

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

Date of decision: 04.03.2013

+ **W.P.(C) 194/2013**

CONST. RAJA RAM NO. 873280156 Petitioner
Through : Mr. Arvind Kumar Patel with Mr.
Hem Kumar, Advocates.
versus

UNION OF INDIA AND ORS Respondents
Through : Mr. Amritpal Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. On the previous date of hearing, this Court had issued notice requiring the respondents to produce the record of the inquiry and the records pertaining to the order of the Disciplinary Authority. Further to that order, the respondents have produced the relevant record.
2. Issue Rule.
3. Mr. Amritpal Singh, Advocate submits that the petition can be disposed of at this stage after final hearing.
4. The petitioner, who, at the relevant time was working in the Central Industrial Security Force (CISF) at its Jorhat ONGC unit in Assam, was served charges through a Memorandum dated 29th December, 2010.
5. Prior to that, he was kept under suspension from 17.05.2010 to

30.06.2010 pending initiation of departmental proceedings. The charges levelled were that, while on duty at the IGI Airport/FRRO, New Delhi on the night of 28/29th April, 2010, a passenger, Jhirmal Singh, who arrived from Paris by flight No. AF 226 at about 10.45 p.m. complained that he (petitioner) extorted money to the extent of 100 Euros from him.

6. It was also urged that the petitioner had been identified by the said complainant, Jhirmal Singh in the presence of Mr. L S Bisht. The charges were that the conduct was highly prejudicial and unbecoming to good order and the discipline of the force and also amounted to indiscipline and violation of lawful orders. The petitioner resisted the charges; the CISF appointed an Inquiry Officer who presided over the departmental proceedings.

7. During the inquiry proceedings, the complainant, Jhirmal Singh, who was produced by the respondents deposed as PW-1. He stated that when he reached at the Airport for the immigration, he was under tension due to which under some mistake and confusion, he had lodged a report and that in fact, the petitioner had not demanded any money; he also stated that he did not give any money to the petitioner.

8. PW-1 also stated that the petitioner had been searched in the Airport at that time by the police and that nothing was recovered from his person. Nevertheless, the Inquiry Officer was persuaded to return the finding of guilt on the strength of depositions of L.S. Bisht; Mr. M Srinivas and one lady Constable, Kavita of Delhi Police. All these corroborated each other to the extent that Jhirmal Singh had complained against the petitioner and had identified him.

9. After considering these facts and the nature of such evidence, the Competent Authority nevertheless concluded that the charges had been proved. The Competent Authority discarded the testimony of PW-1 but decided to accept his version in his complaint where he had levelled the allegations which formed the basis for everything. Significantly, the Disciplinary Authority noted as follows :-

“11. On careful analysis of all the facts as discussed above, it is going to establish that Shri Jhirmil Singh, S/o. Shri Ajit Singh holder of Emergency Certificate No. 955410 dated 19.4.2010 issued from Paris, arrived at IGI Airport by flight No. AF 226 from Paris on 28.4.2010 at about 2245 hrs, and while completing the clearance formalities at the immigration counter, the charged official misbehaved with him and extorted money to the tune of 100 Euro from him. This fact is further proved from the statement of Shri Jhirmal Singh stating that he lodged a complaint with the PCTR of Delhi Police about extortion of money just after reaching outside the terminal building of IGI Airport, New Delhi and further supported by PW-2, PW-3 and PW-4 corroborating in their statements the above fact. The charged official, in his defence, has taken the main plea that after conducting the personal search by immigration officials, nothing was recovered from him., The plea taken by the charged official has no merit as the search was conducted by the immigration officials after a long gap of about 40-45 minutes from the alleged extortion of money, as discussed in the preceding paragraph and a person can easily hide the amount within such 40-45 minutes time. Whereas, on the other hand, the statements of all the prosecution witnesses, recorded during the course of departmental enquiry in the very much presence of charged official, clearly speaks that Shri Jhirmal Singh lodged complaint against the charged official and Shri Dharam Singh, ACIO-II for extortion of money from him and confidently

identified both of them in front of immigration officials as well as all the PWs as the persons who extorted money from him. Further, taking note of the state of tiredness of pax (PW-1) due to long and hectic air travel, in general, the air traveller intends to clear the immigration check as quick as possible and checks out of arrival terminal as fast as possible. During the process of quick check and exit, it is virtually impossible for any pax in routine to distinctively identify the immigration officials, that too after the gap of 40 45 minutes, which in instant case is the fact to be taken note of, as confirmed by PW-1, that, “he did lodge a complaint with PCR of Delhi Police and returned back to immigration check point with Lady Constable Kavita of Delhi Police and identified the two officials who extorted the money. In-spite of being tired, speaks of an act by these two officials with pax which caused him (PW-1) harm/pain after the interaction of drawing his (PW-1) attention at them resulting to later help him to identify both of them proving that the act of extortion did take place on that day and could not disprove at any point of time in the chronology of the incidence in the framework. “Time-and-space” on that day. Therefore, it is clear that the charged official, while on deputation with Intelligence Bureau as SA/G and deployed with Bureau of ‘Immigration/Foreigners Regional Registration Office at IGI Airport/FRRO, New Delhi on the intervening night of 28/29th April, 2010, extorted money to the tune of 100 Euro from a passenger namely Shri Jhirmal Singh, holder of Indian Passport EC NO. 955410 dated 19.4.2010 who arrived from Paris by flight NO. AF-226 at about 2245 hrs on 28.4.2010, who later on identified charged official in the presence of Shri L S Bisht AFFRO/Arrival as the person, who extorted 100 Euros from him. Therefore, taking into consideration all aspects as discussed above, the Article of Charge levelled against the charged official is fully established.

12. Further, I found that the charged official has been provided ample opportunities to defence/present his case during enquiry. The enquiry officer has prepared his findings on the basis of evidences adduced during the course of departments enquiry. The documentary evidences exhibited during the enquiry proceedings, defence produced by the charged official and the averments made by him in his final representation have already been discussed in preceding paragraphs. It is fact that Shri Jhirmal Singh (PW1 in his statement recorded during the course of departmental enquiry had deposed that charged official did not demand money from him, but on the same time, PW1 accepted that he lodged report against the charged official for extortion of money which further supported by all other PWs who, in their statements, clearly deposed that PW 1 along with lady constable Kavita of Delhi Police came to immigration officials and lodged complaint against two immigration officials, including charged official for extortion of money from him and confidently identified both of them in front of immigration officials as well as all the PWs as the persons who extorted money from him. Hence, it has been clearly established on the basis of evidences adduced during the course of departmental enquiry that the charged official, while on deputation with Intelligence Bureau and deployed with immigration/FRRO, at IGI Airport, New Delhi on the intervening night of 28/29.4.2010, extorted money to the tune of 100 Euro from a passenger namely Shri Jhirmal Singh, holder of Indian passport EC No. 955410 dated 19.4.21010, who arrived from Paris by flight no. AF 226 at about 2245 hrs on 28.4.2010. Being a member of the disciplined armed force of the Union like CISF No. 873280156 constable/GD Raja Ram should have maintained high standard of honesty and sincerity especially while on deputation with other organization, which he failed to abide and caused severe embarrassment to the force at large. The CISF is an

armed force of the union and every member of the force is expected to maintain high standard of discipline and extreme devotion and dedication to duty at all times. Any breach of rules and regulations is punishable under specific law/rules enforcing to this organization. The misconduct of the charged official, as have been framed, proved beyond any shadow of doubt on the basis of overwhelming documentary as well as oral evidences, which not only tarnished the image of the force but at the same time, also sets a bad example before the other members of the force. Thus, the charge framed against the charged official clearly brought home on the basis of overwhelming evidences held on record. Therefore, I agree with the findings of the inquiry officer and hold charged official guilty of the charge framed against him vide charge memorandum no. V-15014/Maj-08/ONGC(J)/Disc/10-7972 dated 29.12.2010.

13. I, therefore, in exercise of powers conferred upon me under rule 32 read in conjunction with Schedule-I and with Rule 34(ii) of CISF Rules 2001, impose the penalty of “COMPULSORY RETIREMENT FROM SERVICE WITH ELIGIBLE PENSIONARY BENEFITS” on No 873280156 constable / GD Raja ram of CISF unit ONGC Jorhat. This order will become effective from the date of receipt by the charged official.”

10. Aggrieved by the order of the Disciplinary Authority, the petitioner challenged the order of compulsory retirement in an appeal and approached the DIG of CISF which was rejected on 11th July, 2011. He then approached the Inspector General in a revision which was rejected on 16th February, 2012.

11. In these circumstances, he has approached this Court. As mentioned earlier, the Court had directed the production of the

relevant record of inquiry. The respondents have also filed return in the form of the counter affidavit.

12. It is argued that the petitioner's compulsory retirement from the CISF was utterly unwarranted since the only charge made, that warranted such a serious consequence, was of his having demanded and extorted the sum of 100 Euros from PW-1. It is urged that during the inquiry, pursuant to the departmental proceedings, the complainant himself deposed and did not support the charges. Furthermore, it appears that the petitioner was searched immediately after the complaint; and no foreign currency was recovered from his person.

13. Counsel urged that having regard to the nature of the evidence, i.e, complainant having levelled allegations and thereafter, in the course of the inquiry resiling from it, finding of the guilt could not have been attributed to him by the Inquiry Officer.

14. It was submitted that this being a clear case of 'no evidence', the respondents should have, in fact, dismissed the charges. Instead, they perversely and unreasonably penalised the petitioner. In doing so, the inquiry officer, it is argued, placed unnecessary reliance on the testimony of PW-2, PW-3 and PW-4, all of whom had merely deposed about the complaint made by PW-1, and nothing more.

15. It was submitted that the complainant PW-1 had himself admitted that even though he had levelled allegations and made the complaint in question, it was all due to confusion and pressure of immigration people at the immigration counter and he was mistaken in making it. In these circumstances, the respondents could not have

concluded that the petitioner had actually extorted or even attempted to extort any money.

16. Learned counsel for the respondent relied upon the record of proceedings leading to the dismissal of the petition. He submitted that the mere fact that the complainant resiled from his previous statement doesn't mean that the incident had not occurred.

17. It was argued that it is likely that the complainant might have been approached by the petitioner which resulted in his resiling from his complaint in his own depositions in the proceedings, but the fact remains of the complainant having levelled the allegations, which was not even denied by the other witnesses i.e., PW-2, PW-3 and PW-4 , who also stated that the PW-1 had identified the petitioner.

18. While passing orders, the Disciplinary Authority discussed the evidence of the complainant PW-1 and noticed as follows :-

“6. I have gone through the entire material held on record, report of the inquiry officer and representation of the charged officer. I find that the departmental inquiry has been conducted by the inquiry officer and presenting officer in accordance with the laid down procedure in terms of CISF act/rules. During departmental enquiry, statements of 04 Prosecution witnesses were recorded in the presence of charged official:-

a) Shri Jhirmal singh s/o Shri Ajit Singh (PW1) resident of VIII Natuupura, PS Tanda Distt Hoshiarpur (Punjab) deposed in his statement that he arrived at Delhi Airport in the night of 28.4.2010 from france on emergency visa by flight no. AF-226. He further stated that as there was a huge rush in the immigration and he reached in India after a long journey, he was in tension and due to such tension, after clearance from immigration and coming

outside, he lodged a report against Raja Ram for the reasons not aware to him, whereas neither Raja Ram demanded any money from PW-1 nor PW 1 gave money to him. He further deposed that Raja Ram was searched by his staff in front of PW 1 and no any amount was recovered from him and raja ram has also not misbehaved with PW 1. At last, PW-1 stated that whatever he has reported against raja ram with the police or immigration staff in tension, withdraw the same and do not make any complaint against Raja Ram. Charged official was given the opportunity to cross examine PW 1 but he declined. On examination by presenting officer PW 1 replied that he was in tension due to his domestic problem that is why he lodged complaint against raja ram. On clarification by enquiry officer, PW 1 produced some documents which have been marked as PW 1 exh. P1 to PW 1/exh. P3.

b) Shri L S Bisht AFRO (PW-2) deposed in his statement that on the intervening night of 28/29.4.2010 at about 2335 hrs, Shri M Sriiniwas ACIO- I Incharge, arrival right wing, IGI Airport, New Delhi informed him that a police official namely w/constable Kavita no. 3651, has brought a passenger in the wing with a complaint that two immigration officials had extorted money from him. Thereafter, PW 2 along with Shri S N Sharma AFRRO/Departure rushed in the wing for facts finding and he found that the complainant Shri Jhirmal Singh s/o Ajit Singh, who arrived on emergency certificate from Paris by flight no. AF 226 alleged that two immigration officials namely Shri Dharma Singh, ACIO II and Shri Raja Ram extorted one hundred and fifty Euro respectively from him. Later, Shri Jhirmal Singh also identified both the alleged officials who extorted money from him. Later on, both the officials were searched in the presence of Shri L S Bisht AFRRO, but the said currency was not recovered from them. During cross-examination by charged official, PW 2

replied that charged official was present at arrival right wing and Mahila constable Kavita of PCR and Shri Jhirmal Singh after identified the charged official, informed him on the spot that he (Charged official) has extorted money from him. During clarification by the enquiry officer, pw 2 produced some documents which have been marked as PW 2/ Exh. P1 to PW 2/ exh. P9. On further clarification by the EO, PW2 replied that at the time of conducting search of charged official, he himself, Shri S N Sharma, AFRRO, Shri M Srinivas, AFRRO, W/Const/PCR Kavita and the complainant Jhirmal Singh were present at the spot and w/const/PCR Kavita first reported the matter to Shri M Srinivas, ACIO-I, who later on informed the matter to PWE-2., In reply to another query, pw 2 stated that Shri Jhirmal Singh complained to him about abusing and manhandling by the immigration staff. PW-2 further stated on receipt of complaint from Shri Jhirmal Singh, charged official was immediately placed under suspension and initiated disciplinary action against him.

c) Shri M Srinivas ACIO –I (PW3) deposed in his statement that on the intervening night of 28/29.4.2010, he was functioning as Incharge, arrival right wing of terminal II of IGI Airport. He further deposed that a pax namely Jhirmal Singh S/o. Ajit Singh holding emergency certificate no. 955410 dated 19.4.2010 issued from Paris, arrived by flight No. AF 226 at about 2245 hrs and handed over to Shri Dharam Singh, ACIO-II/Exe. No. 109492 at counter no.4 for clearance. The pax was cleared in about 40- minutes and thereafter, he left the immigration area without making any complaint about extortion of money from him. But in about 5 half an hour, the pax accompanied by a lady constable Ms. Kavita no. 3651/PCR, entered the immigration area and complained that two officials abused him and also extorted money from him. The matter was immediately brought to the notice of Shri L S Bisht AF/ arrival and thereafter, in the

presence of Shri L S Bisht, AF/ arrival and Shri S N Sharma AF/ departure, the pax identified Shri Dharam Singh, A-II/Exe. No. 109492 and Shri Raja Ram SA/G no. 104855 as the two officials who had extorted money from him. The pax alleged that the former took 50 euros and the latter took 100 euros from him. Thereafter, both the two official were searched in the presence of AF/arrival, AF departure, lady constable Kavita and PW3, but no euros , as alleged by the pax/complaint, was recovered from either of them. Charged official was given the opportunity to cross examine PW 3, but he declined. On examination by presenting officer, PW 3 replied that charged official had a cordial relation with the staff. On clarification by the query officer, PW-3 stated that ht takes one or tow minutes to clear a norm al pax but as Shri Jhirmal Singh was travelling on emergency certificate and his visa was expired, that is why it took 40 minutes to clear him. PW3 further stated that w/ct/PCR Kavita came from outside along with Shri Jhirmal Singh and reported that two immigration officials extorted money from Jhirmal Singh, who later on identified both the officials. On further clarification PW 3 replied that at the identify the immigration officials, Shri Jhirmal Singh was confident and he straightway identified both the officials alleging that Raja Ram had extorted 100 euro and Dharam Singh extorted 50 euro from him.

d) No. 3651/PCR lady constable Kavita of Delhi Police PW-4 deposed in her statement that on the intervening night of 28/29.4.2010, she was deployed in night shift PCR duty at IGI Airport, New Delhi from 2000 hrs to 0800 hrs on next day. PW-4 further stated that at about 2300 or 2400 hrs, one pax namely Jhirmal Singh reported that two immigration officials extorted 100 eruo and 50 euro from him. She went inside the airport along with the pax Jhirmal Singh and informed the matter to Incharge of immigration who immediately

called charged official and one other official and the pax Jhirmal Singh identified both of them. Both the charged official and another official were searched in presence of PW 4 and other immigration officials, but no foreign currency was recovered from them, pw4 further deposed that the pax Jhirmal Singh was seems to be in tension and on asking for taking any police action, he denied for the same. During cross examination by charged official, PW 4 replied that when she brought the pax in the immigration office, charged official was called by the immigration Incharge in his office. Presenting officer was given the opportunity to examine PW 4, but he declined. On clarification by enquiry officer, pw4 stated that the pax Jhirmal Singh reported about extortion of money and misbehaved by immigration officials.”

19. In the penalty order imposing compulsory retirement upon the petitioner apart from the above testimony and statement of the complainant, no attempt has been made by the Disciplinary Authority to say why the complainant's deposition in the course of the inquiry was disbelieved.

20. In other words, the finding of the Disciplinary Authority in the inquiry was based upon the deposition of PWs 2, 3 and 4. None of these were eye witnesses to the actual incident of extortion nor did they level any such allegation against the petitioner. No doubt, the complainant did level the allegations in the form of a written complaint. To that extent, PWs 2, 3 and 4 who were the relevant witnesses stated that PW-1, in fact, identified the petitioner; but beyond that, they could not have testified or deposed as to the extent of the truth or otherwise of the allegations of extortion.

21. In these circumstances, the only witness to the extortion was the

complainant i.e, PW-1 himself. Once he resiled from the contents of his complaint, the Inquiry Officer was left with two versions. The first was an uncorroborated complaint made out on the day of the incident; and the second was in the form of the statement recorded for the purpose of disciplinary proceedings during the course of the inquiry against the petitioner's conduct. The complainant took a complete somersault and did not support the charges. In these circumstances, what emerged from the inquiry, even on an overall reading of the testimony of the other witnesses and the statements of the petitioner himself, was that the complainant was not a normal passenger, but was travelling under an emergency certificate, as a result of which, the procedure for his immigration clearance took some time.

22. In the meanwhile, the normal procedure for other passengers was being conducted. The delay in the complainant's immigration clearance apparently provoked him and led to a bit of altercation. This much is evident from the reading of the Disciplinary Authority's order:

“7. Charged official, in his defense statement, has stated that he was on deputation with Intelligence Bureau, New Delhi from December 2005 to 6.7.2010 as SA/G and during that period, he was deployed in FRRO/Immigration at IGI Airport, New Delhi. He further stated that on the intervening night of 28/29.4.2010, he was deployed at Arrival Right Wing. In between 2300 to 2400 hrs, there was a huge crowd at Arrival Counter and as per direction of ACIO Shri M Srinivas, when he asked the passengers to stand in a queue, than one pax namely Jhirmal Singh argued with him and denied to stand in the queue. As the pax was travelling on Emergency Certificate, his documents were

handed over to Shri Dharam Singh, ACIO-II at counter no.4 by Shri M Srinivas and thereafter, the pax was relieved from the counter after 45 minutes after immigration clearance. Thereafter, about 30 minutes, lady constable Kavita of Delhi Police / PCR brought the pax in the immigration office, who alleged that SA/G Raja Ram (charged official) and ACIO-II Dharam Singh extorted 100 euro and 50 euro respectively from him. The pax Jhirmal Singh identified both the charged official and Shri Dharam Singh, ACIO-II in front of lady constable Kavita, Shri M Srinivas,. Shri L S Bisht, AFRRO/Arrival and Shri S N Sharma, AFRRO/Departure. Thereafter, both the officials were searched by Shri M Srinivas in the presence of both the ADRRO, lady constable Kavita and the pax Jhirmal Singh, but no any amount was recovered from them. After the incident, charged official was placed under suspension vide order no. 1055/2/2010 dated 21.5.2010 and after one and half monthly, his suspension was revoked and he was repatriated to CISF on 1.7.2010 from where, he was posted to CISF unit ONGC Jorhat”.

23. It can be seen that the complainant was asked to stand in the queue which he was not inclined to do. Some altercation ensued and thereafter the allegations were levelled by him against the petitioner. The extracted paragraphs of the Disciplinary Authority’s penalty order mentioned above would also show that the complainant’s case was processed by someone else and not by the petitioner during the 45 minutes time period which took for his immigration clearance to be completed.

24. All these facts reveal that the prime witness PW 1 was the aggrieved party. He clearly did not support the allegations and attempted to resile from whatever he stated during the initial stages

when the complaint was levelled by him against the petitioner. In the circumstances, the minimum expected from the Disciplinary Authority was to state why he chose the contents of the complaint over the statement made by PW-1 during the inquiry proceedings. No such attempt is forthcoming in the entire reasoned order of the Disciplinary Authority, which, as noted earlier, preferred the contents of the complaint and at the same discarded the testimony of PW-1, i.e. the complainant himself, during the inquiry. Other than these, there is in fact no evidence.

25. This Court is conscious of the fact that under Article 226 of the Constitution, it does not sit in appeal over the judgment of a domestic inquiry. In the present case, disciplinary proceedings were initiated against the petitioner. It cannot examine or scrutinize the parties as if it is an Appellate Court. Nevertheless, within the jurisdiction permitted to it, it can certainly ascertain whether any evidence or material existed with the decision making authority, i.e. Disciplinary Authority in the present case to arrive at a conclusion which is assailed before it.

26. In case, where there is no evidence or material to support the conclusions, the Court in exercise of judicial review can set aside the ultimate orders made by the administrative authority. There is an authority in support of such proposition i.e., Union of India Vs. H C Goel, AIR 1964 SC 364 & [1964] 4 SCR 718, of a Constitution Bench judgment of the Supreme Court.

27. The present is one such incident where the Disciplinary, Appellate and the Revisional Authorities based their conclusions and

findings without any supporting material or evidence.

28. In fact, the evidence in the form of testimony of PW-1 flew on the face of the allegations and undermine the charges levelled against the petitioner. The reasoning on which the Disciplinary Authority based its conclusions is that the petitioner had ample opportunities in the form of 45 minutes, during which the complainant went out and returned in order to make complaint about the 100 Euros, to somehow hide the money. Now, in order to support the conclusion of extortion, in the absence of the complainant's testimony; or as in the present case, his contrary testimony; the fact that the petitioner had possibly an opportunity to hide foreign currency is not sufficient material; it is certainly not proof of the fact that he had, in fact, extorted or attempted extortion from the passenger concerned.

29. Having regard to the above discussions, this Court is of the opinion that the arguments of the respondents are unsustainable on the ground that it is not supported by any evidence or reasonable material to sustain a finding.

30. Consequently, the impugned retirement order dated 14th May, 2011 issued by the Commandant, CISF, ONGC, Jorhat Unit, against the petitioner is set aside. He is directed to be reinstated to the service of the CISF immediately with all consequential benefits as if he had continued in service without a break from the said date i.e, 14th May, 2011 and shall also be entitled to the arrears and salary and other benefits.

31. The petition is allowed in terms of the above. The directions in the present judgment shall be complied with by the respondents within

six weeks from today; during that period, the petitioner shall be given his posting orders and shall also be released all the arrears of pay and other benefits.

S. RAVINDRA BHAT
(JUDGE)

SUDERSHAN KUMAR MISRA
(JUDGE)

MARCH 04, 2013
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