

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1721/2004

with

Original Application No.1729/2004

New Delhi, this the 15 day of May 2005

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

Original Application No.1721/2004:

Jagdish Chander
(D/908)
r/o F-4, P.S.Kalkaji
New Delhi.

... Applicant

(By Advocate: Sh. Shyam Babu)

Vs.

1. Govt. of NCT of Delhi
Through its Chief Secretary
Players Building
ITO, New Delhi.
2. Joint Commissioner of Police
(Operations)
Police Headquarters, I.P.Estate
New Delhi.
3. Commissioner of Police
Police Headquarters
I.P.Estate
New Delhi. ... Respondents

(By Advocate: Sh. Om Prakash)

Original Application No.1729/2004

Jawahar Lal
D-1/673
S/o Late Sh. Nathu Ram
R/o K-37, Angur Bhawan
Gopal Nagar, Najafgarh
New Delhi.

... Applicant

(By Advocate: Sh. Shyam Babu)

Vs.

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New Delhi. ... Respondents

(By Advocate: Mrs. P.K.Gupta)

O R D E R

By Mr. Justice V.S.Aggarwal:

By this common order, we propose to dispose of the two Original Applications, namely, OA No.1721/2004 and OA No.1729/2004. They arise out of the same charge and summary of allegation and, therefore, can be disposed of together.

2. Applicants **Jagdish Chander** and **Jawahar Lal** are working in Delhi Police. They had been served with the following summary of allegation:

“On the night intervening 29/30.6.97, one lady pax namely Ms. Kavita Kaur Bachada, a British National, holder of passport No.013610063 dated 22.6.94 issued at G.B.R., arrived at IGI Airport by flight No.UA-001 from London and reported at the Immigration counter of S.I. Jagdish Chander, No.D/908 for immigration clearance who was working as clearing officer in arrival left wing with stamp No.W-16(C) duly issued to him and computer No.W-7 was installed at his counter, under the direct supervision of Insp. Jawahar Lal, No.D-

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I/673, I/C Wing. The C.O. SI Jagdish Chander No.D/908 checked the passport and other travel documents of the lady pax and made some querries about the spelling of passenger's name written in the passport i.e. one letter had been inaccurately written in the passport by the issuing agency as "U" instead of "V". The clearing officer did not clear her only on the above sole ground and threatened her to send back to England by next flight if she did not pay some money to him. He cleared the lady pax only after the acceptance of 15 pounds steriling from one of the passengers who was also traveling by the same flight and had also seen the passport of the lady pax and harassed the lady pax for a long time with ulterior motive and mal-intention. The lady pax Ms. Kavita Kaur Bachada submitted a written complaint to this effect on 15.8.97 after reaching London.

It is also alleged that above lady pax arrived by U.A. flight and was cleared by S.I. Jagdish Chander, D/908 by stamp No.W-16(C). As per computer print, the lady pax was the last passenger of U.A. flight, cleared by S.I. Jagdish Chander, No.D/908 which indicates that she had been waiting near the immigration counter for clearance. There was no discrepancy in the papers of the lady pax, but was only a spelling mistake in the name of the pax. In these circumstances the clearing officer should have taken her name according to the name given in the passport and should have written her name as "KAUITA" instead of "KAVITA" in the disembarkation card. He should have checked the L.O.C. with both the letters and should not have detained the lady pax for a long time. This was a harassment to the passenger and the allegations of the pax that the clearing officer demanded/accepted 15 pound steriling for her immigration clearance, sounds its correctness. The version of Insp. Jawahar Lal, No.D-I/673 that no such incident was brought into his notice on the same night does not make him to escape from the responsibility that he had not seen the pax, particularly a lady being detained at immigration counter for such long time. There are clear instructions for I/C Wing that they shall ensure that no pax is harassed or detained and that no unscrupulous clearing officer is able to extort money from a passenger



and they shall immediately intervene as and when the passenger is detained for more than two/three minutes. Insp. Jawahar Lal, No.D-I/673 was working as I/C Wing and S.I. Jagdish Chander, No.D/908 was working as clearing officer under direct supervision, as such the connivance of the Inspector cannot be ruled out.

The above act on the part of Insp. Jawahar Lal, No.D-I/673 (I/C Wing) and S.I. Jagdish Chander, No.D/908 (C.O.) amounts to gross misconduct of indulging in corrupt practices and unbecoming of police officers in the discharge of their official duties and hence renders them liable for departmental action under Delhi Police (Punishment & Appeal) Rules, 1980."

3. The inquiry officer had examined the witnesses and conducted the inquiry. Findings returned with were that so far as taking of 15 pounds from a co-passenger of the complainant, there was no corroborative evidence and that part of the charge was not proved. However, the charge of harassment and detention had been proved against the Sub-Inspector Jagdish Chander and the charge of lack of supervision was held to have been proved against the applicant, Shri Jawahar Lal. The relevant findings are:

"..... The plea taken by the defaulter in this regard that if they had detained the lady pax it would have come to the notice of other Clearing Officers and Incharge Wing. This plea is without much substance as all the Clearing Officers remain busy with their duty and there is crowd on each counter and therefore nobody gets involved in the affairs of others. The defaulter SI Jagdish Chander has produced two defence witnesses i.e. DW-1 and DW2 who were Clearing Officers on the date of incident with the defaulter. Both of them had deposed that they had not seen any harassment or detention of lady pax on the date of incident. But their statements could hardly be given any credence for the simple reason they have been tutored to

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say in the favour of defaulter SI Jagdish Chander being his colleagues so that he could save himself, otherwise normally it was not possible to remember any such incident after a long gap of over 2 years. As regards taking 15 pounds from a co-passenger of the complainant, there is no corroboration evidence except the written version of complainant and therefore in my opinion it would not be fair to accept this charge due to insufficient evidence.

Conclusion

Under the circumstances and on the evaluation of evidence I am of the opinion that the charge of harassment and detention against defaulter SI Jagdish Chander No.D-908 and lack of supervision on the part of defaulter Insp. Jawahar Lal No.D-1/673 is proved but the charge of extorting 15 pounds by defaulter SI Jagdish Chander is not proved."

4. Earlier, when the disciplinary authority had imposed the penalty and appeal was dismissed, the applicant had preferred an Original Application No.666/2003. The orders were set aside keeping in view the decision of the Delhi High Court in the case of Shakti Singh v. Union of India & Others, Civil Appeal No.2368/2000, decided on 17.9.2002 and a direction was given to pass a fresh order, if deemed appropriate.

5. On 30.12.2003, the Joint Commissioner of Police, Delhi had passed a fresh order imposing a penalty of forfeiture of five years approved service of Jagdish Chander permanently for a period of five years entailing reduction in his pay from Rs.6900 to Rs.6025 from the date of issue of the earlier order. So far as the other applicant, Inspector Jawahar Lal is concerned, a penalty of forfeiture of two years approved service permanently for a period of two years entailing reduction in his pay from Rs.7700 to Rs.7300

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from the date of issue of earlier order, was imposed. The operative part of the order reads:

"Under the circumstances and in view of above discussion I found the D.E. finding in order which is based on facts and record. I agree to the finding and hereby award the punishment of forfeiture of two year's approved service permanently for a period of two years to Insp. Jawahar Lal, No.D-I/673 w.e.f. 9.8.2000 after expiry of earlier punishment i.e. forfeiture of two years approved service permanently for a period of one year awarded to him vide order No.8517-25/P.Cell/Vig./P-V dated 9.8.99. Since the misconduct of SI Jagdish Chander, No.D/908 was of gravest nature, hence, I forfeit his five year's approved service permanently for a period of five years with immediate effect. This punishment will however run concurrently with the earlier punishment i.e. withholding of his increment for a period of five years with cumulative effect awarded to him vide order No.2521-46/For(HAP)(P-I) dated 15.5.2000. The pay of Insp. Jawahar Lal, No.D-I/673 is reduced from the stage of Rs.7700/- P.M. to Rs.7300/- P.M. and from Rs.6900/- P.M. to Rs.6025/- P.M. in respect of SI Jagdish Chander, No.D/908 in their time scale of pay. They will not earn the increments of pay during the period of reduction and that on the expiry of the period, the reduction will have the effect of postponing of their future increments of pay."

6. Resultantly, the present Original Applications have been filed.
7. Various pleas have been taken which shall be considered hereinafter.
8. The applications have been contested.
9. According to the respondents, a joint departmental inquiry was initiated against Inspector Jawahar Lal and Sub-Inspector Jagdish Chander on the allegation that on the night intervening of 29-30.6.1997, one lady passenger Ms. Kavita Kaur Bachada, a

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British National, holder of Passport had reported at the immigration counter of the applicant for immigration clearance. Sub-Inspector Jagdish Chander was working at the clearance counter. The said Sub-Inspector had checked the passport and other travel documents of the lady passenger and made some queries about the spelling of passenger's name, which were incorrectly written. He refused to clear her on that ground and an illegal gratification was demanded. After accepting 15 pounds, from another passenger, she was cleared. She was the last passenger who has been cleared for immigration. There was little discrepancy in the paper of the said passenger. On account of the said allegations of demanding and accepting an illegal gratification and harassment, departmental proceedings had been initiated. For lack of supervision, against the co-delinquent the proceedings have also been initiated. According to the respondents, there is no procedural inaccuracy and the assertions of the applicant thus are controverted.

10. We have heard the parties' counsel and have seen the relevant record.

11. The learned counsel for the applicants, at the outset, had urged that the procedure adopted by the inquiry officer was totally contrary to the Rules because he contended that Court-witnesses can only be examined in accordance with the Delhi Police (Punishment & Appeal) Rules, 1980 (for short 'Rules') after the department has produced and the evidence is closed. Thus, according to the learned counsel, the procedure is totally illegal.

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12. We have carefully considered the said submissions. It is true that under Sub-Rule (vii) to Rule 16 of the Rules it has been provided that at the end of the defence evidence or if the inquiry officer so directs, at an earlier stage, the delinquent shall be required to submit his own version of facts. He can file his written statement. Sub-Rule (viii) to Rule 16 further provides that after the defence evidence has been recorded and after the accused officer has submitted his final statement, the inquiry officer may examine any other witness to be called "Court witness" whose testimony he considers necessary for clarifying certain facts not already covered by the evidence brought on record.

13. There is little dispute about the said procedure, which has been engrafted.

14. Under Rule 16 of the Rules to which we have briefly referred to above, it has to be remembered that this is a part of the procedure. The procedural laws are nothing but hand-maids for the Tribunal/Courts to administer the justice. If no prejudice is caused and there is a departure from the procedure, in that event, on that account, it cannot be stated that the inquiry by itself would be vitiated.

15. Identical is the position herein. If at an earlier stage, the Court-witness had been examined which was followed by an opportunity if any that could be granted, we find little ground to accept the plea of the applicant on that score.

16. In that event, it was highlighted by the applicants' learned counsel that the complaint against the applicant could not

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be taken on the record as a statement made by the complainant. There was no witness to prove the same. More so, the employees' number given was not even correct. Sub-Rule (3) to Rule 15 and Sub-Rule (iii) to Rule 16 holds the key to the said argument and also to the subsequent pleas that have to be considered. Therefore, the same are being reproduced below for the sake of the facility:

"15(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."

"Rule 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

A handwritten signature in black ink, appearing to read "Ag" followed by a stylized surname.

answer any questions which the enquiry 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."

17. The Supreme Court had considered the scope of Sub-Rule (3) to Rule 15 and Sub-Rule (iii) to Rule 16 of the Rules in the case of **KULDEEP SINGH v. THE COMMISSIONER OF POLICE & OTHERS**, JT 1998 (8) SC 603. While construing the relevant provisions, the Supreme Court held:

"27. This Rule, which lays down the procedure to be followed in the departmental enquiry, itself postulates examination of all the witnesses in the presence of the accused who is also to be given an opportunity to cross-examine them. In case, the presence of any witness cannot be procured without undue delay, inconvenience or expense, his previous statement could be brought on record subject to the condition that the previous statement was recorded and attested by a police officer superior in rank than the delinquent. If such statement was recorded by the Magistrate and attested by him then also it could be brought on record. The further requirement is that the statement either should have been signed by the person concerned, namely, the person who has made that statement, or it was recorded during an investigation or a judicial enquiry or trial. The Rule further provides that unsigned statement shall be brought on record only through the process of examining the Officer or the Magistrate who had earlier recorded the statement of the witness whose presence could not be procured.

28. Rule 16(3) is almost akin to Sections 32 and 33 of the Evidence Act. Before the Rule can be invoked, the factors enumerated therein, namely, that the presence of the witness cannot be procured without undue delay, inconvenience or expense, have to be found to be existing as they constitute the "condition-precedent" for the exercise of jurisdiction for this purpose. In the

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absence of these factors, the jurisdiction under Rule 16(3) cannot be exercised."

Thereupon, the Supreme Court further held:

"32. Apart from the above, Rule 16(3) has to be considered in the light of the provisions contained in Article 311(2) of the Constitution to find out whether it purports to provide reasonable opportunity of hearing to the delinquent. Reasonable opportunity contemplated by Article 311(2) means "Hearing" in accordance with the principles of natural justice under which one of the basic requirements is that all the witnesses in the departmental enquiry shall be examined in the presence of the delinquent who shall be given an opportunity to cross-examine them. Where a statement previously made by a witness, either during the course of preliminary enquiry or investigation, is proposed to be brought on record in the departmental proceedings, the law as laid down by this Court is that a copy of that statement should first be supplied to the delinquent, who should thereafter be given an opportunity to cross-examine that witness."

18. In the present case before us, the complainant has not appeared as witness to prove her complaint. Even in the preliminary inquiry, her statement has not been so recorded. A complaint, therefore, could not, in the peculiar facts, be taken to be a statement made. As we have noticed, under Sub-Rule (iii) to Rule 16, the previous statement which can be taken into consideration by the inquiry officer when he is of the opinion that the presence of the accused cannot be procured without undue delay, it can only be so done which it has been recorded and attested by a police officer superior to the rank of the accused person or by a magistrate and is either signed by the person making it or has been recorded by such officer during an

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investigation or a judicial enquiry or trial. These ingredients have not been satisfied and, therefore, the said complaint could not be taken to be a previous statement.

19. There is another fatal flaw that has been pointed which could not be ignored. We have already reproduced above Sub-Rule (3) to Rule 15 of the Rules. Sub-Rule (3) to Rule 15 in unambiguous terms provides that the file of preliminary inquiry shall not form part of the formal departmental record, but statements therefrom can be brought on record when witnesses are no longer available. There is no bar to the inquiry officer to bring on record any other documents from the file of the preliminary inquiry if necessary after supplying the same to the delinquent. We have already recorded above that the complaint was not a previous statement nor was a proof.

20. The disciplinary authority as well as the inquiry officer have relied on a previous statement that had been so made. The order of the disciplinary authority indicates:

"1. They stated that Ms. Kavita Kaur Bachada made a written complaint from England addressed to Airport Authority of India on 15.8.97 against the employee whose number was 15390 and not against them. The enquiry should have been made from Airport Authority to locate the right person before fixing-up responsibility on them. This plea of the delinquents is not tenable as a P.E. was already conducted to identify the defaulters, by Shri S.P. Mongia, ACP who concluded that the Pax arrived by U.A. flight and was cleared by SI Jagdish Chander by stamp No.W-16(C) which was issued to him by SI Ram Singh, No.D/2614, the then Duty Officer and Inspector Jawahar Lal, In-charge of Arrival Left Wing alongwith SI Jagdish Chander was also found failing in his duties as

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his supervisory officer. Hence no enquiry from Airport Authority of India was needed."

Thereafter again it was held, recording on the preliminary inquiry report, as under:

"Their other contention was that the Enquiry Officer has drawn his finding in a very perfunctory manner without any evidence. This plea of the delinquents is beyond the truth as the Enquiry Officer has examined four PWs during the departmental enquiry and all these PWs have fully supported the prosecution. Besides there is sufficient documentary evidence i.e. P.E. report, duty chart of Shift-'C' dated 29/30.6.97, the chart issuing stamp No.W-16 (C) to SI Jagdish Chander against his signature by SI Ram Singh, Duty Officer, posting register, disembarkation card and photo copy of monthly print out etc. are available on record."

21. These facts clearly show that the fact which has been barred by the Rule, validity of which has not been challenged and, therefore, is not to be considered still. The preliminary inquiry has been repeatedly relied upon in this regard. The orders, therefore, on that account cannot be sustained.

22. There is another plea urged which cannot be ignored in the peculiar facts of the present case. The complaint was not cited as a witness. The inquiry officer recorded that it had been decided to examine Ms. Kavita Kaur Bachada as Court- witness and since she cannot come to India and it will involve huge expenditure, questionnaire could be submitted. The applicant wanted that he might be paid the expenditure because he would like to cross-examine the witness in the United Kingdom. The applicants had, however, submitted a questionnaire. It cannot be forgotten that the inquiry officer was not a Court. Civil Procedure Code

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apparently was not applicable that interrogatories can be sent abroad. Keeping in view the said important aspect and there being no such procedure prescribed, when the applicant wanted that he should be given a right to cross-examine, in our considered opinion, the questionnaire could not have been so issued and the plea of the applicant was justified.

23. So far as the abovesaid Inspector Jawahar Lal is concerned, he has been charged for lack of supervision. If the charge against the Jagdish Chander fails, necessarily the Jawahar Lal cannot be held responsible for any dereliction of duty.

24. For these reasons, we allow the present applications and quash the impugned orders. Files may be put up before the disciplinary authority, who may, pass a fresh appropriate order if there is any other material except the one that we have excluded.

(S.A.Singh)
Member (A)

(V.S.Agarwal)
Chairman

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