

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17607 of 2014

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Dilip Mehta, son of Late Ram Das Mehta, Parcel Clerk, E.C. Railway, Rajendra Nagar, Patna at present, Ex-Booking Clerk, N.R. Cell, Office of the DRM/Danapur, E.C. Railway, residing at Lal Chouk, Jai Ram Bazar, Near Thakurwari Temple, P.O.- Khagaul, Patna-801105

.... Petitioner

Versus

1. The Union of India through the General Manager, East Central Railway, Hajipur
2. Divisional Railway Manager, East Central Railway, Danapur.
3. Additional Divisional Railway Manager, East Central Railway, Danapur
4. Senior DCM., E.C. Railway, Danapur
5. Asstt. Commercial Manager, E.C. Railway, Danapur
6. Sr. DPO, E.C. Railway, Danapur.

.... Respondents

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Appearance :

For the Petitioner : Mr. M.P. Dixit, Advocate.
Mr. Sanjay Kumar Dixit, Advocate.
Mr. Sanjay Kumar Chaubey, Advocate.
Mr. Shailendra Kumar, Advocate.

For the Railways : Mr. Anil Kumar Sinha, Advocate.
Mr. Shakib Ayaz, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 28-04-2016

Heard learned counsel for the parties.

2. The order dated 13th of January, 2014 passed by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as “the Tribunal”) in O.A. No. 387 of 2012 is subject matter of challenge in the present writ application.

3. In the aforesaid Original Application, challenge was to an order of the Disciplinary Authority dated 26th of February, 2008, order dated 11th of October, 2011 passed by the Appellate Authority

and the order dated 15th of March, 2012 passed by the Revisional Authority, whereby the petitioner was imposed punishment of reduction to next lower grade of pay for five years with cumulative effect and also debarred from cash handling post during the entire service career.

4. The petitioner while working as Senior Booking Clerk at Biharsharif Station on 18th of March, 2006 was charged with the following misconduct:-

(i). That he demanded and accepted extra Rs. 240/- per ticket for Biharsharif to Tarori, though the value of the ticket was Rs. 222/-, thus, in respect of six tickets he has charged extra Rs. 18/- per ticket for his own benefit.

(ii). During checking of Government revenue, it was found that there is excess of Rs. 30/-.

(iii). The two ticket Nos. 33036 and 33037 from Biharsharif to Patna was found in original, which was kept by the petitioner for resale.

(iv). That the petitioner kept a sum of Rs. 4805/- as undisclosed personal amount, which is irregular.

5. On the basis of the charge-sheet, an Inquiry Officer was appointed to conduct inquiry into the charges. Before the Inquiry Officer, the decoy passenger Sri Fekan Choudhary appeared as a witness, who supported the allegation levelled against the petitioner



in the Charge Memo. On the basis of the evidence led before the Inquiry Officer all the four charges levelled against the petitioner were found to be proved. On the basis of such report of the Inquiry Officer, an order of punishment dated 26th of May, 2008 was passed of reduction of pay to the initial stage in the next lower grade for five years with cumulative effect and also debarred from cash handling. The petitioner filed an appeal. The Appellate Authority issued a notice for enhancement of the punishment which order was challenged by the petitioner in O.A. No. 299 of 2008 whereby the challenge to the notice of enhancement was set aside but the prayer for setting aside the penalty raised by the petitioner was not allowed. Aggrieved, the petitioner filed C.W.J.C. No. 3859 of 2011 which was decided on 14th of September, 2011. Operative part of the order reads as under:-

“In that view of the matter, the impugned order of Tribunal is set aside in part and the matter is remitted back to the appellate authority for disposal of the appeal preferred by the petitioner in accordance with law. It is expected that the appellate authority shall consider the grounds raised by the petitioner, at least, in brief and dispose of the same at an early date, preferably, within two months from the date of production/communication of a copy of this order.”

6. It is thereafter, the Appellate Authority passed an order on 11th of October, 2011 dismissing the appeal. The order passed by the Appellate Authority reads as under:-

“The undersigned has gone through the whole case file and your appeal dated 02.04.11 carefully and observed the following

facts:-

“The allegations against Sh. Mehta have been proved beyond doubt in the enquiry. DA has given clear speaking order in imposing the punishment and it seems he has consciously and reasonably decided the quantum of punishment. In the appeal dated 02.04.2008, the result of the check has been sought to be refuted on procedural matter which have been looked into by E.O. Nothing new facts have been presented. It is therefore I am constrained to maintain the punishment imposed by ACM.”

7. In *Oriental Bank of Commerce and another v. R.K. Uppal*, (2011) 8 SCC 695, the Hon’ble Supreme Court has held that when the Appellate Authority decides any appeal against the order of punishment, it could not be an exhaustive order. The Court held as under:-

“27. The High Court has faulted the order of the appellate authority also on the ground of it being a non-speaking order. Is it so? We have carefully perused the order of the appellate authority and we find that the order dated 4-6-2004 cannot be labelled as a non-speaking order. The order does not suffer from the vice of non-application of mind. The appellate authority has addressed the points raised in the appeal and critical to the decision, albeit briefly. It is true that the appellate authority must record reasons in support of its order to indicate that it has applied its mind to the grounds raised but it is not the requirement of law that an order of affirmance by the appellate authority must be elaborate and extensive. Brief reasons which indicate due application of mind in the decision-making process may suffice”.

8. Further revision was dismissed on 15th of March, 2012. The order was communicated vide Annexure-10. The challenge to the order of the Disciplinary Authority, Appellate Authority and the

Revisional Authority before the Tribunal remained unsuccessful and consequently, the petitioner is in a writ application before this Court.

9. Learned counsel for the petitioner vehemently argued that the procedure for laying trap cases, as contained in Paragraph 704 and 705 of the Railway Vigilance Manual has not been complied with as the person who was sent as a decoy passenger was lower in rank than the petitioner which violates the Condition (d) of Paragraph 704(v) of the Manual. Reliance is placed by the counsel for the petitioner on the judgment reported as *Moni Shankar Vs. Union of India and another (2008) 3 SCC 484*.

10. It is also argued that the order passed by the Appellate Authority is a non-speaking cryptic order and against the mandate of this Court and thus, the order of punishment imposed cannot be maintained in law. He places reliance on a judgment reported as *Vijay Singh Vs. State of U.P. & Ors. 2012 (3) PLJR 17 SC*.

11. We have heard learned counsel for the parties and find no merit in the present writ application.

12. In Moni Shankar's case (supra) the Court has referred to another judgment reported as *Chief Commercial Manager, South Central Railway Vs. G. Ratnam (2007) 8 SCC 212* wherein it was held that non-adherence of the instructions laid down in Paras 704 and 705 of the Vigilance Manual would not invalidate the departmental proceedings. After referring to the said judgment, the

Court found the disciplinary proceedings in total violation of the guidelines together with other factors which can be taken into consideration as to whether the Department has been able to prove the charges against the delinquent official. The relevant extract from the *Moni Shankar's* case reads as under:-

“15. It has been noticed in that judgment that Paras 704 and 705 cover the procedures and guidelines to be followed by the investigating officers, who are entrusted with the task of investigation of trap cases and departmental trap cases against the railway officials. This Court proceeded on the premise that the executive orders do not confer any legally enforceable rights on any person and impose no legal obligation on the subordinate authorities for whose guidance they are issued.

16. We have, as noticed hereinbefore, proceeded on the assumption that the said paragraphs being executive instructions do not create any legal right but we intend to emphasise that total violation of the guidelines together with other factors could be taken into consideration for the purpose of arriving at a conclusion as to whether the Department has been able to prove the charges against the delinquent official.”

13. Present is not a case of total violation of the guidelines nor there are other factors which can be taken into consideration for finding that the department has not been able to prove the charges against the delinquent official. Paragraph 704 of the Railway Vigilance Manual deals with trap cases that is leading to Criminal Trials; whereas Paragraph 705 lays down the procedure for action by the department. Still further, Clause (d) contemplates that the men of status should be decoy witness considering the status of the accused.



It all depends upon the normal circumstances and the availability of the person who is ready to act as a decoy. The fact remains that the decoy witness has appeared before the Inquiry Officer and he has been cross-examined by the petitioner. He has stood the test of cross-examination. Therefore, the allegation that the petitioner demanded more money than the price of the ticket stands established. Still further, the selling of a ticket to the decoy witness was one of the charges levelled against the petitioner. There were three other charges. Therefore, even if there was some irregularity, which is not, as it is not a case of criminal trial, the other charges having been proved; it is a cumulative effect of all the charges which are required to be taken into consideration. It may be noticed that in *State of Haryana and Anr. Vs. Rattan Singh AIR 1977 Supreme Court 1522* a three Judge Bench held that even hearsay evidence is admissible in the departmental proceedings. It was held to the following effect:-

“4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is



objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below mis-directed themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid findings could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passengers from American jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as men of understanding and wordly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainty available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground."

14. Still further, the order of this Court was to consider and decide the appeal on merits in accordance with law. Though, it was observed that it is expected that the Appellate Authority shall consider the grounds, the learned Appellate Authority has considered all the questions raised. It is an order of affirmance. Therefore, it cannot be said that the said order violates the spirit of the order passed by this Court.

15. The judgment in **Vijay Singh's** case (supra) is on the

facts of that case where it was found that the Disciplinary Proceedings were result of non-application of mind. But such is not the fact in the present case. We find that the misconduct stands proved by the Inquiry Officer on the basis of evidence led before it which order was accepted by the Disciplinary Authority, later by the Appellate Authority and the Revisional Authority. We do not find any error in the decision making process which may warrant interference in the writ jurisdiction of this Court.

16. The writ application is, thus, dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P.K.P./Anjani
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