

\$~3 & 4 (Common Order)

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

+ W.P.(C) 6632/2011

% Date of decision: 24th July, 2013.

RAM CHANDER AND ORS. Petitioners
Through : Ms.Jyoti Singh, Sr. Adv. with
Ms.Tinu Bajma, Ms.Sahilla Lamba
and Mr.Amandeep Joshi, Advocates
versus

UNION OF INDIA AND ORS Respondents
Through : Mr.Arvind Kumar Shukla, Mr.Alok
Shukla, Mr.Shivom Tandon and
Mr.Shivanshu Bajpai, Advocates.
AND

+ W.P.(C) 7756/2011

KRISHAN KUMAR Petitioner
Through : Ms.Jyoti Singh, Sr. Adv. with
Ms.Tinu Bajma, Ms.Sahilla Lamba
and Mr.Amandeep Joshi, Advocates
versus

UOI AND ORS Respondents
Through : Mr.Arvind Kumar Shukla, Mr.Alok
Shukla, Mr.Shivom Tandon and
Mr.Shivanshu Bajpai, Advocates.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MS. JUSTICE DEEPA SHARMA

GITA MITTAL, J (Oral)

1. These writ petitions emanate from the common incident which occurred in the night intervening 1/2-07-2006 in Train No.8237 up Chattisgarh Express from New Delhi Railway Station to Jalandhar City. Both the petitioners were charged with the same charge and subjected to common disciplinary proceedings. Inasmuch as the writ petitions raise similar question of fact of law, they are taken up together for consideration. With the consent of both the parties, we have heard the writ petitions finally.

2. The facts giving rise to the present petitions are within a narrow compass and are mainly undisputed. To the extent necessary, the same are briefly noted hereinafter.

3. It is an admitted position that the petitioners were recruited as Constables with the Railway Protection Force. On 2.7.2006, these petitioners were on Escort Duty on Train No.8237 up Chattisgarh Express which was to travel between New Delhi Railway Station to Jalandhar City. The petitioners contend that the escort party was led by its Incharge ASI/RPF Shri Ran Singh as well as Constable Joginder Singh.

4. The petitioner complain that they have been wrongly implicated in a false complaint made by one Shri Kuldeep Panwar who was actually guilty of suspicious conduct and travelling unauthorisedly in the train. It is complained that

when the petitioners confronted him, he resorted to implicating them falsely, resulting in the disciplinary action against them.

5. On the other hand, Shri Kuldeep Panwar has complained that on 1st July, 2006 at about 11.20 p.m. he was travelling from Ghaziabad to Saharnpur by the said train on a valid ticket. While alighting from the train at about 3 a.m. on 2nd July, 2006 at Saharanpur Railway Station, which was his destination, three G.R.P.F. Jawans who were in uniform but without name tags and were calling each other by the names of Krishna and Ram Chander forcibly stopped him and demanded his ticket from him. The complainant alleges that he had shown them the ticket, at which they demanded an amount of Rs.300/-. The complainant resisted this demand as he was carrying a valid ticket.

6. The complainant has also further alleged that the said three constables abused, thrashed and beat the complainant with their fist, blows and canes and forcibly took away Rs.500/- from his shirt pocket. Despite protest by co-passengers, the constables persisted with the illegal action and threatened the passengers as well. When the complainant informed the constables that he was going to complain to the GRP police station about their conduct, they became more threatening. The complainant has also made a grievance that the constables had prepared a false receipt relating to the complainant and procured his signatures on some blank papers and threatened him that they will use these blank papers on

which they had procured his signatures and would kill him. The complainant was permitted to alight from the train only at Sirhind Railway station in an injured condition. He returned to his house by Jalandhar-Delhi Super Fast Train; got his injuries medically examined and thereafter lodged complaint in the night of 2nd July, 2006 with the Police Station GRP, Saharanpur on 2.7.2006.

7. It is noteworthy that along with the complaint, the complainant had enclosed his ticket; the receipt as well as the record of his medical check up i.e. the MLC. It is admitted before us that FIR No.111/2006 was registered by the Police Station GRP, Saharanpur on 2nd July, 2006 under Sections 384/342/504/506/323 of the Indian Penal Code. It appears that the complainant also lodged a complaint with the petitioners' office on 2nd July, 2006 itself.

8. We are informed that on 4th July, 2006, the petitioners were suspended from duty by the respondents. Thereafter a preliminary inquiry was conducted into the above allegations against the conduct of the petitioners and vide an order dated 6th July, 2006 they were both dismissed from service. The petitioner appealed against the dismissal. The appellate authority passed an order dated 29th December, 2006 holding that the petitioner could not have been dismissed without a proper inquiry and compliance of principles of natural justice. As a result, the petitioners were reinstated into service.

9. The respondents thereafter issued a charge sheet to the petitioners alleging as

follows:

“H/Constable Ram Chander S/o Sh.Amar Singh of RPF/Post Delhi Kishan Ganj is charged for gross indiscipline and neglect in duty in that he was while on train escorting duty along with Ct.Krishan Kumar in train No.8327 up Chattisgarh Express on the night of 1-2/7/2006 extorted Rs.500/- tortured one passenger namely Sh.Kuldeep Panwar S/o Late Sh.Rampal Singh R/o 700 New Awas Vikas Colony Saharanpur who was having ticket from GZB to SRE. He did not allow the passenger to get down at SRE and took him up to Sirhind.

Constable Krishan Kumar S/o Sh. Ranjeet Singh of RPF/Post Delhi Kishan Ganj is charged for gross indiscipline and neglect in duty in that he was while on train escorting duty along with H/C Ram Chander in train No.8327 up Chattisgarh Express on the night of 1-2/7/2006 extorted Rs.500/-, tortured and did not allow the passenger namely Sh.Kuldeep Panwar S/o Late Sh.Ram Pal Singh R/o 700 New Awas Vikas Colony Saharanpur who was having ticket from GZB to SRE. He did not allow the passenger to get down at SRE and took him up to Sirhind.”

10. It is not disputed that the petitioners were given a fair and adequate opportunity to defend themselves in the disciplinary inquiry proceedings. The inquiry officer recorded the evidence of three prosecution witnesses including the complainant and the petitioners were given adequate opportunity to cross examine the witnesses, which they availed. The petitioner also made defence statements and chose to lead defence, examining two witnesses in support of their plea of innocence.

11. We are informed that by an inquiry report dated 28th July, 2007, the inquiry

officer found that the petitioner Krishan Kumar had not allowed the complainant to alight from the train at Saharanpur even though he was carrying a proper ticket from Sahadra to Saharanpur and took him upto Sirhind. The inquiry officer, however, found that the charge of Rs.500/- having been snatched from the complainant by Ct.Krishan Kumar was not proved as the complainant had not produced any evidence.

12. Learned senior counsel for the petitioners has challenged the findings of the inquiry officer on the ground that there was no reliable evidence to support the same. It is further contended that the findings of the inquiry officer are in the realm of conjectures and that he has presumed that Constable Krishan Kumar had demanded money from the complainant and that therefore there was a tiff between them.

13. So far as Ram Chander is concerned, the enquiry officer has submitted report dated 9.8.2007 and returned similar findings in a separate report dated 28th July, 2007 against Krishan Kumar.

14. The copies of the inquiry reports were duly furnished to the petitioners who represented against them. The disciplinary authority has considered the matter and by two separate orders, agreed with the findings of the enquiry officer. So far as H/Ct.Ram Chander is concerned, vide an order dated 5.9.2007, the disciplinary authority held him guilty of the charges. However, despite the charges being

grave, keeping in view his previous record and length of service, the disciplinary authority took a lenient view and gave him one chance to improve himself. As such, disciplinary authority awarded punishment of withholding of his increments for a period of three years vide order dated 5.9.2007.

15. A similar order was passed so far as Ct.Krishan Kumar was concerned by the disciplinary authority on 31.8.2007 and the same punishment was imposed upon him. The disciplinary authority has also noted the circumstances that no report was given against the complainant Shri Kuldeep Panwar by the delinquent officers the present petitioners on arrival at the junction on 2nd July, 2006 after completion of their escort duty. This circumstance casts doubt on the veracity of the petitioners contentions.

16. Before us, no submission is made that the petitioners were deprived of due and fair opportunity during the inquiry proceedings or denied opportunity to produce defence. No violation of procedure or principles of natural justice is pointed out in the disciplinary proceedings on impugned orders.

17. We may note that the petitioner assailed the order and punishment imposed by the disciplinary authority by way of statutory appeals. H/Ct. Ram Chander filed an appeal dated 2.11.2007 which was rejected vide an order dated 10.12.2007. H/Ct.Ram Chander challenged the orders against him by a statutory revision petition to the Additional Chief Security Commissioner/RPF which was rejected

by an order dated 30.7.2008.

18. So far as the petitioner Ct.Krishan Kumar is concerned, he merely made a mercy petition dated 10.7.2010 which was rejected by an order dated 7.01.2011. Aggrieved by the aforenoticed orders of the disciplinary authority; appellate and revisional authority H/Ct. Ram Chander has assailed them by way of WP (C) No.6632/2011 while Ct. Krishan Kumar has challenged the orders against him by way of WP (C) No.7756/2011. The challenges rest on the sole ground that the same are based on no evidence.

19. It is trite that the scope of judicial review in disciplinary proceedings is extremely limited. The court is permitted to examine the record of the disciplinary proceedings from the perspective only in regard to examine as to whether there was any violations of statutory provisions or rules and regulations. This court would also be permitted to examine as to whether any principles of natural justice would have been violated. In a case where an objection is raised that the findings of the disciplinary authority as well as the appellate or revisional authority are based on no evidence, the court would examine the evidence which was led by the parties before the disciplinary authority. However, the scope of this examination by the court is narrow inasmuch as the burden of proof which the authorities have to discharge is limited to establishing preponderance of probabilities and is not required to discharge the burden of proving the allegations beyond reasonable

doubt as in a criminal trial. Therefore, the burden which the prosecution had to discharge in the aforementioned disciplinary proceedings against the petitioners was only to establish the possibility that the incident as complained could have occurred and the court would test grievances of the petitioners on the bench mark of the probability as to whether it could have occurred as stated or not.

20. The evidence led by the respondent shows that the complainant Sh.Kuldeep Panwar, a train passenger, lodged his complaint at the earliest to the GRP police setting out his grievances. In support of his complaint, he submitted a valid ticket; the receipt as well as copy of his MLC. The police registered FIR no.111/2006 based on his allegations. This passenger thereafter appeared in the inquiry proceedings. He supported his complaint with his oral testimony. The order of the disciplinary authority reflects that Kuldeep Panwar was apprehensive about his safety at the hands of the petitioners and the prosecution had to take steps in the enquiry so as to allay his apprehensions and to enable him to give his statement without any fear of the petitioners. The evidence of the complainant was recorded in the disciplinary proceedings on 30th July, 2007. There is no contradiction between the statement which Sh.Kuldeep Panwar gave to the disciplinary authority and the complaint which is the basis of FIR no.111/2006. Therefore, so far as disciplinary proceedings are concerned, there was sufficient material against the petitioners before the Inquiry Officer to have return the finding of guilty.

21. Learned senior counsel for the petitioners has drawn our attention to the evidence which was recorded in the disciplinary proceedings of defence witness no.2 Mr.A.K.Singh who the Train Ticket Examiner on the fateful night on train No.8237. This witness has in fact corroborated the complainant and has stated in his evidence that the complainant was having M/E a ticket from Ex.Shahdara to Saharnpur. Mr.A.K.Singh has further stated that the complainant was charged Rs.350/- for overriding charges Ex-Saharanpur to Ambala Cantt. And issued EFT NO.196579 and signature of that passenger on the EFT were taken and he released him at Amabala Cantt. Railway Station and continued his journey upto Ludhiana. This witness has therefore corroborated the complainant to the effect that he had valid ticket upto Saharanpur and was not permitted to disembark from train by the petitioners.

22. In view of the above discussion, it is not possible to agree with learned senior counsel for the petitioner that the impugned orders are based on no evidence at all. The impugned orders are based on evidence on record. The challenges by the petitioners are devoid of merit. No further point is pressed for determination by us.

23. These writ petitions are accordingly dismissed.

(GITA MITTAL)
JUDGE

(DEEPA SHARMA)
JUDGE

JULY 24, 2013
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