
(2018) 10 CAT CK 0084
In the Central Administrative Tribunal
Case No : Original Application No. 2910 Of 2013

Rambir Singh

APPELLANT

Vs

Govt. Of NCTD And Ors

RESPONDENT

Date of Decision : 10-10-2018

Acts Referred:

Delhi Police (Punishment & Appeal) Rules, 1980 — Rule 15(2), 16(ix)

Citation : (2018) 10 CAT CK 0084

Hon'ble Judges : K.N. Shrivastava, Member (A), S.N. Terdal

Bench : Division Bench

Advocate : Sachin Chauhan, P.K. Gupta

Final Decision : Dismissed

Judgement

K.N. Shrivastava

Through the medium of this O.A. Administrative Tribunals Act, 1985, the following main reliefs:- filed under Section 19 of the applicant has prayed for the "(i) To set aside the impugned order dated 26.12.2011 whereby the Departmental Enquiry was initiated against the applicant, Order dated 23.08.2012 whereby the major punishment was imposed upon the applicant and Order dated 22.05.2013 whereby the appeal of the applicant was rejected by the Appellate Authority and to further direct the respondent to restore the increments of the applicant as they were never withheld with all consequential benefits including seniority and promotions and pay and allowances."

2. The factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant is a Constable in Delhi Police. At the relevant point of time, he, along with HC (Exe.) Babu Lal, was posted in the immigration area of Delhi Airport. For his alleged connivance in facilitating 5 Nepali girls to clear immigration on forged documents, the impugned Annexure A-1 order dated 26.12.2011 came to be issued to him by the disciplinary authority (DA), namely, the Deputy Commissioner of Police, FRRO, New Delhi. The applicant and the co-

accused were placed under suspension and disciplinary enquiry (DE) proceedings under Delhi Police (Punishment & Appeal) Rules, 1980 were ordered against them. The order also contained the charge against the accused, which would read as under:-

"During the intervening night of 12/13.11.2011 at about 19.45 hours, Ct. (Exe.) Rambir Singh, No. 295/F was seen making a telephonic call from the telephone NO. 61232753 installed at the D.O. desk and after making call, he left from the immigration area. After his reentry to immigration area, 10 Nepali girls paxs seen entering in immigration area from the gate which is only for domestic passengers. All these 10 girls assembled at counter No. 1 where Ct. (Exe.) Rambir Singh, No. 295/F was seen discussing with them and giving them directions to move to other counters. HC (Exe.) Babu Lal, No. 178/F, deployed at counter No. 2 (Departure) had left from his counter without making entry in the movement register and he seen meeting with one person who was involved in filling up forms of two Nepali girls outside immigration area, i.e., Boarding Pass area. He had gone to meet Nepali girls in extreme right and discussing with them. After that HC (Exe.) Babu Lal, No. 178/F seen entering from outside t his counter with one Nepali girls whose form was filled up by the persn who met HC (Exe.) Babu Lal, No. 178/F. Later on HC (Exe.) Babu Lal, No. 178/F cleared that Nepali girl. Out of the two persons who were filling up forms of Nepali girls one has been identified as Vikas, Supervisor Impression/IGIA but identify of other with whom HC (Exe.) Babu Lal, No. 178/F met could not be ascertained. After talking with these Nepali girls, HC (Exe.) Babu Lal, No. 178/F was seen signaling JIO- II (G) Akhilesh Kumar (PIS NO. 104828), deployed at counter No. 1 (departure) about arrival of these Nepali girls at their counter and also seen calling these Nepali girls at counter NO. 1 & 2. HC (Exe.) Babu Lal, No. 178/F and JIO-II (G) Akhilesh Kumar seen clearing some other Nepali girls from counter Nos. 1 & 2 manned for special assistance for wheeled chair passengers without consulting I/Cs Wing and AFRRO.

On suspicion by ACIO-I/G Inderjeet Singh, I/C Wing, about 20 Nepali girls passengers standing in front of counter No. 1 and 2 (Special Assistance Counters), were checked by ACIO -I/G Inderjeet Singh, SI (Exe.) Jagtar Singh, No. D-1377 and SI (Exe.) Rajesh Kumar Singh, No. D-215, All I/Cs Wings. Out of these Nepali girls, five Nepali girls found having forged documents and against them cases were registered. Out of them, four paxs namely (1) MRs. Phulmati Thapa Magar, Nepali Passport No. 1978721 (FIR No. 518/11 dated 13.11.2011 u/s 419/420/468/471 IPC PS IGIA), (2) Mrs. Sarmila Shrestha, Nepali Passport No. 1974009 (FIR No. 520/11 dated 13.11.2011 u/s 419/420/468/471 IPC PS IGIA), (3) (3) Anjana Rai, Nepali Passport No. 4534345 (FIR No. 521/11 dated 13.11.2011 u/s 419/420/468/471 IPC PS IGIA); and (4) Miss Madhuri Dura, Nepali Passport No. 3718250 (FIR No. 522/11 dated 13.11.2011 u/s 419/420/468/471 IPC PS IGIA) were apprehended from the counter of W/SI (Exe.) Malti Bana, No. D/1399. However, none of these Nepali girls was cleared by the C.Os., i.e., HC (Exe.) Babu Lal, No. 178/F and W/SI (Exe.) Malti Bana No.

D/1399. During the above process, where ever these Nepali girls move, Ct. (Exe.) Rambir Singh, No. 295/F seen moving with them at counter No. 1, 2 & 7."

2.2 Pursuant to Annexure A-1 order, Inspector S.P. Kukreti was appointed as enquiry officer (EO), who conducted the enquiry against the accused. The EO, vide his report dated 31.05.2012, concluded as under:-

"Conclusion From the above discussion, relied upon the statements of PWs and perusal of CCTV footage of the incident, it has been established that both the delinquents were facilitating these Nepali woma the charge against HC Babu Lal, No.178/F and Const. Rambir Singh, No.295/F stands proved." A copy of the EO's report was furnished to the applicant by the DA with Annexure A-4 covering letter dated 20.06.2012.

2.3 The applicant submitted his representation against the EO's report. However, the DA was not satisfied with the representation and vide its impugned Annexure A-2 order dated 23.08.2012 imposed the penalty of "withholding of next increment for a period of four year permanently" upon the applicant as well as his co-accused. The ibid order also stated that the suspension period of the applicant from 17.12.2011 to 15.07.2012 is to be treated as "not spent on duty" for all intents and purposes.

2.4 Aggrieved by the impugned Annexure A-2 order of DA, the applicant preferred statutory appeal to the departmental appellate authority (AA), namely, Commissioner of Police, Delhi, who, vide his Annexure A-3 order dated 22.05.2013, dismissed the appeal. Aggrieved by the impugned Annexures A-1, A-2 & A-3 orders, the applicant has filed the instant O.A. praying for the reliefs as indicated in paragraph (1) above.

3. In support of the reliefs claimed, the applicant has broadly pleaded the following grounds:

3.1 The allegations leveled against the applicant are vague and indefinite, and on the basis of such allegations, DE proceedings should not have been started against the applicant.

3.2 The allegations are based on suspicion and surmises, assumptions and presumptions, and they cannot be made the basis for starting DE proceedings against the applicant.

3.3 The Annexure A-1 order would indicate that the possibility of the applicant in facilitating the Nepali girls with ulterior motive was just an assumption and not based on any facts.

3.4 No prior permission of Additional Commissioner of Police was obtained before initiating the DE proceedings against the applicant and thus mandate of Rule 15 (2) of Delhi Police (Punishment & Appeal) Rules, 1980 has been flouted.

3.5 The applicant had put-forth 4 defence witnesses (DWs) and none of them was put to question by the EO, and hence, their depositions are to be taken as

truthful. In view of it, no misconduct on the part of the applicant has been established, and as such, he deserves to be exonerated of the charges.

3.6 The EO has not recorded specific findings in each of the articles of charge, as required under Rule 16 (ix) of Delhi Police (Punishment & Appeal) Rules, 1980 and, thus, the entire DE proceedings get vitiated.

3.7 Counter Nos. 1 & 2 were earmarked for special assistance. They were manned by the JIO - II Akhilesh and the applicant. The Nepali girls approached the counter Nos. 1 & 2 on their own, as passengers are free to go to any counter. There is no bar to clear the passengers from special assistant counter. As such, the allegations against the applicant are not founded.

3.8 Two other immigration officials, W/SI Malti Bana and JIO - II Akhilesh had also cleared a passenger with forged documents. Both of them were named in the preliminary enquiry but they stand exonerated whereas the applicant has been punished.

3.9 The order of the AA is non-speaking and is mechanical in nature. It does not deal with specific submissions made by the applicant in his appeal.

3.10 The punishment imposed on the applicant is disproportionate to the charges leveled.

4. Pursuant to the notices issued, the respondents entered appearance and filed their reply, in which they have broadly averred that the counter Nos. 1 & 2 were earmarked for physically challenged passengers. The applicant was detailed as General Duty (GD) Constable. The CCTV footage of the incident clearly indicated that the applicant, immediately after calling from the landline number installed at the DO desk, proceeded towards immigration area where some Nepali girls were seen entering the immigration area at the same time and assembling at counter Nos. 1 & 2 manned for special assistance. He was seen moving towards counter Nos. 1 & 2 frequently. The co-accused HC Babu Lal was also seen entering from outside his counter with one Nepali girl whose form was filled up by the same person, who had met HC Babu Lal. The CCTV footage completely revealed complicity of the applicant in arranging the immigration clearance of Nepali girls with forged documents.

5. The applicant has filed rejoinder to the reply filed on behalf of respondents, in which, more or less, the points raised in the O.A. have been reiterated.

6. On completion of pleadings, the case was taken up for hearing the arguments of the parties on 18.09.2018. Arguments of Mr. Sachin Chauhan, learned counsel for applicant and Mrs. P K Gupta, learned counsel for respondents heard.

7. Mr. Sachin Chauhan, learned counsel for applicant, besides highlighting the averments made in the O.A., submitted that the applicant was not manning any immigration counter. He was only a GD Constable guiding the passengers. Drawing our attention to the depositions of 4 DWs present on the scene of the

incident, Mr. Sachin Chauhan submitted that in view of their depositions, the alleged misconduct of the applicant does not stand proved. He stated that these DWs have not been cross examined and hence, their depositions are to be accepted in toto.

8. Mr. Sachin Chauhan also drew our attention to the deposition of PW- 5 Inderjit Singh, ACIO-I/G, IC Wing, Immigration, IGI Airport, who has stated that he did not notice any misconduct, carelessness, negligence or misbehavior on the part of both the delinquents relating to the incident. He has further stated that due to huge rush, the counter earmarked for special assistance for wheelchair born passengers are used for general passengers on the direction of I/Cs Wing. He has also stated that he did not see any footage regarding exchange of money between both the delinquents and the Nepali girls.

9. Per contra, Mrs. P K Gupta, learned counsel for respondents stated that the misdemeanor of the applicant and co-delinquent, HC Babu Lal was crystal clear from the CCTV footage. He was seen guiding the Nepali girls. She further stated that there was no rush at the immigration counter, yet the applicant chose to direct the Nepali girls to go to special counter Nos. 1 & 2. The complicity of the applicant in getting the Nepali girls in immigration cleared on forged documents has been fully established during the course of enquiry and the EO has also concluded to that effect.

10. We have considered the rival contentions of the parties and have also perused the pleadings.

11. The scope of judicial review in the matter of DE proceedings is highly limited. Judicial review is normally resorted to only in following circumstances:

- (a) Principles of natural justice have not been followed in the conduct of DE proceedings,
- (b) Incompetent authorities have issued the charge memorandum and passed the penalty orders,
- (c) The penalty orders have been passed in violation of relevant laws/rules; and
- (d) The punishment inflicted is disproportionate to the offence committed.

12. The above principles have been enshrined in the following judgments of Hon"ble Supreme Court:

- (i) Union of India v. P. Gunasekaran,(2015) 2 SCC 610
- (ii) Ranjit Thakur v. Union of India & others, (1987) 4 SCC 611; and
- (iii) Kuldeep Singh v. Commissioner of Police & others, JT 1998 (8) SC 603.

13. In the instant case, we find that the enquiry has been conducted as per the prescribed procedure and principles of natural justice have been observed at every stage of the enquiry. The EO has examined as many as 6 PWs and 4 DWs.

He has also evaluated the evidence adduced by them. The findings of the EO are based primarily on the CCTV footage, which cannot be controverted by anyone. The punishment of "withholding of next increment for a period of four year permanently" inflicted upon applicant also does not appear to be disproportionate to the charge leveled against him. Furthermore, the Tribunal is not expected to re-appreciate the evidence adduced in the enquiry proceedings.

14. In view of the discussions in the foregoing paragraphs, we do not find any flaw in the impugned orders. Accordingly, the O.A. is dismissed with no order as to costs.