

(2011) 03 DEL CK 0202

In the Delhi High Court

Case No : Writ Petition (C) No. 14251 of 2005

The Commissioner of Police

APPELLANT

Vs

Satpal Pawar and Another

RESPONDENT

Date of Decision : 28-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 03 DEL CK 0202

Hon'ble Judges : Veena Birbal, J;Anil Kumar, J

Bench : Division Bench

Advocate : Reeta Kaul, for the Appellant; Arun Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

Veena Birbal, J.—This is a petition under Article 226 of the Constitution of India wherein Petitioner has prayed for quashing of the impugned order dated 2nd February, 2005 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the Tribunal") wherein the Tribunal has quashed the order passed by the Disciplinary Authority dated 2nd November, 1999 by which Respondent No. 1 was dismissed from service as well as the order dated 10th January, 2003 passed by the Appellate Authority upholding the aforesaid order.

2. Briefly the facts relevant for the present petition are as under:

Respondent No. 1 was appointed as a Sub Inspector with Delhi Police in 1989. On the night intervening 28th/29th March, 1996, a complaint was made by a passenger, namely, Gurjeet Singh to Sh. D.P. Pandey, ACP/FRRO on duty at Indira Gandhi International Airport, New Delhi against the Respondent No. 1 who at the relevant time was on duty at counter No. 11 at IGIA for clearing immigrations. Sh. Gurjeet Singh had alleged that Respondent No. 1 had granted him immigration clearance after making him wait for 20 minutes only after receiving a sum of Rs. 500/- as illegal gratification from him. On receipt of said

complaint, a search was conducted and a currency note of Rs. 500/- bearing No. 2cc-388493, alleged to have been signed by complainant Sh. Gurjeet Singh was recovered from the drawer of counter No. 11 where Respondent No. 1 was performing duty. The necessary formalities regarding search and recovery were completed. On the same day, Respondent No. 1 was placed under suspension. A departmental enquiry was ordered against Respondent No. 1 as well as Inspector Lila Ram. A charge sheet was served upon Respondent No. 1 along with list of witnesses and documents. The departmental enquiry was entrusted to Smt. Anita Roy, DCP/DE Cell and later on same was transferred to Sh. S.S. Grewal, DCP/IGI Airport. The department examined six prosecution witnesses and Respondent No. 1 examined two defense witnesses and thereafter enquiry officer submitted his report holding Respondent No. 1 guilty of charges. A copy of the enquiry report was served upon Respondent No. 1 to enable him to make representation, if any. Thereafter, Respondent No. 1 submitted his reply. After going through the evidence and representation of Respondent No. 1, the Disciplinary Authority agreed with the findings of the Inquiry Officer and held Respondent No. 1 guilty of receiving illegal gratification and passed order of punishment of removal from service against Respondent No. 1 vide order dated 2.11.1999. Against the said order, Respondent No. 1 filed an appeal to the Commissioner of Police, i.e the Appellate Authority against the aforesaid order. During the pendency of the said appeal, Respondent No. 1 filed an O.A No. 2458/2000 before the Tribunal which was disposed of on 6th August, 2001 wherein it was held that the Joint Commissioner of Police was not competent to pass order in the disciplinary matters and issued directions for reinstatement of Respondent No. 1. Against the said order, the Petitioner filed W.P.(C) 6689/2001 in this Court which was decided on 30th April, 2002 whereby the order passed by the Tribunal was quashed and it was held that the Joint Commissioner of Police had the requisite jurisdiction to act as a disciplinary authority and accordingly remanded back the matter to the Tribunal for considering the matter afresh. Subsequently, the Tribunal vide order dated 23rd September, 2002 disposed of O.A directing that in the first instance the appeal of Respondent No. 1 be decided by the Commissioner of Police. In pursuance thereof the Commissioner of Police, after considering the facts and circumstances of the case rejected the appeal vide order dated 10th January, 2003. Aggrieved with the same, Respondent No. 1 filed an O.A No. 32/2004 before the Tribunal.

3. The main stand of Respondent No. 1 before the Tribunal was that there was no material against him in respect of charges leveled against him and on the relevant day i.e. on the night intervening 28th /29th March, 1996 he did not detain any passenger. He had continued clearing passengers at the relevant time, as such the question of his taking illegal gratification did not arise and the charge leveled against him was not established. The stand of Petitioner was that there was sufficient evidence against Respondent No. 1 of demanding and acceptance of bribe.

4. The further stand of Respondent No. 1 was that the alleged complaint was in

"Gurmukhi" script and the Respondent No. 1 was not aware of said language, he had not understood its contents as such no proceedings could have been initiated against him.

5. On hearing the counsel for parties, the Tribunal had held that no prejudice had been caused to Respondent No. 1 and in fact no specific averment had also been taken in this regard. Merely because complaint was in Gurmukhi script, it could not be taken that Respondent No. 1 ought to succeed when no prejudice was shown to have been caused.

Relying on the copy of the Computer Centre, Bureau of Information maintained at IGI Airport, the Tribunal gave a finding that the complainant was cleared at 4.14 am and thereafter subsequent passenger had been cleared at 4.16 am and the said list was showing different timings on which different passengers were cleared. After considering the evidence on record, the Tribunal found that the findings arrived at by the authorities were erroneous and were based on no evidence, as such, quashed the impugned order.

The aforesaid finding was arrived at by the Tribunal keeping in mind the proposition that in judicial review of departmental proceedings the scope for interference was limited and interference would be justified only when findings were erroneous and based on no material evidence.

6. Aggrieved with the same, present petition is filed by the Petitioner.

7. Learned Counsel for the Petitioner has contended that the Tribunal did not return any finding on the charge of receiving illegal gratification of Rs. 500/- by Respondent No. 1 from complainant Gurjit Singh, as such the Tribunal was not justified in quashing the dismissal order. Ld. counsel has further contended that even if the list relied upon by the Tribunal shows that the complainant was cleared at 4.14 am, the material on record had established that the Respondent No. 1 had made him stand for about 20 minutes till he got Rs. 500/- as illegal gratification, as such the Tribunal ought not to have held that charges were not proved.

8. On the other hand, the stand of Respondent No. 1 is that that is "no evidence" in the enquiry proceedings against Respondent No. 1 and the Tribunal has rightly held so. It is contended that it is not a fit case for interference of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

9. The enquiry had been conducted against Respondent No. 1 with allegations that in the night intervening 28/29.03.1996 one passenger, namely, Gurjit Singh who was holding a passport issued at Chandigarh, had complained to Assistant Commissioner of Police that at about 4.20 am he came to immigration centre No. 11 for checking. The immigration clearance was given to him after 20 minutes and that too after taking Rs. 500/- as illegal gratification. On receipt of complaint, a search of drawer of counter No. 11 where Respondent No. 1 was performing duty, a currency note of Rs. 500/- alleged to have been signed by

complainant Gurjit Singh was recovered. The case of Petitioner is that there were clear cut instructions that passenger should not be detained more than 3/4 minutes for immigration clearance.

The relevant finding of the Tribunal is as under:

11. Our attention had been drawn towards the copy of the Computer Centre, Bureau of Information maintained at I.G.I. Airport, New Delhi. The complainant passenger, Gurjit Singh had been cleared at 4:14 am. Perusal of the said list clearly shows that thereafter the subsequent passenger had even been cleared at 4:14 am followed by the next passenger at 4:16 am. There is a long list of subsequent passengers which were cleared as it is apparent from the said list.

12. Respondents made available to us the statement of the witnesses that had been recorded during the course of the enquiry. Shri A.S. Sandhu (ACIO) had categorically stated that they had taken the search on the said complaint around 4:50 am and it took them 15-20 minutes to do so. Perusal of the computer list shows that the passengers were still being cleared by the applicant at the relevant time and he continued to clear the passengers up to a time after 5:15 am. This clearly shows that passengers were being cleared and continued to be cleared even after the complainant had been cleared at the relevant time. According to the department, the search was conducted at the time when the passengers were also being cleared as communicated in the computer. In that view of the matter, the whole edifice of case of the department falls to the ground. It is not supported by the documents on record. We only repeat often saying that man can tell lies and not the documents. The computer which is not shown to have been interpolated clearly falsifies the version of the department. Therefore, we are of the considered opinion that the findings so arrived at by the authorities are erroneous and are based on no evidence.

The copy of Computer Centre, Bureau of Information maintained at IGI Airport relied upon by Tribunal is a part of record maintained by the public authority. The said document is not disputed by the learned Counsel for the Petitioner either before the Tribunal or before this Court. Counsel for the Petitioner has not been able to explain the contradiction in the charge sheet and the aforesaid document. Since no explanation has come, there is no case for interference. Further, neither the complainant nor Sh. S.S. Sidhu, ACIO-I had appeared as witness in the departmental proceedings. No reason has been given as to why PW S.S. Sidhu, ACIO-I who was a material witness to the alleged recovery had been dropped. The copy of computer center referred above shows that the complainant Gurjeet Singh was cleared at 4.14 am. The next passenger was cleared at 4.16 am. Passenger prior to complainant Gurjeet Singh was cleared at 4.10 am. It further shows up to 5.05 am, the Respondent had been working and clearing the passengers. There is no evidence on record to show that the complainant was detained for 20 minutes. PW-5, SI Charan Singh a material witness of the department has also not supported its case. He has deposed that the defaulter was clearing the passengers at his counter No. 11 at a distance of 5-6 feet from

him. No one among ACIO-I A.S. Sandhu, ACIO-I S.S. Sidhu and SI Om Prakash had come to conduct the search of counter No. 11 relating to the defaulter SI. He further stated that neither any passenger was detained by the defaulter SI more than required time nor any amount was recovered from the counter of the defaulter. The defaulter was clearing continuously the passengers at the counter No. 11. The Tribunal after considering the evidence on record as well as documents has held that findings arrived at by the authorities are erroneous and based on no evidence. Under these circumstances, the contentions raised by the Petitioner have no force. The impugned order of the Tribunal cannot be termed to be illegal or unsustainable so as to require any interference of this Court in exercise of the jurisdiction under Article 226 of the Constitution of India.

10. In the circumstances of the case, the order of the Tribunal quashing the order of Respondent No. 1 for dismissal does not require any interference of this Court and the writ petition is, therefore, dismissed.

The parties are left to bear their own costs.