

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.6726/2004**

% **Judgment Reserved On: 21.09.2010**
Judgment Delivered On: 24.09.2010

RAJESH BHUTANI Petitioner
Through Ms.Meenu Mainee, Advocate
Versus

UOI Respondent
Through Mr.A.S.Dateer, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

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1. This is the second round of litigation fought by Rajesh Bhutani against the Indian Railways. The first round was fought when he filed OA No.1783/1999 questioning the report of the enquiry officer indicting him of the misdemeanor alleged against him; the report being ex-parte was questioned by him on the ground that he never received a notice to attend the enquiry officer nor was the enquiry report submitted to him.

2. Vide order dated 21.09.2000, OA No.1783/1999 succeeded when the Tribunal noted that the address at which Rajesh Bhutani resided was B-29, West Patel Nagar, New Delhi and not B-79, West Patel Nagar, New Delhi on which address the notices were sent. It was directed by the Tribunal that fresh enquiry be held.

3. At the second stage, the enquiry officer duly served Rajesh Bhutani who participated at the enquiry and suffered a penalty when the disciplinary authority, agreeing with the report of the enquiry officer, inflicting a major penalty of reducing his pay in the grade of ₹975-1540 from ₹1075/- to ₹975/- for a period of six years with cumulative effect. The appeal filed got rejected, compelling Rajesh Bhutani to file OA No.2898/2002 which has been dismissed by the Tribunal vide impugned judgment and order dated 08.08.2003. Review attempted vide RA No.294/2003 has been dismissed vide order dated 24.10.2009.

4. Before noting the contentions advanced by Rajesh Bhutani, it would be advisable for us to note the misdemeanor alleged against him as per the charge sheet served upon him. It was alleged against Rajesh Bhutani that on 22.08.1994, while working at the upper class counter at NDLS booking, and discharging duties of a Mobile Booking Clerk, he issued two tickets in Chair Car Ex.NDLS to BTI by 4589 Express to Shri Nizam, an employee of Quick Travels and collecting ₹470/- from Shri Nizam issued BPT No.982016 in sum of ₹412/- and in spite of protest by Shri Nizam refused to return ₹58/-. One Shri T.R.Sethi President of Travel Agent Association approached Rajesh Bhutani to rectify his wrong but Rajesh Bhutani refused to do so openly admitting having received ₹58/- in excess. Shri TRP complained to the Deputy Superintendent and thereafter in the presence of Shri S.S.Babjani Head TCR and Shri Charan Singh P.C.I., Rajesh Bhutani admitted having over-charged ₹58/-. It was further alleged that a written complaint was thereupon submitted by Shri Nizam which was investigated by Shri C.K.Sethi and the allegation was found to be correct.

5. The Department could not examine Shri Nizam or Shri T.R.Sethi since they did not respond to the summons issued to them by the enquiry officer. Shri Charan Singh, PCI/NDLS appeared as PW-1 and admitted that Ex.P-3 was the statement made by him to Shri C.K.Sethi

who was entrusted the job of investigating the complaint P-1 lodged by Shri Nizam. He deposed that in his presence Rajesh Bhutani confessed having over-charged Rs.58/- and refused to return the same. He stated that he heard the conversation between Shri Nizam and the charged officer because he got attracted to the booking counter upon hearing shouts of a passenger. He deposed that he heard the passenger complaining of being over-charged of Rs.58/-. He deposed that Shri S.S. Bablani HTCR also witnessed the incident. Shri S.S.Bablani HTCR appeared as PW-2 and stated that the statement P-2 recorded by C.K.Sethi was made by him. He corroborated presence of Charan Singh PW-1 by deposing that when he went to resolve the problem he saw Shri Charan Singh PCI present at the spot. Shri C.K.Sethi PW-3 deposed that he investigated the matter pursuant to the complaint Ex.P-1 and he recorded the statements of Shri Charan Singh and Shri Bablani and that his investigation revealed that Rajesh Bhutani had over-charged Rs. 58/- and that Rajesh Bhutani confessed to the same in his presence.

6. After the department led evidence, Rajesh Bhutani filed an application to summon two defence witnesses but did not name them. He simply requested the enquiry officer that the persons on duty on 22.08.1994 i.e. the date of the alleged incident as Chief Booking Supervisor and the Supervisor be summoned. The enquiry officer passed an order on 29.06.2001 that in the absence of any specific names, the charged officer should summon whomsoever he wants.

7. The enquiry officer indicted Rajesh Bhutani and while discussing the evidence referred to the complaint Ex.P-1 made by Shri Nizam and noting that neither Shri Nizam nor Shri T.R.Sethi appeared at the enquiry, there was enough evidence to indict Rajesh Bhutani in view of the testimony of Shri Charan Singh, Shri S.S.Bablani and Shri C.K.Sethi. The disciplinary authority and the appellate authority have agreed with the findings returned by the enquiry officer.

8. The Central Administrative Tribunal has found sufficient evidence against Shri Rajesh Bhutani and has dismissed OA No.2898/2002.

9. Two contentions were urged by Ms. Meenu Mainee, learned counsel for Rajesh Bhutani. Firstly, counsel urged that the witnesses sought to be examined by Rajesh Bhutani were Railway servants and unless the enquiry officer summoned them, the two would not have got leave and hence would not have appeared before the enquiry officer. Thus, counsel urge that by not summoning the defence witnesses, who were Railway employees, the defence has been prejudiced. Second contention urged is that by not examining Shri Nizam the Department has not proved any incident though the mouth of Nizam and that the complaint Ex.P-1 stated to have been made by Nizam remained unproved. Counsel urged that at best, the testimony of the three witnesses examined at the enquiry was hearsay evidence and hence inadmissible. Removing the said evidence, counsel urged that it was a case of no evidence.

10. We do not agree with either submission.

11. Pertaining to non-issue of summons to examine the Chief Booking Officer and the Supervisor on duty on 22.08.1994, suffice would it be to state that the enquiry officer was not obliged to find out as to which two persons were on duty at the Railway station on 22.08.1994 as the Chief Booking Officer and the Supervisor. Rajesh Bhutani was obliged to give the names of the officers concerned and only then could they be summoned. In the absence of Rajesh Bhutani disclosing the names of the two persons who were working as the Chief Booking Officer and as the Supervisor at the Railway station on 22.08.1994, the enquiry officer was perfectly justified in directing that Rajesh Bhutani should produce the two if he desired to examine them.

12. As regards the second plea, as noted by us hereinabove, Charan Singh claims to have got attracted to the Booking counter as

he heard a passenger shouting and complaining of being over-charged. He deposed that when he reached the booking counter he heard with his own ears the passenger complaining of being over-charged in sum of Rs.58/- and Rajesh Bhutani admitting having over-charged Rs.58/- but refusing to return the said amount. Thus, without discussing any further evidence, we can safely conclude that the testimony of Shri Charan Singh was not hearsay evidence. He may not have seen the origin of the fight and may not have heard the initial exchange of volatile dialogues between Rajesh Bhutani and Shri Nizam, but what he heard mid-way proves that Shri Nizam was complaining of Rajesh Bhutani having over-charged him Rs. 58/- and Nizam complained about the same.

13. S.S.Bablani has deposed that he heard with his own ears Rajesh Bhutani confessing to have over-charged Shri Nizam Rs.58/-.

14. It is thus a case where there is direct evidence through the mouth of Shri Charan Singh of what he saw and heard as transpired between Shri Nizam and Shri Rajesh Bhutani. Contemporaneous evidence of Rajesh Bhutani's confession at the spot and when the heat of the moment was on has surfaced through the mouth of S.S.Bablani. It hardly thus matters that Shri Nizam and Shri T.R.Sethi did not depose before the enquiry officer.

15. We find no merit in the writ petition which we dismiss imposing cost in sum of Rs.5000/- against the petitioner and in favour of the respondents.

PRADEEP NANDRAJOG, J.

SEPTEMBER 24, 2010
'ag'

MOOL CHAND GARG, J.