

(2013) 05 DEL CK 0310

In the Delhi High Court

Case No : Writ Petition (C) 250 of 2012

Commissioner of Police and Others

APPELLANT

Vs

S.I. Dharam Pal

RESPONDENT

Date of Decision : 20-05-2013

Acts Referred:

Citation : (2013) 6 AD 63 : (2013) LabIC 3720 : (2013) 4 SCT 66

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Aditya Madan, for the Appellant; Bhawani Shanker Sharma, for the Respondent

Judgement

V. Kameswar Rao, J.—The challenge in the writ petition is to the order dated August 31, 2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in Original Application No. 1804/1998, whereby the Tribunal has set aside the orders dated August 27, 1997 of the Disciplinary Authority and February 11, 1998 passed by the Appellate Authority. The brief facts are that while working as a Sub Inspector the respondent was proceeded against at a regular departmental enquiry on the allegation that on the intervening night of February 12/13, 1996, one passenger named as Tal Margalit a National of Israel, accompanied with one male passenger, approached the immigration check post, IGI Airport, New Delhi and reported at the counter where respondent was working as a Clearing Officer. Stamp No. E-12/D was issued to him and computer No. 3 was installed at his counter. Ms. Tal Margalit had overstayed in India and the respondent after accepting Rs. 1,000/- from the said passenger gave immigration clearance to her. The flight in question was cancelled due to foggy weather and consequently the immigration clearance of all the passengers was cancelled. The passenger again reported for immigration clearance the next date. She was questioned by the clearing officer about her overstay and was off loaded. She claimed to have paid Rs. 1,000/- to the Clearing Officer, meaning thereby, she had paid the requisite charges for the

overstay to be regularised. The passengers submitted a written complaint that she had paid Rs. 1,000/- to the Clearing Officer for immigration clearance due to overstay.

2. The Inquiry Officer completed the departmental proceedings and submitted his findings dated June 23, 1997, concluding that the charge against the respondent stood proved. Vide its order dated August 27, 1997 the disciplinary authority imposed a punishment of forfeiture of five years approved service permanently for a period of five years with consequent reduction in pay from Rs. 1,760/- per month to Rs. 1,640/- per month in time scale of pay for a period of five years. It was directed that the petitioner will not earn increments of pay during the period and on expiry of the period, the deduction will have the effect of postponing his future increments of pay. The respondent preferred an appeal against the said order of disciplinary authority which was also rejected by the Appellate Authority vide its order dated February 11, 1998.

3. The respondent had filed O.A. No. 1804/1998 challenging the aforesaid two orders. The Tribunal set aside the order dated August 27, 1997 and December 11, 1998 on technical ground that since the FRRO had acquired competence and jurisdiction to act as disciplinary authority with effect from January 29, 1998, the order passed prior to that date were without any jurisdiction. This Court, on a writ petition filed by the petitioner herein, being Writ Petition No. 4532/2001, remitted the matter back to the Tribunal for fresh adjudication on merits.

4. The primary contention on behalf of respondent before the Tribunal was that a reasonable opportunity to defend himself has been denied in as much as the preliminary enquiry report was not supplied to him. Another contention which was advanced on behalf of the respondent is that the statement of passenger recorded does not contain anything against the applicant regarding alleged demand or acceptance. Further, the passenger had failed to identify him at the time of TIP. Reliance was placed by the respondent on the under noted judgments of the Supreme Court, this Court and the Bangalore Bench of the Tribunal.

(i) Kuldeep Singh Vs. The Commissioner of Police and Others,

(ii) Commissioner of Police and Others Vs. SI Karuna Sagar,

(iii) Dhujender Pal Singh Vs. Govt. of NCT of Delhi and Others,

(iv) 1991 (1) SLR 667 (CAT-Bangl.) N.K. Varadarajan v. Senior Deputy Director General, AMSE Wing, Geological Survey of India and Anr.

5. The case, put forward on behalf of petitioner is that there is enough evidence in the form of testimony of PW-4, who states that the respondent had cleared both the passengers and when the respondent was asked about the clearance of the passenger, he has said that he has not seen the passport while clearing the passengers.

6. The Tribunal while allowing the O.A. has concluded as under:

On careful consideration of the rival contentions of the parties and on perusal of the record basically applicant has been punished on PE record. The allegations made by the complainant passenger in her complaint clearly states that the applicant has visited along with passengers to identify the presence but failed to recognize him. There is nothing in the statement to show that applicant is the person who has demanded or accepted the bribe from the passenger. The factum of identification parade having failed is clearly admitted by the ACP Yashbir Singh, who was not made party to the list of witnesses but was introduced under Rule 16 (viii) of the record as a court witness, yet the PE report has not been served upon applicant. The objection when raised has been responded by the EO on the ground that once the relied upon statements were supplied to the applicant, copy of the finding of PE was not necessary, goes against Rule 15 (iii) of the Rules as well as non-supply of PE report as per the then Standing Order NO. 125 was also an illegality. Though the complaint was already served upon applicant but the claim of the PE officer as to the guilt of the applicant having not been served on PE officer being examined as court witness, necessarily copy of the PE report should have been served upon applicant for effective cross-examination, which has not been done due to this handicap by the applicant. When such a plea has been taken before the disciplinary authority, the same has been rejected on the ground that the PE report was not necessary is in contravention of the decision of the Apex Court in Kashinath Dikshita's case (supra) as well as Rule 15 (iii) where any document taken from the PE file when taken on record, the delinquent officer has to be served a copy thereof. In the statement of CW-1 there has been a reference to the PE conducted by him. This makes it more obligatory upon the respondents to serve a copy of the PE to the applicant.

Leave apart, as per Rule 16 (iii) of the Rules if presence of a witness is not procured with convenience his earlier statement is admissible when it is attested by a higher official during the course of investigation or enquiry. Though the statement of passenger was attested, yet nothing has been stated against the applicant and no complaint of that date has come, naming the applicant as the same person who has taken the bribe. Moreover, applicant is the person who accompanied the passengers for identification and even at that time he was not named. Merely because there has been clearance with the stamp allotted to applicant, against which he has given an explanation of misuse etc., the same having not been considered, the witness should have been examined with an opportunity of cross-examination to the applicant. Mere exhibiting the documents in the PE, where rules of preponderance of probability are applicable, yet the Apex Court in L.I.C. of India and Another Vs. Ram Pal Singh Bisen, and in State of U.P. and Others Vs. Saroj Kumar Sinha, held that documents not proved by oral evidence are illegal. The decision of the Apex Court in Kashinath Dikshit (supra) has also reiterated the above position in respect of Rule 16 (iii) of the Rules. As such, holding applicant guilty by the EO before he cleared the

passengers, when there is no specific allegation of demand or acceptance of bribe, naming him by the passenger, is a finding recorded by the EO merely on suspicion and surmises, which will not take the place of proof, as ruled by the Apex Court in Union of India (UOI) Vs. H.C. Goel,

7. Mr. Aditya Madan appearing for the petitioner would contend that the Tribunal has totally misdirected itself both on facts and law. He would submit that there is enough evidence on record to prove the charges against the respondent, which the Inquiry Officer did in his enquiry report. He would also state that seven witnesses were produced on behalf of the department. The respondent had not produced any defence witness. One witness namely Sh. Yashbir Singh, ACP (FRRO) was examined as a court witness and his statement was recorded on May 20, 1997. Mr. Madan has produced photocopy of the main DE file and took us to the statements of the witnesses. He laid stress on the deposition of PW-6 S.K. Ahuja Inspector (Administration), who had proved duty roster of February 12/13, 1996, which shows allotment of stamp No. E-12 and computer No. 3 to the respondent. According to Mr. Madan, the fact that the passenger in question was given immigration clearance by affixation of stamp and through the computer is not disputed. He says that the plea of the respondent that someone might have misused the stamp is an afterthought.

8. On the other hand, learned counsel appearing for the respondent would submit that it is a case of no evidence. Further, the passenger has not identified him in TIP and also she has not named the respondent in her complaint.

9. Upon consideration of the rival submissions, it is seen that offences of this nature are not committed in open but discretely. In the complaint given by the passenger namely Ms. Tal Margalit, she had stated that she had paid Rs. 1,000/- to the Clearing Officer for her immigration on account of her overstaying. The clearing officer was the respondent. The deposition of Inspector S.K. Ahuja PW-6 in respect to the stamp and the computer allotted to the respondent has not been disputed. The respondent had not carried out any cross examination of PW-6. The Inquiry Officer in this regard, in his discussion of evidence had stated as under:

The fact that S.I. Dharam Pal was on duty on the night intervening 12/13.02.1996 and he cleared pax Tal Margalit is a matter of record and are also not denied by the delinquent officer. Further the stamp No. E-12 affixed on the passport of the complaint Ex. CW/C is also matter of record. The complaint given by the complainant in which she has levelled charges of taking Rs. 1,000/- by Immigration Officer for her overstay in India is a sufficient proof that the money was taken for the clearance of the complainant. These facts were told by the complainant to Sh. S.N. Aras, In-charge Wing as well as Sh. Satyapal Mongia, ACP verbally and a written complaint was also given to them, which is Ex. PW-2/A.

10. The penalty order dated August 27, 1997 also note the fact that the stamp of

defaulter i.e. the respondent herein put on the passport of the passenger as a direct evidence against the respondent. The Tribunal brushes aside this finding of the Inquiry Officer based on the deposition of PW-6 Inspector S.K. Ahuja by stating that "merely because there has been clearance with the stamp allotted to the applicant, against which he has given an explanation of misuse etc., the same having not been considered, the witness should have been examined with an opportunity of cross examination to the applicant."

11. The Tribunal could not have come to such a finding. The witness PW-6 Inspector S.K. Ahuja had produced the duty roster of February 12/13, 1996 of departure right side shift "D" from where it is seen that the respondent was allotted stamp No. E-12 and computer No. 3. The respondent did not cross examine nor had put any question to the witness about the stamp being misused. It is nobody's case that the passenger was not cleared from this computer. An important evidence was overlooked by the Tribunal while allowing the O.A. There being evidence on record, it can't be said that the findings are based on surmises and suspicion. In any case, it is a settled law that standard of proof required in departmental enquiry is "preponderance of probability" The Divisional Controller, KSRTC Vs. M.G. Vittal Rao, . In so far as the other contention that the report of the P.E. had not been supplied to the respondent is concerned, it is the case of the petitioner that the P.E. report was not relied upon by the department against the respondent and as such, was not required to be given. The two statements relied upon by them, that is of the passenger and her friend were supplied to the delinquent officer along with summary of allegations. This fact has not been denied by the respondent. We are of the view that a document which has not been relied upon was not necessarily to be given to a charged officer. The law mandates that only those documents are required to be supplied, whereupon reliance has been placed by the department Pandit D. Aher Vs. State of Maharashtra,

12. The reliance placed by the counsel for respondent on Rule 15(3) of the Punishment & Appeal Rules, 1980 has no applicability in the facts of the case. Rule 15(3) stipulates as under:-

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 brining 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.

13. A perusal of the aforesaid provision would reveal in so far as preliminary enquiry, with which we are concerned now, stipulates that the same shall not form part of the departmental record but the statements may be brought on

record of the departmental proceedings when the witnesses are no longer available. It does not bar the Inquiry Officer bringing on record any other documents from the file of the preliminary enquiry, if the Inquiry Officer considers it necessary, the same shall be, after supplying the copies to the charged officer. The statement recorded during the preliminary enquiry shall be signed by the person making them and attested by the enquiry officer. We are of the view that there is nothing in Rule 15(3) which obligates the Inquiry Officer to necessarily bring on record the report of the preliminary enquiry. In any case as we have held that the same was not relied upon, there was no necessity to give the copy of the same to the charged officer.

14. The totality of facts would reveal that the respondent has given immigration clearance to the passenger who had overstayed. It is a serious misconduct in itself. In a given case, it may also have a security related issues. He was holding a position of trust and confidence. The conclusion of the Tribunal is not sustainable and the same is liable to be set aside. We set aside the order of the Tribunal dated August 31, 2010 passed in Original Application No. 1804/1998 and dismiss the Original Application. No costs.