

Commr.Of Police,Delhi & Ors vs Jai Bhagwan on 10 May, 2011

Equivalent citations: AIRONLINE 2011 SC 35, 2011 (6) SCC 376, (2011) 3 ESC 401, (2011) 129 FAC LR 1094, (2011) 3 SCT 326, (2011) 6 MAD LJ 305, (2011) 2 SERV LJ 440, (2011) 179 DLT 578, (2011) 3 SERV LR 728, (2011) 2 CUR LR 855, (2011) 5 SCALE 696, (2011) 3 JCR 189 (SC), (2011) 8 ADJ 69 (SC), (2012) 2 CHANDCRIC 23

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Bench: Mukundakam Sharma, Anil R. Dave

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4213 OF 2011

[Arising out of SLP (C) No. 13331 of 2010]

Commissioner of Police, Delhi & Ors.

.... Appellants

Versus

Jai Bhagwan

....Respondent

JUDGMENT

Dr. MUKUNDAKAM SHARMA, J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated 20.01.2010 passed by the High Court of Delhi in Civil Writ Petition No. 3591 of 2001, whereby the High Court allowed the Writ Petition filed by the respondent herein and set aside the order dated 15.01.2001 passed by the Central Administrative Tribunal.

3. The facts leading to the filing of the present case are that the respondent herein, at the relevant point of time, was working as a Constable in Delhi Police and was posted at the IGI airport, New Delhi at the X-Ray Machine Belt. An allegation was made by one Mrs. Ranjana Kapoor that while being so posted there the respondent extorted Rs. 100/- by way of illegal gratification from her during the course of security check of passengers. It is alleged that Mrs. Kapoor made a complaint to one S.P. Narang, Operations Officer of Air France who took the complainant to O.P. Yadav, Inspector, Delhi Police on duty at the Delhi Airport. It is also alleged that the complainant identified the respondent, who thereupon returned the aforesaid sum of Rs. 100/- to the complainant in the presence of O.P. Yadav, Inspector, and Arjun Singh, Sub-Inspector, who were also present at that time.

4. In view of the aforesaid allegations made against the respondent, a departmental enquiry was initiated against him and a chargesheet was drawn up with a charge to the following effect: -

"Charge:

You, Ct. Jai Bhagwan No. 770/A are hereby charged that on the night intervening 6/7.3.95 while performing duty on Belt at X-Ray machine at gate No. 7, 8 and 9 in Shift A. NITC had extorted Rs. 100/- as an illegal gratification from Mrs. Ranjana Kapoor during the course of Security Check of passengers of flight No. AF-177. She made a complaint of this incident to Shri P.S. Narang Operations Officer of Air France, who introduced her to Shri O.P. Yadav Inspr. She handed over a complaint to the Inspector and identified you, Ct. Jai Bhagwan No. 770/A as you had accepted Rs. 100/- from her which was later on returned to her by you in the presence of Inspr. O.P. Yadav and SI Arjun Singh. The above act on the part of you, Ct. Jai Bhagwan No. 770/A amounts to gross misconduct and unbecoming of a police officer which renders you liable to be punished Under Section 21 of D.P. Act, 1978."

5. Pursuant to the initiation of the aforesaid enquiry, an enquiry officer was appointed, who examined four witnesses produced on behalf of the appellants. Two witnesses were also produced on behalf of the respondent. After recording evidence and after appreciating the said evidence as also the written defence statement of the respondent a report was submitted by the enquiry officer finding the respondent guilty of the charge drawn up against him.

6. With the aforesaid records and the findings, matter was placed before the disciplinary authority who directed that any representation as against the findings recorded by the enquiry officer could be submitted by the respondent.

Pursuant to the same, the respondent submitted a detailed representation on 30.10.1995. The disciplinary authority after going through the entire records passed an order dated 15.11.1995 dismissing the respondent from service. It was stated in the said order passed by the disciplinary authority that after considering the evidence on record, gravity of misconduct and overall facts / circumstances of the case it is proved that the respondent misused his official position and involved himself in corrupt practices / malpractices of illegal gratification and, therefore, he is not a fit person to be retained in the police force, consequent upon which the punishment of dismissal was awarded to the respondent.

7. Being aggrieved by the aforesaid order passed by the disciplinary authority the respondent filed an appeal before the appellate authority which was also dismissed vide its order dated 19.01.1996. Consequently, the respondent filed a revision which also came to be dismissed. Feeling still aggrieved the respondent filed an original application before the Central Administrative Tribunal [for short "the Tribunal"] which was registered as OA No. 1755/1997. By order dated 15.01.2001 the Tribunal dismissed the aforesaid original application as against which the respondent filed a Writ Petition in the High Court of Delhi. By the impugned judgment and order passed on 20.01.2010 the High Court allowed the Writ Petition filed by the respondent. In the aforesaid judgment and order the High Court made following observations: -

"4. Undoubtedly, the charges of misuse of position and extortion are very serious charges. However, before a person is fastened with the punitive liability of charges of corruption / extortion, a proper inquiry, following the principles of natural justice has to be conducted.

5. It is well settled that the High Court or the Central Administrative Tribunal will not interfere with the findings of fact recorded at the domestic enquiry, however, if the case is a case of no evidence or the finding is highly perverse or improbable then it is the duty of the High Court and the Central Administrative Tribunal to go into the merits of the case....."

And while referring to the decision in the case of Kuldeep Singh v. Commissioner of Police reported in AIR 1999 SC 677 the High Court held that the case of the appellants herein is a case of no evidence and that there is violation of Rule 16 (iii) of the Delhi Police (F &A) Rules, 1980 (for short "the Rules") and ordered the reinstatement of respondent in service but without any back wages.

8. As against that order of the High Court appellants have filed the present appeal, in which, notice was issued and upon service of the said notice, the respondent entered appearance and, therefore, we heard the learned counsel appearing for the parties and also perused the materials on record.

9. The learned counsel appearing for the appellants submitted that there was enough evidence on record to find the respondent guilty of the charge against him. In support of the said contention reference was made to the decision of the disciplinary authority as also to the findings of the enquiry officer. It was also submitted that Inspector, O.P. Yadav and S.I. Arjun Singh stated in clear terms that they had seen the respondent returning the aforesaid amount of Rs. 100/- to the complainant. It was also submitted that there was no violation of Rule 16(iii) in the present case and, therefore, High Court was not justified in setting aside the order of dismissal passed against the respondent.

10. The learned counsel appearing for the respondent, however, while refuting the aforesaid contentions submitted that the Mrs. Ranjana Kapoor, complainant of the case, was not examined as witness in the departmental enquiry and, therefore, there was no opportunity to cross-examine her and, therefore, there is a violation of Rule 16(iii) of the Rules.

It was also submitted that so far as the receiving of illegal gratification by the respondent is concerned, the case of the appellants is a case of no evidence at all. In this regard support was also taken by the counsel appearing on behalf of the respondent from the statements of the Nirmala Devi [DW-

1].

11. In the light of the aforesaid submissions we have perused the records. The complainant Mrs. Ranjana Kapoor complained about the said incident to P.S. Narang, Operations Officer of Air France, who took the complainant to O.P. Yadav, Inspector, Delhi Police on duty at the Delhi Airport and there she lodged the complaint to Inspector-O.P. Yadav that the respondent has extorted illegal gratification from her amounting Rs. 100/- during the course of security check of passengers. The records disclose that thereupon Inspector-O.P. Yadav along with complainant and P.S. Narang went to the place of the security check where, it is stated that, the respondent gave Rs. 100/- to the complainant in the presence of Arjun Singh, S.I..

12. O.P. Yadav, Inspector, and Arjun Singh, S.I., during the departmental enquiry proceedings have only deposed that Rs. 100/- was returned by the respondent to the complainant. During the course of enquiry proceedings no witness was examined on behalf of the appellants to prove and establish by tendering any direct, cogent and reliable evidence that the aforesaid amount of Rs. 100/- was received by the respondent by way of illegal gratification from anyone.

13. In the present case the strange thing is that the two persons, namely, O.P. Yadav and Arjun Singh, on the basis of whose statement present case was initiated, have stated that they have not witnessed/seen respondent taking any money from the complainant and that they have only witnessed the fact of respondent returning money to the complainant. Even otherwise, besides these two persons, there must have been many other persons including police officers on duty near about the X-Ray machine belt but none of them was cited and examined as witness during the departmental proceedings to prove and establish that such money as alleged was received by the respondent as illegal gratification.

The place where security check was carried out was an open place and there must have been many other persons, besides police officers, present at that time but none of them has been examined during the departmental proceedings against the respondent to prove the alleged fact of demanding and receiving illegal gratification by him.

14.In the present case, although there is some evidence that an amount of Rs. 100/- was returned by the respondent to the complainant but there is no such direct and reliable evidence produced by the appellants in the departmental proceedings which clearly prove and establish that the respondent demanded and received an illegal gratification of the said denomination. It seems that the proof of taking such illegal gratification has been drawn from the evidence of returning of Rs. 100/- to the complainant by way of a link up.

15.It also seems quite impracticable to presume that in the presence of so many passengers, the respondent could have extorted money. The allegation of receiving Rs. 100/- as illegal gratification is framed on suspicions and possibilities while trying to link it up with the instance of returning back of Rs. 100/- by the respondent to the complainant.

There are many other shortcomings in the entire investigation and the enquiry like the statement of Mrs. Ranjana Kapoor was not recorded by the Inspector and the Inspector also did not take down in writing and also attest the complaint made by her. The statement of S.P. Narang was also not recorded by the Inspector nor did the Inspector seize Rs. 100/- note nor noted down its number. Mr. Narang was also not examined during the course of departmental proceedings. Non-examination of the complainant and P.S. Narang during the departmental proceeding has denied the respondent of his right of cross-examination and thus caused violation of Rule 16 (iii) of the Delhi Police (F & A) Rules, 1980.

16.In the absence of such a definite/clear proof supporting the case of the appellants it is difficult to draw a finding of taking illegal gratification by the respondent from the complainant.

Therefore, as rightly held by the High Court the present case is a case of no evidence.

17.Therefore, in view of the facts and circumstances of the present case at hand we have no hesitation to hold that the view taken by the High Court does not suffer from any infirmity and that the present is a case of no evidence and that there is a violation of Rule 16 (iii) of the Delhi Police (F & A) Rules, 1980.

18.Albeit there could be a needle of suspicion pointed towards the respondent. However, suspicion cannot take the place of proof and, therefore, we find no merit in this appeal which is hereby dismissed.

19.However, in the facts and circumstances of this case we not only reiterate the order passed by the High Court that the respondent on reinstatement would not be paid any back-

wages or arrears of wages for the period during which he was out of service but we also observe that he would not be given any sensitive posting and he shall be kept under watch.

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.....J [Dr. Mukundakam Sharma]J [Anil R. Dave] New Delhi, May 10, 2011.