

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 1282/2013
M.A. No. 990/2013

Reserved on : 30.01.2017
Pronounced on : 07.02.2017

**HON'BLE MR. P.K. BASU, MEMBER (A)
HON'BLE DR. BRAHM AVTAR AGRAWAL, MEMBER (J)**

Mahesh Kasana,
S/o Shri Kishori Singh,
Aged about 43 years,
R/o Flat No.109, Pocket G,
Sarita Vihar, Delhi-110076. .. Applicant

(By Advocate : Dr. Ashwani Bhardwaj with Ms. Bhawna Massey)

Versus

1. Commissioner of Police, Delhi,
Police Head Quarters,
Indraprastha Estate,
New Delhi.
2. Special Commissioner of Police,
Administration,
Police Head Quarters,
Indraprastha Estate,
New Delhi.
3. Special Commissioner of Police,
Intelligence & Operations, Delhi
Police Head Quarters,
Indraprastha Estate,
New Delhi.
4. Joint Commissioner of Police,
Headquarters, Delhi,
Police Head Quarters,
Indraprastha Estate, New Delhi.
5. Deputy Commissioner of Police,
F.R.R.O., New Delhi. .. Respondents

(By advocate: Mrs. Harvinder Oberoi)

ORDER**By Mr. P.K. Basu, Member (A)**

The applicant is a Sub-Inspector in Delhi Police. While he was deputed on the Immigration Counter at IGI Airport, New Delhi, he cleared a passenger on the night of 27/28.07.2008 on a passport that did not belong to her. Based on the immigration clearance granted by the applicant, she travelled upto Doha but was deported back when authorities in Doha found that she was impersonating.

2. A departmental proceeding was started against the applicant vide order dated 17.09.2008. The enquiry was conducted and the Enquiry Officer held the charge as proved. In fact, in his report, he has mentioned that the applicant himself admitted the fact that he failed to detect impersonation. The Enquiry Officer came to the conclusion that the applicant, no doubt, was negligent, careless, lacks professionalism and derelict in discharge of his official duties in this case in his report dated 20.08.2009. The Disciplinary Authority considered the enquiry report, the role of the applicant as well as heard him in orderly room on 23.10.2009. It was noted that both in his written and oral submissions, the applicant has not rebutted the charges proved against him in any manner. The Disciplinary Authority awarded a penalty of forfeiture vide order dated 06.11.2009 of one year approved service for a period of one

year temporarily on the applicant. The applicant filed an appeal, in which vide order dated 01.04.2011 the Appellate Authority reduced his punishment to 'censure'.

3. The applicant is aggrieved by this order and has prayed as follows in the O.A.:

- "(a) Quash the Orders No.SIB/OB/D170908-152-0001, Dt. 17.09.2008, the findings dt. 20.08.2009, order No.D061109-152002 Dt. 06.11.2009, Order No.81-82/P.Sec.Spl.C.P./Int. & Ops. Dt. 01.04.2011, Order No.365683-84/CB-I(PHQ) dt. 21.06.2011, Order No.67660-759/CB-1/PHQ dt. 18.10.2012, and
- (b) Direct the respondents to open the sealed cover of the admission of the applicant to the Promotion List 'F' (Executive) w.e.f. 14.09.2009 kept by them in sealed cover, vide their order dt. 24.09.2009, and award all consequential benefits of pay allowances, seniority/promotion etc. with all arrears etc. with all consequential benefits, and
- (c) Allow the OA with all consequential benefits with all arrears, and pass any other or further order(s), in favour of the applicant, which this Hon'ble Tribunal may deem fit, just & proper in the above-mentioned facts & circumstances."

4. The main ground adopted by the applicant's counsel in support of his prayer is that the act of the applicant cannot be construed as 'misconduct' on his part. In this regard, he relied on an order of this Tribunal in O.A. No.1815/2007 (Inspector Prem Chand vs. Govt. of N.C.T. of Delhi and Others), in which the Tribunal had relied on a judgment of the Hon'ble Supreme Court in **Union of India & Others vs. J. Ahmed**, (1979) 2 SCC 286, especially the following observations:

"Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct [see *Pierce v. Foster* 17 Q.B. 536, 542]. A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle (Indicator Newspapers, 1959 1 WLR 698)*]. This view was adopted in Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur(61 Bom LR 1596), and Satubha K. Vaghela v. Moosa Raza(10 Guj LR 23). The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct"."

5. The learned counsel for the applicant also states that the applicant had been on duty from 1930 hours and the passenger came to his counter at around 0415 hours, i.e. after continuous performance of 8 hours 45 minutes at the counter, by which time he was very tired and, therefore, this mistake happened.

6. The learned counsel for the respondents raised the following preliminary objections:

(i) The order of the Appellate Authority is dated 01.04.2011, which means that the O.A., having been filed in April, 2013, is delayed and the O.A., therefore, is not maintainable in accordance with Section 21 of the Administrative Tribunals Act, 1985. If we consider the sealed cover procedure dated 14.09.2009, as prayed for by the applicant in prayer (b), there is a delay of four years.

It is stated by the learned counsel for the respondents that the application for condonation of delay filed by the applicant is vague, without giving any specific reason why it was delayed. In fact, the period of delay has also not been quantified by the applicant and, therefore, it should be rejected. It is further stated that in para 9, the applicant says that he could not file the present O.A. in time because of his being humiliated and not getting promoted and punishment inflicted upon him, however, in para 10, he contradicts himself that there is no delay in filing this O.A.

(ii) The O.A. has two prayers which are not related to each other. Prayer 8(a) relates to challenge to the orders passed by the Disciplinary Authority/Appellate Authority etc., whereas prayer 8(b) deals with opening of sealed cover and benefits of pay allowances, seniority/promotion to the applicant. It is, therefore, stated that the O.A. suffers from the defect of multiple remedies being sought.

7. On the merits of the case, learned counsel for the respondents stated that in the show cause order itself, it has been mentioned that the so called act of the applicant amounts to negligence, carelessness, lack of professionalism and dereliction of duties apart from gross misconduct. It is further argued that before the Enquiry Officer he should have raised these arguments, which he has raised today, but he did not. Neither did he raise this argument before the

Disciplinary Authority and Appellate Authority. In fact, the Disciplinary Authority has mentioned in his order that the written as well as oral submissions of the applicant has not rebutted the charges proved against him in the enquiry. Learned counsel also pointed out that if the official at Doha could detect that the passenger was impersonating, there was no reason why the applicant could not have detected that the passenger was travelling on someone else's passport.

8. Learned counsel for the respondents also pointed out that the applicant in the past also has faced the following punishments:

- (i) Censure dated 10.05.2002 in D.E. for not reporting at the Moharram arrangement and also not appearing before Addl. DCP/North Distt.
- (ii) Forfeiture of one year approved service temp. for a period of one year vide order dated 11.02.2004 for not handing over the exhibits in PS Civil Lines which indicates that the documents/exhibits were lost by the SI.
- (iii) Censure dated 25.02.2008 for loss of 71 cards of flight No.TF-315 dated 17.10.2006 from his counter.
- (iv) Censure for his unauthorized absence of 60 days treating absence period as period not spent on duty vide order No.121-134/For HAP P-II dated 07.01.2009.

(v) Censure for his unauthorized absence of 49 days treating absence period as period not spent on duty vide order No.107-120/For HAP P-II dated 07.01.2009.

In his rejoinder, the applicant states that there are only five (not six, including the present 'censure') punishment against him.

9. Heard the learned counsel for the parties and perused the pleadings as well as judgments.

10. Admittedly, a passenger was allowed to board a flight to Doha on someone else's passport by the applicant. The Doha Authorities detected this and deported her back to IGI Airport. The applicant admitted the mistake done by him, but the learned counsel states that in the light of judgment in **J. Ahmed** (supra), it should be considered only as a 'mistake' and not as a 'misconduct'. The other argument is that after eight hours of duty, the applicant was tired and, hence, this mistake happened.

11. It is seen from the record that the applicant has faced punishment in the past five times (or four times according to the applicant) for dereliction of duty, negligence etc. before this incidence. The lapse on his part was serious of not being able to detect that the passenger was travelling on someone else's passport and certainly is severe dereliction of duty, negligence, carelessness

and misconduct. In **J. Ahmed** (supra) also, the Hon'ble Supreme Court has stated that a conduct, which is blameworthy on the part of a government servant in the context of the Conduct Rules would be misconduct. If a government servant conducts himself in a way which is not consistent with due and faithful discharge of his duties, it is misconduct and a disregard of an essential condition of the contract of service may constitute misconduct. Therefore, we reject the argument of the learned counsel for the applicant that only in case there is ill motive (the Appellate Authority noting that the applicant committed a mistake without any mala fide), it cannot be stated that it is not a misconduct. He was sleeping on the job and, as a result, a grave error had happened. This could be detected by the Doha authorities but not by the applicant. Moreover, as pointed out by the respondents, the applicant was awarded punishment in the past as well for dereliction of duty, negligence etc. Therefore, we find no merit in this O.A. The same is, accordingly, dismissed. No order as to costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

/Jyoti/