

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P. (Civil) No. 3591/2001

Reserved on: 1st December, 2009

Decided on: 20th January 2010,

JAI BHAGWAN Petitioner

Through: Mr. Ravi Kant Jain, Advocate.

Versus

COMMISSIONER OF POLICE & ORS. Respondents

Through: Ms. Avnish Ahlawat, Advocate.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

MUKTA GUPTA, J.

1. The Petitioner was a constable in Delhi Police when on charges of illegally extorting Rs. 100/- from one Mrs. Ranjana Kapoor, a departmental

enquiry was initiated against him. He was formally charged in the following terms:

“Charge

You, Ct. Jai Bhagwan No. 770/A are hereby charged that on the night intervening 6/7.3.95 while performing duty on Belt at X-Ray machine at gate no. 7, 8 and 9 in Shift ‘A’ NITC had extorted Rs. 100/- as an illegal gratification from Mrs. Ranjana Kapoor during the course of Security Check of passengers of flight No. AF-177. She made a complaint of this incident to Shri P.S. Narang Operations Officer of Air France, who introduced her to Shri O.P. Yadav Inspr. She handed over a complaint to the Inspector and identified you, Ct. Jai Bhagwan No. 770/A as you had accepted Rs. 100/- from her which was later on returned to her by you in the presence of Inspr. O.P. Yadav and SI Arjun Singh.

The above act on the part of you, Ct. Jai Bhagwan No. 770/A amounts to gross misconduct and unbecoming of a police officer which renders you liable to be punished u/s 21 of D.P. Act, 1978.”

2. Pursuant to the departmental enquiry, the Petitioner was dismissed from service. The order of dismissal was challenged by the Petitioner in appeal and before the Revisional Authority, however, the same were rejected, thereby confirming the order of the disciplinary authority.
3. The orders dated 19th January, 1996 and 4th July, 1996 of the disciplinary authority and the appellate authority were the subject matter of

challenge in Original Application No. 1755/1997 before the Central Administrative Tribunal. In the said original application Petitioner's contentions were rejected and the original application was dismissed on 15.1.2001. The Petitioner impugns the punishment orders, the connected appellate orders and seeks reinstatement in the present petition before us.

4. Undoubtedly, the charges of misuse of position and extortion are very serious charges. However, before a person is fastened with the punitive liability of charges of corruption/extortion, a proper inquiry, following the principles of natural justice has to be conducted.

5. It is well-settled that the High Court or the Central Administrative Tribunal will not interfere with the findings of fact recorded at the domestic enquiry, however, if the case is a case of no evidence or the finding is highly perverse or improbable then it is the duty of the High Court and the Central Administrative Tribunal to go into the merits of the case. Reliance in this regard is placed on the decision in the case of ***Kuldeep Singh vs. Commissioner of Police, AIR 1999 SC 677***, the relevant paras 9 to 12 and 26 to 28, 32 and 35 of which are reproduced as under :

“9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic

enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.

11. In the light of the above principles, let us scrutinise the case in hand.

12. The charge framed against the appellant in the instant case is as under:--

"You, Constable Kuldeep Singh No. 2138/SD, are hereby charged that while posted at P.P. Amar Colony on 22-2-1990, you kept illegally Rs. 200/- out of Rs. 1,000/- given by the factory owner, Smt. Meena Mishra running her factory at A-25, Garhi, Lajpat Nagar for the payment of her labourers, Shri Radhey Shyam s/o Shri Phool Vash, Shri Rajpal Singh s/o Shri Brahma Nand and Shri Shiv Kumar s/o Shri Ganga Ram. All these three labourers had made a complaint that Smt. Meena Mishra had stopped their payment of Rs. 2,200/- for three months.

The above act on your part amounts to grave misconduct and unbecoming of police officers which renders you, constable Kuldeep Singh No. 2138/SD, liable for punishment under Section 21 of Delhi Police Act, 1978.

Sd/- Shakti Singh
SHAKTI SINGH
Inspector, Enquiry Officer,
DE Cell, Vigilance, Delhi."

26. Non-production of the complainants is sought to be justified with reference to Rule 16 (3) of the Delhi Police (F & A) Rules, 1980. Rule 16(3) is as under:--

"If the accused police officer does not admit the misconduct, the E.O. shall proceed to record evidence in support of the accusation, as is available and necessary to support the charge. As far as possible the witnesses shall be examined direct and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-examine them. The E.O. is empowered, however, to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such officer be procured without undue delay, inconvenience or expense (sic) necessary provided that it has been recorded and attested by a police officer superior in rank to the accused officer or by a Magistrate and is either signed by the person making it or has been recorded by such officer during an investigation or a judicial enquiry or trial. The statements and documents so brought on record in the departmental proceedings shall also be read out to the accused officer and shall be given an opportunity to take notes. Unsigned statements shall be brought on record only through recording the statements of the officer or Magistrate who had recorded the statement of the witness concerned. The accused shall be bound to answer any question which the E.O. may deem fit to put to him with a view to elucidating the facts referred to in the statements or documents thus brought on record."

27. This Rule, which lays down the procedure to be followed in the departmental enquiry, itself postulates examination of all the witnesses in the presence of the accused who is also to be given an opportunity to cross-examine them. In case, the presence of any witness cannot be procured without undue delay, inconvenience or expense, his previous statement could be brought on record subject to the condition that the previous statement was recorded and attested by a police officer superior in rank than the delinquent. If such statement was recorded by the Magistrate and attested by him then also it could be brought on record. The further requirement is that the statement either should have been signed by the person concerned, namely, the person who has made that statement, or it was recorded during an investigation or a judicial enquiry or trial. The Rule further provides that unsigned statement shall be brought on record only through the process of examining the Officer or the Magistrate who had earlier recorded the statement of the witness whose presence could not be procured.

28. Rule 16(3) is almost akin to Sections 32 and 33 of the Evidence Act. Before the Rule can be invoked, the factors enumerated therein, namely, that the presence of the witness cannot be procured without undue delay, inconvenience or expense, have to be found to be existing as they constitute the "condition-precedent" for the exercise of jurisdiction for this purpose. In the absence of these factors, the jurisdiction under Rule 16(3) cannot be exercised.

32. Apart from the above, Rule 16(3) has to be considered in the light of the provisions contained in Article 311(2) of the Constitution to find out whether it purports to provide reasonable opportunity of hearing to the delinquent. Reasonable opportunity contemplated by Article 311(2) means "Hearing" in accordance with the principles of natural justice under which one of the basic

requirements is that all the witnesses in the departmental enquiry shall be examined in the presence of the delinquent who shall be given an opportunity to cross-examine them. Where a statement previously made by a witness, either during the course of preliminary enquiry or investigation, is proposed to be brought on record in the departmental proceedings, the law as laid down by this Court is that a copy of that statement should first be supplied to the delinquent, who should thereafter be given an opportunity to cross-examine that witness.

35. Having regard to the law as set out above, and also having regard to the fact that the factors set out in Rule 16(3) of the Delhi Police (F & A) Rules, 1980, did not exist with the result that Rule 16(3) itself could not be invoked, we are of the opinion that the Enquiry Officer was not right in bringing on record the so-called previous statement of witnesses Radhey Shyam and Rajpal Singh.”

6. In the present case before adverting to the issues raised by the Petitioner in the light of aforementioned decision, certain facts are essential to be stated.

7. The complainant Mrs. Ranjana Kapoor as per the Respondents came to Inspector O.P.Yadav along with Mr. P.S.Narang, Operations Officer working with Air France at IGI Airport and handed over a complaint which was exhibited in departmental proceedings as Exhibit PW-1/A. The complainant Mrs. Ranjana Kapoor was not examined in the departmental proceedings and her complaint was taken on record without any opportunity

of cross examination to the Petitioner. Inspector O.P.Yadav neither recorded the statement of Mrs. Ranjana Kapoor, nor attested the complaint, nor did he record the statement of Mr. P.S.Narang nor seized the Rs.100 note nor noted down its number. Thus in the departmental enquiry, conducted in the present case, the complaint of Mrs. Ranjana Kapoor was taken on record in total violation of Rule 16 (iii) of the Delhi Police (Punishment and Appeals) Rules (hereinafter referred to as “Rules”) as the same has neither been recorded and attested by any superior officer than the Petitioner or by a Magistrate.

8. As per Inspector O.P.Yadav, Constable Jai Bhagwan demanded Rs. 100/- from the complainant for clearing the baggage at the X-Ray machine. He further states that after getting the clearance the complainant went and complained to Shri P.S. Narang, Operations Officer who came back with her and contacted him in the presence of SI Arjun Singh whereafter Constable Jai Bhagwan returned the money. Neither Mrs. Ranjana Kapoor nor Shri P.S. Narang has been examined in the departmental proceedings thus denying the Petitioner the right of cross-examination. Mr. P.S.Narang’s statement was also not recorded by Inspector O.P.Yadav. The reason given by Inspector O.P.Yadav for not recording the statement of Mr. P.S.Narang is

that after the flight took off, he did not come in security hold area, so he did not record the statement. Besides, it is the case of Inspector O.P.Yadav that the Petitioner returned the money in his presence and in the presence of SI Arjun Singh and Shri P.S.Narang. However, Shri Narang in his statement recorded during the preliminary enquiry which is taken on record as Ex 4/B in departmental proceedings has stated as under :-

“Statement- I, P.S.Narang, Operations Officer, working with Air France at IGI Airport during the night of 6/7.3.95 was contacted by a lady passenger by our Air France flight the name of the passenger is unknown complained to me that one of the security personal had taken some money while passing through security check. The passenger was directed and introduced to the Inspector on duty whose name is also unknown. Immediately after introducing the passenger to the Inspector incharge I proceeded back to the aircraft. All what happened between the security personal and the passenger is not known to me.

I was shown the complaint of a passenger Ranjana Kapoor addressed to the Duty Manager, Delhi Police which was not written in my presence today and no money transaction what so ever happened in front of me.

Sd/-
P.S.Narang/10.4.95”

Thus, from the statement of Sh. P.S.Narang it is evident that neither any money was taken nor given in his presence.

9. The entire case of the prosecution revolves around Inspector O.P.Yadav and SI Arjun Singh who have not witnessed the Petitioner taking money from the complainant. It is strange besides these two police officers who were not at the place of occurrence, there were many other police officers on duty specially at the X-Ray machine where the Petitioner was on duty but none was cited as a witness in the departmental proceedings. The Petitioner had examined two defence witnesses of whom w/HC Nirmala Devi was present at the spot as she was searching frisking at gate No.7, 8 and 9. She states that Constable Jai Bhagwan was on duty at belt and the said point was visible from her duty point as it was near to her duty point. She has denied either the Petitioner having taken the money or returning it to anyone, which fact has not at all been considered by the disciplinary authority. Hence from the above discussion it is apparent that the present case is not only a case of violation of Rule 16(iii) but also a case of no evidence.

10. Besides looking into the evidence it is further evident that the present case is not only a case of no evidence but the version of Inspector O.P.Yadav and SI Arjun Singh is also highly improbable. The X-ray of hand baggage takes place in open where there are a number of persons besides police

officers, that is officers of the other departments and passengers lined up to get themselves frisked and get the hand baggage cleared. It is highly improbable that in the presence of so many people the Petitioner would extort money and would then give her back for no rhyme or reason, specially when there is no allegation of any contraband or any illegality against Mrs. Ranjana Kapoor, the complainant.

10. Following the decision of the Supreme Court in the case of ***Kuldeep Singh vs. Commissioner of Police (supra)*** we set aside the impugned order dated 15th January, 2001 passed by the Central Administrative Tribunal in Original Application No.1755/1999, of the disciplinary authority dated 15th November, 1995 and the appellate authority dated 19th January, 1996.

11. The Petitioner is directed to be reinstated in service, however, no order is being passed with regard to the back wages on the principle of no work no wages.

MUKTA GUPTA, J

MADAN B. LOKUR, J

JANUARY 20, 2010

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