

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA NO. 1675/2004

MA No. 1420/2004

New Delhi, this the 24th day of March, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K Naik, Member (A)**

1. SI Manohar Lal
(PIS No. 28710061)
R/o B-7, Sector 12,
Police Colony, R.K. Puram,
Delhi - 22.

2. Const. Meer Singh,
(PIS No. 28861619)
R/o H.No. D-42,
Mohan Garden,
Uttam Nagar,
Delhi - 59.

...Applicants

(By Advocate: Shri Anil Singhal)

-versus-

1. Govt. of NCT of Delhi through
Commissioner of Police,
Police Head Quarters,
IP Estate, New Delhi.
2. Joint Commissioner of Police Operations,
Police Headquarters,
I.P. Estate,
New Delhi.
3. Dy. Commissioner of Police (FRRO),
through Commissioner of Police,
Police Head Quarters,
IP Estate,
New Delhi - 110 002.

...Respondents

(By Advocate: Shri Rishi Prakash)



ORDER

Justice V.S. Aggarwal, Chairman:

Applicants, by virtue of the present Original Application, assail the orders passed by the disciplinary authority dated 27.08.2003 imposing the following penalty on them:

"In view of the above discussion, it is noticed that in the instant case, it is proved beyond doubt that on that night some Afghan nationals were cleared on Indian Passports by connivance of immigration officials and the two defaulters facilitated their clearance and offered money to clearance officer. As such, I hold the charge against ASI Manohar Lal No. 4476/D and Const. Meer Singh No. 225/F as proved. They deserve to be punished and therefore, I, Sandeep Goel, DCP/FRRO, New Delhi hereby order to award a punishment to ASI Manohar Lal No. 4476/D and Const. Meer Singh No. 225/F of forfeiture of one year approved service permanently entailing reduction in their pay from Rs. 5100/- to 5000/- PM and Rs. 4220/- to 4135/- PM respectively. The suspension period of ASI Manohar Lal No. 4476/D and Const. Meer Singh No. 225/F from 17.4.2002 to 28.10.2002 is also decided as period not spent on duty for all intents and purposes.

Let a copy of this order be given to ASI Manohar Lal No. 4476/D and Const. Meer Singh No. 225/F free of cost. They can file an appeal against this order to the Joint Commissioner of Police, (Operations), Delhi within 30 days from the date of receipt of this order, if they so desires."

2. The applicants preferred an appeal, which was dismissed by the appellate authority on 5.4.2004.
3. Some of the relevant facts are that on the night intervening 3/4.3.2002, three Afgan Nationals holding certain passports issued at Delhi came at Departure Right Wing Counter of Sub Inspector Tek Ram

for immigration clearance by Syrian Airlines. After scrutiny of their passports, Sub Inspector Tek Ram found some doubts in their nationality since the old man was looking like an Afghani Sikh. He referred the matter to I/C Wing of Sh. S.K. Saxena, ACIO-I. Shri Saxena took all the three passports to consult the then AFFRO. After some time Shri Saxena came at the Counter along with Constable Meer Singh, Reader of AFFRO and asked him to clear the pax as per the order of AF/Shift. Constable Meer Singh told Sub Inspector Tek Ram that it was a courtesy of AF/Shift and prepaid by SI Manohar Lal, who was on leave on that day. On the same night there were three more passengers, who were Afgan Nationals. The first two were cleared by K.N. Bhattacharya, ACIO-II and the third by Anand Prakash, ACIO-II. It is contended that on the next day, ASI Manohar Lal and Constable Meer Singh i.e. applicants, tried to give him Rs. 1500/- but he denied to accept that amount. The departmental proceedings were initiated taking that role of the applicants was doubtful and showed their connivance with the pax to give them immigration clearance. The Enquiry officer had framed the following charge:

"I, K.K. Arora, AF/HQ, Enquiry Officer charge you SI Manohar Lal, No. 4476/D (now ASI) and constable Meer Singh No. 225/F that on the night intervening 3-4/03/2002 three Afghan nationals namely Sh. Harnam Singh holding passport No. B-5136693 dated 9.7.01 issued at Delhi, Smt. Ram Kaur holding passport No. U-640638 dated 14.09.1995 issued at Delhi and Shri Rawatar Singh holding passport No. A-1389522 dated 4.2.1996 issued at Delhi came at Departure Right Wing counter of SI Tek Ram No. D/929 (now retired) for immigration clearance by Syrian Airlines. After scrutiny of their passports SI Tek Ram No. D/929 (Cleariang officer) found some doubts in their nationality since the old man was looking like an Afghani Sikh. He referred the matter to I/C Wing Sh. S.D. Saxena,

BAg

ACIO-I. Shri Saxena took all the three passports to consult the then AFRRO Shri S.C. Batra. After some time Sh. Saxena came at the counter of SI Tek Ram along with you Constable Meer Singh, Reader of AFRRO and asked him (Tek Ram) to clear the pax as per the order of AF/Shift. You Constable Meer Singh told SI Tek Ram (CO) that it was a courtesy of AF/Shift and prepaid by SI Manohar Lal, who was on leave on that day. However AF/Shift Sh. S.C. Batra totally denied this.

During the fact finding enquiry conducted by Insp. S.K. Singh, five passengers (three cleared by SI Tek Ram and two by K.N. Bhattacharya) were clearly established to be Afghan nationals. SI Tek Ram further stated that on the next day duty you SI Manohar Lal (Now ASI) and Const. Meer Singh tried to give him some money but he denied accepting that.

All the above clearly showed the role of both of you as doubtful and showed your connivance with the paxes to give them immigration clearance.

The above act on the part of you SI Manohar Lal No. 4476/D (now ASI) and Constable Meer Singh No. 225/F amounts to gross misconduct by indulging in corruption during the discharge of your official duties which renders you liable for punishment u/s 21 of Delhi Police Act, 1978."

4. The enquiry officer reported that charge stood proved under clouds of doubt. It is in this backdrop that the impugned orders, referred to above, had been passed.

5. Learned counsel for the applicants assails the said orders on various grounds. He even contended that there was no material against the applicants to establish the same. In addition to that, his plea was that without due application of mind as to if departmental proceedings have to be initiated or criminal proceedings should be initiated, the departmental proceedings have been started and further the statements



37

made in the preliminary enquiry and findings have been taken on the record, which is not permissible in law.

6. The Original Application has been contested.

7. So far as the first contention is concerned, indeed, one can conveniently refer to sub rule (2) to Rule 15 of the Delhi Police (Punishment & Appeal) Rules, 1980, which reads:

“(2) In cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held.”

This clearly shows that if there is a preliminary inquiry which discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held.

8. The respondents made available to us the departmental file, perusal of which shows that there was no consideration as to if criminal case should be registered against the applicants or not.

9. Necessarily, application of mind would be required. A similar controversy arose before this Tribunal in the case of **Krishan Kumar vs. Govt. of National Capital Territory of Delhi & Ors.** (OA No.

ls Ag —————

3021/2003 decided on 22.09.2004). When a similar argument had been advanced, it was allowed recording:

"10. Reliance on behalf of the applicant is further placed on the Division Bench decision of the Delhi High Court in the case of **Commissioner of Police & Ors. Vs. R.C. Shekharan** (CW-1553/2003) decided on 30.4.2003. The Delhi High Court while construing sub rule 2 to Rule 15 of the Rules hold:

"8. Indeed, there cannot be any case law on the question that has arisen in the present case inasmuch as it is a question of fact whether there was any application of mind by the Additional Commissioner of Police to the question whether the Respondent should be proceeded against by lodging a criminal case against him or by holding a departmental enquiry against him. As noticed by the Tribunal, the file was never put up before the Additional Commissioner of Police and hence there was no application of mind by him to this aspect of the matter. It is not as if in every case a departmental enquiry has to be initiated or that in every case a criminal prosecution has to be launched. It is for the Additional Commissioner of Police to decide on the facts of each case what action is to be taken against a delinquent officer. In the present case, there was no such application of mind by the Additional Commissioner of Police because the file was not put up before him in terms of Rule 15(2) of the Rules."

11. Learned counsel for respondents tries to distinguish the cited judgment contending that therein the file had never been submitted to the Additional Commissioner of Police, while in the present case, it was so submitted. We are afraid that the cited cases, though correctly mentioned, will not be a ground to take away the ratio decidendi of the decision of the Delhi High Court. The Delhi High Court clearly held that there has to be an application of mind by the Additional Commissioner of Police whether the concerned person is to be dealt with departmentally or a

ls kg

criminal case should be registered in the present case, as already mentioned above and re-mentioned at the risk of repetition even the office noting does not indicate that it was ever contemplated that criminal case should be registered against the applicant. In this backdrop of the matter, we have no hesitation to hold that sub-rule 2 to Rule 15 of the Rules has been complied with."

10. Identical is the position herein and, therefore, on this short ground, the application is liable to succeed.

11. Not only that, under sub rule (3) to Rule 15 of the Rules, the file of the preliminary enquiry cannot be taken on the record nor the statements of the witnesses so considered, unless the necessary ingredients of sub rule (3) to Rule 15 of the Rules are satisfied, which are being reproduced below:

"(3) The suspected police officer may or may not be present at a preliminary enquiry but when present he shall not cross-examine the witness. 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. All statements recorded during the preliminary enquiry shall be signed by the person making them and attested by enquiry officer."

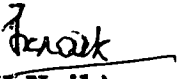
12. In the present case before us, the order of the disciplinary authority refers that on that night at least five Afghan Nationals were travelling who fraudulently obtained Indian passport cleared in connivance with the immigration officials. It is stated to have been proved in the fact-finding enquiry. Thus, the disciplinary authority fell


ls Ag

16
into an error in taking into account the fact from the preliminary enquiry, which should not have been so done.

13. Keeping in view the same, it will be indeed an exercise in futility to go into the merits of the matter.

14. Resultantly, we allow the present Original Application and quash the impugned orders. It is directed that, if deemed appropriate, the file may be submitted before the Additional Commissioner of Police for taking fresh action.


(S.K. Naik)
Member (A)


V.S. Aggarwal)
Chairman

/na/