

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 777/1991 Decided on : 24.7.95

SI Umed Singh ... Applicant(s)

(By ShriMukul Talwar,Advocate)

versus

Lt. Governor, Delhi & Ors. ... Respondent(s)

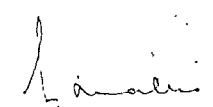
(By Shri S. K. GuptaAdvocate)

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HON'BLE SHRI JUSTICE S. C. MATHUR, CHAIRMAN

HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. To be referred to the Reporter or not ? No
2. Whether to be circulated to other Benches No
of the Tribunal ?


(S. C. Mathur)
Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 777 OF 1991

New Delhi this the 24th day of July, 1995.

C O R A M :

HON'BLE SHRI JUSTICE S. C. MATHUR, CHAIRMAN

HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

SI Umed Singh, No. D/1084,
S/O Sri Chand,
Sub Inspector in Delhi Police,
Delhi.

... Applicant

(By Shri Mukul Talwar, Advocate)

-Versus-

1. Lt. Governor of Delhi,
Rajniwas, Rajniwas Marg,
Delhi.
2. Commissioner of Police,
Delhi Police,
Police Headquarters,
New Delhi.
3. Additional Commissioner of
Police (Operations) through
Police Headquarters,
Delhi Police, New Delhi.
4. Deputy Commissioner of
Police (FRRO) through Police
Headquarters, Delhi Police,
New Delhi.

... Respondents

(By Shri S. K. Gupta for Shri B. S. Gupta, Adv.)

O R D E R

Shri Justice S. C. Mathur -

The applicant, Umed Singh, a Sub Inspector in the Delhi Police, is aggrieved by the punishment of two years' forfeiture of service temporarily with no effect on pension with immediate effect entailing reduction in pay from Rs.1820/- to Rs.1700/- imposed upon him in disciplinary proceedings held under the Delhi Police (Punishment and Appeal) Rules, 1980 framed in

exercise of powers conferred by Section 147 (1) and (2) of the Delhi Police Act, 1978 (34 of 1978). At the relevant time the applicant, another Sub Inspector of Police, Ranbir Singh and Constable Mohinder Singh were posted at the Immigration Counter of the then International Airport at Palam, Delhi. It is alleged that on 24.11.1985, SI Ranbir Singh cleared a passenger, Manjit Singh, at the counter. Armed with this clearance, Manjit Singh boarded Gulf Air flight No. GF-131 for Bahrain. At Bahrain his passport on the strength of which he was travelling was found to be forged. Accordingly, Manjit Singh was deported back to India. He arrived at the Palam Airport on 27.11.1985 and left the aircraft leaving his passport, air ticket and boarding card in the aircraft itself. These papers were later collected by a staff member of Gulf Air and sent to the immigration authorities. A search for the passenger, Manjit Singh was made but he could not be traced. In the escape of Manjit Singh, SI Ranbir Singh, the applicant and Constable Mohinder Singh were suspected to be involved. Accordingly, the Foreign Regional Registration Officer (FRRO)/DCP, New Delhi by order dated 13.11.1986 ordered joint disciplinary enquiry against all the three.

2. Summary of allegations was issued to the applicant and charge was framed in the following terms :-

"I, O. P. Malhotra, ACP/AFRRO, New Delhi charge you S.I.s Ranbir Singh No. D/1660, Umed Singh No. D-1084 and Constable Mohinder Singh No. 1958/FRRO U/S 21, D.P. Act, 1978 in that on 24-11-85, SI Ranbir Singh was on Immigration duty at Delhi Airport on the departure side & was issued Immigration stamp No. D-6 & you (SI Umed Singh) cleared one Manjit Singh s/o Ball Singh r/o Vill. Dhogri, Distt. Jullunder on a forged passport No. U-082990 dated 3-5-'83 issued from Jullunder & further the said passport had no POE clearance. As such, the pax was refused entry at Bahrain & was deported back on Gulf Air flight 002 dated 27-11-'85. Again, on the night of 26/27-11-'85 you S.I. Ranbir Singh were the clearance officer, while SI Umed Singh & Constable Mohinder Singh were on pax checking duty, when the said Manjit Singh was deported & had arrived at Delhi Airport on GF 002 flight on 27-11-'85. He (Manjit Singh) slipped through immigration counter without immigration clearance because of your negligence/connivance.

The said acts on your part amount to gross misconduct and render you liable for departmental punishment u/s 21 of D.P. Act, 1978."


From the above charge, it would appear that at the relevant time SI Ranbir Singh was on the departure side of the immigration counter while the applicant, SI Umed Singh, was on the arrival side.

3. In his reply the applicant did not dispute his posting as stated in the charge memo. He, however, submitted that there was no lapse on his part as he did not allow any passenger to slip away who did not have the immigration arrival stamp on his travel documents. In other words, his plea was that Manjit Singh did not pass through the immigration counter where the applicant was on duty on the arrival side. He referred to rule 12452-60 (Deportation) FRRO Unit whereunder it was the obligation of the airlines staff to hand over the deportee at the immigration

counter but this was not done. He thus, put the blame for the disappearance of passenger, Manjit Singh on the airlines staff. He also pointed out that although a telex message had been received by the Gulf Air from Behrain immigration authorities that a passenger by the name of Manjit Singh was being deported from Behrain as he was travelling on forged passport but they did not inform the immigration authorities at the Palam Airport well in time before the arrival of the flight. The flight from Behrain had landed at 5.40 a.m. at the Palam Airport and the immigration authorities were informed about Manjit Singh's arrival only at about 8.00 a.m. This was when the shift duty had changed. He stated that in the circumstances it was reasonable to assume that the passenger escaped with the connivance/negligence of the airlines staff. He was positive in his defence that Manjit Singh was not brought to the immigration counter. He pointed out that at the relevant time, the passengers were brought from the aircraft to the apron and from there they first came to health counter and then to immigration counter. The possibility of Manjit Singh slipping away from the apron area was pointed out.

4. Before the enquiry officer five witnesses were examined on behalf of the prosecution and five were examined on behalf of the defence. Two witnesses were examined as enquiry witnesses.

5. After summarising the depositions of the various witnesses, the enquiry officer recorded



his finding in respect of the applicant thus -

"It is admitted both by prosecution and the defaulter that he was put on passenger checking duty on the night of 26/27-11-'85 when the subject passenger Manjit Singh slipped through immigration counters without immigration clearance. According to the defaulter he was newly posted to Immigration checkpost at Delhi Airport and as such was not conversant with the immigration work. I do not agree with this contention of the defaulter as passenger checking duty does not require any specialised training and a Police officer who has undergone basic training should be competent enough to perform such a job. There is no doubt that the subject passenger was deported by GF-002 flight on 27-11-'85 and he had passed through Immigration counters without any immigration check and this was due to the failure of the defaulter to check him. However, evidence on record has not come to indicate any malafide on the part of the defaulter but since he was negligent to detect the passenger, I hold him guilty of the charge." (emphasised).

The enquiry officer has recorded a positive finding to the effect that passenger, Manjit Singh passed through immigration counters without any immigration check and this was on account of the failure of the applicant to check him. The evidence on record, according to the enquiry officer, did not establish any mala fide intention on the part of the applicant and, therefore, he recorded the finding that the applicant was negligent in the discharge of his duty.

6. The learned counsel for the applicant has submitted that the finding that the passenger had passed through the immigration counter is not based on any evidence and the enquiry officer has also not referred to any such evidence. It was submitted by the learned counsel that the finding is based on surmise.

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7. The learned counsel submitted that the structure of Palam International Airport was entirely different from the present Indira Gandhi International Airport. According to him, the structure left ample opportunity to the passenger to slip away from the Airport without coming to the immigration counter. It is stated that the applicant could be found guilty only if it had been established that the passenger, Manjit Singh actually passed through the immigration counter.

8. We have gone through the findings of the enquiry officer and we do find that he has not referred to the evidence of any particular witness which establishes the allegation that the passenger, Manjit Singh passed through the immigration counter. We may now proceed to examine the enquiry officer's summarisation of the prosecution witnesses.

9. The first prosecution witness is SI Yash Pal Singh. The witness has stated that he was the duty officer on arrival side on the night between November 26/27, 1985. He has further stated that the concerned flight had arrived at about 5.30 a.m. and 223 passengers had disembarked but no passenger by the name of Manjit Singh was cleared by the immigration staff nor disembarkation card of the said passenger was received by him. He also stated that he did not see SI Ranbir Singh leaving his counter or escorting out any passenger. This witness has made no statement adverse to the applicant's defence.

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The next witness PW-2 is SI Raghubir Singh. He had performed duty in the night intervening November 23/24, 1985 on the departure side. His evidence is relevant only for SI Ranbir Singh. This witness has not made any statement with regard to the date November 26/27, 1985 when passenger, Manjit Singh returned from Behrain.

PW-3, Banarsi Dass was posted as AFRRO/HQ(FRRO/New Delhi). He has stated that on 27.11.1985 he was on duty with shift 'A' at Palam Airport from 8.00 a.m. to 7.00 p.m. and that on that date Shri V. K. Prabhu, representative of Gulf Air had come to his office and delivered a letter signed by him. Shri Prabhu also gave to the witness passport in the name of Manjit Singh, boarding card and ticket. Shri Prabhu informed the witness that these papers were found abandoned inside the aircraft and the holder of the said papers had been refused entry in Behrain and the said passenger had slipped away through immigration without getting clearance. The witness does not claim to have seen Manjit Singh coming to the immigration counter. To the question whether it was the duty of the airlines staff to produce the deportee before the immigration staff, he replied that he was not sure about it. The statement of the witness that Manjit Singh slipped away through the immigration counter is based on surmise.

PW-4, Inspector R. L. Saini, has stated that at the relevant time he was Inspector incharge on

the departure side of the immigration counter. He was on duty in the night intervening November 23/24, 1985 and also on the night intervening November 26/27, 1985. The witness has stated that Manjit Singh was not produced before him either by the Gulf Air staff or by the immigration staff. The witness claimed that he came to know subsequently about Manjit Singh slipping away through the immigration counter. The evidence of this witness is thus hearsay. This witness admitted that it was the duty of the airlines staff to produce the deportee before the immigration staff. His evidence shows that the airlines staff did not discharge this duty. The witness was, however, unable to give the particulars of the rule.

The last prosecution witness was Shri V. K. Prabhu, PW-5. He was Station Manager, Gulf Airlines. He stated that on 24.11.1985 one Manjit Singh had travelled between Delhi-Bahrain on GF-131 flight and he was refused entry in Bahrain because his passport was found to be forged. He has also stated that ~~the~~ the said Manjit Singh was sent back to Delhi on flight GF-002 on 26.11.1985. On arrival of the flight at Delhi, the witness found the documents referred to hereinabove in the aircraft cabin but there was no trace of the passenger. He handed over the documents to the immigration authorities through his letter dated 27.11.1985. The witness admitted that the practice was that the crew would take the

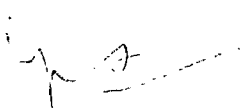
travel documents and hand over the same to the airlines staff at the airport of disembarkation, who in turn would pass on the same to the immigration counter along with the passenger. He has also admitted that the airlines had advance information about the deportation of passenger, Manjit Singh. Another significant admission by him is that the flight arrived at 5.30 a.m. but the crew did not hand over the travel documents and the passenger to the ground staff. The testimony of this witness indicates that the primary fault in the slipping away of Manjit Singh lies with the airlines staff and not with the immigration staff. The role of immigration staff would come in only when the passenger reaches the immigration counter. If the passenger does not reach the immigration counter at all, it is difficult to hold the immigration staff responsible for the disappearance of the passenger until there is evidence to show that there was no other route through which the passenger could go out of the airport. Such evidence in the present case is lacking. We are, therefore, of the opinion that the finding recorded by the enquiry officer is not based on evidence but is based on surmise. Accordingly, the impugned order of punishment cannot be sustained.

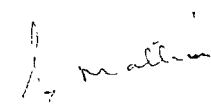
10. In view of the above, the O.A. is allowed and the orders dated 24.6.1988 passed by the Deputy Commissioner of Police/FRRO; dated 8.12.1988 passed by the appellate authority; dated 21.4.1989

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passed by the Commissioner of Police, Delhi; and dated 29.3.1990 passed by the Lt. Governor, Delhi, are hereby quashed. The applicant shall be entitled to his costs from the respondents.


(K. Muthukumar)
Member (A)


(S. C. Mathur)
Chairman

/as/