
Union of India Vs Narender Singh

Writ Petition (C) 5869 of 2001

Court: Delhi High Court

Date of Decision: July 23, 2013

Hon'ble Judges: V. Kameswar Rao, J; Pradeep Nandrajog, J

Bench: Division Bench

Advocate: Somdutt Kaushik, for the Appellant; Shanker Raju, for the Respondent

Final Decision: Dismissed

Judgement

Pradeep Nandrajog, J.

The writ petition was dismissed on December 05, 2001 noting that the decision impugned has since been

implemented by the petitioner and the penalty of dismissal from service imposed upon the respondent being set aside he has been reinstated in

service. However, on a challenge before the Supreme Court, order dated December 05, 2001 was set aside with a direction that the writ petition

be heard and decided on merits. The petition has come up for final hearing today. We have heard learned counsel for the parties.

2. In a short and a cryptic decision dated November 21, 2000, allowing O.A. No. 95/1998 the Tribunal has quashed the order dated August 07,

1997 dismissing respondent from service as also the appellate order dated November 20, 1997 rejecting the appeal filed by the respondent

against the order dated August 07, 1997.

3. The Tribunal has held that the possibility of bias of the Inquiry Officer could not rule out. The Tribunal has found some evidence of bias from the

fact that the Inquiry Officer has not permitted respondent to examine six witnesses. The Tribunal has opined that the alleged interpreter who acted

as a link between Afghan Nationals and the police officials being not examined would vitiate the inquiry. The Tribunal has opined that under the

circumstances it has to be held that the respondent did not get sufficient and adequate opportunity to examine material witnesses to defend himself

and thus there was a denial of natural justice.

4. Regretfully, the decision by the Tribunal is sketchy and gives an impression as if it is a precise writing.

5. On February 15, 1996 the respondent, working as a Head Constable in Delhi Police and posted at the Indira Gandhi International Airport,

made a complaint to his superior authority that his superior police officers and in particular the Assistant Commissioner of Police Sudesh Kumar

had threatened to implicate him when the respondent, while performing his duties at the Airport, prevented the police officers on duty to take home

liquor from the Duty Free Shops at the Airport. 11 days later on February 26, 1996, ACP Sudesh Kumar alleged against the respondent that he

illegally extracted foreign currency from two Afghan Nationals who reported the matter to and that the foreign currency had been recovered from

the respondent. Statements allegedly made by the two Afghan Nationals were recorded in Hindi.

6. A disciplinary inquiry commenced against the respondent by issuance of a Summary of Allegations. Neither the two Afghan Nationals nor the

interpreter who acted as a link to translate what the Afghan Nationals purportedly said in "Pashto" was examined. The alleged recovery memo

pertaining to foreign currency being recovered from the respondent was proved, but sans the signatures of the respondent. The foreign exchange

which was purportedly recovered was claimed to have been returned to the Afghan Nationals on March 07, 1996 as per memo drawn up on said

date. But the fact of the matter was that the Afghan Nationals had left India on March 06, 1996.

7. Before the Inquiry Officer commenced recording of evidence the respondent objected to the Assistant Commissioner of Police acting as the

Inquiry Officer because even said officer was In-charge at the Airport and as per the respondent was in concert with other police officers in

illegally taking alcohol from the Duty Free Shops in the Airport, a request which was turned down.

8. When the stage reached of leading defence evidence the respondent moved an application on October 16, 1996 praying that he be permitted to

examine eight official witnesses, two of whom were Custom officers and the remaining six were police officers. The relevance of examining said

eight persons were disclosed in the application. In an unreasoned decision it was conveyed to the respondent that the request to examine defence

witnesses was declined. No reasons whatsoever have been recorded as to why the witnesses were opined to be irrelevant. As regards the

respondent, we find that with respect to the eight witnesses proposed to be examined in defence, the respondent informed in his application as

under:-

1. Sh. R.K. Joshi, ACP Hd. Qrs., IGI Airport, New Delhi: He will depose that a report was sent to him by Inspr. Suresh Kumar No. D-1/467

regarding scotch whisky being taken out clandestinely by the Staff and Sh. Sudesh Kumar ACP was misled by his staff that they were being

watched.

2. Inspector Suresh Kumar No. D-1/467, IGI Airport, New Delhi-He will depose that he spent a report regarding smuggling of Scotch Whisky

from the Airport and Sh. Sudesh Kumar ACP was misled by his staff. Sh. Sudesh Kumar ACP was keeping a grudge.

3. Ct. Hanuman Singh No. 405A, IGI Airport, New Delhi-- He will depose that he took the Afghan Nationals Rahim Gul And Shyam Raiz with

him under the orders of Sh. Sudesh Kumar ACP and lodged them in a guest house in Balimaran.

4. ASI Bachchiram No. 1120-D, IGI Airport, New Delhi-- He will depose that the liquor was being taken out illegally from the Airport under the

orders of Insp. Vig. A watch was being kept. Sh. Sudesh Kumar ACP was misled by his staff that he was also being watched and the ACP was

keeping a grudge against the Vig. Staff and the ACP even threatened Insp. Suresh Kumar and abused him.

5. HC Narender Kumar No. 1113-A, IGI Airport, New Delhi--He will depose that he was also posted there and the staff misled (sic should read

as misled) ACP Sh. Sudesh Kumar.

6. Custom Inspector Santosh Kumar, IGI Airport, New Delhi along with Custom Receipt No. 20370 dated 27-2-96 in respect of Shyam Raiz.

He will also depose that Shyam Raiz was not brought to the Customs for clearance by any of the Police Officers and no Dollar or any money was

recovered in his presence from HC Narender Singh No. 101-A.

7. Custom Inspector S.A. Siddiqui--He will produce Custom Receipt No. 20365 or 20368 in respect of Rahim Gul. He will also depose that

Rahim Gul was not brought to the Customs by any Police Officer for clearance of Customs and further no dollar or any Indian currency was

recovered from HC Narender Kumar No. 101-A in his presence.

8. Shri M. Dorai Swamy, Asstt. Collector of Customs, IGI Airport, New Delhi-He will also depose what the DWs, Customs Inspectors Santosh

Kumar and S.A. Siddiqui will depose.

9. But, for reasons unknown, two witnesses were permitted to be examined.

10. From the facts noted hereinabove the following emerges:-

(i) On February 15, 1996 respondent made a complaint that ACP Sudesh Kumar was pressurizing him to overlook police personnel deputed at

the Airport taking home foreign made alcohol sold at the Duty Free Shops in the Airport under pain of disciplinary action.

(ii) On February 27, 1996 two Afghan Nationals purportedly made statements implicating the respondent. Since the Afghan Nationals only spoke

"Pashto" an interpreter was used who was not examined at the inquiry. The two Afghan Nationals were not examined at the inquiry for the obvious

reason they were not in India.

(iii) On the same day i.e. February 27, 1996 foreign exchange in sum of US\$ 100 was shown to have been recovered on the personal search of

the respondent but the memo does not bear the signatures of the respondent.

(iv) The foreign exchange was statedly returned to the Afghan Nationals on March 07, 1996 but the two had left Delhi on March 06, 1996.

(v) The respondent wanted to examine eight witnesses in defence, with relevance of each disclosed in his application. The request was declined by

a non-speaking order. Later on only two witnesses were permitted to be examined.

11. We concur with the ultimate conclusion arrived at by the Tribunal that the possibility of the respondent being falsely implicated cannot be ruled

out and in any case serious prejudice has been caused to the respondent by not permitting all eight defence witnesses to be examined. Indeed, we

see no reason why Custom Inspector Santosh Kumar and Custom Inspector S.A. Siddiqui who were independent persons were not permitted to

be examined. As per the respondent their testimonies would have established that neither Rahim Gul nor Shyam Riaz, the two Afghan Nationals,

were not brought to the Customs by any police officer and that the Custom Officers had no information of any such incident as was alleged against

the respondent took place. The writ petition is accordingly dismissed but without any order as to costs.