Singh from Bangkok by Flight No. KU/382 on the night of 27/28.10.89; his being allowed to pass through Immigration despite clear contradiction between the name as shown in the Disembarkation Card and that shown in the passport ; the presence of the applicant in the immigration arrival Right Wing when he had no reason or business to be there; his being seen talking to the said Jagseer Singh, all amounts to overwhelming circumstantial evidence in support of the conclusion arrived at by the Disciplinary/Appellate Authority that as the applicant did have a hand in ensuring that Jasbir Singh/Jagseer Singh was cleared through Immigration with some ulterior motive.

9. The next ground taken is that the applicant was not at all concerned with the entire process of clearance of the passenger and was unnecessarily implicated. In view of the foregoing discussion, this ground has no merit.

22

10. The next ground taken is that no effort was made to summon the concerned passenger whose address was available with the department at Village Rode, Distt. Faridkot which itself showed that there was no doubt about the passenger's correct identity. The appellate authority had correctly observed that in view of the other materials on record, the non-examination of the passenger in the departmental enquiry is not of much significance. Hence this ground also fails.

11. Next it has been argued that there is no direct evidence to implicate the applicant. In the present departmental proceeding the impugned penalty has admittedly been inflicted on the basis of circumstantial evidence. It has to be remembered here that evidence does not at all times have to be <sup>direct</sup> for the charges to be established. If the evidence, though circumstantial, leads to a preponderance of probability as to the guilt of the defaulter, that is quite sufficient for the charges to be held as established. What must be ensured is that the charges should not be based on conjectures and surmises or based on no evidence. In the present case, as discussed above, the circumstantial evidence is sufficient to establish the charge against the applicant.

12. The next ground taken is that the

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findings of the Enquiry Officer are perverse i.e. which no reasonable person would accept. A perusal of the E.O's report shows that the report is a detailed one, which has been accepted by the Disciplinary Authority and the Appellate Authority and these reasons are based on the circumstantial evidence on record, and those conclusions therefore cannot be said to be perverse.

13. Next it has been urged that the applicant had not been given an adequate opportunity to defend himself. This ground is baseless because a perusal of the entire materials on record makes it abundantly clear that full opportunity was given to the applicant to defend himself in the DE.

14. The next ground taken is that the provisions of Rule 16 Delhi Police (Punishment & Appeal) Rules, 1980 are unconstitutional and violative of Article 14 of the Constitution. It is contended that the provisions in the said Rule are analogous to certain provisions in the Cr.P.C but at the same time this Rule makes a substantial departure from the provisions in the Cr.P.C. It is also contended that under the Cr.P.C to try an allegation of criminal offence on the basis of a police report or a complaint, preliminary evidence is recorded; witnesses are cross-examined and if the offence is not made out, then the accused is discharged. Similarly under Rule 16 of Delhi Police (P & A) Rules, 1980 if the misconduct is not made out, the delinquent is discharged. However, where a charge in a criminal case is made out under the Cr.P.C, charge is framed and the accused is asked to plead guilty to the

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charge but if the accused pleads not guilty to the charge, the prosecution is required to resubmit the evidence and give an opportunity to the accused to further cross-examine the witnesses but such a provision is not available under Rule 16 which gives occasion to the Enquiry Officer to prejudge the issue, deny the delinquent employee an opportunity to defend the charge under Rule 16(iv) and straight away proceed to compel the delinquent employee to produce the defence.

15. We would observe here that the procedure for conducting a departmental enquiry under the Delhi Police (P & A) Rules, 1980 cannot be compared with the procedure for conducting criminal trials under the Cr.P.C. The comparison, if any, can be made with the procedure for conducting departmental proceedings under the CCS (CCA) Rules. Under those rules, the charges are framed and the charge sheet is issued to the delinquent employee at the outset itself, on the basis of which the departmental enquiry proceeds. In regard to the functionaries of the Delhi Police who are governed by the Delhi Police Act and the Delhi Police (P & A) Rules made thereunder, it is clear that where the misconduct if proved is likely to result in a major punishment, the charge sheet is framed only after the evidence in support of the allegations has been recorded and the EO is satisfied prima facie that there is substance in the same, vide Rule 16(iv). It is only thereafter that the delinquent employee is required to enter into defence. These provisions have clearly been

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made to protect the Delhi Police functionaries from facing any frivolous and unsubstantiated charge sheet, and accords fully with the principle of natural justice, and hence this argument has no merit.

16. The next ground taken is that the EO's report is based on conjectures and surmises and the same cannot be taken as the basis for imposing punishment. As stated above, the EO's findings, which are based on circumstantial evidence, point to the preponderance of probability that the applicant is guilty of the misconduct with which he is charged. It is not a case where the guilt of the applicant is based on conjectures and surmises. Hence this argument does not succeed.

17. The next ground taken is that the punishment of dismissal inflicted on the applicant is extremely harsh and oppressive. In this connection in UOI Vs. Parma Nanda AIR 1989 SC 1185, the Hon'ble Supreme Court has held that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction, and the Tribunal cannot interfere with the finding of the Enquiry Officer or competent authority where they are not arbitrary or utterly perverse. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice, is a matter exclusively within the jurisdiction of the competent authority. In the present case, there are

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no materials to hold that the enquiry has been inconsistent with the rules and in violation of the principles of natural justice. Under the circumstance any interference in the punishment imposed would wholly be outside our jurisdiction.

18. Before parting with this case we may refer to some of the rulings cited by applicant's counsel Shri Charya. The first ruling is UOI Vs. H.C. Goel AIR 1964 SC 364, in paragraph 27 of which it has been held that mere suspicion should not be allowed to take the place of proof even in domestic enquiries. As pointed out above, this is not a case of mere suspicion but of strong circumstantial evidence pointing to the guilt of the applicant as charged. Hence this ruling does not help the applicant.

19. The next ruling cited is A.L. Kalra Vs. Project and Equipment Corporation of India Ltd- 1984(3) SCC 316, wherein it has been held that where misconduct when proved, entails penal consequences, the same should be defined precisely and adequately so that any ex post facto interpretation of some incident may not be camouflaged as misconduct. Similarly a general expectation of a certain decent behaviour in respect of employees keeping in view Corporation culture may be a moral or ethical expectation. Failure to keep to such high standard of moral, ethical or decorous behaviour constitute befitting an officer of the company by itself cannot

(27)

misconduct unless the specific conduct falls in any of the enumerated misconduct. In the present case, the charge is quite specific that Inspector Tikam Chand Goel and S.I. Rajpal Singh in collusion, connived with applicant HC Mohinder Singh in clearing IOC Subject Jasbir Singh @ Jagseer Singh through Immigration on the night of 27/28.10.89 for some ulterior motive. As discussed above, the charge is precise and accurate and there was overwhelming circumstance to establish the misconduct of the applicant as charged, and it cannot be said that the applicant has been held guilty merely for failure to maintain a sufficiently high, moral and decorous behaviour, and hence this argument also fails.

20. Shri Charya has next relied upon the CAT Calcutta Bench Ruling in S.P. Mukherjee Vs. UOI & other- ATR 1986 CAT 424 which also relies upon A.L. Kalra's case, referred to above, but as A.L. Kalra's case (supra) does not help the present applicant, we cannot derive any benefit from S.P. Mukherjee's case.

21. The next ruling upon which reliance has been placed is State of UP Vs. Raj Kishore AIR 1987 SC 1642 wherein the Hon'ble Supreme Court had upheld the Allahabad High Court's view that the Disciplinary Authority's finding holding the applicant's guilty of alleged misconduct was based on 'no evidence.' In the present case, as stated above, however, this is not a case of 'no evidence',

28

hence the said ruling does not help the applicant.

22. Reliance has also been placed on the case of Bhagwati Prasad Dubey Vs. The Food Corporation of India- AIR 1988 SC 434 wherein the Hon'ble Supreme Court allowed the SLP filed by the appellant against the Allahabad High Court's order dated 2.9.80 dismissing the writ petition in limine filed by the appellant challenging his removal from service in FCI. In that case, it was held that the conclusion of the Enquiry Officer about proof of charge of misconduct was based on 'no evidence', and hence the order of removal from service was liable to be set aside. The present case is not a case of no evidence, and hence this ruling does not help the applicant.

23. Reference has also been made to CAT PB OA No.341/91 Ramesh Kumar Vs. Commissioner of Police & others, whereby the impugned order of dismissal from service was set aside on the ground that the charges were vague. We are aware that the SLP filed against that judgment was also dismissed. In the present case, as pointed out, this is not a case where the charge suffers from vagueness and under the circumstance the judgment in Ramesh Kumar's case (supra) does not help the applicant.

24. In the result, we see no good ground to interfere in the matter. This OA fails and is dismissed. No costs.

*A. Veda Valli*

( DR. A. VEDAVALLI )  
MEMBER (J)

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*S. R. Adige*  
( S. R. ADIGE )  
MEMBER (A).