

8

Central Administrative Tribunal, Principal Bench

Original Application No. 277 of 2004

New Delhi, this the 20th day of August, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member(A)

1. HC Surender Kumar,
PIS No. 28883994,
Presently posted at,
F.R.R.O. Office,
R.K. Puram, New Delhi
2. HC Kishan Kumar,
PIS No. 28823621,
Presently posted at,
F.R.R.O. Office,
R.K. Puram, New Delhi

... Applicants

(By Advocate: Shri S.K. Gupta)

Versus

1. Govt. of NCT of Delhi,
Through Chief Secretary,
Delhi Secretariat,
Players Bhawan, I.P. Estate,
New Delhi-2
2. Commissioner of Police,
Delhi Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi-2
3. Joint Commissioner of Police(Ops.),
Delhi Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi-2
4. Deputy Commissioner of Police/F.R.R.O.,
East Block No.8, Level-II,
Sector-I, R.K. Puram,
New Delhi
5. Satyabir Singh,
Inspector,
Inquiry Officer,
Departmental Enquiry Cell,
P.S. Defence Colony,
New Delhi

... Respondents

(By Advocate: Shri Om Prakash)

O R D E R (ORAL)

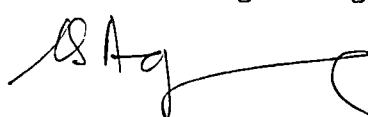
Justice V.S. Aggarwal, Chairman

The applicants are Head Constables in Delhi Police. They faced disciplinary proceedings pertaining to

VS Ag

the following summary of allegations:

"It is alleged against HCs Krishan Kumar No.90/F and Surender Kumar No.62/F that on 24.1.2002, one pax namely Sh.M.C. Prasher, an Australian National, holding P.P. No.L-8147617 who was departing by flight No.AI-416 to Singapore and had already been cleared by C.O. A.K. Shukla (ACIO-II) of shift-D having departure stamp No.E-7(D) approached the I/C Departure Right Wing. Insp. Abhey Singh and later-on Sh.A.K. Sharma, AFRRO Shift-A and told them about some wrong happening in the immigration area. He informed that while he was standing in immigration area, two young men were also waiting in the queue in front of him for immigration clearance of the same flight. The officer who cleared him (complainant) with immigration stamp No.E-7(D) viz. ACIO.II A.K. Shukla No.107374 sent these two passengers back by making remarks that "they were not having proper visa". In the meantime, new shift (i.e. shift-A) took over and he (complainant) was waiting for these two passengers to come out of the immigration for these two passengers to come out of immigration for curiosity sake. The complainant also noticed some suspicious negotiations going on between these two passengers and the immigration officers. Later-on, when they came out of immigration, he (complainant) asked one of the passengers whose name he (complainant) came to know later-on to be Mr.Gurcharan Singh s/o Sh. Gurdev Singh r/o Vill. Bhinderkalan, Tehsil Dharmakot, Distt. Moga, Punjab who told him that he had paid Rs.1,000/- to one of the immigration officials who was later-on identified to be H.C. Krishan Kumar No.90/F. Thereafter, H.C. Krishan Kumar came to the counter of one Immigration Officer Sh. B.P. Tripathy (ACIO-II) No.108285 and confirmed that he had taken money from the passenger who then stamped the passport of Mr. Gurcharan Singh. Like-wise second passenger Mr.Nachhattar Singh s/o Sh. Balbir Singh r/o Vill. Binderkalan, Tehsil Dharamkot, District Moga, Punjab also narrated the similar story and told that he also paid Rs.1,000/- to one H.C. Surender Singh No.62/F. The statements of all the three pax were also obtained and duly attested by AF/Shift-A. Both pax Sh.Gurcharan Singh and Nachhattar Singh clearly mentioned in their statements that H.Cs. Krishan Kumar No.90/F and Surender Kumar No.62/F had demanded Rs.1000/- each for getting them cleared from



immigration and accepted illegal gratification to the tune of Rs.1000/- each in lieu of his their service which was not part of their official duty.

The above act on the part of HCs Surender Kumar, 62/F and Krishan Kumar, 90/F amounts to gross misconduct by indulging in corruption during the discharge of his official duties which renders him liable for departmental action accordance with rule for punishment as envisaged u/s 21 of Delhi Police Act-1978."

2. The enquiry officer appointed held that the summary of allegations which were later almost converted into a charge stood proved. The disciplinary authority imposed penalty of forfeiture of two years approved service temporarily entailing reduction in their pay from Rs. 4220/- P.M. to Rs. 4050/- P.M. and Rs. 4305/- to Rs. 4135/- P.M., respectively in case of Head Constables Surender Kumar and Krishan Kumar. They preferred an appeal which has since been dismissed.

3. By virtue of the present application, they assail the orders passed which we have referred to above.

4. To keep the sequence of events in order, it must be mentioned that on 11.8.2004, learned counsel for the applicants gave up the ground pertaining to violation of sub-rule 2 to rule 15 of Delhi Police (Punishment and Appeal) Rules, 1980. However, he argued that the previous statements of Nachhatter Singh and M.C. Parashar recorded during preliminary enquiry could not be taken into consideration. The learned counsel in this regard relied upon sub-rule (iii) to rule 16 of the Rules referred to



above which reads as under:

"16.(iii) If the accused police officer does not admit the misconduct, the Enquiry Officer shall proceed to record evidence in support of the accusation, as is available and necessary to support the charge. As far as possible the witnesses shall be examined direct and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-examine them. The Enquiry Officer is empowered, however, to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay, inconvenience or expense if he considers such statement necessary provided that it has been recorded and attested by a police officer superior in rank to the accused officer, or by a Magistrate and is either signed by the person making it or has been recorded by such officer during an investigation or a judicial enquiry or trial. The statements and documents so brought on record in the departmental proceedings shall also be read out to the accused officer and he shall be given an opportunity to take notes. Unsigned statements shall be brought on record only through recording the statements of the officer or Magistrate who had recorded the statement of the witness concerned. The accused shall be bound to answer any questions which the inquiry officer may deem fit to put to him with a view to elucidating the facts referred to in the statements of documents thus brought on record."

5. It is obvious from perusal of the same that it is the mandate of the rules that as far as possible, witness should be examined in the presence of the delinquent. However, his earlier recorded statement can be brought on record where in the opinion of such officer, his presence cannot be procured without undue delay, inconvenience or expense.

6. Learned counsel for the respondents pointed that

Ab Ag

Nachhattar Singh was at Singapore and, therefore, his presence could not be procured without undue delay, inconvenience or expense.

7. Unfortunately, such a finding has not been recorded. In fact, pertaining to Nachhattar Singh the enquiry officer records:

"Shri Nachhattar Singh did not join the DE proceedings as he is in Singapore. In such type of circumstance it is not definite whether the letter received from his side has been written by him or by any other person....."

Thereupon again the finding has been recorded:

"The letter which has been received from the Shri Nachhatter Singh is the photocopy of a letter bearing the signatures, name and address of Shri Nachhatter Singh. Without examining Shri Nichhatter Singh it is not possible to ascertain whether said letter has been sent by Shri Nichhatter Singh i.e. PW in the DE or by any other person and therefore it is not possible to rely upon the facts mentioned in the said letter."

8. This clearly shows that the enquiry officer himself was doubting the copy of the letter received by him. There is no specific finding in the enquiry report satisfying the ingredients of sub-rule (iii) to rule 16 of the Rules referred to above that presence of Nachhattar Singh could not be procured without undue delay, inconvenience or expense. Keeping in view the fact that enquiry officer was himself in doubt about the genuineness

As Ag

of the letter, in all fairness an attempt could well have been made to send the summons to Nachhattar Singh and thereafter, a specific finding could be recorded in this regard. This is for the reason that sub-rule (iii) to rule 16 specifically prescribes "in the opinion of such officer". The opinion necessarily has to be expressed in words.

9. For these reasons, it appears that there was an inadvertent mistake in this regard which was acted upon by the disciplinary authority and the appellate authority. Resultantly, we allow the present application and remit the case to the disciplinary authority who may, if deemed appropriate, send it to the enquiry officer for taking further action in accordance with law. Consequential benefits, if any, shall be awarded to the applicants.


(S.A. Singh)
Member(A)

/dkm/


(V.S. Aggarwal)
Chairman