

OA. No. 297/2003

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

.. Applicant

versus

- .. Respondents

ORDER

Justice V.S. Aggarwal

Applicant was an Assistant Sub Inspector in Delhi Police. Disciplinary proceedings had been initiated against him along with another person on the allegation that on 24.3.1996 from 0330 hours to 0400 hours, the Deputy Commissioner of Police, Indira Gandhi International Airport had made a surprise visit at Terminal-II and watched the activities of security staff from public visitors gallery. He found that the applicant and his co-defaulter at the exist gate, shift B were checking passports of selected passengers. Their activities were found to be suspicious. Besides on questioning, the passengers going through that gate told the police officials at that gate were extorting money. At 0405 hours, the Deputy Commissioner of Police searched the pockets of Head Constable Suresh Kumar and 75 Dirhams were

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recovered from the left side pocket of his trouser. The applicant was also present at that time and was on duty.

2. The departmental enquiry was entrusted to Deputy Commissioner of Police/FRRO who submitted his report that the charge against the applicant and the other Head Constable was fully proved. The disciplinary authority accepted the report of the inquiry officer and keeping in view the nature of the dereliction of duty dismissed the applicant and the other co-defaulter from service. The applicant preferred an appeal which was dismissed by the Commissioner of Police on 26.8.2002. By virtue of the present application, the applicant seeks quashing of the orders passed by the disciplinary authority as well the appellate authority with the consequential benefits.

3. In the reply filed, the application has been contested. It has been pointed that there was sufficient evidence on record to prove the allegations against the applicant and keeping in view the gravity of misconduct, the penalty had been awarded which commensurates with the dereliction of duty.

4. The main argument advanced on behalf of the applicant was that so far he is concerned, there is no evidence against him to connect him with the alleged misconduct while on behalf of the respondents, it has been urged vehemently that the evidence on the record clearly shows the misconduct on the part of the applicant.

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5. The scope for judicial interference in departmental proceedings is limited. In normal circumstances, the findings of fact have not to be interfered with. In the case of **Jiwan Mal Kochar v. Union of India and Others**, (1983) 4 SCC 148, the Supreme Court concluded that when there is no bias, full opportunity had been given and there is no non-compliance with the statutory rules, interference ordinarily should not be made. The findings recorded are:-

"13. Admittedly, the Enquiry Officer had no bias against the appellant and he had given him all opportunities to defend himself in a fair and reasonable manner. There is no non-compliance with any statutory rule or requirement or any principle of natural justice. The conclusion of the Enquiry Officer regarding the appellant's guilt in respect of entire Charge No.7 and part of Charge No.9 is based on circumstantial evidence which has been accepted by the Enquiry Officer and found to be acceptable even by the learned Judges of the High Court in the light of three sets of documents and other circumstances considered by them."

Similarly, in the case of **Govt. of Tamil Nadu and Others v. Vel Raj**, (1997) 2 SCC 708, the same question was under consideration. In the said case, the finding of misconduct had been recorded by the inquiry officer and was confirmed by the appellate authority. It was based on evidence. It was not even suggested to be perverse. The Supreme Court held that this Tribunal should not have interfered with such a finding of fact.

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6. Even in the case of the High Court of Judicature at Bombay v. Udaysingh and Others, (1997) 5 SCC 129, the Supreme Court held that technical rules of evidence and proof beyond doubt are not applicable to departmental enquiry, but the preponderance of probabilities and conclusions drawn by a reasonable man would be sufficient for the purpose of departmental enquiry.

7. In the case of B.C. Chaturvedi v. Union of India and Others, (1995) 6 SCC 749, the same question had again been considered and following principles had been provided:-

"13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India V. H.C. Goel, (1964) 4 SCR 718 this court held at p.728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

From the afforested, it is obvious that in the departmental enquiry, the findings can be arrived at on preponderance of probabilities. The scope for judicial review would only be ^{permissible} ~~limited~~ where the findings are not

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based on any evidence or are totally perverse.

8. It is on the aforesaid principles that the facts of the present case have to be appreciated.

9. At the outset, we deem it necessary to mention that so far as the case of Head Constable Suresh Kumar, the other co-delinquent is concerned that is totally distinguishable because therein on the facts, it was found that not only he was collecting the amount, the same was even found from his person. Each case has to be decided on its own merits.

10. In the present case in hand, it is in evidence that there are two gates, one for entry and the other for exit of the passengers. It transpires that on that particular day, one gate was closed and the other was being used for incoming passengers as exit gate. It is in this process that the applicant and the other person were on the same gate for the day.

11. In the present case in hand, no recovery had been made from the person of the applicant. One would hasten to add that this is not the sole factor that merely because if recovery had not been effected, the man cannot be held responsible for the misconduct. Facts of each case have to be seen because if there are additional factors and there is absence of any meeting of the minds between the applicant and the other person, necessary

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conclusions can always be drawn. But herein there are other factors that are forthcoming.

12. None of the passengers had pointed towards the applicant that he was also responsible for the said misconduct.

13. The evidence on the record shows that it was stated by Shri Rajesh Kumar, Deputy Commissioner of Police, PW-3 that the applicant was standing near the Head Constable and was ushering the passenger towards the Head Constable. It was the Head Constable who was taking the money. We have already pointed above that there were two gates and if the applicant was ushering the passengers towards the Head Constable who is a co-delinquent, one is not surprised because it was the duty of the Head Constable to check those passengers. Necessarily, when the applicant was ushering the passengers towards the Head Constable, he was doing his duty. In a departmental enquiry, as already pointed above, though the findings can be arrived at on preponderance of probabilities, but totally on suspicion, one cannot be made responsible.

14. In that event on behalf of the respondents, it was pointed that while the passengers were paying money to the Head Constable, it was to the knowledge of the applicant, But in this regard, the charge had not been specifically so framed and this prompts us to conclude that so far as the applicant is concerned, there is

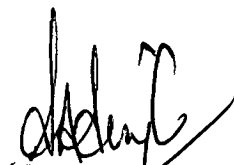
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totally lack of evidence against him.

15. For these reasons the impugned orders cannot be sustained. The same are quashed. The present application is allowed. The applicant would be entitled to the consequential benefits. No costs.


(S.A. Singh)
Member (A)

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(V.S. Aggarwal)
Chairman