

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Judgment Reserved on : March 10, 2014*
Judgment Delivered on : March 12, 2014

+ **W.P.(C) 1522/2003**

RAJ VIR SINGH MANN Petitioner
Represented by: Ms.Meenal Kashyap, Advocate with
Mr.B.A.Jadon, Advocate
versus

UOI & ORS. Respondents
Represented by: Ms.Richa Kapoor, Advocate
with Ms.Saahila Lamba, Advocate for
UOI

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE JAYANT NATH

PRADEEP NANDRAJOG, J.

1. The facts leading to filing of the present petition are that on September 23, 1987, the petitioner was appointed in CISF on the post of SI/Executive. In the month of March 1995 the petitioner was sent on deputation to the Intelligence Bureau where he was working on the post of ACIO-II/G at Indira Gandhi International Airport, New Delhi.

2. On March 23, 1996, one Ms.Dipannita Bose made a complaint to the Assistant Commissioner of Police, IGI Airport, New Delhi that on March 23, 1996, she was travelling to Hongkong; the officer present at the Immigration Counter harassed her by saying that the photograph on her passport is not hers and the officer demanded ₹800/- for granting immigration clearance to her; which sum she paid.

3. On receipt of aforesaid complaint, Sudesh Kumar ACP, Inspector Sukesh Singh, Constable Jagjit Singh and the complainant Dipannita Bose went to the immigration counter to identify the immigration officer who had extorted the money from the complainant. On reaching there i.e. immigration counter, the complainant identified the petitioner as the officer who had extorted money from her. At the first instance, the petitioner denied having taken any money from the complainant but subsequently on being persuaded by I/c Wing A.K.S.Teotia he returned the sum of ₹800/-, which sum was seized by ACP Sudesh Kumar.

4. Thereafter on December 05, 1996 a charge sheet was issued to the petitioner framing a charge against him to the effect that on the intervening night of March 22/23, 1996 he had extorted a sum of ₹800/- from Ms.Dipannita Bose. In response thereto, the petitioner submitted a reply dated December 20, 1996 wherein he denied the allegations leveled against him.

5. On consideration of the aforesaid reply submitted by the petitioner, on March 04, 1997 the Assistant Director, IB appointed an Enquiry Officer to enquire into the charge framed against the petitioner.

6. On June 11, 1997 the petitioner was supplied the listed documents and thus commenced the enquiry. On June 13, 1997 the Enquiry Officer issued notices to the departmental witnesses including complainant Dipannita Bose for recording of their statements on July 04, 1997. In response thereto, complainant Dipannita Bose sent a letter dated July 01, 1997 to the Enquiry Officer wherein she expressed her inability to give her statement in the matter as she is based in Mumbai. Thereafter on July 13, 1997 the Enquiry Officer wrote a letter to complainant Dipannita Bose requesting her to participate in the departmental enquiry and that TA/DA

shall be released for her for said purpose. When Dipannita Bose did not turn up before him on August 26, 1997 the Enquiry Officer issued another notice to her but in vain. Yet again on September 25, 1997 the Enquiry Officer issued another notice to the complainant for her appearance in the enquiry proceedings but to no avail. In that view of the matter, complainant Dipannita Bose could not be examined in the enquiry proceedings.

7. During the enquiry proceedings, the department examined 3 witnesses in the first instance viz. Inspector Sukesh Singh PW-3, Const. Jagjit Singh PW-4 and A.K.S.Teotia, ACIO-I (G), PW-5.

8. Inspector Sukesh Singh PW-3, stated that on the intervening night of March 22/23, 1996 he was looking after departure Gate No.3 at IGI Airport when at about 11.15 P.M. a lady who told her name Ms.Dipannita Bose came at Gate No.3. She was weeping and told him that a person at the immigration had taken money from her. He took her to ACP Sudesh Kumar who accompanied by Ct.Jagjit Singh, the complainant and he i.e. Inspector Sukesh Singh went to the immigration counter where the complainant identified the petitioner as the officer who had extorted money from her. On being asked by ACP Sudesh Kumar the petitioner took out a sum of ₹800/- from his pocket and handed over the same to ACP Sudesh Kumar. The aforesaid sum was seized vide a seizure memo which bears his signatures. Pertinently, the statement of Inspector Sukesh Singh that the petitioner took out a sum of ₹800/- from his pocket and handed over the same to ACP Sudesh Kumar was not challenged by the petitioner when he cross examined PW-3.

9. Ct.Jagjit Singh PW-9, stated that complainant Ms.Dipannita Bose had identified the petitioner as the officer who had extorted money from her in his presence. Inspector Sukesh Singh or ACP Sudesh Kumar gave him

currency notes totaling ₹800/- and asked him to photocopy said notes. After photocopying said notes he returned the same to the complainant.

10. A.K.S.Teotia, ACIO-I (G), PW-5, stated that on the intervening night of March 22/23, 1996 he was in-charge of departure left wing immigration. Sometime during the night he received a call from Inspector Sudesh Kumar enquiring about the whereabouts of ACP Zile Singh. He immediately conveyed the message to Zile Singh who was present at Gate No.3. In the meantime, ACP Sudesh Kumar reached departure left wing with complainant Dipanita Bose. He was told by ACP Zile Singh to help ACP Sudesh Kumar in recovering the extorted money. When asked to identify the officer who had extorted money from her, the complainant Dipanita Bose did not identify the petitioner but some other person. On checking the passport of the complainant, it came to light that the petitioner had granted immigration clearance to the complainant and not the person identified by her. He persuaded the petitioner to return the amount taken by her from the complainant whereupon the petitioner kept the money which was in his hand in the basket of the complainant.

11. The documentary evidence adduced by the department was as follows:-

a) Duty Roster: - The petitioner was working as Immigration Clearance Officer on counter No.Dep-w(8) of departure left wing of immigration on the intervening night of March 22/23, 1996.

b) Flight Chart: - Flight No.UA-002 bound for Hong Kong on which complainant Dipannita Bose was travelling was granted immigration clearance from departure left wing of immigration.

c) Computer Printout: - Complainant Dipannita Bose was granted immigration clearance from a computer terminal which was being manned by the petitioner.

d) Embarkation Card of complainant: - Complainant Dipannita Bose was granted immigration clearance with a stamp which was issued to the petitioner.

e) Seizure memo recording recovery of ₹800/- from the petitioner.

f) Complainant dated March 23, 1996 made by complainant Dipanita Bose.

12. No defence witness was examined by the petitioner.

13. Vide his report dated February 17, 1998 the Enquiry Officer held that the fact that a sum of ₹800/- from his pocket was given by the petitioner to complainant Dipanita Bose is indicative of the guilt of the petitioner but the guilt of the petitioner could not be proved beyond doubt in the enquiry on account of failure of two main witnesses of the prosecution viz. complainant Dipanita Bose and ACP Sudesh Kumar to appear in the enquiry proceedings.

14. On receipt of aforesaid report by the Enquiry Officer, vide order dated 25.05.1998 the Disciplinary Authority directed the Enquiry Officer to again send summons to complainant Dipanita Bose and ACP Sudesh Kumar to appear in the enquiry proceedings. Thereafter ACP Sudesh Kumar appeared before the Enquiry Officer on September 17, 1998. The gist of the statement of ACP Sudesh Kumar PW-1, was that in the intervening night of March 22/23, 1996 complainant Dipanita Bose had identified the petitioner as the officer who had extorted a sum of ₹800/- from her at the immigration

counter and that sum of ₹800/- was handed over by the petitioner to the complainant in his presence.

15. Vide order dated January 17, 2000 the Disciplinary Authority held that the charge framed against the petitioner stand proved and imposed the penalty of removal from service upon the petitioner.

16. Thereafter the petitioner preferred an appeal and revision to the Appellate/Revisional Authority and the same were rejected vide orders dated August 24, 2000 and March 13/14, 2001 respectively.

17. Aggrieved by the aforesaid, the petitioner has filed the present petition under Article 226 of Constitution of India. The mainstay of the present petition filed by the petitioner is that complainant Dipannita Bose who alleged that the petitioner had extorted a sum of ₹800/- was not examined in the enquiry proceedings and thus the charge framed against him cannot be held to be proved.

18. As the writ petition came up for arguments on March 03, 2014, finding inchoateness in the submission of the learned counsel for the petitioner we had requested her to submit written submissions as recorded in the order dated March 03, 2014. The matter was adjourned for March 10, 2014 on which date learned counsel for the petitioner and the respondent handed over written submissions. From the same it can be gleaned that the submissions of the petitioner are as under:-

A Complainant Dipannita Bose has not been examined by the department in the enquiry proceedings.

B The seizure memo relating to the currency notes allegedly given by the complainant to the petitioner and subsequently returned to her i.e. the

complainant by the petitioner was prepared on March 22, 1996 and whereas the complaint made by complainant Dipanita Bose is dated March 23, 1996 which is highly suggestive of the fact that the complaint dated March 23, 1996 is a fabricated document and that no complaint was made by complainant Dipanita Bose particularly when the complaint dated March 23, 1996 does not bear the signatures of the complainant.

C The statement of ACIO-I A.K.S.Teotia PW-5, was recorded in the preliminary enquiry on April 02, 1996 i.e. nearly 10 days after the incident dated March 22, 1996.

D The failure of the complainant to identify the eight currency notes given by her to the petitioner coupled with the facts that the complainant has nowhere stated that she had given eight hundred rupees notes to the petitioner and ACP Sudesh Kumar PW-1, did not ask the petitioner to identify that whether the notes which were allegedly given to her by the petitioner were the ones which she had given to him is highly suggestive of the fact that ACP Sudesh Kumar PW-1, had planted said notes upon the petitioner in order to falsely implicate him particularly when the report regarding incident in question was prepared by ACP Sudesh Kumar on March 22, 1996 i.e. prior to the complainant dated March 23, 1996 and the depositions of ACP Sudesh Kumar that he cannot say that what had happened to the currency notes.

E The charge of extortion of money from complainant Dipanita Bose framed against the petitioner fails in view of the deposition of ACIO-I A.K.S.Teotia that the officer identified by complainant Dipanita Bose as having extorted money from her was not the petitioner.

F The provisions of Rules 14(16) and 14(21)(b) of the CCS (CCA) Rules, 1965 have been violated in the instant case inasmuch as statement of ACP Sudesh Kumar PW-1, was recorded after the conclusion of recording of the evidence.

G The immigration counter where the petitioner allegedly extorted money from the complainant was a busy place meaning thereby, that many other persons would have seen the petitioner extorting money from the complainant. The fact that no public witness was examined by the department raises a serious doubt on the genuineness of the case set up by the department against the petitioner.

H The statement dated April 02, 1996 of ACIO-I A.K.S.Teotia brings out that there was strife between ACP Sudesh Kumar PW-1 and ACIO-I A.K.S.Teotia PW-5 and that ACP Sudesh Kumar was nursing a grudge against ACIO-I A.K.S.Teotia PW-5. The said statement establishes that ACIO-I A.K.S.Teotia was negligent inasmuch as the Immigration Department was not functioning properly. ACP Sudesh Kumar PW-1, falsely implicated the petitioner in the present case.

I The enquiry proceedings were not conducted on day-to-day basis despite specific direction given by the Office of Assistant Foreigner Regional Registration to said effect. That the documents mentioned in the list of documents annexed with the charge sheet were not supplied to the petitioner for more than a year.

19. With regard to the submissions regarding non-examination of the complainant and seizure/identification of the currency notes it has to be noted that as many as 4 notices were issued by the Enquiry Officer to complainant Dipannita Bose to appear before him but she did not turn up at

the enquiry proceedings. The non-examination of complainant Dipannita Bose or discrepancy, if any, in the seizure of notes is not fatal to the case of the department inasmuch as the documentary evidence adduced by the department clearly brings out that it was the petitioner who had given immigration clearance to the complainant on the intervening night of March 22/23, 1996. The statements of the departmental witnesses clearly establishes that it was the petitioner who had extorted money from the complainant inasmuch as the complainant had identified the petitioner as the person who had extorted money from her in the presence of said witnesses. Furthermore, the conduct of the petitioner of returning the sum of ₹800/- to the complainant is highly suggestive of the guilt of the petitioner.

20. With regard to the submission that the seizure memo of the currency notes and report of ACP Sudesh Kumar regarding the incident in question is dated March 22, 1996 whereas the complaint made by complainant Dipannita Bose is March 23, 1996 it assumes importance to note that the incident in question happened around 11.15 P.M. on March 22, 1996. The complainant first made an oral complaint whereupon ACP Sudesh Kumar started an investigation into the matter. During the course of investigation, the suspicion fell upon the petitioner as he was posted at the immigration counter at the relevant time wherefrom the passenger emigrated. The complainant identified the petitioner as the person who had extorted money from her. The petitioner was interrogated and he returned the sum of ₹800/- to the complainant. The currency notes were returned to the complainant and the photocopies of the said notes were seized. ACP Sudesh Kumar PW-1, prepared a report regarding the incident in question. Thereafter a written complaint was made by the complainant Dipannita Bose with respect to the incident in question. It is apparent that the seizure memo and report were

prepared between 11.15 P.M. to 12.00 midnight on March 22, 1996 whereas the complaint was made by the complainant after 12.00 midnight on March 23, 1996; hence the difference in dates between the seizure memo, the report prepared by ACP Sudesh Kumar and the complaint lodged by complainant Dipanita Bose. Regarding non-signing of the complaint dated March 23, 1996 by the complainant Dipanita Bose it be noted that the complaint has been written by the complainant in her own handwriting.

21. Regarding recording of statement of ACIO-I A.K.S.Teotia on April 02, 1996 it is to be noted that no preliminary enquiry has been conducted in the instant case. The record of the case shows that after the incident took place allegations were leveled against ACIO-I A.K.S.Teotia that he did not supervise the work of his subordinate officers including the petitioner on March 22, 1996 due to which the petitioner was able to extort money from the complainant and that he tried to shield the petitioner by attempting to hush up the matter when the petitioner returned the money to the complainant. In response thereto, ACIO-I A.K.S.Teotia had written a letter on April 02, 1996 to his superior officers denying the allegations leveled against him, which has been wrongly mentioned as '*statement*' in the list of documents annexed with the charge sheet issued to the petitioner.

22. Regarding the deposition of ACIO-I A.K.S.Teotia that the complainant had failed to identify the petitioner as the officer who had extorted money from her it is to be noted that ACP Sudesh Kumar PW-1 and Inspector Sukesh Singh PW-3, had categorically deposed that the complainant had identified the petitioner as the officer who had extorted money from her. Furthermore, the documentary evidence adduced in the case also establishes that it was the petitioner who had granted the immigration clearance to the complainant. The record of the present case

goes to show that the allegations relating to negligence, shielding the petitioner etc. were leveled against ACIO-I A.K.S.Teotia. In that view of the matter, the possibility that ACIO-I A.K.S.Teotia falsely stated that the complainant had failed to identify the petitioner as the officer who had extorted money from her in order to save his own skin cannot be ruled out.

23. Regarding the violation of Rules 14(16) and 14(21)(b) of the CCS (CCA) Rules, 1965 it is noted that ACP Sudesh Kumar who was a material witness of the department failed to appear in the enquiry proceedings despite issuance of several notices to him by the Enquiry Officer. Considering the importance of testimony of ACP Sudesh Kumar inasmuch as he had conducted an investigation into the incident in question the Disciplinary Authority permitted recording of statement of ACP Sudesh Kumar after conclusion of recording of evidence.

24. Regarding the submission relating to delay in supply of documents to the petitioner it is to be noted that the preliminary hearing of the enquiry was held on June 11, 1997, on which date the documents referred to in the charge sheet were sought by the petitioner. On the same date i.e. June 11, 1997 the Enquiry Officer supplied the said documents to the petitioner.

25. To summarize, the duty roster would evidence that the petitioner was working as Immigration Clearance Officer on counter No.Dep.-W(8) of departure left wing on the intervening night of 22nd and 23rd March, 1996. One Dipannita Bose was travelling by flight No.UA-002 to Hongkong and was granted immigration clearance from the departure left wing of the immigration. The computer printout of the immigration clearance at the computer terminal revealed that the same was manned by the petitioner. The embarkation card of the complainant bore a stamp which was issued to the petitioner. Seizure memo records recovery of ₹800/- from the petitioner.

In the decision reported as (1977) 2 SCC 491 State of Haryana & Anr. Vs. Rattan Singh it was held that logically probative evidence is sufficient evidence at a domestic enquiry to decide whether the charge leveled is proved or not.

26. Tested on the anvil of law aforesaid we dismiss the writ petition but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(JAYANT NATH)
JUDGE

MARCH 12, 2014
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