

**Central Administrative Tribunal
Principal Bench**

OA No. 1714/2013

Order reserved on: 08.08.2016

Order pronounced on: 08.09.2016

Hon'ble Mr. Justice M.S.Sullar, Member (J)

Hon'ble Mr. V. N. Gaur, Member (A)

Sh. Surajit Som,
Age 52 years,
S/o Sh. Ashim Ranjan Som,
R/o E-205, Panchsheel Apartments,
Plot No.24, Sector-4, Dwarka,
Delhi-110078.

- Applicant

(By Advocate: Mr. S.K. Gupta)

Versus

Union of India through
Secretary,
Ministry of External Affairs,
South Block, New Delhi.

- Respondents

(By Advocate: Mr. A.K. Singh)

ORDER

Hon'ble Mr. V.N. Gaur, Member (A)

The applicant, a Section Officer (SO) in the Ministry of External Affairs has challenged the order dated 10.05.2013 passed by the Disciplinary Authority (DA) imposing the penalty of reduction to a lower stage in the time scale of pay by one stage for a period not exceeding three years without cumulative effect and not adversely affecting his pension.

2. Respondents had issued a statement of imputation of misconduct or misbehaviour vide memorandum dated 18.11.2010 containing the following allegations:

“Statement of imputations of misconduct or misbehaviour on which action is proposed to be taken

On 1.11.2007, 5 persons were apprehended by Immigration Authorities, IGI Airport, New Delhi while attempting to travel abroad on the basis of forged official passports issued in the name of army officials. These passports had been issued under the signatures of Shri Surajit Som, Section Officer (PV-II) at that time.

It then came to the notice of the Ministry that a total of 24 official passports signed by Shri Surajit Som were issued to non-entitled civilians when requests for issue of official passports for visit of Army band to Chile, Germany and Malaysia were received in 2007. Out of these, 5 were issued for Chile visit, 18 for Germany visit and one for the wife of Lt. Col K.S. Chadha who had been nominated as a member of army contingent scheduled to visit Malaysia and had planned to take his wife alongwith. All these passports had been issued on the basis of the application forms filled in and brought by one LNK M. Suresh Babu of Ceremonial and Welfare Directorate of Army Headquarters, to PV-II Section.

Sh. Surajit Som did not mark these applications to the dealing Assistants for required scrutiny. They were dealt with by him directly and given to LNK M. Suresh Babu for preparing. LNK M. Suresh Babu took advantage of the situation and committed the forgery. He even managed to take photo-substituted, blank and unlaminated passports out of PV-II Section. Out of the above 24 passports, 15 were photo-substituted, 7 unlaminated and one issued on 30.9.2007 in name of LNK Babu himself for his Chile, blank.

Shri Som was the custodian of blank passports. He reposed blind faith in LNK M. Suresh Babu and gave him the blank official booklets. He signed these official passports without verifying the photographs of the applicants that were required to be attested by the Army's competent authority at the back and to be enclosed with the respective application forms. He did not even take a proper record of the blank official passports after they had been written by LNK Babu. As a result of Shri Som's actions, these passports were used by LNK Babu for illegal human trafficking and could have had serious repercussions on the country's security. Shri Som's negligence and dereliction of duty offered a free run to LNK M. Suresh Babu to do what he pleased including violation of provisions of the law and thereby bringing a huge embarrassment and bad name to the institutions of the Army and the Ministry of External Affairs.

Shri Surajit Som also issued a diplomatic passport no. D1021720 to Brigadier H S Bedi on 23.8.2007 for his visit to Malaysia although as per the provisions of the Passport Manual, only Major General and above in the Army are entitled for diplomatic passports. The application of Brigadier Bedi had clearly mentioned his rank as Brigadier. Brig Bedi used this diplomatic passport for his official travel to Malaysia despite his not being eligible for a diplomatic passport. This form too had been filled in and brought to PV-II Section by LNK M. Suresh Babu.

From the above acts, it is evident that Shri Surajit Som has exhibited lack of devotion to duty and conduct unbecoming of a Government Servant thereby contravening Rules 3 (1) (ii) & (iii) of CCS (Conduct) Rules, 1964. Ministry, therefore, has no option but to initiate disciplinary action against him under Rule 16 of CCS (CCA) Rules, 1965.”

3. The applicant submitted his reply on 26.11.2010 denying all the charges. Respondents thereafter consulted the UPSC, who after examining the case record advised that the Ministry of External Affairs may initiate disciplinary proceedings against the applicant afresh by issuing a fresh charge sheet for major penalty proceedings. The CVC also observed that the negligence on the part of the applicant was quite grave and advised initiation of major penalty proceedings. The DA, however, disagreed with that advice with the concurrence of the DOP&T and passed an order on 11.05.2012 imposing a penalty of the reduction to lower stage in the time scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension. The applicant approached this Tribunal in OA No.2281/2012 challenging the order of DE on various grounds including not furnishing of certain relied upon documents. The respondents supplied those documents, considered the

representation of the applicant, and passed the final order dated 10.05.2013 maintaining the same penalty. The applicant has challenged the order dated 10.05.2013 in this OA.

4. Learned counsel for the applicant argued that the respondents have inflicted the punishment on the applicant without conducting any proper enquiry. The applicant had denied all the charges and given convincing explanations but the same was not considered by the respondents. His stand was that allowing L/Nayak Suresh Babu to prepare a passport was an old practice and he only continued with it. He never received application for passports directly. The application was scrutinised by Sh. M. Thapliyal, UDC or by Sh. C.P. Bachas, second SO of PV-II section. He was not the custodian of the diplomatic passport as the same was kept by one Smt. Suresh Rani Sharma, UDC. The tampering in the passport had probably occurred after he had signed them and it had gone for lamination. As the work distribution would show the workload assigned to the PV-II Section was heavy but the number of working hands was inadequate. If some mistake had occurred because of the heavy work load, though not admitted at all by the applicant, he cannot be penalised by any yardstick. It was also argued that in the issuance of official and diplomatic passport the approval of Under Secretary or Deputy Secretary concerned was taken, and there was overall supervision of Joint Secretary. According to the judgment of Hon'ble Supreme Court the supervisory officers cannot

be absolved from the responsibility if anything went wrong. In this case except the applicant no action has been taken against any other person. Relying on **Man Singh vs. State of Haryana and others**, OA No.45/2014 the learned counsel pleaded for parity with the other officers who were in the channel. It has also been argued that as laid down in **Mahavir Prasad vs. State of U.P.**, AIR 1970 SC 1302, the Disciplinary Authority in its order has to deal with all the contentions raised by the applicant in his representation, which was not done.

5. Learned counsel for the respondents, on the other hand, submitted that the respondents had given due consideration to the actual conditions in which the applicant and other staff were operating in PV-II Section. It was due to this reason that the respondents did not agree with the advice of UPSC and CVC to draw a major penalty proceeding against the applicant. With the concurrence of the DOP&T which is the nodal department for such matters, the respondents decided to disagree with the advice of UPSC and CVC and considered only minor penalty proceeding against the applicant. He further submitted that respondents followed the procedure for imposing minor penalty and gave opportunity to the applicant to defend his case. The flaw that was left behind in the proceedings was also removed after the direction of this Tribunal in OA No.2281/2012. The DA had taken into consideration all the pleas that were raised by the applicant in his

representations and dealt with them in the order dated 10.05.2013 (impugned). He also submitted that according to the law the Tribunal has to see whether the competent authority has proceeded in a manner which is in accordance with the relevant rules and the principles of natural justice. Once the competent authority after following the due procedure and after considering the gravity of the offence decided the quantum of penalty, the Tribunal may not interfere in the same.

6. We have heard the learned counsel for the parties and perused the record. No doubt that the allegations against the applicant that he was involved in issuing of official and diplomatic passports of unauthorised persons is a serious one and the CVC and UPSC after considering the seriousness of the lapse had advised drawing up of major penalty proceedings. The respondents, however, are in the best position to appreciate the factors cited by the applicant in his defence namely method of working in the section, prevailing practices, workload, individual capabilities of officers, availability of staff, and so on. In this case the respondents took all these factors into account and despite the seriousness of the charges against the applicant, after due application of mind, and with the concurrence of DOP&T, decided to stick to minor penalty proceedings. The CCS Rules does not make it mandatory to hold a departmental enquiry before imposing a minor penalty as in this case.

7. With regard to the contention that no one else has been penalised for the issue of official/diplomatic passports to unauthorised persons, it is observed that the charge against the applicant is that of lack of supervision. His defence is that, though not admitted explicitly, a mistake could have occurred in a situation where PV-II Section was working under tremendous work pressure. He has also contended that the heavy workload justified taking the help of the army personnel who were visiting the Section for issue of passports. These submissions do not dilute his responsibility of being vigilant and keeping an eye on the passports which he had signed and being taken for lamination. Work pressure cannot justify the action of SO to totally disassociate himself from the fate of a sensitive document that he has signed, and take a plea that he was not responsible if somebody manipulated the document within the section after he had signed it. We are, therefore, unable to accept the attempt of the applicant to transfer the responsibility of his supervisory lapse to his own supervisors.

8. The applicant had raised all the grounds which have been raised in this OA before the DA also and the same have been dealt with in detail in the order passed by the DA dated 10.05.2013. We agree with the learned counsel for the respondents that in a disciplinary proceeding role of the Courts or Tribunal is limited to ensure that the statutory procedure has been followed in the departmental proceeding and there is no violation of the principles of natural

justice. It is not for the Tribunal to decide the quantum of penalty either. In this case the applicant has not been able to show that his contentions have not been properly dealt with by the DA in his order or there has been any violation of the statutory procedure.

9. It is relevant to recall the Hon'ble Apex Court in **B. C. Chaturvedivs. U.O.I.**, (1995) 6 SCC 749 holding that "the judicial review is not an appeal from a decision but a review of the manner in which the decision has been made". This limitation imposed on the jurisdiction of the Tribunal in the matter of disciplinary proceedings is common with the judgments of Hon'ble Supreme Court in **Union of India vs. Parma Nand**, AIR 1989 SC 1185, **Union of India vs. Sardar Bahadur**, 1972 (2) SCR 225 and **Union of India vs. A.Nagamalleshwara Rao**, AIR 1998 SC 111.

10. In the light of the foregoing discussion and the reasons stated, we do not find any reason to interfere in the decision of the Disciplinary Authority. The OA is therefore dismissed as devoid of merit. No costs.

(V.N. Gaur)
Member (A)

(Justice M.S.Sullar)
Member (J)

'sd'

September 8, 2016