

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

#22.

+ W.P.(C) 17813/2004

Date of Decision: 21.09.2010

S.I. RAJESHWAR AGGARWAL Petitioner
Through: Ms. Manpreet Kaur, Adv. for
Mr.Arun Bhardwaj, Adv.
versus

COMMISSIONER OF POLICE & ORS. Respondent
Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

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

: **MOOL CHAND GARG, J.(Oral)**

1. The petitioner posted as S.I. with Delhi Police while working in the departure right wing, on the night intervening 23/24.07.2000 stated to have granted immigration on forged travel documents to two passengers, namely, Prem Pal Kaur and Rajwinder Kaur who were going abroad by flight No.OZ-348. He was proceeded departmentally after the passengers were deported back from the USA and arrived at Indira Gandhi International Airport on 27/28.07.2000 by the same flight and the petitioner while working as a clearing officer in departure right wing managed to get them out of the Airport without being handed them over to the immigration authorities for legal action. It was alleged that the petitioner was in full knowledge that he had given immigration clearance to those passengers intentionally with ulterior motives.

2. On the aforesaid allegations, the petitioner was subjected to a departmental inquiry. The inquiry officer held that the charges against the petitioner were substantiated. The disciplinary authority

agreed with the findings of the inquiry officer and ordered removal of the petitioner from the police force with immediate effect. He preferred an appeal. The Joint Commission of Police acting as an appellate authority concluded that it was the petitioner who granted immigration clearance of forged documents to the passengers but taking a lenient view awarded following punishment to the petitioner.

“Hence I would like to take a lenient view and reduce the punishment to that of forfeiture of two years of approved service temporarily for a period of two years from the date of punishment order and accordingly his pay is reduced by two stages i.e. ₹6375/- to ₹6025/- p.m. the period of reduction and on the expiry of this period the reduction will not have the effect of postponing his future service with immediate effect. His suspension period from 31.07.2000 to 16.04.2001 and intervening period from 17.04.2001 to the date of his rejoining the duty will be treated as period not spent on duty.”

3. This order was assailed by the petitioner before the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as ‘the Tribunal’) contending that there was no evidence to show that those passengers were traveling on forged passports/documents. He further contended that the Rule 16 of the Delhi Police (Punishment and Appeal) Rules, 1980 pertaining to the departmental inquiry is ultra vires as it gives rise to unreasonable procedure and lastly it was also pleaded by the petitioner that dual punishment awarded to him was not in accordance with law.

4. The Tribunal dealt with the original application filed by the petitioner being O.A.No.3414/2001 and while dismissing all other submissions made by the petitioner granted the petitioner limited relief by setting aside the order of the Joint Commissioner of Police (Appellate Authority) imposing punishment and held:

17. In that event, it was urged that the punishment awarded tantamount to dual punishment and, therefore, it cannot be sustained. Strong reliance was placed on a Division Bench decision of the Delhi High Court in the case of Shakti Singh V. Union of India & Ors. in Civil Writ Petition No.2368 of 2000 decided on 17.09.2002. In the case of Shakti Singh, the punishment inflicted upon him

was:-

“The charge leveled against Inspr. Shakti Singh, No.D-1/231 is fully proved.....
Thus, the pay of Inspr.Shakti Singh, No.D-1/231 is reduced by five stages from ₹2525/- to ₹2100/- in the time scale of pay for a period of five years. He will not earn increment of pay during the period of reduction and on the expiry of this period, the reduction will have the effect of postponing his future increments of pay.”

The Delhi High Court while considering Rule 8 of the Rules held that it tantamount to inflicting two punishments because it should be either reduction in pay or deferment of increment or increments permanently or temporarily. Indentical is the position herein. In face of the said decision, we deem it appropriate that the appellate authority may keep the ratio decidendi of the decision in the case of Shakti Singh (Supra) and may pass a fresh and appropriate order.

18. For these reason, the application is disposed and the matter is remitted to the appellate authority for imposition of the punishment in terms of what has been recorded above. No costs.”

5. The Appellate Authority pursuant to the order passed by the Tribunal dated 04.12.2002 modified the punishment awarded to the petitioner to the extent that two years approved service of the petitioner was forfeited temporarily for a period of two years. However, the order regarding period of suspension was kept intact as per the earlier order.

6. The petitioner aggrieved of the modified order of the appellate authority again filed original application before the Tribunal which was registered as O.A.No.1141/2003. An attempt was made by the petitioner to assail the order of the Appellate Authority, disciplinary authority and the inquiry officer by reiterating his submissions made by him even earlier before the Tribunal and which did not find favour with the Tribunal while disposing of O.A. No.3414/2001. As far as the punishment as modified by the appellate authority, nothing

specific has been addressed in the application filed before the Tribunal for the second time.

7. It is well settled that the submissions made which have been dealt with earlier by the Tribunal attain finality and they cannot be raised again by the petitioner in the second original application. What the petitioner could have urged and had not urged, cannot be raised by him again. As regard the modified punishment imposed by the Appellate Authority, nothing has been brought to our notice that there was any infirmity in the said order. Insofar as merits of the case are concerned, once the matter was gone into by the Tribunal earlier by O.A.No.3414/2001 decided on 04.12.2002, the petitioner was not entitled to rake up similar issues again.

8. Even otherwise, looking into the facts of this case we find no reason to interfere with the findings returned by the Tribunal in the impugned order dated 02.01.2004 inasmuch as the charges which were framed against the petitioner stood proved before the inquiry officer, the order passed by the inquiry officer was accepted by the disciplinary authority and thereafter punishment was confirmed by the appellate authority which as stated above stands modified once the case was remitted back to the appellate authority by the Tribunal vide order dated 04.12.2002.

9. We concur with the reasonings given by the Tribunal in having dismissed the O.A. filed by the petitioner. We make reference to the reason so given by the Tribunal which are reproduced as under:

“6. The learned counsel for the applicant in the first instance had contended that in the earlier application, the impugned order had not been quashed and the matter was simply remitted and, therefore, he should be permitted to raise all the pleas which were not earlier considered.

7. So far as the first limb of the argument is concerned, when the matter was remitted to the appellate authority is concerned it tantamount to quashing of the first order. While saying so, we hasten to add that if there were pleas which were not taken in the earlier application, the same cannot be permitted to be taken afresh. In this regard, the rules of the game cannot be thrown to the wind.

However,if there are pleas which were taken and not considered in the earlier application, the applicant can certainly press the same to his advantage, if any.

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13. Perusal of the above shows that even the contention so much thought of need not be delved into because as already pointed above, the applicant can only raise pleas which were taken in the earlier application and not decided. The applicant cannot be permitted to take altogether new pleas in this regard. This pleas had not been raised in the earlier application. We, therefore, reject this contention to be afterthought.

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16. Perusal of the order of the disciplinary authority dated 17.04.2001 indicates that the said authority had considered the evidence and recorded:-

“All the deportees are handed over to AF Arrival and signatures are taken from the Airlines staff and AF also appends his signatures as a token of receipt of deportees. But the system was not allowed to operate as the defaulter had hijacked it and corrupted it. On the eventful night he gets a message from one of the official of Airlines and he goes to contact him. He has no business to contact and Airlines official which is not a practice as no clearing officer are in touch with Airline Staff. If at all it is there it is for profession purposes only or for “unprofessional” purposes like this.”

Even though the findings are based on propensity of probabilities still they are drawn and are based on the statement of the witness (Head Constable Shakeel Ahmed, PW-3). It cannot, therefore, be held that it is a mere imaginary finding not based on any material on record.

17. The last submission which requires consideration, was that the applicant’s defence evidence had not been considered. Perusal of the record reveals that the inquiry officer had looked into the defence evidence produced by the applicant but did not deem it proper to act upon the same. The appreciation of evidence logically falls within the domain of the authorities who are conducting the inquiry or the disciplinary authority. There is thus little ground to interfere.”

10. For the reasons given above by the Tribunal and concurrence expressed by us with the observations made by the Tribunal, we find no merits in the writ petition and the same is hereby dismissed with no order as to costs.

MOOL CHAND GARG, J

PRADEEP NANDRAJOG, J

SEPTEMBER 21, 2010
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