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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 610/2009

COMMISSIONER OF POLICE & ORS

.... Petitioners

Through Mr.Anjum Javed, Advocate

versus

SHYAM SUNDER

..... Respondent

Through Mr.Sama Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

ORDER

16.09.2010

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1. Vide impugned judgment and order dated 25.04.2008 the Tribunal has allowed OA No.730/2006 and has quashed the penalty of forfeiture of 2 years service permanently entailing reduction in pay from ₹ 4220/- per month to ₹ 4050/- per month. The reasoning of the Tribunal is that it was a case of no evidence.

2. The summary of allegations against the respondent is as under:-

"On the night intervening 18/19.06.2002, one Pax namely Ranjith Dass S/o Prem Dass r/o 25-B, New No.4, Bhupathy Street Arcot Road, Virukamukkam, Chennai-92 along with his carrier Prem Kumar were apprehended on the forged travel documents and taken in the refusal room for interrogation. After the interrogation of the pax, Sh. Bageshwar Kaushik, ACIO-II prepared a ruqqa for registration of case at PS IGI Airport, New Delhi against the

W.P.(C) 610/2009

Page 1 of 8

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pax. The rugga was brought to PS IGI Airport along with the travel documents by Const. Shyam Sunder No.290/F. Accordingly a case FIR No.279 dated 19.06.2002 u/s 419/420/468/471 IPC and 12 P.P. Act was registered against the pax Ranjith Dass S/o Prem Dass and his carrier Prem Kumar. During the course of investigation, accused Ranjith Dass disclosed that Const. Shyam Sunder No.290/F had taken US \$ 450 from him in the refusal room of immigration on the pretext that the said amount would be sent to his house at his native place in Chennai. Const. shyam Sunder was summoned by the I.O. of the case at PS IGI Airort for the purpose of identification through I/C Shift 'B'. He (Const. Shyam Sunder) was identified by the accused Ranjith Dass in the presence of I.O. Sh. Ajay Makin, "ACIO-II (PIS No.123408) of Immigration FRRO and HC Chander Babu, No.414/F of PS I.G.I. Airport. Accordingly Const. Shyam Sunder No.290/F was placed under suspension w.e.f. 21.06.2002 vide order No.2331-60/For (HAP) dated 26.06.2002.

The above act on the part of Const. Shyam Sunder Np.290/F amount to gross misconduct by indulging in corruption during the discharge of his official duties which renders him liable for departmental action in accordance with rule for punishment u/s 21 of Delhi Police Act-1978."

3. 8 witnesses were examined by the enquiry officer who framed the formal charge which was on the lines of the summary of allegations and thereafter the respondent produced two witnesses in defence. The enquiry officer held the charge to be proved, which report was accepted by the disciplinary authority.

4. The Tribunal has noted in brief the testimony of the prosecution witnesses as also the testimony of the two defence witnesses. The Tribunal has thereafter in para 7 onwards of the impugned decision highlighted the discrepancies. Qua the complainant, the Tribunal noted the discrepancy in the statement of the complainant made to the enquiry officer vis-à-vis what the complainant stated in the court of the Ld. ACMM by way of an affidavit. The Tribunal noted that the

enquiry officer has just not analyzed the contradictions. The Tribunal further noted that PW-3 S.I. Naresh Kumar Hooda had deposed about said fact i.e. the affidavit filed by the complainant before the Ld. ACMM as also the fact that the Ld. ACMM had sent the said affidavit for facts to be properly enquired by the Polcie, but the said deposition has been noted by the Tribunal as not having been analyzed by the enquiry officer.

5. The Tribunal has thereafter noted that the appellate authority had analyzed the statement of the complainant made before the investigating officer and had held as under:-

"13. Now, the other aspect relates to the motive. The basic complaint is that the appellant had taken US \$ 450 to send to the village of complainant. This itself suggests that the proposal would have come from the complainant only. Thus the question of demand is not there. Thus there cannot be a motive and receipt of money with the above understanding cannot be called gratification. Thus this is not a case of acceptance of illegal gratification. There has been some privy between the complainant and the appellant, while the complainant was in custody and that the appellant did not bring it to the notice of his seniors."

6. The Tribunal has thereafter held that if the aforementioned observations of the appellate authority are juxtaposed with the complainant's affidavit submitted to the Ld. ACMM, the credibility of the statement made by the complainant and as recorded by the investigating officer completely crumbles.

7. The Tribunal has specifically noted, in para 8 of the impugned decision that the officer who made the preliminary enquiry was reluctant to examine the complainant in spite of the complainant being available.

8. The Tribunal has thereafter discussed the observations of the appellate authority in para 12 of the appellate order wherein the

appellate authority has observed as under:-

"12. Very technically it may be correct that unless the complainant is produced during the course of enquiry, his statement given during investigation may not be relied upon. However, the fact remains that other witnesses produced during the course of enquiry have deposed that the pax Shri Ranjith Das identified the appellant in their presence and reiterated the complaint. Thus by the evidence of witnesses produced during enquiry, the fact that there is a complaint against the appellant is established. The appellant did not however got the opportunity to examine the complainant, while he got the opportunity to examine the other witnesses. It has however, been established that there was complaint against the appellant. It should be viewed from the angle as to why there was no complaint against others. Thus, there is adequate inference that there has been some privy between the complainant and the appellant."

9. The Tribunal has held that the latter part of para 12 of the appellate order was an incorrect inference keeping in view the first part of para 12 of the appellate order.

10. Discussing the analysis of the evidence by the enquiry officer, the Tribunal has noted that the enquiry officer as also the disciplinary authority and the appellate authority have consciously ignored the testimony of PW-7, DW-1 and DW-2. The discussion by the Tribunal in para 9 of its decision reads as under:-

"9. The enquiry officer and the disciplinary authority have made labored attempts to ignore the testimony of PW-7, DW-1 and DW-2. The enquiry officer, while analyzing the evidence has observed thus:

"(C) The main contention of the D.Ws. 1 & 2 is that most of the time, they were in the refusal room and that the complainant had not stated about demanding of money by the Constable. But from the statement of P.Ws. 1 to 5 the complainant had clearly pointed at Const. Shyam Sunder who took US \$ 450 from him. Both the D.Ws. stated that they

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don't know Tamil language as such possibility of demanding and accepted US \$ 450 from complainant Ranjit Dass by Const. Shyam Sunder, No.290/F in Tamil language could not be ruled out."

There is no mention of PW-7 in his analysis of evidence. The evidence of DW-1 and DW-2 has just been dismissed on the flimsiest grounds that they did not know Tamil and, therefore, could not have understood the demand made by the Applicant. However, there is no need for the witnesses to understand Tamil to see with their eyes, the acceptance of US \$ 450 by the Applicant and ₹ 300/- by the complainant. The disciplinary authority has dealt with this aspect thus:

"i) The defaulter Const. has pleaded that as per the statement of PW-7 and DWs-1 and 2, being eye witnesses he neither searched the pax nor demanded/taken US dollars from the pax during the whole intervention night of 18/19.06.2002. This plea of the defaulter does not carry any weight in the light of the specific mention by the complainant that the money was taken when he was alone with Const. Shyam Sunder No.290/F in the refusal room. Thus, the statements of PW-7, DWs-1 and 2 do not contradict the allegations. While PW-7 has stated that he had gone to toilet three times to attend call of nature and during that period, the complainant remained in the refusal room. Similarly DW-2 has not said that he remained always present in the refusal room. Therefore, it is not ruled out completely that there was no opportunity at all for Const. Shyam Sunder to remain alone with the complainant. If the defaulter Constable had not taken the US dollars from the pax, then why would he have made a complaint against the defaulter Const., to the I.O. of the case as well as to the Hon'ble Court of ACMM, Patiala House, New Delhi, whereas the complainant had no enmity with the defaulter constable. Moreover, the defaulter constable was the only person knowing Tamil language and others were not able to communicate with the complainant."

First, PW-7 has not stated that he had gone to toilet two or three times during the period the complainant was in the 'refusal room' at the Airport. What he has stated is reproduced below:

"Q4. Did you leave me alone with the accused persons that night?

Ans.4. No I was present with the accused almost the whole time, if in case I was called for by anyone, then A-II Sarjit Bagchi and Ct. Surender 231/F who was duty constable in Refusal that night remained present."

It is DW-1, Constable Surinder Singh who has stated thus in his examination by the enquiry officer:

"Q.9. During the course of interrogation or till Pax Ranjith Dass remained in the refusal room, did you go out for your work or to attend natural call or for personal/Govt. work?

Ans. Has gone 2-3 times for natural call but in the refusal room there are two toilets and had not gone out."

This witness has also made the following statement in response to another question:

"Q.8. Were A-II Bageshwar Bagchi and A-II Surjit Bagchi present in the refusal room during that time?

Ans. Both the COs remained present during that time for proceeding of the case for more and more time during that period. One C.O. always remained present."

The charge against the applicant, the report of the enquiry officer and orders of disciplinary and appellate authorities are riddled with holes. The complaints statements before the Investigation Officer and the learned ACMM are so divergent that no credence can be put on this. PW-1 to PW-5 have only repeated what the complainant stated before the Investigation Officer. It is hearsay evidence

based on the statement of a person whose credibility is doubtful. No credence can, therefore, be put on the evidence of PW-1 to PW-5 because of the aforesaid reason. On the other hand there is no reason to disbelieve the statements of PW-7, DW-1 and DW-2. There cannot be any other conclusion in the case in hand that it is a case of 'no-evidence' against the applicant.

11. The Tribunal has concluded by re-emphasizing the non-examination of the complainant and his complaint being made the basis of the indictment causing serious prejudice to the respondent.

The Tribunal has additionally noted the serious contradictions in the complaints made to the Police and the affidavit filed before the Ld. ACMM which was sent for investigation to the Police by the Ld. ACMM.

12. These in a nutshell are the reasoning of the Tribunal.

13. Learned counsel for the petitioner urges that the Tribunal has re-appreciated the evidence.

14. The Tribunal has not re-appreciated the evidence to come to a different conclusion by attaching weight or reducing weight of the evidence led. The Tribunal has simply read the evidence to find out whether the enquiry officer, the disciplinary authority and the appellate authority have appraised the evidence favourable to the respondent and have weighed the same vis-à-vis the incriminating evidence, an activity which is permissible under judicial review. Needless to state where the authorities deliberately ignore evidence favourable to the defence it has to be a case of the authorities ignoring relevant evidence requiring their actions to be quashed. If the authorities had considered the evidence favourable to the respondent and juxtaposed it vis-à-vis the incriminating evidence and stated reasons as to why the favourable evidence was not being accepted, we could have appreciated the contention that the Tribunal could not have re-appreciated the evidence and substituted its

W.P.(C) 610/2009

satisfaction with that of the authorities below. But we find that the instant case is one where evidence favourable to the respondent has just been ignored.

15. Learned counsel for the petitioner does not dispute that the factual aspects noted by the Tribunal are correct.

16. Thus, we dismiss the writ petition but without any orders as to costs.


PRADEEP NANDRAJOG, J


MOOL CHAND GARG, J

SEPTEMBER 16, 2010
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