

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Writ Petition No.17864 of 2014

Date of Decision: May 01, 2015

Sandeep Kumar

.....Petitioner

versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE P.B.BAJANTHRI.

Present: Mr.Namit Kumar, Advocate, for the petitioner.

Mr.Karminder Singh, Advocate, for the respondents.

1. Whether Reporters of Local papers may be allowed to see the judgment?yes

2. To be referred to the Reporters or not?yes

3. Whether the judgment should be reported in the Digest?

Surya Kant, J. (Oral)

The petitioner impugns the order dated 30.04.2014 passed by Central Administrative Tribunal, Chandigarh Bench, whereby his Original Application, challenging the order of his removal from service as a result of departmental action, has been dismissed. The order dated 30.05.2014 of the Tribunal dismissing the petitioner's review application is also under challenge in this appeal.

[2] The facts may be noticed briefly.

[3] The petitioner joined the Railways as a Ticket Collector on 22.01.1992. He was later on promoted as Travelling Ticket Examiner (TTE).

[4] The petitioner was posted in Train No.2137 as Incharge of Coach Numbers S-3 & S-4 from New Delhi to Ferozepur, on 23.03.2005. The Vigilance Team comprising three Vigilance Inspectors from the Headquarters boarded the train at Narwana and on surprise checking found that the

petitioner had allowed 48 passengers to occupy the sleeper coaches S-3 and S-4 without tickets. The Vigilance Team then regularized the travelling of the passengers after charging Rs.5300/- from them. During the course of surprise inspection by the Vigilance Team, the petitioner, with a view to avoid the checking, is alleged to have misbehaved and mis-handled the members of the Vigilance Team and RPF train staff. Consequently, the petitioner was served with the charge-sheet dated 11.09.2007, containing the following allegations:-

“....On 24.03.2005, when he was on duty in coach No.S-3 & S-4 of train No.2137 and checked between Jind-BTI,

- (1) He was carrying 48 irregular passengers in his sleeper coaches No.S-3 and S-4. All these passengers were got regularized/charged and Rs.5300/- were released from them.
- (2) He also adopted non co-operative attitude towards vigilance and misbehaved and tried to manhandle with vigilance team and RPF train staff to avoid vigilance check.

It clearly shows his malafide intention.....”

[5] The petitioner denied the allegations and pleaded innocence. He further alleged that the Vigilance Team was not ready to listen his explanation and snatched away EFT book and Chart 2137 forcibly from him after the RPF personnel tied his hands. He further alleged that the Vigilance Team and the RPF personnel slapped him and didn't care despite hue and cry made by him. The petitioner heavily relied upon on a complaint purportedly made by him to the Senior Divisional

Commercial Manager, Northern Railway, Ferozepur Cantt, on 28.03.2005.

[6] It is appropriate to mention at this stage that the petitioner filed a criminal complaint against the members of Vigilance Team as well as RPF staff under Sections 323/382/341/342/353/504/506/148/149 IPC read with Section 146 of the Railways Act, in the Court of Chief Judicial Magistrate, Bathinda, on 30.04.2005. In the aforesaid complaint, the Additional Chief Judicial Magistrate, Bathinda, vide order dated 21.08.2013, has summoned the respondents (accused) after observing that prima-facie sufficient grounds under Sections 323, 342, 506, 148 read with Section 149 of the Indian Penal Code, were made out.

[7] Reverting back to the stage of the charge-sheet, it is not in dispute that having found the petitioner's reply unsatisfactory, Mr.G.S.Suri, C.E.T. of the Vigilance Wing was appointed as Inquiry Officer. The Inquiry Officer, vide his report dated 10.08.2009 (Annexure A-6), held that both the charges levelled against the petitioner stood proved.

[8] A copy of the enquiry report was supplied to the petitioner vide memo dated 10.08.2009 against which, the petitioner submitted his objections which were duly forwarded to the Disciplinary Authority on 21.08.2009 (Annexure A-12). The Disciplinary Authority vide order dated 27.10.2009 (Annexure A-1) dealt with the petitioner's representation and finding no merit in his defence plea, imposed the punishment of removal from service with immediate effect. Operative part of the order passed by the Disciplinary Authority reads as follows:-

“..... I have also carefully gone into his past

service record which is not satisfactory. He has not refrained himself from corrupt activities though he was removed from service in other case for similar type of corruption committed by him. Whatever has been recorded as above shows that Sh.Sandeep Kumar TTE is not a fit person to be retained in Government service any more.....”

[9] The aggrieved petitioner filed departmental appeal but that was also declined vide order dated 23.12.2009 (Annexure A-2), the relevant part whereof reads as follows:-

“..... In the appeal Sh.Sandeep Kumar has mentioned that D.A. (DCM/FZR) has passed speaking orders which are not reasoned one. This plea is not acceptable because the DA has passed speaking orders after carefully going through all the material evidence available on record. It is not mentioned in the appeal as to how the orders of DA are not reasoned one.

Non co-operation with the checking team is also a very serious offence and has been proved in the course of the DAR enquiry.

I have also consulted past service history of the applicant and found that he is habitual in committing such type of serious misconducts during service.....”

(emphasis applied)

[10] The petitioner then preferred a revision which was turned down by the Revisional Authority vide order dated 29.01.2010.

[11] Still further, the petitioner submitted a mercy petition under Rule 31 of the Railway Servants (Discipline and Appeal) Rules, 1968, which was also rejected vide a self-speaking order dated 07.12.2012.

[12] The relentless petitioner then approached the Central Administrative Tribunal, Chandigarh Bench, who has vide order dated 30.04.2014 dismissed his Original Application observing that the judicial review in disciplinary proceedings is limited and does not permit re-appreciation of evidence as an Appellate Authority. The Tribunal has further observed that it cannot arrive at its own independent finding on re-consideration of evidence and that where it is a proved case of corruption, punishment of dismissal or removal from service is fully justified. The Tribunal thus declined to interfere with the impugned orders passed by the authorities. The petitioner thereafter filed a Review Application which has been summarily rejected by the Tribunal vide order dated 30.05.2014.

[13] Still aggrieved, the petitioner has preferred the instant writ petition.

[14] We have heard learned counsel for the parties at a considerable length firstly on 21.04.2015 and again today.

[15] It is vehemently contended by learned counsel for the petitioner that (i) the charges levelled against the petitioner are ex-facie false and concocted; (ii) had the petitioner unauthorizedly received any payment from the passengers, such cash would have been recovered from him by

the vigilance staff but no such amount was found in petitioner's possession; (iii) the statement of none of the 48 passengers was recorded either on the date of alleged incident, i.e., 23.03.2005 or in enquiry. Reliance is placed in this regard on a decision of the Hon'ble Supreme Court in Hardwari Lal versus State of U.P., 1999(8) SCC 582; (iv) the petitioner's plea went unnoticed that 48 passengers had in fact boarded in Coach Nos.S-1 & S-2 where one Harsh Kumar Sharma was Incharge TTE and he was absent from duty on that day and that those passengers were deliberately planted by the vigilance staff in Coach Nos.S-3 & S-4; (v) the petitioner brought the true facts to the knowledge of the authorities in 28.03.2015 vide complaint (Annexure A-7); (vi) the enquiry proceedings were held in a biased and pre-judged manner as the Inquiry Officer was also from the Vigilance Wing and the petitioner sought the change of Inquiry Officer at the earliest, vide application dated 16.06.2008 and again on 29.09.2008 but his request was not acceded to. Reliance is placed on Indrani Bai versus Union of India and others, 1994 (Sup2) SCC 256; (vii) The petitioner has been denied fair trial as some of the documents having material bearing on the merits of the case, were not supplied to him. Such documents were not supplied though the Inquiry Officer observed that these were relevant, and (viii) the punishment is highly disproportionate to the nature of charges proved against the petitioner.

[16] On the other hand, Mr.Karminder Singh, learned counsel for the respondents maintained that the enquiry proceedings have been conducted in a fair, just and impartial manner after giving adequate opportunities to the petitioner to defend himself. He points out that the story with regard to

physical assaults allegedly given to the petitioner by the Vigilance and RPF staff was concocted after 5-6 days as the complaint to this effect was made by him on 28.03.2005 whereas the incident was of 23.03.2005. According to Mr.Karminder Singh, the aforesaid complaint or the criminal proceedings filed by the petitioner are nothing but an after-thought defence plea.

[17] Having given our thoughtful consideration to the rival submissions and on consideration of the material on record, we do not find any merit in this writ petition. We say so for the reasons that the Vigilance Team has been admittedly constituted by the Railways for checking the malpractices or corrupt activities by its staff. The entry of vigilance staff in Coach Nos.S-3 & S-4 at Narwana or the fact that 48 passengers were actually travelling without tickets is admitted by the petitioner himself, though he claims that such passengers had actually boarded Coach Nos.S-1 & S-2. The report of the vigilance staff that the petitioner, with a view to avoid vigilance checking, started manhandling them and/or abused them, inspires confidence as there was possibly no pre-conceived bias to falsely implicate the petitioner. Secondly, the fact that no amount, allegedly taken by the petitioner from the passengers was recovered from him, is inconsequential for the reason that all the passengers were admittedly found travelling without tickets. Further, the passengers got themselves regularized on deposit of requisite charges of Rs.5300/- with the vigilance team, is suggestive of the fact that they were travelling unauthorizedly and for which the petitioner had not taken any action. Thirdly, it was not necessary to examine the passengers who were found

travelling unauthorizedly as witness(es). It is a matter of common knowledge that such passengers are reluctant to come forward to appear in the domestic enquiry. It is not a case of criminal trial where charges were required to be proved against the petitioner beyond any pale of doubt. In the instant case the enquiry report is self-explanatory and after discussing the entire evidence at threadbare, the petitioner was held guilty. Fourthly, the petitioner's plea that 48 passengers had actually boarded Coach Nos.S-1 & S-2 or that they were falsely shown to have been travelling in Coach Nos.S-3 & S-4 by the vigilance team, is apparently a belated plea. Be that as it may, no re-appreciation of evidence led in the domestic enquiry is permissible within the scope of judicial review. Fifthly, there is a substance in the contention raised by the respondents that the petitioner took 5 days in reporting the matter to the authorities regarding the alleged abuse of power by vigilance team and RPF staff. Had there been an iota of truth in that allegation, the petitioner would have reported the matter without any loss of time. Sixthly, the petitioner's allegation against the Inquiry Officer that the enquiry was held in a biased and pre-judged manner as the Inquiry Officer too was from the Vigilance Wing, is not well founded. It is a mere apprehension. The vigilance cell has been created with a specific task and conduct of enquiry by that cell in no way can be said to be against the principles of natural justice or fair play. As regard to denial of documents, which were relevant, the petitioner has not been able to make out a case of any prejudice caused to him due to non-supply of such documents. No such plea was raised by him before the Appellate or Revisional Authorities. Unless the non-supply of

documents adversely effect the defence plea and resultantly there is a denial of fair trial, then only such a plea can be entertained. As regard to last plea, namely, that punishment awarded to the petitioner is disproportionate to the charges levelled against him, we do not find any merit. The Disciplinary as well as the Appellate Authorities have taken note of the past conduct of the petitioner when earlier also he was found guilty of such like serious misconduct. In fact, the Appellate Authority observed that the petitioner is habitual in committing misappropriation/embezzlement of Government funds. It is the conceded position before us that earlier also the petitioner on identical charges was ordered to be removed from service but the Appellate Authority surprisingly took a lenient view and reduced the punishment of removal from service to minor punishment of withholding of increments for six months. Such an act of misplaced sympathy encouraged an incorrigible petitioner to again indulge in misappropriation for which the order of his removal from service has now been passed. The punishment in question thus cannot be said to be harsh in nature.

[18] For the reasons afore-stated, we do not find any merit in this writ petition.

[19] Dismissed.

[20] No order as to costs.

[SURYA KANT]
JUDGE

May 01, 2015
mohinder

[P.B.BAJANTHRI]
JUDGE