

Rajeev Kumar Vs. Union of India and Ors.

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Court : Delhi

Decided On : Feb-23-2015

Judge : Pradeep Nandrajog

Appellant : Rajeev Kumar

Respondent : Union of India and Ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Reserved On : February 11, 2015 Judgment Delivered On : February 23, 2015 + W.P.(C) No.3416/2013 RAJEEV KUMAR Represented by:Petitioner Ms.Rekha Palli, Advocate with Ms.Punam Singh and Mrs.Garima Sachdeva, Advocates versus UNION OF INDIA & ORS. Represented by:Respondents Mr.Ankur Chhibber, Advocate CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE PRATIBHA RANI PRADEEP NANDRAJOG, J.

1. The petitioner was appointed as a Sub-Inspector in the Central Industrial Security Force (CISF) in November, 2003 and after serving at Vishakapatnam was posted at Indira Gandhi International Airport (IGI Airport) in May, 2008.

2. Along with SI Shashi Kumar and SI Ajay Yadav, the petitioner was deployed for duty in the intervening night of November 21, 2011 and November 22, 2011 at X-BIS-14 of Terminal III at the IGI Airport and the duty hours were between 20:00 hours of November 21, 2011 till 07:00 hours of November 22, 2011.

3. The three Sub-Inspectors had to sit in rotation for a duration of 20 minutes each at the X-ray machine for screening the hand baggage of the passengers. A team of constables was on duty with the three Sub- Inspectors. Register Security Stamps having different numbers were issued to the three Sub-Inspectors, and relevant would it be to note that the Register Security Stamp bearing No.219 was issued to the petitioner and the stamp issued to SI Shashi Kumar was having No.249 and the one issued to SI Ajay Yadav was No.201.

4. Working in rotation for a duration of 20 minutes each, the job of three Sub-Inspectors was to screen the hand baggages so that no prohibited item was carried by any passenger in the hand baggage. If any was detected, the same had to be removed from the hand baggage. If nothing objectionable or prohibited was found in the hand baggage the Register Security Stamp had to be affixed on the tag on the hand baggage. Acting in tandem, the Sub-Inspector would concentrate on the screen in front of the seat of the Sub-Inspector where the X-ray image of the contents of the baggage was displayed, and as the baggage moved along the trolley and outside the X-ray machine, on a signal given to the Constable standing nearby that there was nothing objectionable detected in the hand baggage, the Constable concerned, using the Register Security Stamp, would emboss the stamp on the hand baggage. In the meanwhile the passenger concerned would simultaneously undergo the security check at which the passenger was frisked at the adjoining gate and obtain clearance evinced by a clearance seal affixed on the boarding pass. The passenger would then collect the hand baggage and proceed to the gate at the terminal from which the passenger would proceed to the aircraft to be boarded.

5. A gentleman named Kulbir Singh Brar had to board British Airway Flight No.256 to London. He checked in at the checking counter. His hand baggage was put at the conveyor belt to be scanned by the X-ray machine where petitioner, SI Shashi Kumar and SI Ajay Yadav were on rotational duty. After screening, the baggage was cleared and the stamp bearing No.219 was affixed on the tag Ex.PW-5/Ex.4 of the baggage, and the passenger proceeded to board the aircraft. At that point of time L/Ct.Vineeta Giri was the constable who had to affix the stamp of security clearance on the baggage and she affixed the stamp on the hand baggage

bearing No.219. The staff of the British Airways at the second ladder point of Gate No.3A detected four live rounds of 0.22 mm bullets. The matter was reported to the security staff. Insp.V.S.Chauhan of CISF went to the spot and took custody of the four rounds and deposited them in the armoury of the CISF unit and allowed the passenger to board the flight because the passenger showed to him a valid arms license. As per a circular dated July 28, 2005 issued by the Bureau of Civil Aviation and Security, Insp.V.S.Chauhan ought to have informed the Delhi Police. He did not do so.

6. For the incident in question noting that the passenger Kulbir Singh Brar had been given clearance at the X-BIS No.14 between 04:20 hours to 04:40 hours on November 21, 2011, when as per X-ray Rotation Register the petitioner was on duty, and additionally for the reason on the hand baggage security clearance stamp No.219 was affixed, which was issued to the petitioner, a charge memorandum was issued to the petitioner alleging the charge of dereliction in duty resulting in Kuldeep Singh Brar being given security clearance in spite of his hand baggage containing 4 live rounds of 0.22 mm cartridges.

7. The petitioner did not deny that along with SI Shashi Kumar and SI Ajay Yadav the three had to perform duty in rotation at the X-ray screening machine. He did not deny that the passenger Kuldeep Singh Brar was given security clearance when he passed the gate where the machine on which the petitioner and SI Krishan Kumar and SI Ajay Yadav were on duty and that the hand baggage of the passenger was affixed with stamp No.219, which was issued to the petitioner. The petitioner also did not deny the entries made in his own hand, duly signed by him on the X-ray Rotational Register which recorded that the petitioner was performing duty at X-BIS No.14 from 04:20 hours to 04:40 hours in the morning of November 21, 2011, but he relied upon a log-in-log-out record as per which from 03:59 hours to 05:15 hours on November 22, 2011 SI Ajay Yadav sat at the X-ray scanning machine followed by a brief interval when SI Shashi Kumar sat on the machine from 05:17 hours to 05:22 hours and thereafter the petitioner sat from 05:22 hours to 06:22 hours.

8. In other words, the defence of the petitioner was that whilst it may be true that as per the standing operating procedures the three SubInspectors had to sit at the X-ray screening machine for a duration of 20 minutes only at a time and rotate duties, with each sitting one after the other, for 20 minutes and in respect of which the three made entries in the X-ray Rotational Register and as per which the petitioner recorded he being at the machine from 04:20 hours to 04:40 hours, but as a matter of fact the three Sub-Inspectors did not sit at the X-ray screening machine contemporaneous to the time they recorded in the X-ray Rotational Register. The three were performing their duties in a casual manner evidenced by the log-in-log-out entries made in the computer, the printout whereof would show that from 03:59 hours to 05:15 hours on November 22, 2011 SI Ajay Yadav sat at the X-ray scanning machine followed by a brief interval when SI Shashi Kumar sat on the machine from 05:17 hours to 05:22 hours and thereafter the petitioner sat from 05:22 hours to 06:22 hours.

9. The CCTV footage Cam No.3425 shows that the baggage was screened at 04:33 hours.

10. With respect to the log-in-log-out entries generated from the computer printout a controversy arose whether due to malfunctioning the timing recorded was one hour and seventeen minutes ahead of the actual time, and in respect of which we find that no clear picture is emerging from the evidence of the various witnesses which were examined during the inquiry.

11. The Inquiry Officer submitted a report holding that the charge was proved and for which finding the Inquiry Officer relied upon the fact that the petitioner did not deny he along with SI Shashi Kumar and SI Ajay Yadav deputed for duty at the X-BIS-14 of Terminal III of IGI Airport between 20:00 hours to 07:00 hours in the intervening night of 21 st and 22nd November, 2011 and the petitioner was issued Register Security Stamp bearing No.219, SI Shashi Kumar was issued Register Security Stamp bearing No.249 and SI Ajay Yadav was issued Register Security Stamp bearing No.201; and that the X-ray Rotation Register which was required to be maintained as per guideline issued was filled in their own handwritings by the petitioner, SI Shashi Kumar and SI Ajay Yadav which had an entry that the

petitioner was performing duty at X-BIS No.14 from 04:22 hours to 04:40 hours and that the security clearance was given after the baggage in question was screened at 04:33 hours. Further, the security clearance stamp No.219 was affixed on the tag Ex.PW-5/Ex.4.

12. There is no conclusive opinion expressed with respect to the log- in-log-out entries made showing that from 03:59 hours to 05:15 hours on November 22, 2011 SI Ajay Yadav sat at the X-ray scanning machine followed by a brief interval when SI Shashi Kumar sat on the machine from 05:17 hours to 05:22 hours and thereafter the petitioner sat from 05:22 hours to 06:22 hours and the controversy whether due to a malfunctioning in the computer the timing recorded was one hour and seventeen minutes ahead of the actual time.

13. Furnishing a report to the Inquiry officer of the petitioner and considering his report the Disciplinary Authority vide impugned order dated July 25, 2012 inflicted the penalty of reduction of petitioners pay by two stages for a period of one year with further direction that petitioner will not earn increments of pay during the period of reduction and that on expiry of this period the reduction will have the effect of postponing his future increments of pay against which the appeal filed by the petitioner gave him partial relief inasmuch as vide order dated September 12, 2012, the Appellate Authority reduced the penalty to reduction of pay from two stages to one stage.

14. The appellate order dealt with the timings recorded in the log-in- log-out register, and opined that primacy had to be given to the X-ray Rotation Register in which entries were made by the petitioner, SI Shashi Kumar and SI Ajay Yadav in their own hands and that the written entry made by the petitioner recorded that from 04:20 hours to 04:40 hours, the petitioner was on duty.

15. Revision petition preferred by the petitioner to the Revisional Authority was rejected on February 28, 2013.

16. We note that during the inquiry proceedings the petitioner had raised an issue regarding a report submitted by Insp.D.S.Ahlawat at a preliminary inquiry which records that the bag of the passenger was screened at X-BIS-15, in respect of

which Insp.D.S.Ahlawat stated during inquiry proceedings that it was a typographic error requiring the department to prove from the recording of CCTV Camera No.3425 installed at X-BIS-14 that the baggage was screened at X-BIS-14 and that the passenger was frisked at Booth No.13 which was adjoining as proved from the recording of CCTV Camera No.3423, in respect of which controversy no arguments were advanced at the hearing of the writ petition.

17. Before dealing with the contentions urged at the hearing of the writ petition we need to highlight that the requirement of a Sub-Inspector sitting at the X-ray machine for only 20 minutes and taking rest for 40 minutes during which 40 minute duration, one by one, in succession, two Sub-Inspectors sit at the X-ray machine, is that the constant focused (without a blink of the eye) gaze at the screen where the X-ray image falls strains the eyes of the viewer and lest fatigue impairs the visual reception of the viewer, the eyes should be given a rest. A fleeting momentary lapse is fraught with dangerous consequences because if a passenger is able to sneak in the hand baggage an explosive material, the lives of not only the crew members but even the passengers travelling in the aircraft would be endangered. The highest level, achieving 100% perfection, of duty is thus important; and needless to state the standing operating procedures have to be devised in a manner that this can be achieved. The department has rightly evolved a standing operation procedure of deputing three Sub-Inspectors for the nine hour duty, requiring each to sit at the X-ray scanning machine one at a time with rotation every 20 minutes. To ensure strict compliance the X-ray Rotation Register is required to be maintained in which entries have to be made contemporaneously when the three Sub-Inspectors rotate sitting at the Xray machine every 20 minutes. The log-in-log-out entries made in the computer are made by all force personnel and there is an element of unofficiousness in the same. In any case, if there is a conflict between what is required to be maintained as a part of a standing operating procedure and what is recorded by way of a general instruction and in respect of which there may be an element of un-officiousness, credence has to be given to the former, and this reasoning of ours takes into account the argument advanced that it is the duty of the Inquiry Officer to deal with not only the evidence which incriminates the charged officer but even to deal with such evidence which exonerates the charged officer. It may be true that the Inquiry

Officer has not reasoned as above, nor has the Disciplinary Authority done so, and as regards the Appellate Authority it has dealt with the issue in a limited manner, but the three are not expected to reason as Judges do.

18. It is settled law that adequacy or inadequacy of evidence would not be gone into by a writ Court because the jurisdiction being exercised is not the appellate jurisdiction. As long as contemporaneous credible evidence surfaces of a high probative value, verdicts of found guilty at domestic inquiries are not to be interfered by Courts.

19. There is an inherent problem even otherwise with the log-in-log-out printout obtained from the memory of the computer in which all force personnel made log-in-log-out entries. It shows that from 3:59 hours to 05:15 hours SI Ajay Yadav sat on the X-ray scanning machine. The duration would be one hour and sixteen minutes, which ex-facie is inconceivable because it would be virtually impossible for SI Ajay Yadav to sit at the X-ray scanning machine for one hour and sixteen minutes at a stretch : his eyes would pop out if he did so.

20. Insp.Parminder Singh has appeared as PW-7 during the inquiry. After he deposed by way of examination-in-chief regarding the incident and the CCTV footages, he was cross-examined by the petitioner on March 06, 2012, and in view of the answers given by him the Inquiry Officer put some clarificatory questions, and in answer where to he said that the CCTV images which he saw contemporaneously revealed to him that as per passenger was frisked at the male frisking booth his hand baggage was being scanned at the X-ray machine where the petitioner was sitting. Whereas the petitioner appended his signatures at the bottom of the page where Insp.Parminder Singh's examination-in-chief was recorded and where the cross-examination by the petitioner concluded, he affixed his signatures at the place where clarificatory answers given by the witness to the questions asked by the Inquiry Officer were recorded, but not on the sheet where the Inquiry Officer has recorded a brief summary of what is recorded in the CCTV footage. The Inquiry Officer has recorded that the charged officer has refused to sign and has also refused to take the copy of the deposition of the witness concerning questions put to him by the Inquiry Officer.

21. A feeble attempt was made during argument of the writ petition that the questions put by the Inquiry Officer were behind the back of the petitioner and the record is falsified to said extent, an argument which overlooks the fact that the cross-examination of the witness ends at the middle of the third page of the deposition recorded, at which place the petitioner has signed. Thereafter three questions put by way of clarification by the Inquiry Officer and their answers have been recorded on the remainder of the page, at the bottom whereof the petitioner has signed. It is then followed by a penning of the contents of the CCTV footage. It is here that the petitioner has refused to pen his signatures. It is apparent that the clarificatory questions were put to the witness in the presence of the petitioner conclusively established by petitioners signatures on the deposition sheet. Realizing that the cat was out of the bag when the CCTV footage was seen and a brief summary thereof was penned, the petitioner refused to sign the said brief summary noted by the Inquiry Officer.

22. It was urged that from the fact that Insp.V.S.Chauhan did not act as per the circular dated July 28, 2005 issued by the Bureau of Civil Aviation and Security which required him to deposit the four live rounds of 0.22 mm bullets recovered from Kuldeep Singh Brar it is apparent that the force personnel were discharging duties in a very lax manner and therefore credence should be given to the printout of the log-in-log-out entries made is no argument in the eyes of law for the reasons which we have already given above regarding primacy to be given to the X-ray Rotation Register and what is recorded contemporaneously in the CCTV footages showing that when Kuldeep Singh Brar was being frisked the petitioner was sitting at the X-ray scanning machine where the hand baggage of the passengers was being screened. Secondly for the reason if one officer is lax in performance of his duties, that does not mean that somebody else should be given the benefit of the laxness in work by the said person. A caveat. If laxness of one impacts the other, depending upon the facts of each case the impact thereof would then have to be seen. In the instant case the laxness shown by Insp.V.S.Chauhan of not handing over the four live bullets to the Delhi Police has no impact on the laxness shown by the petitioner who was casual and careless in screening the hand baggage of the passenger who went passed the security check with the four live bullets undetected in the hand baggage.

23. The verdict of guilt is thus supportable by a plethora of evidence which we have captured above. The penalty of reduction in the time scale of pay by one stage for a period of one year with future effect cannot be said to be arbitrary.

24. The writ petition is dismissed but without any order as to costs. (PRADEEP NANDRAJOG) JUDGE (PRATIBHA RANI) JUDGE FEBRUARY 23 2015 mamta

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