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

% *Date of Decision: March 06, 2014*

+ **W.P.(C) 6655/2003**

SANJIV KUMAR Petitioner
Represented by: Mr.Tarkeshwar Nath, Advocate with
Mr.Randhir Kumar, Advocate.

versus

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

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

PRADEEP NANDRAJOG, J. (Oral)

1. The facts leading to the filing of the present petition are that on July 15, 1994 the petitioner was appointed in CISF as a Constable. On July 22, 2002 he was detailed to perform duty as baggage lifter/handler at the X-Ray outlet located on the right side of Security Hold Area (SHA) of Domestic Terminal of NSCBIA Airport, Kolkata.
2. On July 22, 2002 at about 07.00 P.M. one N.Mohan Lal who was travelling to Mumbai by Sahara Flight No.S-2224 complained that a mobile phone was missing from his hand baggage after it was put through the X-ray machine when his baggage was screened. Immediately thereafter, Inspector Sham Lal, Duty Officer (SHA) came there and instructed SI Bindu Prasad,

who was present there to reverse the image of the bag on the screen. On being reversed, it was confirmed that when the bag was put through the X-ray machine it contained two mobile phones, one of which was missing. Thereafter the higher officers directed CISF personnel who were performing duty at the X-ray machine to be frisked. SI Bindu Prasad told of the petitioner having gone to the washroom few minutes before the complaint was made by the passenger Sh.N.Mohan Lal. At this, Inspector Sham Lal, accompanied by SI R.P.Guniya and the passenger went to the men's washroom for the staff, where a mobile phone was found in a cupboard. The passenger indentified the said mobile phone as belonging to him. Since the passenger was getting late for the flight he rushed to board the same but before that he gave the mobile number to Inspector Shyam Lal. As per the department, Inspector A.K.Singh interrogated the petitioner in the presence of Assistant Commandant C.L.Bhatia and the petitioner confessed that he had picked up the mobile phone of the passenger.

4. On the same day i.e. July 22, 2002, Inspector A.K.Singh prepared a special report PW-2/Ex.P.4 pertaining to the incident in which he recorded as aforementioned. The next day i.e. July 23, 2002 Inspector/Ex.Sham Lal prepared another report PW-1/Ex.P.2 pertaining to the incident which was identical to the report PW-2/Ex.P.4 with further recording that the petitioner had confessed to having committed the offence.

5. On July 23, 2002 a preliminary enquiry was conducted in respect of the incident by Inspector/Ex.P.C.Chausabh who submitted his report opining therein that prima facie it appears that the petitioner had lifted a mobile phone belonging to the passenger Sh.N.Mohan Lal from his hand baggage when it was scanned through the X-ray machine.

6. On July 24, 2001 a charge-sheet was issued to the petitioner alleging as under:--

“That No.942295151 Constable Sanjiv Kumar of CISF Unit, NSCBI Airport Kolkata while performing duty as baggage lifter/handler (SHA) at Domestic Terminal Building in ‘B’ Shift from 12:00 hrs to 20:00 hours he removed a mobile phone from the hand baggage of a passenger namely Mr.N.Mohan Lal at the out of X-ray machine and concealed the mobile with ill motive. Thus, No.942295151 Constable Sanjiv Kumar committed an act of misconduct, neglect of duty and gross violation of Rule. Hence the charge.”

7. The petitioner pleaded not guilty to the charge and thus an Inquiry Officer was appointed.

8. At the preliminary hearing the petitioner sought : (i) preliminary inquiry report; (ii) complaint lodged by Sh.N.Mohan Lal; (iii) receipt evidencing Sh.N.Mohan Lal receiving mobile phone allegedly recovered; and (iv) statements of witnesses recorded during preliminary inquiry.

9. Supplying the statements of the witnesses recorded during the preliminary inquiry, denying report of the preliminary inquiry to be supplied, the petitioner was informed that said report was not a relied upon document. He was informed that the passenger had not made any written complaint and that no receipt was obtained from him when the mobile phone, after it was recovered, was returned to him. Thus, it was informed that since said two documents did not exist, the question of supplying any copy to the petitioner did not arise.

10. At the enquiry, the department first examined Inspector/Ex.Sham Lal PW-1, who deposed the contents of special report dated July 22, 2002 prepared by him. Additionally, he deposed that he made a GD entry in

respect of the incident in question. Since while narrating the facts we have recorded what happened at the Airport, we need not note the testimony of PW-1 as it simply narrates said facts.

11. Thereafter Inspector/Ex.A.K.Singh PW-2, was examined who proved the report prepared by him and deposed facts which we have noted while narrating the sequence of events which allegedly took place at the Airport.

12. Thereafter SI Bindu Prasad PW-3, was examined who stated that on July 22, 2002 he was detailed to perform 'B' shift duty at SHA at the airport for the period from 12.00 P.M. to 02.00 P.M. At about 07.00 P.M. he was operating the X-ray which used to screen the hand baggage of the passengers. At that time one passenger came to him and complained that one mobile phone was missing from his hand baggage, whereupon he stopped the X-ray machine and reversed the same to check the contents of the baggage of the passenger. The X-ray showed that two mobile phones were kept in the hand baggage of passenger, one inside the baggage and the other in the side pocket of the baggage. Thereafter he screened the hand baggage of the passenger in the X-ray which revealed that the mobile phone kept inside the baggage was intact but the phone kept in the side pocket was not there. The petitioner was detailed as baggage lifter and assigned with the duty of endorsing remarks in the hand baggage tags on said day. At that time, SI/Ex.B.K.Mehta was sitting on a chair besides him for learning X-ray operation and a lady constable was performing duty at inlet of said X-ray machine. When the passenger in question was at the frisking booth, the petitioner had taken permission from him to go to the washroom. Before leaving, the petitioner had endorsed remarks on the hand baggage of the passenger in question. All this while, the passenger was shouting that his

mobile phone has been stolen from his hand baggage. Thereafter Inspector Sham Lal came there and enquired from him about the incident. He informed Inspector Sham Lal that save and except the petitioner no officer posted at X-ray machine left the X-ray machine during or after the time the baggage of the passenger was screened and that the petitioner had left the X-ray machine to visit the washroom. The petitioner returned and started performing duty.

13. Thereafter SI/Ex.B.K.Mehta PW-4, was examined who deposed in identical terms as SI Bindu Prasad PW-3.

14. Lastly, SI/Ex.R.P.Guliya PW-5, was examined who stated that on July 22, 2002 he was detailed to perform duty at the domestic terminal for the period from 02.00 A.M. to 10.00 A.M. At about 05.15 A.M. he saw a crowd near a X-ray machine at the SHA. On enquiry he learnt that a passenger has complained about theft of his mobile phone from his hand baggage. In this connection, officer C.L.Bhatia, had ordered frisking of staff posted at said X-ray machine. After sometime Inspector Sham Lal asked him to accompany him to the men's washroom. On checking the washroom he found a mobile phone in a cupboard. After sometime the passenger was called to the washroom and he identified the mobile phone to be his. Since the passenger was getting late for flight he rushed to board the same as the mobile phone was handed over to him.

15. After recording the statement of SI/Ex.R.P.Guliya PW-5, the Inquiry Officer summoned two officers; namely Assistant Commandant C.L.Bhatia and SI/Ex.S.K.Nirala as Court Witnesses.

16. Assistant Commandant C.L. Bhatia CW-1, deposed in identical terms as Inspector/Ex.A.K.Singh PW-2. Additionally, he stated that after the

mobile phone was recovered from the washroom he interrogated the petitioner in the presence of Inspector A.K.Singh and the petitioner confessed to his guilt.

17. SI/Ex.S.K.Nirala CW-2, stated that on July 22, 2002 he was detailed to perform duty at SHA of Domestic Terminal. At about 05.15 P.M. one passenger was complaining about theft of his mobile phone from his hand baggage.

18. Pertinently, opportunity was given by the Inquiry Officer to cross-examine aforesaid two court witnesses, which was availed by the petitioner.

19. Thereafter witnesses; SI Bindu Prasad PW-3 and SI/Ex.B.K.Mehta PW-4 were re-examined by the Inquiry Officer in order to seek certain clarification (s) from said witnesses. An opportunity was given by the Inquiry Officer to the petitioner to further cross-examine aforesaid two witnesses, which opportunity was availed by the petitioner.

20. The petitioner did not lead any defence evidence.

21. Vide his report dated February 25, 2003, the Inquiry Officer held that the charge framed against the petitioner stands established. The report of the Inquiry Officer was supplied to the petitioner for his response and after considering the same vide order dated March 22, 2003, was accepted by the disciplinary authority who levied the penalty of removal from service upon the petitioner against which appeal filed was rejected on June 21, 2003. Aggrieved, the present petition has been filed, and as argued today the following points were urged:-

(i) A copy of the preliminary enquiry report was not supplied to the petitioner which has prejudiced him in his defence.

(ii) Copies of the complaint lodged by the passenger as also the receipt evidencing return of the mobile phone not being supplied to the petitioner has prejudiced him.

(iii) The finding returned by the Inquiry Officer that the petitioner had removed a mobile phone from the hand baggage of a passenger is based on no evidence because nobody saw the petitioner removed the mobile phone.

(iv) Passenger N.Mohan Lal whose mobile phone was allegedly stolen by the petitioner has not been examined and he alone could prove that his mobile phone was stolen.

(v) The Inquiry Officer acted as a Prosecutor by cross-examining witnesses and summoning two as Court Witnesses followed by re-examining PW-3 and PW-4 to fill up lacunae in the prosecution evidence.

24. The report of the preliminary inquiry was not a relied upon document and has not been considered by the Inquiry Officer in his report; noting that statements of witnesses recorded during preliminary inquiry were supplied to the petitioner, there is no merit in the first contention that non-supply of the report of the preliminary inquiry caused prejudiced to the petitioner.

25. As regards the second submission, it is to be noted that neither any written complaint was made by the passenger in respect of the loss/theft of his mobile phone nor any receipt was obtained when the mobile phone was handed over to the passenger, thus the question of supply of said documents does not arise. The testimony of the witnesses of the prosecution would reveal that the passenger had arrived at the Security Check after boarding had been announced. The flight was to take off. Where was the time to complete the formalities such as obtaining a written complaint from the passenger as also a receipt when the mobile phone was returned to him.

26. As regards third and fourth submissions, it needs to be recorded that the following facts emerge from the depositions of the witnesses of the department : -

(i) On July 22, 2002 the petitioner was detailed to perform duty as baggage lifter/handler at the X-Ray outlet located on the right side of Security Hold Area (SHA) of Domestic Terminal of NSCBIA Airport, Kolkata for the period from 12.00 P.M. to 08.00 P.M.;

(ii) One mobile phone was missing from the hand baggage of passenger N. Mohan Lal inasmuch as two mobiles phones were present in the hand baggage of passenger when his baggage was first time screened in the X-ray but only one mobile phone was present in the baggage when the same was screened subsequently as deposed by SI/Ex.Bindu Prasad;

(iii) Mobile phone in question was missing after the baggage was screened at the X-ray machine and before the passenger came to collect the same after he was frisked;

(iv) Four persons were posted near X-ray machine at the relevant time namely, (i) a lady constable; (ii) SI/Ex.Bindu Prasad PW-3; (iii) SI/Ex.B.K. Mehta; and (iv) the petitioner;

(v) The lady constable could not have removed the mobile phone inasmuch as she was posted at inlet of X-ray machine and two mobiles phones were seen when the baggage was first time screened through the X-ray machine;

(vi) The fact that the mobile phone was found in the washroom used by the staff indicates that it was a CISF personnel who had concealed the said phone in the washroom inasmuch as the passengers did not have access to said washroom;

- (vii) The petitioner had endorsed the remarks on the tag of the baggage of the petitioner and had gone to the SHA washroom soon thereafter; and
- (viii) Mobile phone belonging to the passenger was found in the washroom.

The aforesaid facts, when seen cumulatively, strongly probabalizes that it was the petitioner who had removed the mobile phone from the hand baggage of passenger N.Mohan Lal and had concealed the same in the washroom of SHA.

27. Nothing turns on N.Mohan Lal, the passenger not being examined as a witness under the circumstances. Besides, in the decision reported as (1977) 2 SCC 491 State of Haryana & Anr. vs. Rattan Singh, not examining bus passengers who had told the ticket checking staff that the conductor Rattan Singh had charged money from them but had not issued tickets was held not to be fatal to the case of the prosecution. It was held that at domestic inquiries there is no allergy to hearsay evidence.

28. As regards the allegation that the Inquiry Officer acted as a Prosecutor, having perused the testimony of all witnesses we find that whenever clarifications were required the Inquiry Officer put clarificatory questions. The petitioner was given full opportunity to cross-examine the witnesses. Besides, two contemporaneous documents the first being the special report PW-2/Ex.P.4 prepared on the same day and the second being the report PW-1/Ex.P.2 prepared the next day rule out any contrivance on the part of the Inquiry Officer who was not even on the scene when the reports were prepared and we simply highlight that the depositions of the witnesses state facts which have already been recorded in the two reports. It would be thus useless for us to note the clarificatory questions put by the

Inquiry Officer.

29. We find no merit in the writ petition which is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(JAYANT NATH)
JUDGE

MARCH, 2014
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