

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

Decided on : 24.07.2014

+ W.P.(C) 6118/2013

RENU S. KUMAR

..... Petitioner

Through: Ms. Rekha Palli with Ms.
Amrita Prakash and Ms. Ankita
Patnaik, Advocates.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Ankur Chhibber, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. By an order dated 26.07.2012, the petitioner was levied the penalty of removal from service under Sub Rule (22) (ii) of Rule 36 read with Rule 34 and Schedule - 1 of CISF Rules - 2001 and Clause-2 (12) (xiii) of CISF (Amendment) Rules, 2003. Her appeal against the punishment was rejected on 31.12.2012. Even her Revision Petition against the levy of punishment and the order-in-appeal was dismissed on 31.05.2013. Aggrieved by the aforesaid orders resulting in her removal from service, the petitioner has sought under Article 226 of the Constitution of India, quashing of the three orders by a Writ of Certiorari and a Writ of Mandamus directing the respondent to reinstate the petitioner in service with all consequential benefits.

2. The case relates to an incident of 10th April 2012, when the petitioner was detailed in 'A' shift duty from 0500 hours to 1300

hours at domestic SHA X-BIS-4 of RGI Airport, Hyderabad. Her duty was to carry out “physical-baggage-checking” of passengers travelling to various destinations from Hyderabad Airport, her colleague Sub Inspector Suman Punia was assigned the duty at X-BIS (hand-baggage scanner machine) operation. It is stated that in the course of her duty, at 0955 hours, SI Punia signalled to the petitioner to check two handbags as she suspected the presence of some eatables, paper cutter and a coil of thin rope in the bag as neither of these items are allowed in the aircraft as cabin luggage.

3. Upon the petitioner’s request, the said lady-passenger opened the bag herself and paper cutter, eatables and a coil of thin rope etc. were put aside in a tray on the ground; initially the passenger was reluctant to take out the prohibited items and go outside and put the belongings in her checked in baggage on the plea that there was very little time left for her flight but later she relented and the petitioner directed the stamp duty constable to give the items to the passenger.

4. While putting the prohibited items back into her bag, the lady passenger levelled allegations that her two gold rings and one earring were missing from her bag and she started imputing the petitioner of pilferage. On alarm being raised, SI Suman Punia and the petitioner were taken to the Asstt. Commandant’s room which was about 12-15 meters away from the X-BIS machine for frisking by Ms. Shanthi Komari, Sr. Assistant GHIAL. Amongst them, the petitioner was first to be frisked by Ms. Shanthi Komari and while the petitioner was being frisked, the lady passenger and SI Suman Punia kept waiting on the sofa near the cabin in the Assistant Commandant’s room. It is

stated that after frisking the petitioner thoroughly and finding nothing on her person, Ms. Shanthi Komari came outside the cabin and she noticed the missing gold items on the floor, which upon being asked was recognized and claimed by the lady passenger to be her missing jewellery items. Thereafter, Ms. Shanthi Komari reported to the Commandant that she thoroughly frisked both of them whereas in fact, only the petitioner has been frisked and nothing was found on her person. It is stated that subsequently, during enquiry Ms. Shanthi Komari changed her statement and falsely stated that the missing gold items were found lying on the floor of the cabin.

5. The passenger later identified as Ms. Fatima Nazia and was seen in the CCTV recording. The article of charge against the petitioner was:

“A gross misconduct, an act of dishonesty and serious breach of discipline on the part of No.032650019 Lady SI/Exe Renu S Kumar, in that, on 10-04-2012 while she was detailed in ‘A’ shift duty from 0500 hours to 1300 hours at domestic SHA X-BIS-4 of RGIA Hyderabad, she while carrying out physical baggage checking duty, took out personal belongings i.e. two gold rings and one gold ear ring from the hand baggage of a lady passenger, namely Fatima Nazia who was bound to travel from Hyderabad to Delhi by Spice Jet flight SG-226 during pre-embarkation security checking at about 1000 hrs with the malafide intention of wrongful gain”

6. The prosecution evidence regarding the allegations were reduced to a very narrow compass. There is no dispute that the three gold items were not found at the X-BIS machine where the lady passenger's cabin-luggage were being checked. The three ladies

involved were the petitioner, her colleague - SI Suman Punia, and the passenger herself. They were taken into a room which was about 12 to 15 meters away. The petitioner was the first one to be frisked within the Assistant Commandant's room while the other two ladies waited outside the cabin. The three gold items were not found on the person of the petitioner. The petitioner contends that after having undergone a thorough but futile frisking inside the cabin of Assistant Commandant's office, Ms. Shanthi Komari later found the three gold items outside the cabin of Assistant Commandant's room which were then handed over to the lady passenger. SI Suman Punia (PW-2) during her cross-examination by the petitioner in question No. 11 clearly stated that the ornaments were found lying on the floor at a distance of 3 to 4 meters from the petitioner. Report of Ms. Shanthi Komari to the Commandant (Annexure P-3) recorded that ornaments were found outside the cabin in the AC's room when she came out after finishing frisking of the petitioner. Therefore, the contention of the respondent that none of the witnesses stated/deposed that the missing items were found at a distance of 3 to 4 meters, was wrong. The petitioner submits that there is no evidence of anyone having seen the petitioner being in possession of the said three gold items and/or dropping the items at the place from where they were found nor was any metallic sound heard by anyone when the gold items fell on the floor. The petitioner submits that Ms. Shanthi Komari later changed her true version from the report made to the Assistant Commandant immediately after the frisking in which she had recorded that she

found the missing gold items on the floor in the AC's room outside the cabin.

7. The petitioner's case was that instead of her being subjected to physical frisking first, the lady passenger should have been frisked first to ascertain whether the gold items were on the latter's person. The petitioner contends that the lady passenger was obviously irritated on being asked to remove the prohibited items from her cabin luggage and to check them in the check-in luggage, hence she had imputed the charge of pilferage against her, out of spite.

8. This Court witnessed the CCTV recording of the entire incident from the time the lady passenger arrived at the security check counter; opened her bag, took out items from it and is seen in conversation with the officers manning the X-BIS machine. The petitioner is identified as standing opposite to the passenger speaking to her over the security-check table. The passenger can be seen clearly along with her bag and the disgorged items from the bag kept on the table. There is no evidence or apparent removal of any item by the petitioner from the security check counter onto her person. After sometime she is seen to move away from the security counter and the passenger too leaves the spot. Apparently, this is the time when all the three ladies were taken to the Assistant Commandant's room for physical frisking.

9. The Revisionary Authority concurred with the finding of the department that there is no difference in the statements of PW-6 i.e. Ms. Shanthi Komari given after frisking of the petitioner and during her departmental inquiry; that in her initial statement Ms. Shanthi Komari did not specify the distance between the petitioner and the

missing gold items which were found lying on the floor. It was only during the cross-examination that Ms. Komari had deposed that it to be at a distance of about a foot or so from the petitioner; that the presumption of Ms. Komari having been pressurized to depose a tutored statement was misplaced; that the petitioner had chosen not to exercise her right to cross-examine Ms. Komari during the departmental inquiry; that the allegations of subjecting the petitioner to unnecessary harassment of being frisked too was baseless. The Revisionary Authority held that the passenger had written a complaint about missing ornaments and partly held the petitioner responsible for the theft but the other two ladies were not frisked because, in the interim, the ornaments were recovered.

10. This Court notes that the Revisionary Authority recorded that the ornaments had been recovered from the frisking of the petitioner. This is, evidently an erroneous finding. It is not based upon the record because the gold items were admittedly discovered not from the person of the petitioner but were found lying on the floor outside the cabin at some distance from her, after she had been frisked by Ms. Shanthi Komari.

11. After having witnessed the CCTV recording and having considered the submissions of counsel for the parties, this Court is of the view that there is nothing on record to show that the petitioner removed, picked-up or pilfered the gold ornaments from the baggage of the lady passenger. The ornaments were, evidently, found outside the cabin which was located inside the Assistant Commandant's room where the petitioner was physically frisked. They were not found on

the person of the petitioner but, at some distance from her. The distance claimed by the petitioner is 3 to 4 feet away from her and outside the cabin where she was physically frisked and that there is no evidence of anyone witnessing the petitioner dropping the gold ornaments on the floor or the tinkeling sound of the gold items falling on the floor. An extract of the CISF General Diary (DOM SHA) dated 10.4.2012 (Page 23) notes: “the said lady Pax found her golden earring & ring found near the ground.” There is no direct evidence of the gold items ever being on her person or in her possession. Therefore, the allegation against the petitioner was baseless, misplaced and untrue and the finding against her was clearly wrong.

12. This Court is further of the view that logically, when the lady passenger complained of loss of the gold items, it should have been first ascertained whether she had actually lost it or had erroneously removed it into some pocket of her apparel. It is well possible that she had it on her person and could have dropped it on the floor just when the physical frisking was taking place. At the time of security check of hand bag, an airline passenger is always anxious to clear the security check. Any obstacle in quick clearance or being subjected to further checking of their cabin luggage could cause annoyance, embarrassment and also be perceived as harassment. The pressure to clear out from the checking counter is always there, all-the-more because of the mounting queue of passengers behind who are awaiting their turn to clear into secure area for boarding of the plane. In such circumstances an anxious and perhaps spiteful passenger could well impute a charge against an officer who though being diligent in her

duty may be perceived by the passenger as the embodiment of harassment. It is well possible that the lady passenger could have removed the three gold ornaments from her body lest it create a problem while passing through the metal detector frame. She could well have been holding them in her hand or having kept it somewhere else in her belongings or apparel, have forgotten it in the confusion, after being subjected to detailed checking of the cabin baggage. The gold ornaments could have innocently got mixed up in her own belongings while lending her the erroneous impression, that the same had been pilfered by the petitioner. It is also possible that the lady passenger discovered her mistake when she along with two CISF officers were being taken for physical frisking and to escape embarrassment, it could have been dropped in the Assistant Commandant's room. Therefore, logically, the lady passenger should have been frisked first so as to obviate any possibility of the gold items being on her person.

13. Insofar as there is no direct evidence inculcating the petitioner of the offences she was charged with, the domestic inquiry was vitiated by ignoring the likelihood of the gold items having been dropped inside the Assistant Commandant's room by someone else.

14. A separate statement of the passenger has not been recorded during the trial nor was she put to any cross-examination in this regard. Therefore, the presumption, by the CISF that the gold ornaments which were found on the floor were either dropped or left by the petitioner just before she went in for physical frisking, is without any basis and is wrong. Subjecting the petitioner to physical

frisking first instead of the complainant lady passenger, to ascertain whether the missing items were on the person of the petitioner displays a clear bias against the petitioner and a presumption that the petitioner had indeed, pilfered the gold ornaments.

15. The petitioner has spent nine years of unblemished service but has been removed from service on the complaint of just an agitated passenger, whose bags were checked by the petitioner, not only in front of the passenger but in the presence of her other on-duty CISF colleagues who were aware of the entire checking.

16. From the aforesaid discussion, the charge of misconduct, dishonesty and breach of discipline in misappropriating the personal belongings i.e. three gold ornaments is not made out. Her removal from service is fully unjustified. The innocence of the petitioner is witnessed from the CCTV recording as well as from the aforesaid discussion. There is nothing to inculcate the petitioner and she is innocent. The petition succeeds. The impugned orders dated 26.07.2012, 31.12.2012 and 31.05.2013 are set aside. The petitioner is to be reinstated in the service with full salary and all benefits of pay increments, seniority etc. for the intervening period. The respondents are directed to issue necessary orders in this regard within four (4) weeks. No orders as to costs.

NAJMI WAZIRI
(JUDGE)

KAILASH GAMBHIR
(JUDGE)

JULY 24, 2014/acm