

Vinod Malik & Ors. Vs.delhi Energy Development Agency and Ors.

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Court : Delhi

Decided On : Nov-28-2016

Appellant : Vinod Malik & Ors.

Respondent : Delhi Energy Development Agency and Ors.

Advocate for Def. : Mr. Kush Sharma, Mr. RESPONDENTS Ekant Luthra

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + % VINOD MALIK & ORS.
W.P.(C) No.6387/1998 Reserved on:

23. d November, 2016 Pronounced on:

28. h November, 2016 Mr. Manoj Joshi, Advocate.

... Petitioner

s Through: versus DELHI ENERGY DEVELOPMENT AGENCY AND ORS.
Through: Mr. Kush Sharma, Advocate with Mr.

... RESPONDENTS

Ekant Luthra, Advocate. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To
be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. By this writ petition under Article 226 of the Constitution of
India, three petitioners impugn the three orders passed by the departmental

authority dated 30.11.1998 whereby the petitioners were imposed the penalty of dismissal from services which shall be a disqualification for future employment under the Government.

2. Since effectively there are three writ petitions because of three separate charge sheets against the three petitioners resulting in three reports W.P.(C) No.6387/1998 Page 1 of 16 of the Enquiry Officer and three penalty orders, case of each of the petitioners will have to be taken separately for discussion.

3.

... Petitioner

No.1 is Sh. Vinod Malik. He was issued a charge sheet dated 28.7.1992 containing two Articles of Charges. First Article of Charge was of petitioner No.1 handing over six bogus driving licences to Sh. Kishan Singh, the then Motor Licencing Officer (MLO) on 11.6.1991. The second Article of Charge is that the petitioner No.1/Sh. Vinod Malik was a Store Keeper in the Polaroid Unit at 5/9, Under Hill Road, Delhi and on 11.6.1991 he failed to maintain and reconcile the record of the Polaroid register. Whereas 442 Polaroid cards were issued, but, the register only showed a report with respect to 429 Polaroid cards, there being deficiency of 19 Polaroid cards.

4.

... Petitioner

No.1 denied the charges and contested the departmental proceedings before the Enquiry Officer. 5(i) Enquiry Officer has held that charge No.1 is proved against the petitioner No.1 because the 6 bogus driving licences bearing nos.C-88052610, C-90020985, C-91060140, C-91060141, C-91060142 and C-91060143 were indeed proved as Ex. S-1 to S-6 and which driving licences did not tally with the official record and thus were bogus. The factum of W.P.(C) No.6387/1998 Page 2 of 16 handing over by the petitioner No.1 of the six bogus licences to the MLO/ Sh. Kishan Singh has been taken as proved from the statement of PW-2. Accordingly the Enquiry Officer, in the opinion of this Court, has rightly arrived at the conclusion of petitioner No.1 handing over six bogus

licences on 11.6.1991 to the MLO/Sh. Kishan Singh. (ii) So far as the second article of charge of missing 19 Polaroid cards is concerned, the enquiry officer on the basis of the record found that as a fact 19 Polaroid cards did not exist, though as per the records they ought to have existed because 442 Polaroid cards were issued but only 429 were found. Even if 6 cards out of 19 were those used for preparing 6 bogus licences, then yet there was no valid explanation with proof of 13 Polaroid cards. Enquiry officer has thus rightly found this article of charge to be proved. 6(i) Learned counsel for the petitioner No.1 argued that the petitioner No.1 was not supplied with the documents by the department, and therefore, the enquiry proceeding must fail, however, it is seen that this argument has no legs to stand upon because petitioner no.1 has failed to file before this Court any application which was filed before the Enquiry Officer for giving of the documents but which documents were not supplied. In fact the proceedings of the Enquiry Officer dated 4.8.1997 and 20.11.1997 W.P.(C) No.6387/1998 Page 3 of 16 shows that the petitioner No.1 was granted inspection of the documents vide order dated 4.8.1997 and in the subsequent order dated 20.11.1997, no issue was raised by the petitioner No.1 of his not having been allowed to inspect the documents or that the petitioner no.1 be supplied with the documents. The proceedings before the Enquiry Officer dated 4.8.1997 and 20.11.1997 are reproduced as under: Enquiry Proceedings dated 4.8.1997 No.57/PR/51-53 Government of India Central Vigilance Commission New Delhi 04.08.97 Subject: Departmental Enquiry against Shri Vinod Malik, LDC, Mrs. Shikha Mazumdar, LDC and Shri Prahlad Kumar, Peon, DEDA.

ORDER

S H E E T Present: : Shri S.S.Ghonkrokta, the PO. Shri Vinod Malik, CO. Shri Prahlad Kumar, CO. Smt. Shikha Majumdar, CO. Shri Sadhu Ram, Defence Assistant BH held today. At the outset, the Cos pointed out that they have not been given the inspection of the listed documents till date. Hence, the PO is directed to give the inspection of the listed documents to all the COs in his office on or before 20.8.97. PO should obtain a certificate from the COs soon after the inspection of the listed documents and send to the undersigned. After the inspection of the listed documents, COs may like to submit their lists of defence documents/witnesses which should reach the undersigned on or before 29th

Agust, 97 with a copy to the PO. These lists should contain the name, number, date, custodian and relevance of the documents to the charge and in case of witnesses, name designation and relevance to the charge failing which the lists will be rejected outrightly. W.P.(C) No.6387/1998 Page 4 of 16 Regular Hearing in the above cases will be held on 9th and 10th October, 1997 in the office of the undersigned from 10 AM onwards. Both the PO and the COs are directed to complete the above formalities before the commencement of the RH as scheduled. strict compliance and information. Copy of the ordersheet handed over to the PO and the all the COs for Sd/- PO, CO, DA Sd/- (Dr. P. Rathnaswamy) Inquiry Officer. FNo.57/PR/51 ORDER SHEET Enquiry Proceedings dated 20.11.1997 Present: : : : Shri S.S.Ghankrokta Shri Vinod Malik Shri Sadhu Ram Government of India Central Vigilance Commission Sub: Departmental Inquiry against Shri Vinod Malik LDC, DEDA New Delhi 20.11.97 PH resumed At the outset, the PO produced listed documents which were taken on record and marked as Ex.S-1,S-4 to S-6 & S-9. Documents at Sl No.2,3 and 7 were dropped by the PO as these were not made available by the disciplinary authority. PO also requested for citing 11 more prosecution documents and one state witness and submitted a list to this effect, with a copy to the CO which was acceded to. record marking as PW-1 and PW-2. After that, he closed the prosecution side. The defence side of the case was taken up. CO denied the charges orally. Defence Documents demanded by the CA could not be produced as the PO claimed them to be not available. However, the CO produced one defence document of his own which was marked as Ex.D-1 and taken on record with the consent of the PO. A copy of the same was given to the PO also. CO had not cited any defence witness. The CO offered himself as a witness in his own case and his deposition was taken on record and marked as DW-1. He was also examined in general by the undersigned. With this, defence side of the case was closed. The proceedings concluded. He examined 2 prosecution witnesses whose depositions were taken on : PO : CO : DA W.P.(C) No.6387/1998 Page 5 of 16 The PO is directed to submit his written brief to the undersigned on or before 26.11.97 with a copy to CO and the CO will submit his defence written brief on or before 3.12.97 on receipt of the written brief from PO. Copy of the order-sheet alongwith copy of deposition of witnesses and the general examination of the CO handed-over to the PO and the

CO for information. Sd/- PO, CO, DA (Dr. P. Rathnaswamy) Inquiry Officer Sd/- (ii) I therefore reject the argument urged on behalf of the petitioner No.1 that the enquiry proceedings must fail as petitioner No.1 was not supplied with the relevant documents.

7. Enquiry proceedings before a departmental authority are decided like a civil case on balance of probabilities and this Court cannot interfere with the findings of the departmental authorities unless the findings are completely perverse i.e the departmental authority has taken a completely perverse view. Merely taking of one possible and plausible view would not mean that the findings and the conclusions of the Enquiry Officer are perverse. The relief prayed by the petitioner No.1 for setting aside of the impugned order dated 30.11.1998 of dismissal from services is therefore rejected.

8. So far as the petitioner No.2/Smt. Sikha Mazumdar is concerned, she was served with the charge sheet dated 28.7.1992 containing one Article of Charge. The charge was that the petitioner no.2 typed the W.P.(C) No.6387/1998 Page 6 of 16 Polaroid cards without their existing proper forms/applications for grant/renewal of licences/duplicate licences. In this regard, the Enquiry Officer has noted that the petitioner no.2/Smt. Sikha Mazumdar did not dispute that she had in fact typed the Polaroid cards. Once the Polaroid cards are admitted to be typed by the petitioner no.2 in the absence of any application forms on record for issuing of licences, petitioner no.2 has rightly been held guilty of being part and parcel of the racket of preparing bogus licences. The four driving licences in question are as under: 1. Driving Licence No.C-88052610 (Card No.196931) 2. Driving Licence No.C-90020985 (Card No.198071) 3. Driving Licence No.C-91060140 (Card No.198040) 4. Driving Licence No.C-91060143 (Card No.198043) 9. Enquiry Officer has held that the aforesaid four licences did not tally with the official record, and therefore the petitioner No.2 was guilty. The relevant discussion of the Enquiry Officer in this regard are contained in paragraphs 22-25 of the report of the Enquiry Officer dated 31.12.1997 and these paras read as under: At the outset, the PO contended that the charges against the CO is 22. proved. The PO refuted the COs denial of charges for her not giving the detailed reasons to substantiate her denial of charges. He narrated that in the Transport Department the procedure

was that the Polaroid Cards were issued bearing a Sl. No, based upon the relevant documents. He continued further that the Typist was supposed to type the cards after satisfying herself/himself that the papers produced before her/him are complete, before the competent authority to sign them. Therefore, the CO is responsible. The PO refuted the W.P.(C) No.6387/1998 Page 7 of 16 defence document cited in Ex.D-1 stating that this document did not have any relevance to the Article of Charge under the circumstances of the case. Moreover, he also argued that there was no written instruction from the MLO to prepare bogus licences to the CO. In view of the documentary evidence cited in Ex.S-1 to S-4, S-5 and S-6, the PO claimed that the charge against the CO is proved.

23. At the outset, the CO denied the article of charge against her. She pleaded that there was no evidence to prove the charge against her. The fake licences were issued by Shri Krishan Singh, MLO (Licensing Authority) and for the same she pleaded that she was not responsible. Accordingly, she denied the charge against her.

24. The allegation against the CO was that she in connivance with others typed four fake Polaroid cards without proper supporting documents. Exs. S-1 to S-4 are the documents produced before the prosecution in this regard. According to these documents, the four following bogus licenses are confirmed:

1. Driving Licence No.C-88052610 (Card No.196931)
2. Driving Licence No.C-90020985(Card No.198071)
3. Driving Licence No.C-91060140(Card No.198040)
4. Driving Licence No.C-91060143(Card No.198043)

25. On scrutiny of the old records, the details given in those Nos. were not found tallied as cited in Ex.S-5,S-6 and S-7. The CO cited the defence documents Ex.D-1 to refute the charges against her. The document cited by the defence in Ex.D-1 was pertaining to streamlining the system of issue of driving licences dt.5.10.93 which was subsequent to these bogus licences were typed as the date of these licences were dt. 11.6.91. It is very obvious to stop the event the instructions were

issued subsequently as cited in Ex.D-1. Thus, it establishes that the CO had typed the above Polaroid Cards without proper documents in connivance with others and the charge against the CO is established. (underlining added)

10. The aforesaid discussion and conclusions of the Enquiry Officer show that the Enquiry Officer has taken one possible and plausible view, which in any manner cannot be said to be perverse and hence this Court cannot exercise extraordinary powers under Article 226 of the W.P.(C) No.6387/1998 Page 8 of 16 Constitution of India to substitute its view for that of the departmental authority. This is all the more so in the present case where the petitioner No.2 did not even step into the witness box for affirming her stand on oath, and therefore, such a charged official ought not to be believed who does not step into the witness box to substantiate her case. In fact on account of petitioner No.2 not stepping into the witness box, the Enquiry Officer did put her questions as regards the Article of Charge and in answers to such questions it was not disputed by the petitioner No.2 that she in fact had typed the Polaroid Cards. Therefore, once the cards are found to have been typed by the petitioner No.2 in absence of the necessary forms or applications, petitioner No.2 has been rightly held guilty of the charge by the Enquiry Officer. 11(i) So far as petitioner No.3/Sh. Prahlad Kumar is concerned, he was issued the charge sheet dated 28.7.1992 having two Articles of Charges. The first Article of Charge was that the petitioner No.3 who was assigned to take photographs of the licence holders after receiving of the Polaroid Cards duly typed, failed to return all the 442 Polaroid Cards received by him and instead only returned lesser Polaroid Cards of 423 in number. Out of the 19 missing Polaroid Cards six cards were subsequently taken by the petitioner No.3 from the MLO and illegally cancelled the same but the remaining 13 W.P.(C) No.6387/1998 Page 9 of 16 Polaroid Cards out of the 19 missing Polaroid Cards continued to be unavailable. The second Article of Charge was of petitioner No.3 failing to deliver 6 driving licenses to the concerned licence holders and being part of the process of making of forged licences. The case against the petitioner No.3 is in some way intertwined with the case against petitioner No.1 inasmuch as the issue overlaps with respect to non-availability of 19 Polaroid Cards out of the 442 Polaroid Cards which were issued for the day. The duty of the petitioner No.1 was as a store keeper and the duty of petitioner No.3 was as a person who had to take

photographs and placed them on the Polaroid Cards i.e. 442 Polaroid Cards, and out of which Polaroid Cards 19 cards were found to be missing. (ii) The Enquiry Officer, so far as the first Article of Charge against petitioner no.3 is concerned, has held that 19 Polaroid Cards were in fact found to be missing as per the record and hence first Article of Charge was proved against the petitioner No.3. This valid conclusion has been stated by the Enquiry Officer as per para 24 of this report and which reads as under: 24. Shri Prahlad Kumar, Peon was assigned the job of photographer and this is a wrong practice. Any staff recruited against the post of a Peon and if he is asked to perform the job of a technician/photographer, it amounts to exploitation. The duties and responsibilities of a Peon are purely non-technical unlike the duties and responsibilities of a photographer. This wrong practice of course does not give premium to Shri Prahlad Kumar, peon to commit irregularities. By practice, the CO has been successfully discharging the W.P.(C) No.6387/1998 Page 10 of 16 functions of a photographer and in this case there is no allegation against this competence. In this case, according to Article of Charge 1, the main allegation is that the CO is held responsible for non-production of 13 Polaroid Cards out of 19 Polaroid Cards as the 6 Polaroid Cards were found stamped CANCELLED. As per Ex.S-1, there would have been the stock of 442 Polaroid Cards as per the entries in the register but physical counting there were only 423 cards. Thus, the deviation from the physical stock to stock on record was 19 cards. Out of 19 cards there were 6 Polaroid Cards that are stamped CANCELLED which left the balance 13 Polaroid Cards. On 11.6.91, the CO returned/submitted the duplicate cards of the driving licences issued on that day. On the verification physical stock with stock on record, there was a deficiency of cards and these deficiencies were pointed out to the CO subsequently, surrendered 6 more cards. In the meanwhile Krishan Singh, MLO, reached the Branch and he took the possession of these 6 cards. Subsequently, the CO took these cards from Krishan Singh and stamped them as CANCELLED. The CO did not return the remaining 13 Polaroid Cards. Exs. S-1, S-15, S-16, S-17 S-19 and S-20 confirm the checking of the physical stock the stock on record on the day as referred above. PW-1 confirmed Ex.S- 17 which was his pre-recorded statement, in his deposition. In the cross- examination of PW-1, the details of missing 19 Polaroid Cards are confirmed. The CO himself confirmed in his deposition as a

witness in his own case that he was orally instructed to take the photographs of the candidate. In view of above, thus, the article of Charge 1 against the CO is established.

12. The aforesaid discussion and conclusion of the Enquiry Officer is of one possible and plausible view, and therefore, this Court cannot interfere with the same in exercise of powers under Article 226 of the Constitution.

13. So far as the second Article of Charge of not handing over six driving licences to the six persons is concerned, it is seen that six driving licences along with six Polaroid Cards were found in the possession of the MLO and the petitioner No.3 collected 6 Polaroid cards from the MLO and thereafter cancelled them i.e. originally 6 Polaroid cards were not in the W.P.(C) No.6387/1998 Page 11 of 16 custody of the petitioner no.3 though they should have been. Also, on physical verification, it was found that 6 Polaroid cards were part of 19 Polaroid cards and which 19 cards were not found in the stock register on record. Thus, it was rightly held by the Enquiry Officer that there were 6 bogus licences and 6 driving licences were not returned by the petitioner No.3 to the concerned licence holders.

14. For the sake of completion of narration and the record, at this stage let me reproduce the entire evidence and cross examination of all the three petitioners and which have been given in para 5 of the writ petition and this para reads as under: 05 Final Hearing in Departmental Inquiry against petr-1,3, started and concluded on 20.11.97 and against petr-2 on 19.11.97 by Dr.P Rathnaswamy, Commissioner for Department Inquiries, Central Vigilance Commission. The complete evidence is reproduced hereunder- In Re: Vinod Malik, LDC, DEDA (petr-1) PW-1: Mr. N.K.Garg, LDC, Transport Deptt, Delhi Admn Examination-in-chief He joined the department in 1988 as LDC. Ex.S-6 which is his statement was shown to him and he confirmed the same. Cross-Examination On enquiry, the CO returned six more cards. He was not aware of any further inquiry in regard to the remaining 13 cards. Re-Examination Ex.S-1 was shown to him and he confirmed the same. Re-Cross-Examination W.P.(C) No.6387/1998 Page 12 of 16 In Ex S-1, there was a reference to 19 cards. He was not aware of any inquiry made with the CO. PW-2: Mr.Chander Pal, Peon, TD, Delhi Admn. Examination-in-chief He

joined Deptt on 29.10.1986 as Peon. He saw CO who handed over 6 licences to MLO. Cross-Examination As he was normally going with MLO he was seeing that the CO handed over 6 licences to MLO. DW-1: Vinod Malik, LDC, DEDA (Charged Official) Examination-in-chief He joined the department on 23.03.85 as LDC. On receipt of the application for renewal of licences the cases were dealt with as per practice and the necessary documents were signed by MLO. These documents were sent to DEDA. The license fee Rs.40/-would be deposited with the cashier and after the documents are duly signed by the MLO. The DEDA cards were given to the photographer who would call by name persons concerned who would be duly verified with their respective parents names for necessary photographs which would be pasted in the licences for lamination and after lamination the licences were issued to the public. In the evening the photographer concerned would stamp cancellation on data cards before returning to MLO. MLO maintained relevant documents and register. Cross-Examination He would be rendering all assistance to Shri SKAcharya in terms of putting a file dealing with bills etc and also he would be staff concerned who would be issuing stores like polaroid cards, camera films to the DEDA staff. Further, he would also attend to the duties of repairing of printers etc. He did not remember how many Polaroid cards he had issued on 11.06.91. He received an inter-com telephone from Prahlad Kumar, Peon who was allegedly in the office of MLO when he went there to handover polaroid cards. On hearing, he went to MLO and when he reached there he came to know that there was a dispute in the total number of Polaroid cards. He came to know in the discussion that Shri Prahlad Kumar had stamped unstamped 6 polaroid cards on the arrival of the MLO. He requested for giving receipt for the actual cards received in the MLO office and for the remaining Polaroid cards, he would settle next day. Even though it was not one of his duties but as he was about to close the office, received an W.P.(C) No.6387/1998 Page 13 of 16 intercom from Shri Prahlad Kumar and had to go. He was not aware of the 6 bogus licence number mentioned in the charge-sheet. Re-Examination He did not handover the 6 licences to the MLO. Re-Cross-Examination Nil General Examination of the CO (Vinod Malik) by Inquiry Authority (IA) Q: A: Q: A: Do you accept the charges?. No Do you want to state anything pertaining to the articles of charge?. He will submit in detail in his defence written brief on receipt of written brief from the PO. In Re:

Mrs. Sikha Mazumdar, LDC, DEDA (petr-2) There was no PW nor any DW. Ex D-1 was the Office Order dt. 05.10.1993 (P/10 hereto). The CO (petr-2) was generally examined by IA wherein she denied the charge, saying she had to and did type Cards as per Form -9 approved by the MLO. She invited reference to Ex D-1. In Re : Prahlad Kumar, Peon, DEDA (petr-3) PW-1 : Mr. N.K. Garg, LDC, TD, Delhi Admn Examination-in-Chief He joined the department in 1988 as LDC, Ex S-17 which is his statement was shown to him and he confirmed the same. Cross-Examination On enquiry, the CO returned 6 more cards. He was not aware of any further inquiry in regard to the remaining 13 cards. Re-Examination Ex S-1 was shown to him and he confirmed the same. Re-Cross-Examination In Ex S-1, there was a reference of 19 cards. He was not aware of any inquiry made with the CO. DW-1 : Prahlad Kumar, Peon, DEDA (petr-3) (CO) Examination-in-chief W.P.(C) No.6387/1998 Page 14 of 16 He joined the deptt. On 25.07.1985 as a Peon. Shri SK. Acharya orally instructed him to take photographs of the candidates applying for the licences and after taking the photographs he would clean the respective pictures. These pictures were pasted on the license cards and he would get them laminated. In a day, he normally used to take 400 to 500 photographs. Cross-Examination Motor Licence Officer would give the cards to him for photographing them. He would call the individuals by name and verified the parents names of individuals for confirmation. He used to handover the laminated licence cards to the public after the lamination. The data cards left with him would be handed over to staff members of MLO Branch and receipt will be taken on record - register. Polaroid cards were to be issued by DEDA staff. The licences were given to the public and only the Polaroid cards were with him. These polaroid cards were also given to the MLO Branch. He returned on that day 429 cards and for the same obtained receipt on the register. The cards were given to him according to the number of persons for licences and accordingly photographs were taken for lamination and distribution. In all the 429 polaroid cards they were stamped. General Examination of CO (Prahlad) by the IA No.Q : Do you accept the charges?. A : Q : Do you want to state anything pertaining to the articles of A : charge?. He will submit in detail in his defence written brief on receipt of written brief from the PO. 15. Finally I would like to note the argument urged on behalf of the petitioners that petitioner nos. 1 and 3 had sought for the original record being

the Polaroid register and which has not been produced by the respondent no.1, however, this argument is misconceived for the reason that it was upon the petitioner nos. 1 and 3 to summon the record to prove their respective cases and merely citing such record in the list of witnesses will W.P.(C) No.6387/1998 Page 15 of 16 not mean that this Court has to presume that petitioners in the course of the enquiry proceedings had asked for production of the register so as to explain the factum with regard to 13 Polaroid cards that they were used either for identity cards for certain SC ST candidates and about 3 of them were wrongly typed or destroyed. To show that no evidence was led on behalf of petitioners no.1 and 3 with respect to the record register for explaining the deficiency of 19 Polaroid cards/13 Polaroid cards, I have already reproduced above the entire evidence which is led in the case and therefore a self serving averment that the respondent no.1 did not produce the record although petitioner nos. 1 and 3 prayed for the same cannot be accepted by this Court in the absence of its substantiation.

16. In view of the above, there is no merit in the writ petition, and which is therefore dismissed, leaving the parties to bear their own costs.
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