

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

% *Judgment Reserved on: August 01, 2016*
Judgment Delivered on: August 03, 2016

+ **W.P.(C) 9200/2006**

G.B.SHAH

..... Petitioner

Represented by: Ms.Kajal Chandra, Advocate with
Ms.Swati Sinha and Ms.Perna
Chopra, Advocate

versus

UOI & ORS

..... Respondents

Represented by: Mr.Arun Bhardwaj, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. Mr.Aly Sidk, a resident of Cairo, Egypt was travelling on May 08, 2004 by flight No. 9W-331 bound for Delhi from Mumbai at 09:10 hrs. During screening of his baggage a suspected object like cartridge was noticed by SI/Exe. S.P.Verma and after confirming his doubt by showing the image on X-Ray Screen to fellow officials, the concerned passenger was informed. The baggage was opened and the live cartridge recovered from a pouch containing coins was removed by SI/Exe. S.P. Verma who was on duty to screen the baggages. Senior officer Inspector/Exe. G.B. Shah i.e. the petitioner was informed about the incident and the passenger along with the objectionable item recovered from the baggage was handed over to him. As the objectionable object had already been taken out, the baggage was cleared. SI/Exe. S.P.Verma continued

performing his duty of screening the baggages.

2. What happened thereafter would have remained unnoticed but for the communication sent by the passenger vide letter dated May 10, 2004, which is extracted as under:

*'ALY SIDK
25 E Sebak St.
Helirpolis, Cairo*

Dated 10th May, 2004

*To
The Director General,
Central Industrial Security Force,
New Delhi.*

Subject:- Unscrupulous and corrupt attitude of a senior officer.

Sir,

Under the mentioned subject I would like to draw your kind attention towards an immoral and deceitful act of a security officer posted at Mumbai Airport. The following sequences of the incident would cast the light on the gravity of the act.

It was 8th instant of May -2004 when I was about to travel by flight No.9W-331 Mumbai to Delhi. During security check I was inquired by a security staff whether I had license for keeping weapon. I was shocked to learn that the security personal had noticed a live cartridge in my hand bag. I tried to convince him that I had undergone several security checks prior to that and none found the same. The security personal opened the bag and discovered a live cartridge. It undoubtedly belonged to me. The security personal called two security officers and briefed the situation to them. Afterwards, a senior officer (G.B.Shah) was called by the concerned personal. He too inquired whether I had any license for weapon. I confessed

that I had weapons and license but not carrying at that time. I was asked to follow the officer. I was taken to a room where Mr.G.B.Shah terrorized me explaining the repercussion for carrying live cartridge and its irreparable legal consequences. I pleaded that it happened out of ignorance and unawareness. I was not aware about the cartridge in the bag. My appeal and pleading could not convince him. He asked me to pay \$1000 to him. He assured me that I would go unhurt if I pay him the amount. I was compelled to pay him an amount of \$800 to get me out from the terrific situation. I did not have any other way. This kind of attitude of the Indian officer amounts to gross harassment to innocent foreigner tourists. This brings defame and wrong impression to India in abroad.

Not only hope but I am sure this matter would be given due attention adn the guilty will be punished.

Thanks

Yours truly,

*Sd/-
(ALY SIDK)
25 E Sebak St.
Helirpolis, Cairo*

*Copy to
Director, CS International Airport, Mumbai.'*

3. On the basis of above communication received from Mr.Aly Sidk action was initiated against the petitioner. A memorandum of charge containing the following Articles of Charge was prepared and issued to the petitioner:-

Article of Charge-I

“That No. 873280396 Inspector/Exe.G.B.Shah of CISF unit, CSIA Airport Mumbai, while detailed in the day shift duty on 08/05/2004 from 07:30 hrs. to 19:30 hrs. and functioning the

supervision duty at Terminal-1B has suppressed the fact of the recovery of one round live ammunition which was recovered from the baggage of one passenger namely Mr.Aly Sidk, by No. 013210069 SI/Exe S.P. Verma and handed over to him at about 08:30 hrs. on 08/05/2004. The above act on the part of No. 873280396 Insp/Exe G.B. Shah amounts to gross negligence and dereliction towards his duties.”

Article of Charge-II

“That No. 873280396 Inspector/Exe.G.B. Shah of CISF unit, CSIA Airport Mumbai, while detailed in the day shift duty on 08/05/2004 from 0730 hrs. to 1930 hrs. and functioning the supervision duty at Terminal-1B had disposed off one live ammunition at his own level which was handed over to him by CISF No.013210069 SI/Exe S P Verma at the security Hold Area (SHA) of Terminal 1B on 08/05/2004 at about 08:30 hrs. and kept the department in darkness about the recovery of said live ammunition and its disposal. The above act on the part of No.873280396 Insp/Exe G.B.Shah amounts to gross misconduct, dereliction of duty and violation of lawful orders as well as prejudicial to the security of Civil Aviation Operation.”

Article of Charge-III

“That No. 873280396 Inspector/Exe.G.B. Shah of CISF unit, CSIA Airport Mumbai, while detailed in the day shift duty on 08/05/2004 from 0730 hrs. to 1930 hrs. and functioning the supervision duty at Terminal-1B had allowed a passenger of Egyptian nationality namely Mr.Aly Sidk, to boardo Flight No.9W-331 bound for Delhi from Mumbai on 08/05/2004 at 09:10 hrs. in a clandestine manner and dishonest intention without taking appropriate legal course of action against the said passenger for carrying one live ammunition in his hand bag without valid document. The above act on the part of No. 873280396 Inspector/Exe.G.B. Shah amounts to gross misconduct, indiscipline and also raised a question on his integrity.”

4. In response to the chargesheet, the petitioner denied all the charges levelled against him.
5. The Disciplinary Authority decided to conduct an inquiry under Rule 36 of CISF Rules 2001 against the petitioner. Sh. Rajiv Pant, Dy. Commandant, CISF Unit, CSIA Mumbai was appointed as Enquiry Officer to inquire into the charges framed against the petitioner.
6. During inquiry two PWs i.e. SI/Fire S.P. Verma, SI/Fire Devnath Saha, were examined by the department to prove the charges against the petitioner. Asstt. Commandant M.S. Inwate has been examined as CW-1. The petitioner also produced four DWs namely SI/Fire Bini Sajan as DW-1, SI/Fire S.S. Rawat as DW-2, SI/Fire A.S.C.Singha as DW-3 & SI/Exe. N.N.S. Yadav as DW-4 in his defence.
7. The Enquiry Officer submitted his report to the Disciplinary Authority wherein after referring to the testimony of the above named witnesses held that all the charges against the petitioner have been proved.
8. The petitioner was served with the copy of the inquiry report giving him an opportunity to submit his response within fifteen days from the receipt of the same. The petitioner submitted his representation dated March 23, 2005 against the report of Enquiry Officer. After considering the report of the Enquiry Officer and the response of the petitioner, the Disciplinary Authority vide impugned order dated April 11, 2005 levied the penalty of 'Dismissal from Service' which was maintained by the Appellate Authority vide its order dated September 08, 2005.
9. The present petition challenges the order dated April 11, 2005 passed by the Disciplinary Authority imposing a penalty of 'Dismissal from Service' as also the order of rejection dated September 08, 2005 by the

Appellate Authority.

10. On behalf of the petitioner Ms. Kajal Chandra, Advocate submitted that in this case inquiry was instituted by the person who was not competent to institute the same and the petitioner has been denied fair opportunity to defend himself. Learned counsel for the petitioner has challenged the penalty of dismissal from service claiming it to be a case based on 'no evidence' against the petitioner.

11. Learned counsel for the petitioner has drawn the attention of this Court to the fact that the foundation for initiating disciplinary proceedings against the petitioner is missing in this case for the reason that Mr.Aly Sidk in whose baggage the ammunition (live cartridge) was allegedly detected and recovered has neither been cited nor examined as witness. Despite petitioner's request to summon Mr.Aly Sidk from Egypt at his own expenses, his request was not acceded to. Thus, it is a case where he has been awarded penalty of dismissal from service without examining the complainant who allegedly reported the matter vide his communication dated May 10, 2004 in respect of the incident dated May 08, 2004.

12. Learned counsel for the petitioner has submitted that since the contents and veracity of the letter dated May 10, 2004 written by Mr.Aly Sidk resident of Cairo, Egypt were not proved by him, the said letter being not supplied to the petitioner to ascertain in which language the said letter was signed by Mr.Aly Sidk and how it was received i.e. by post or by hand, the petitioner could not have been held guilty for the charges framed against him. Further no entry was made by SI/Exe. S.P. Verma in the daily diary about the doubtful article in the baggage of the passenger or name of the official whose assistance was taken by SI/Exe. SP Verma to ascertain the

nature of the doubtful object. He also did not flash wireless message to any senior officer about the detection of the ammunition (live cartridge) from the baggage of the passenger. Statement of the defence witness examined by him to establish that there was no recovery of live cartridge has not been appreciated. Learned counsel for the petitioner has prayed for quashing the impugned orders dated April 11, 2005 and September 08, 2005.

13. Mr.Arun Bhardwaj, learned counsel for the respondent has submitted that on May 08, 2004 Mr.Aly Sidk an Egyptian citizen was suspected of carrying a live cartridge in his pocket. After confirming the nature of the suspected object i.e. live cartridge he was handed over to the petitioner by CISF staff. The petitioner asked for \$1000 from the passenger for his release and ultimately allowed him to leave after taking \$800 from him. The incident was reported by the passenger by letter dated May 10, 2004 and an inquiry was instituted into an entire incident. Learned counsel for the respondent has submitted that there was ample material before the Enquiry Officer in the form of statement of witnesses examined during inquiry to prove the charges against the petitioner so there was no need to call the passenger from whose baggage the live cartridge was recovered as he notified the incident to the notice of CISF through a letter. Learned counsel for the petitioner has submitted that in view of the nature and gravity of offence the petitioner deserved penalty of dismissal from the service.

14. Perusal of record of disciplinary proceeding evinces that at the stage of preliminary hearing, the petitioner was questioned as to whether he had received the charge-sheet and understood the charges to which he replied in affirmative. During the preliminary hearing the petitioner was also questioned as to whether he admitted any of the charge so that inquiry could

be restricted only in respect of the charge which is not admitted. The petitioner denied all the charges. When the petitioner was questioned about having any objection on the appointment of the Deputy Commandant Rajiv Pant as the Enquiry Officer, the petitioner expressly stated that he had no objection in this regard. When questioned about the language in which he wanted the inquiry proceedings to be conducted, the petitioner desired that the inquiry should be conducted in Hindi. The petitioner was specifically asked whether he wanted assistance of any MOF posted in the said Unit and if so, to give list of three names as required under Rule 36(8)(a) CISF Rules, 2001. The petitioner did not exercise his option. He also confirmed that he had fully understood the procedure to be followed during the inquiry proceedings.

15. It is evident from the departmental file that as desired by the petitioner the inquiry proceedings have been conducted in Hindi. One of the witness SI/Fire Deb Nath Saha (PW-2) was initially examined on November 21, 2004. When the petitioner objected to the assistance provided by the PO to the Bengali speaking PW-2 to translate his deposition in Hindi, the objection made by the petitioner was accepted by the Enquiry Officer and PW-2 was thereafter examined and cross examined on November 29, 2004. Thus, the petitioner cannot claim that the inquiry has not been conducted in accordance with the principles of natural justice. He never questioned the appointment of the Enquiry Officer by the Disciplinary Authority and none of the issues raised before us about fairness of trial or competency of the Disciplinary Authority to appoint Enquiry Officer were raised.

16. Next contention raised on behalf of the petitioner is non-examination of the passenger Aly Sidk to ascertain the correctness of the contents of the

letter stated to have been sent by him on May 10, 2004 and consequent effect of non-examination of Aly Sidk make it a case of 'no evidence' against the petitioner.

17. Since the main ground of challenge by the petitioner is that it is a case of 'no evidence' against him as the complainant has not been examined nor the contents of his communication which formed basis to institute an inquiry against him have been proved against him, it would be appropriate for us to refer to the statement of two material witnesses in this regard.

18. Sub-Inspector/Exe. S.P.Verma (PW-1) was on duty to check the baggages of the passengers which also included on bag which was suspected by him to be containing something like cartridge. He deposed before the Enquiry Officer that on May 08, 2004 i.e. the day when posting order of the petitioner G.B.Shah was received, he was on day shift duty. At about 08:30 hrs to 09:00 hrs when he was on baggage checking duty, he received one baggage for manual checking which he put in X-Ray-3 of Terminal 1B. At X-Ray screen he could see something like round (ammunition) in the coins. He again examined the bag from another angle and the doubt was confirmed. Hence, he showed the image on X-Ray to another Sub-Inspector whose name he could not recollect. When that Sub-Inspector also confirmed the said object to be like a round (ammunition), then PW-1 third time examined the baggage from another angle and again showed it to SI/Fire Deb Nath Saha who confirmed the same to be a cartridge (ammunition). Then he kept the bag on the baggage checking table and questioned the concerned passenger who was dressed like Arabian. The passenger was not able to understand Hindi or English, so by gesture he was made to understand about the presence of a live cartridge in his baggage.

Thereafter the passenger took out a pouch containing coins and out of that one live round of pistol was recovered. He again questioned the passenger whether he was having an arms licence but was unable to understand what the passenger said in response.

19. PW-1 SI/Exe.S.P.Verma stated that he informed and called the petitioner i.e. Inspector G.B.Shah, handed over the passenger Aly Sidk alongwith live cartridge and also narrated the entire episode to Inspector G.B.Shah. When Inspector G.B.Shah started talking with the passenger he resumed baggage checking duty of other passengers. He has also stated that Inspector G.B.Shah asked to put 'security check' stamp on the tag of the bag of the passenger as live round had already been removed from the bag and there was no objection in clearing the same from security angle, he put 'security check' stamp on its tag.

20. The petitioner cross examined PW-1 SI/Exe.S.P.Verma at length and during cross examination also SI/Exe. S.P.Verma reiterated that after the cartridge was taken out, the petitioner directed him to put the stamp as minus the cartridge the baggage was cleared. Question No.23 put to PW-1 SI/Exe. S.P.Verma was as to why he followed illegal command to put stamp on the baggage tag. SI/Exe. S.P.Verma again replied that he followed the command as nothing objectionable was left in the bag. While answering Question No.24 as to which superior officer other than the petitioner was informed by him about the incident, PW-1 SI/Exe. S.P.Verma replied that it was for the petitioner to inform other superior officers.

21. PW-2 SI/Fire Deb Nath Saha has stated that on May 08, 2004 he was on duty in the day shift at SHA of Terminal 1B. At about 08:30 hrs. after completion of baggage checking when he was proceeding towards X-BIS-1

for duty at that point of time SI/Exe.S.P.Verma called him towards X-BIS-3 and showed him an image in the monitor and asked him whether it was an image of an ammunition or not. He looked at the image of the object carefully which was round and opined to SI/Exe.S.P.Verma that it might be image of ammunition and advised him to check it thoroughly. Thereafter he left for duty to X-BIS-1. After sometime, he saw a foreign passenger in Arab robe standing near X-BIS-3. He also saw SI/Fire S.P.Verma in discussion with Inspector/Exe. G.B.Shah. He was satisfied that SI/Firce S.P.Verma was giving information about the incident to the superior and he became busy in duties.

22. The Enquiry Officer has discussed the evidence while recording that during screening of baggage of an Egyptian passenger, PW-1 SI/Exe. S.P.Verma suspected a cartridge which he confirmed not only by seeing object from three different angles but also getting it viewed from two other fellow colleagues and thereafter confronting the passenger about the objectionable content in the bag. The passenger took out the pouch containing coins from which one live cartridge was recovered. In the meantime Inspector/Exe. G.B. Shah i.e. the petitioner was also called at the spot. After the petitioner reached there, the passenger alongwith recovered cartridge was handed over to him and on his direction cleared the baggage as the cartridge had already been removed. PW-2 SI/Exe. S.P.Verma thereafter became busy in discharging his duty to clear baggages of other passengers.

23. The Enquiry Officer has considered the standing instructions in this regard. PW-1 SI/Exe. S.P.Verma sent communication to a superior officer of a rank of Inspector i.e. the petitioner and handed over the baggage, the passenger and the recovered cartridge. Thus, further action was required to

be taken by the petitioner.

24. But for the letter dated May 10, 2004 sent by the passenger namely Aly Sidk who perhaps on not being able to pocket that incident preferred to inform the concerned authorities, the incident would have gone unnoticed by the superior officers.

25. The letter dated May 10, 2004 sent by the passenger Aly Sidk was only an awakening call to the CISF Authorities. Initiation of inquiry on the basis of that letter and examination of witnesses who had an opportunity to notice the objectionable contents in the baggage has been proved during inquiry by examining the concerned witnesses. Contents of letter dated May 10, 2004 were well known to the petitioner. He was even having the copy of the same to know its exact contents. It being a case of total denial of the incident by the petitioner at every stage, the Enquiry Officer examined the witnesses in the light of complaint made by name to the concerned authorities. On the basis of material produced during conduct of inquiry with right to cross examine the witness being availed by the petitioner, we find that the inquiry has been conducted as per rules.

26. It is well settled that while in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt, in the departmental proceedings the standard of proof is one of preponderance of the probabilities. It is a case where non-examination of the concerned passenger from whose baggage the cartridge was recovered had hardly any effect on the outcome of inquiry proceedings.

27. In (1995) 6SCC 750 Union of India and Anr. v. B.C. Chaturvedi, a three-Judges Bench of Supreme Court has considered the scope of judicial review by High Court and, inter alia, observed as under:-

‘Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence.’

28. When the case of the petitioner is examined in the light of above settled legal position, we have not been able to find any illegality, irregularity or perversity in the action of the respondents.

29. The writ petition is dismissed.

30. No costs.

(PRATIBHA RANI)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

August 03, 2016
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