

ikpal Singh Vs. Uoi and ors

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Court : Delhi

Decided On : Dec-19-2012

Judge : Pradeep Nandrajog

Appellant : ikpal Singh

Respondent : Uoi and ors

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Reserved on: December 14, 2012 Judgment Pronounced on : December 19, 2012 + W.P.(C) 7099/2012 IKPAL SINGH Petitioner Represented by : Mr.Arun Bhardwaj, Advocate. versus UOI AND ORS Respondents Represented by : Ms.Barkha Babbar, Advocate. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MR. JUSTICE MANMOHAN SINGH PRADEEP NANDRAJOG, J.

1. The petitioner was appointed as a Constable (GD) by CISF and as on January 07, 2011 was posted at CISF Unit, IOC, Panipat, Haryana.

2. He was charge-sheeted as under:During posting of Force No.961401920 Const (GD) (Suspended) Ikpal Singh, CISF Unit, IOC Panipat on 07.01.2011 in the third shift at 21:00 hrs till 05:00 hrs was posted for checking at South Gate of PNCP. On the above said that at about 22:00 hrs TATA Sumo not DL-4CF-9016 without gate pass and without any valid permission entered the Unit of PNCP area unauthorizedly being a member of disciplined and armed force No.961401920 Constable Ikpal Singh has done extreme carelessness and disobedience of orders

during his duty by allowing TATA Sumo to enter without gate pass in the unit. Hence the charge.

3. And, we highlight that the charge against the petitioner was of performing duties carelessly and disobeying orders in that he permitted a motor vehicle to enter the precincts of the IOC Complex Panipat without a gate pass or a valid permission when petitioner was posted for checking duty at the South Gate of the Complex.

4. The petitioner denied the charge and took a stand that he was deputed for duty at the Out Gate and not at the In Gate. He highlighted that the distance between South-Out-Gate and South-In-Gate was around 50 feet and therefore the Constable posted at South-Out-Gate could not perform the duties at South-In-Gate. An Inquiry Officer was appointed and the department examined eight witnesses, namely, Insp.(Ex.) A.K.Mishra, SI (Ex.) B.P.Singh, SI Ram Chander, HC (GD) Jal Singh, Ct.Sukhbir Singh, Ct.Chander Pal Singh and Ct.Chinmay Mandal.

5. Ct.Sukhbir Singh PW-1 deposed that on January 07, 2011 at about 22:30 hours he received information that a member of the force had apprehended a TATA Sumo vehicle bearing registration DL-4CF-9016 which had entered in the Fabrication Yard. On receiving information he went to the cycle stand at the Fabrication Yard and saw Ct.Chander Pal Singh and Ct.Chinmay Mandal along with the driver of the offending vehicle. When he enquired from the driver as to how he had entered the premises without a pass he replied that he had an arrangement with the persons posted at the South Gate and so no one stopped him. He then conducted a search of the immediate area and then proceeded towards the South Gate where he saw SI Ram Chander, HC(GD) Jal Singh and Ct.Ikpal Singh were posted. He verified the same by checking the Duty Register. SI Ram Chander told him that HC(GD) Jal Singh was posted for In-Gate checking while Ct.Ikpal Singh i.e. the petitioner was posted for Out-Gate checking. When questioned as to how the vehicle had entered the premises without a valid pass no satisfactory reply was given by either of them. SI Ram Chander merely replied that he was making entries in the Daily Book at the relevant time.

6. Ct.Chander Pal Singh PW-2 deposed that on January 07, 2012 at about 21:35 hours he received information that there may be a possibility of theft and thus along with Ct.Chinmay Mandal he left to set up an ambush at the fabrication yard to catch the driver. They saw a vehicle stopping and five persons getting out. Thereafter when the vehicle turned, it was stopped and the driver apprehended. When questioned, the driver said that they had entered to commit theft and named the five persons who had got out of the vehicle. Questioned by the Investigating Officer as to who was posted at the South In-Gate, he replied that HC Jal Singh was posted at the South In-Gate and that the petitioner was posted at the South Out-Gate and SI Ram Chander was in the Control Room.

7. Ct.Chinmay Mandal PW-3, deposed in sync with PW-2.

8. SI (Exe.) B.P.Singh PW-4 and Ct.L.V.V.S.Narayana PW-5 deposed that they reached when they got information that a motor vehicle had been seized and they were told to search the area and that they do not remember who was posted at the South Gate.

9. HC(GD) Jal Singh PW-6, deposed that on January 07,2012 he was posted in the In-Gate for duty from 21:00 to 05:00 hours on the orders of SI Ram Chander. That no vehicle entered the gate without a gate pass when he was on duty. At 22:05 hours he left the post to answer the call of nature and requested petitioner to man his post and returned after 8 to 10 minutes. Cross-examined by the petitioner as to whether he informed SI Ram Chander when he left the post, he replied that since he saw SI Ram Chander making entry in the daily book he did not disturb him. He stated that it was common practice for a person at a post to leave the post to relieve himself and request somebody else to assume duty on his behalf. Questioned as to the distance between the Out-Gate and the In-Gate he stated that the distance was about 50 feet, and in view of said admission when questioned as to how was it possible for a personnel to man two posts at a distance of 50 feet, he replied that the distance was irrelevant.

10. SI Ram Chander PW-7, stated that on January 07, 2011 he was the Shift In-Charge and had assigned duty to HC(GD) Jal Singh at the In gate and Ct.Ikpal Singh at the Out gate for the shift commencing from 21:00 hours up to 05:00

hours. He stated that the duty of the person at In gate was to check the gate pass or permission to a vehicle to enter the premises and the duty of the person posted at Out gate was to check the vehicles leaving the precincts of the complex and to inform the officer in charge in case of any problem. He stated that HC (GD) Jal Singh was responsible for the TATA Sumo vehicle entering without permission. He also stated that if any force member had to leave the gate he had to do so only after taking permission of the Shift In-Charge.

11. On being questioned by the Presenting Officer as to whether anybody was additionally posted due to overcrowding during the shift period he replied that no one was posted as an additional hand and clarified that in case a personnel had to leave the post a member from the Quick Reaction Team would replace him, but admitted that one Force personnel could take the help of another posted on duty at the same time. He categorically stated that he never saw HC Jal Singh leave the gate nor he took permission from him.

12. Insp.(Exec.) A.K.Mishra PW-8 deposed that he was posted as Group Commandant at the time of the incident. In the morning of January 08, 2012 he was informed of the incident and that an investigation had been ordered by the Deputy Commandant pertaining to the incident. When he checked the duty register he found that SI Ram Chander, HC(GD) Jal Singh and Ct.Ikpal Singh were posted at the South Gate during the night shift on January 7, 2011.

13. On questioning by the Presenting Officer, he stated that In- Gate and Out-Gate of PNCP were not different, but were one and that force members posted at South-Gate had different responsibilities, but usually worked in co-ordination with each other.

14. The Inquiry Officer submitted a report holding petitioner guilty and in so concluding held that the evidence established that the Force members posted at the gate help each other in case of need and that at the relevant time HC Jal Singh had sought the help of the petitioner and since the TATA Sumo vehicle had entered without a valid permit, the charge was established. Relevant part of the Inquiry Report reads as under:This shows that force members posted at South Gate out and South Gate in helps each other in case of need. In reply to question

No.6 accused force members told that he did not know that TATA Sumo vehicle is entering without gate pass. In reply to question No.9 the accused force member told that he was busy in checking at his duty place and did not paid attention on that side. In reply to question No.10 the accused force member told that in case anything is required by person at out checking he informs shift incharge and after providing reliever he leaves the work place. It clearly shows that if shift incharge is not present there and any senior to force member is present and in case of need he calls person of South Gate out checking then goes for his help. Conclusion:After examining the statements of prosecution side and documentary evidence. It is found that on 07.01.2011 at about 2150 hours TATA Sumo vehicle not DL-4CF-9016, shift incharge SI/Exe. Ram Chander after going into control room entered the PNCP Plant from South Gate without gate pass and at that time HC/GD Jal Singh and Const.Ikpal Singh for his help was present on the same gate. Therefore Force No.901601920 Const./GD Ikpal Singh by memo not V15014/CHCG/CISF/DIS-36/RC/2011-475 dated 14th March 2011 charges framed are fully proved.

15. Agreeing with the report of the Inquiry Officer the Disciplinary Authority levied penalty of compulsory retirement upon the petitioner vide order dated September 15, 2011 against which appeal filed was rejected vide order dated January 23, 2012 and revision preferred has been rejected vide order dated June 26, 2012.

16. Now, there is a problem. The charge against the petitioner was of performing duties negligently by permitting a TATA Sumo vehicle to enter without a gate pass. It was not the charge against the petitioner that he assisted HC Jal Singh in a negligent manner.

17. Learned counsel for the petitioner vehemently argued that since the petitioner was posted at the Out-Gate, a fact admitted by all witnesses of the prosecution, he defended himself by making good the point that the vehicle had entered from the In-Gate. Learned counsel further urged that the witnesses of the department took a shifting stand, in that PW-6 stated that it was common practice for a Force personnel to leave the duty post and request somebody else to man the duty post at said time and thereby introducing the theory that petitioner was at the relevant

time manning the In-Gate and the Out-Gate, a version which was somewhat strengthened by the testimony of PW-8 who also deposed of such practice.

18. Now, if the charge had been that it was a practice for Force personnel to leave their duty post for some time requiring their colleague to man two posts, the petitioner could have led evidence by seeking production of relevant office instructions that this was not permissible. It is thus a case where it can be said that the charge established is other than the charge alleged or it can even be said that the petitioner has been prejudiced.

19. That apart, it is the duty of every Inquiry Officer to weigh in the basket all the evidence led and not selectively pick up pieces of evidence from here and there. The Inquiry Officer has overlooked the fact that admittedly HC Jal Singh was posted at the In-Gate and the petitioner was posted at the Out-Gate. Admittedly, the vehicle had entered from the In-Gate. It was therefore easy for HC Jal Singh to shift the blame by taking a convenient stand, which he did. Even at a domestic inquiry, Rule of Prudence would require the testimony of HC Jal Singh to be taken with a pinch of salt. Now, even HC Jal Singh admits that he was required to make an entry in the Daily Diary of his leaving the duty post and claims that he went to the Control Room to do so, but seeks to explain no entry made by him in the Daily Diary by stating that he saw SI Ram Chander making entry in the Daily Diary and therefore he did not disturb him. SI Ram Chander claims that HC Jal Singh never came to the Control Room. We find it most illogical for HC Jal Singh to be going to the Control Room to make an entry in the Daily Diary and obviously the entry would have been made by the Shift In-Charge i.e. SI Ram Chander, and if SI Ram Chander was sitting with the diary in front of him and making some entry, it would be all the more logical for HC Jal Singh to tell him to make one more entry. All this has been overlooked by the Inquiry Officer. Further, the Inquiry Officer has overlooked that HC Jal Singh admitted that the distance between the In-Gate and Out-Gate was 50 feet and when questioned as to how could a person at the Out-Gate simultaneously manage the In-Gate, conveniently replied that the distance was irrelevant.

20. Since during inquiry the site plan showing the two gates was not proved, we had required a site plan to be produced before us and the one which was produced before us would reveal that the distance between the two gates is indeed 50 feet.

21. It is thus a case where the Inquiry Officer has ignored material and relevant evidence and has ignored the relevant circumstances. Unfortunately, the Disciplinary Authority, the Appellate Authority and the Revisional Authority have overlooked the same.

22. During arguments, learned counsel for the respondents sought to urge that as a matter of fact what happened was that after 10:00 PM in the night, the In-Gate was closed till the next morning as number of vehicles making ingress and egress decreased thereby requiring the guard at the In-Gate to close the In-Gate and shift to the Out-Gate from which gate alone incoming and outgoing vehicles would be checked and thus urged that it was in said circumstance that the petitioner was responsible for a vehicle to be making an unauthorized entry.

23. Learned counsel had made a submission as above ignoring that a completely new version was being projected before us.

24. The writ petition is allowed. Impugned orders dated September 15, 2011; January 23, 2012; and June 26, 2012 are quashed. The petitioner is reinstated in service with all consequential benefits but without any back-wages.

25. No costs. (PRADEEP NANDRAJOG) JUDGE (MANMOHAN SINGH) JUDGE
DECEMBER 19 2012//dkb//

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