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

+ **W.P.(C) No.1981/2012**

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Date of decision: 10th July, 2013

DK SINGH

..... Petitioner

Through : Mr. Anand Mishra, Adv.

versus

UOI AND ORS

..... Respondents

Through : Mr. Asish Nischal, Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE DEEPA SHARMA

GITA MITTAL, J. (Oral)

1. By way of the present writ petition, the petitioner has assailed the order dated 13th June, 2008 passed by the disciplinary authority accepting the recommendations dated 12th May, 2008 made by the Enquiry Officer on conclusion of disciplinary proceedings against the petitioner. The petitioner has also assailed the order passed on 9th April, 2009 by the appellate authority rejecting his appeal and the order dated 11th January, 2010 made by the revisional authority.

2. There is no material dispute to the facts giving rise to the present petition.

3. It appears that the petitioner was working as a Sub Inspector with the Central Industrial Security Force and was posted as X-Ray Baggage Inspection System (X-BIS) at the Indira Gandhi

International Airport, New Delhi on the 25th of July, 2007, between 0700 hrs. to 2000 hrs. At that time, Inspector/Exe R.S. Shekhawat was deployed as the Inspector In-charge of Security Hold Area (SHA) – 1A at the said airport. The petitioner was deployed as Trained Staff No.2 to monitor X-Ray Machine Screen while Sub-Inspector K.B. Kopuri was deployed as Trained Staff No.3 (for manual search) at point SHA (IA) X-BIS No.2. The petitioner monitored the baggage of a passenger, Mr. Sudesh Kumar Gulati on the X-Ray machine. As the baggage image showed something in orange colour and dark, there was suspicion of huge cash amount or explosive being carried by the passenger. As such the petitioner requested the said passenger to go for manual search of his bag to which passenger requested his baggage check to be conducted in privacy.

4. The petitioner has drawn our attention to the circular No.23/2005 (page 24) dated 11th July, 2005 whereby the respondents have notified the “Procedure for Passenger and Carry-On Baggage Screening” in term of Rule 8A of the Aircraft Rules 1937. As per the respondents policy, we find that the duties of the X-Ray Officer have been notified in para 5.4.

As per para 5.4, the baggage of the passenger is required to be submitted to examination by X-Ray machine. As per para 5.4.5, it is mandated that if any unauthorized articles are present or if there is doubt as to the contents of any bag, the bag must be hand searched.

5. So far as the incident of 25th July, 2007 is concerned, the petitioner had claimed to have handed over the baggage to Trained Staff No.3 - Sub-Inspector K.B. Kopuri for the manual search. Sub-Inspector K.B. Kopuri told the owner that for check in privacy he had to come to separate room to which the passenger consented. The petitioner, therefore, had complied with the requirements of para 5.4.5.

6. So far as information to the Inspector In-charge of Security Hold Area is concerned, the petitioner duly informed Sub-Inspector K.B. Kopuri. It is an admitted fact that the private search was conducted by Sub-Inspector K.B. Kopuri along with Inspector/Exe R.S. Shekhawat in a separate room. It is also an admitted fact that the role of the petitioner came to an end with his having intimated Sub-Inspector K.B. Kopuri about there being something suspicious in the baggage of the passenger.

7. It appears that on the 26th of July, 2007, the passenger Mr. Sudesh Kumar Gulati lodged the following complaint:-

“It is submitted that on 27.07.07 at about 1130 hrs with family arrived from Mumbai by Flight Nos.S2-102. Shri Gulati came to Domestic CISF C/Room, IGI Airport and reported that on 25.07.07 at about 0830 hrs when he along with his family was travelling by flight IC-167 to Mumbai, then in SHA 1-A while he was screened by the CISF security personnel, he was informed that his bag contained some suspicious item and the bag had to be checked physically. After this, I got the bag checked by the screening person. After checking the bag, screening man took me to a room outside SHA, where four of

the CISF ladies staff was having breakfast. The screening man told those ladies to go out of the room and they obliged his directions. One Inspector came inside the room and latched the room and CISF person opened my bag, and asked me from where did you get such huge amount of cash? Then I answered that I got this money for the admission of my child, then screening man said that Rs. Five Lakhs should be given to him otherwise he would be arrested. In the course of bag checking a bundle of Rs.500/- denomination notes fell down, subsequently I told the screening man that a bundle had fallen down but he refused to acknowledge this, then I myself picked the bundle and kept that in my bag. After that screening man took Rs.500000/- (five lakh), then I pleaded that screening man that the amount was meant for the admission of my child and if he takes I would be in trouble. But the screening man did not yield to the plea and replied that it was my headache/problem. After that the screening man kept two bundles of Rs.1000/- denomination note (two lacs). Then Inspector instructed the screening man to let the passenger go. While coming out of the room I read the names of the screening man and Inspector as K.B. Kopuri and R.S. Shekhawat respectively. Later, screening man informed me to go with the bag. I came to the SHA and the bag was screened, stamped and I proceeded to the boarding gate as I was the last pax of the flight.”

8. The petitioner was suspended from service with effect from 27th July, 2007.
9. The matter was informed to Senior Commandant by the Raman, the then Deputy Commandant. The Senior Commandant with other officers thereupon interrogated Inspector/Exe R.S.

Shekhawat and Sub-Inspector K.B. Kopuri as well as the petitioner. During the interrogation, Inspector/Exe R.S. Shekhawat as well as Sub-Inspector K.B. Kopuri admitted that they had extorted Rs.2,00,000/- from Mr. Sudesh Kumar Gulati on the 25th of July, 2007. It is on record that an amount of Rs.90,000/- was recovered from the residence of Inspector/Exe R.S. Shekhawat through Inspector S.S. Rana. So far as the balance amount of Rs.1,10,000/- is concerned, Sub-Inspector K.B. Kopuri revealed that he had invested this amount in shares and the amount would be handed over to the CISF officers on 27th July, 2007 by 1300 hrs.

Mr. Asish Nischal, learned counsel appearing for the respondents confirms that this amount was actually handed over by Sub-Inspector K.B. Kopuri to the CISF officer as stated.

10. Despite the above position, the petitioner was issued a charge sheet dated 20th August, 2007 wherein the following two charges were made against him:-

“ARTICLE OF CHARGE I

An act of gross misconduct, indiscipline, violation of lawful orders and malafide intention in that No.033610018 SI/EXE D.K. Singh of CISF Unit IGI Airport New Delhi while detailed for day shift duty at SHA IA X-BIS No.2 after detecting orange color layer impression in the machine of a baggage which could have been explosive or huge quantity of cash in bundles without report the matter to SHA I/C, deliberately provided opportunity to SI/EXE K.B. Kopuri for physical checking of said baggage which actually contained a huge quantity of cash in bundles and which led SI/Exe K.B. Kopuri

to extort Tx.02 lacs from concerned pax in violation of IG/APS HQrs Circular No.AS 10/07 dated 16.5.2007.

ARTICLE OF CHARGE II

An act of gross misconduct, indiscipline and dereliction of duty in that No.033610018 SI/EXE D.K. Singh of CISF Unit IGI Airport New Delhi while detailed for day shift duty from 0700 hrs to 2000 hrs at SHA IA X-BIS No.2 on 25.07.2007 left his duty post on his own”

11. The petitioner submitted his reply dated 27th August, 2007 informing the respondents that he had complied with the prescribed procedure in discharge of his duties.

12. The Enquiry Officer was appointed in the matter who conducted an inquiry on the above charges. The petitioner had pleaded not guilty to the charges.

13. Interestingly, the respondents produced only Inspector/Exe R.S. Shekhawat and Sub-Inspector K.B. Kopuri as witness in the matter. The inquiry was concluded on 12th May, 2008 and a detailed inquiry report of the same date was submitted by the Enquiry Officer. In the inquiry report, the Enquiry Officer absolved the petitioner of charge no.2. He however, returned a finding of “guilty” so far as charge no.1 was concerned.

14. The Disciplinary Authority agreed with the findings in the report of the Enquiry Officer. As a result of finding of guilt so far as charge no.2 was concerned, the Disciplinary Authority imposed the penalty of “*Reduced to minimum in the time scale of pay for a*

period of two years. It is further directed that he will not earn increments of pay during the period of reduction and that on expiry of this period the reduction will have the effect of postponing his future increments of pay” with immediate effect upon the petitioner.

15. The petitioner had made a statutory appeal to the Deputy Inspector General, Airport Sector (North Zone), CISF. This appeal was also rejected by the appellate authority by the order dated 9th April, 2009. The petitioner’s revision to the Additional Director General, CISF (Ministry of Home Affairs) was rejected by an order dated 11th June, 2010. The petitioner has assailed the finding of the Enquiry Officer ; order dated 13th June, 2008 of the Disciplinary Authority; order dated 9th April, 2009 of the Appellate Authority and 11th January, 2010 of the Revisional Authority by way of the present writ petition.

16. The challenge of the petitioner primarily rests on the ground that the instant case was a case of no evidence to support the charges against the petitioner.

17. During the course of submissions, it was brought to our notice that the respondents have conducted disciplinary proceedings against Inspector/Exe R.S. Shekhawat pursuant to a charge sheet dated 17th July, 2008 wherein the following charges were levelled against him:-

“Article of Chare – I

An act of gross misconduct, indiscipline and

dishonesty in that No.924330432 Insp/Exe R S Sekhawat of CISF Unit IGI Airport New Delhi, colluded with SI/Exe K B Kopuri in extorting an amount of Rs.02 lacs from a passenger with malafide intention on 25.7.2007 at about 0830 hrs. While performing day shift duty at SHA Terminal IA as In-charge SHA and collected Rs.90,000/- as his share of the extorted amount.

Article of Charge – II

Gross misconduct & dereliction of duty in that No.924330432 Insp/Exe R S Sekhawat of CIST Unit IGI Airport New Delhi being In-charge of SHA Terminal IA on 25.07.2007 in day shift failed to discharge his duty efficiently & honestly.

Article of Charge – III

Gross misconduct and dereliction of duty in that No.924330432 Insp/Exe R S Sekhawat of CISF Unit IGI Airport New Delhi being In-charge of SHA Terminal IA on 25.07.2007 in day shift also failed to exercise proper supervision over his subordinates in violation of instructions in IG/AS Circular No.AS 10/07 dated 16.05.07 wherein the personnel of ASG are barred from questioning about carriage of cash & other valuables”

18. We are informed that Inspector/Exe R.S. Shekhawat was found guilty of all charges in the disciplinary proceedings and stands dismissed from service on 17th July, 2008.

19. So far as Sub-Inspector K.B. Kopuri is concerned, disciplinary proceedings were held against him pursuant to the following charge sheet dated 6th August, 2007:-

“ARTICLE OF CHARGE – I

An act of gross misconduct, indiscipline and violation of lawful orders in that No.032460045 SI/Exe K.B. Kopuri of CISF Unit IGI Airport New Delhi while detailed for day shift duty at SHA-1A on 25/07/2007 asked a pax about carriage of huge amount of cash violating IG/APS HQrs. New Delhi Circular No.10/07 dated 16.05.2007.

ARTICLE OF CHARGE – II

An act of gross misconduct, indiscipline and dishonesty in that No.032460045 SI/Exe K.B. Kopuri of CISF Unit IGI Airport New Delhi extorted Rs.02 lakhs from a passenger with malafide intention on 25.7.2007 at about 0825 hours while detailed for day shift duty at SHA-1A.

ARTICLE OF CHARGE – III

An act of gross misconduct, indiscipline in that No.032460045 SI/Exe K.B. Kopuri of CISF Unit IGI Airport New Delhi violated sub rule (1) of Rule 16 CCS (Conduct) Rules by indulging in speculative trading of shares etc.

20. These charges were also proved in the disciplinary proceedings and he was dismissed from service on 19th July, 2008.

21. Coming to the case of the petitioner, the respondents have contended that he had failed to inform the Shift In-charge about the same. Perusal of the circular dated 16th May, 2007 would show that in case there is suspicion with regard to the baggage of any person upon its X-Ray, the same has to be subjected to hand search. The petitioner was assigned duties is stated to have so noticed some article and had informed Sub-Inspector K.B. Kopuri who was also on duty with him.

22. In terms of Circular No.23/2005 dated 11th July, 2005 whereby the respondents have prescribed the procedure for passenger and carry-on baggage screening which has been issued in terms of Rule 8A of the Aircraft Rules, 1937. As per para 5.4.5 noted above, the petitioner had met the requirements of this para as he had given due information of his being noticing image in orange colour. There is no dispute at all that the petitioner was not involved in the illegal actions of Inspector/Exe R.S. Shekhawat and Sub-Inspector K.B. Kopuri.

23. The respondents state that the petitioner was deputed at the X-Ray machine. The expectation that the petitioner would leave the X-Ray machine unmonitored while he went to Inspector/Exe R.S. Shekhawat to inform him would be impermissible and was also practically not possible. Even if there was the requirement of expressly informing the Shift In-Charge by the X-Ray machine operator himself, the petitioner would be deemed to have complied with such requirement as he had informed Sub-Inspector K.B. Kopuri of the same, who conveyed the information to Inspector/Exe. R.S. Shekhawat, the Shift In-charge.

24. The respondents have placed reliance on para 7 of the Circular No.AS-10/2007 dated 16th May, 2007 which reads as follows:-

“(vii) If, initial physical checking of the passenger calls for a more detailed checking or if the passenger himself requests for the checking to be made away from the normal area, further checking must be

carried out by the ASG personnel under the close supervision of Inspector Incharge or AC Incharge available at the time.”

25. It is evident that the above procedure is to be followed if, the physical checking of the passenger, a more detailed checking is envisaged. This prescription does not relate to detection/suspicion about the contents of a passenger baggage while subjecting it to an X-Ray examination. The above narration would show that there is not a whit of evidence to support charge no.1 which was levelled against the petitioner.

The Circular No.AS-10/2007 dated 16th May, 2007 thus had no application to the case in hand.

26. The petitioner could not have had any knowledge that Sub-Inspector K.B. Kopuri nursed any mala fide intention with regard to the contents of the passenger's baggage. The petitioner cannot be faulted for informing Sub-Inspector K.B. Kopuri, the colleague who was admittedly on duty with the petitioner. Certainly, the petitioner could not have expected that his Shift In-charge (Inspector/Exe. R.S. Shekhawat) would have extorted amounts from the passenger. In any case, no fault can be attributed to the petitioner for the wrong doings of his superior Inspector/Exe R.S. Shekhawat, the Shift In-Charge or his colleague Sub-Inspector K.B. Kopuri. The passenger has made no complaint at all against the petitioner. It is manifest that there is no evidence against the petitioner.

27. For all the above reasons, the finding of the Enquiry Officer; the order dated 13th June, 2008 of the Disciplinary Authority; order dated 9th April, 2009 of the Appellate Authority and 11th January, 2010 of the Revisional Authority finding the petitioner guilty of the first charge are not sustainable in law and are hereby set aside and quashed.

28. As a result, the petitioner would be entitled to all consequential benefits upon setting aside of the aforementioned punishment imposed upon the petitioner.

29. The respondents shall pass appropriate orders in this regard within four weeks from today and communicate the same to the petitioner forthwith.

30. The payment in terms of the orders passed shall be effected to the petitioner within a further period of six weeks thereafter.

This writ petition is allowed in the above terms.

(GITA MITTAL)
JUDGE

(DEEPA SHARMA)
JUDGE

JULY 10, 2013
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