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HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (S) NO. 5033 OF 2015

S.R.B. Krishna, S/o Late S.S. Rao, aged about 52 years, R/o Near Jain Mandir, G.E. Road, Charoda, (PO & PS), Bhilai, Durg Dist., CG State. PIN 490025.

... Petitioner

Versus

1. Union of India, through General Manager, SEC Railways, Bilaspur, Bilaspur Dist., CG State, PIN 495004.
2. Chief Personnel Officer, Personnel Department, Headquarter Office, Bilaspur, Bilaspur Dist., PIN 495004. CG State.
3. Additional Railway Manager, SEC Rlys, Raipur, Raipur Dist., (CG State) PIN 492008.

... Respondents

For Petitioner	:	Mr. K.R. Nair, Advocate.
For Respondents	:	Mr. H.S. Ahluwalia, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per NAVIN SINHA, C.J.

04/01/2016

1. The Petitioner is aggrieved by order dated 10.8.2015 passed by the Central Administrative Tribunal, Jabalpur Bench, circuit sitting at Bilaspur, in Original Application No. 941 of 2013 and the order dated 26.10.2015 in Review Application No. 203/00031/2015 arising from the same.
2. The Tribunal declined to interfere with the order of punishment dated 12.7.2011 reverting the Petitioner from the post of Head TTE in the scale of Rs. 9300-34800 (G.P.Rs.4200/-) to the post of Junior TE in the scale of Rs. 5200-20200 (G.P. Rs.1900/-) for a period of 10 years with cumulative effect. The pay of the Petitioner was fixed at the initial scale of Rs.5,200/-. The Appellate and the Revisional authority declined

interference by their orders dated 6.2.2012 and 25.10.2012 respectively.

3. Learned Counsel for the Petitioner submitted that the punishment was unjustified. The indictment of the Petitioner in the departmental proceedings was perverse as it had not been established that he had demanded illegal gratification of Rs. 100/- from one Shri Gautam Nandi traveling in the AC coach. The latter had deposed that he had offered money to the Petitioner which cannot amount to a demand. There is no proof that any money collected by way of illegal gratification from four passengers traveling in the AC Coach was recovered from the Petitioner. Merely because some cash may have been found below the berth on which the Petitioner was sitting does not lead to a presumption that it was illegal gratification collected by him. The envelopes in which the money had been kept were not opened and two different witnesses had talked of different denomination of the currency notes in the envelopes. The order of punishment was also vitiated as one of the findings of non-regularization of the four persons on Berths No. 29, 30, 31 and 4 in the AC coach despite passage of reasonable time after the train had left Bilaspur did not form part of the charge. It was lastly submitted that the punishment was grossly disproportionate to the charge.

4. Learned Counsel for the Respondents submitted that the Petitioner was the Head TTE of the AC coach on the fateful day in which the raid was carried out. Four passengers, including a decoy passenger were found traveling unauthorisedly in the AC coach without proper tickets. It was the Petitioner's duty and responsibility not to have permitted the same. On the contrary he permitted them to do so for

personal gain without taking the difference in fare and issuing the extra fare ticket in lieu of illegal gratification taken by him. There are no allegations of any irregularity in the conduct of the departmental proceedings and any prejudice caused to the Petitioner because of the same. The absence of a specific charge with regard to non-regularisation of the passengers despite passage of reasonable time has not caused any prejudice to the Petitioner in the facts of the case. There cannot be reappraisal of evidence under Article 226 in exercise of powers for judicial review which has to be confined to the decision making process only. The findings in a departmental proceeding are based on preponderance of probabilities. The strict standard of proof beyond all reasonable doubt has no application. The punishment was neither disproportionate nor shocking to the conscience.

5. We have considered the submissions on behalf of the parties.

6. The Petitioner was served a memo of three inter connected charges on 3.7.2007 with regard to his having permitted four unauthorised passengers to travel in AC coach of Train No. 5159 Down, Durg-Chhapra Sarnath Express in Bilaspur-Katni Section. The vigilance team conducted a surprise inspection. The Petitioner had demanded Rs. 100/- as illegal gratification from the decoy passenger Shri Gautam Nandi, WSI/BSP for unauthorisedly allowing him to travel on Berth No. 4 of A-1 (Second AC coach of 5159 Down, Sarnath Express).

7. The second charge stated that four unauthorized passengers (including the decoy passenger) were found traveling in the AC coach and who were then charged the differential fare amount subsequently by Shri V.C. Rao, TTE, Durg vide extra fare ticket (EFT No. 458709, 458710 and 458711).

8. The third charge was that the Petitioner did not cooperate with the vigilance team during the surprise check by refusing to show the cash kept in his pocket and that he refused to show issuance of EFT for regularization of unauthorized passengers detected during the vigilance check. He had thus failed to maintain absolute integrity, showed lack of devotion of duty and acted in a manner unbecoming of a railway servant, contravening provision of Rule No. 3.1 (I), (II) and (III) of Railway Services (Conduct) Rules, 1966. The Petitioner was also served the statement of imputation of misconduct in support of the charges. He submitted his written defence to the charges.

9. Seven witnesses were examined by the department to prove the charges. The Petitioner cross examined them also. The Enquiry Officer by his report dated 6.5.2010 held all three charges proved. A second show cause notice was given to the Petitioner along with a copy of enquiry report by letter dated 11.5.2010. The Petitioner submitted his reply which did not allege any procedural irregularity in the conduct of the departmental proceeding. The order of punishment was then passed. The Appellate and the Revisional authority declined to interfere with the punishment.

10. The law with regard to conduct of departmental proceedings and the scope for interference with an order of punishment passed in such a proceeding, in exercise of powers for judicial review under Article 226 of the Constitution stands well entrenched by several precedents. Succinctly stated, an order of punishment passed in a departmental proceeding cannot be interfered with under Article 226 of the Constitution under the garb of judicial review unless there is gross infirmity in the decision making process causing prejudice to the

delinquent. The Court cannot enter into reappraisal of the evidence to arrive at its own conclusions possibly different from that of enquiry officer and the Appellate and Revisional authority. We may only refer to (1995) 6 SCC 749 (B.C. Chaturvedi v. Union of India) observing as follows :-

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

11. The Petitioner does not dispute that he was the TTE in the AC Coach in question. It is not disputed that a vigilance team carried out the raid. The presence of four passengers without valid travel documents is also not in dispute. One of them was a decoy passenger, with regard to whom an exchange of illegal gratification took place is not in controversy. The Petitioner was not able to produce proof of valid extra fare ticket receipts issued to them. The extra fare was

subsequently recovered from the three passengers by another TTE. Currency notes were found thrown under the berth on which the Petitioner was sitting. The seizure of the currency notes was proved by the departmental witnesses whom the Petitioner had cross examined also. Seven currency notes of Rs.100/- and five currency notes of Rs.20/- were recovered from the berth on which the Petitioner was sitting. The number of the Rs. 20/- notes tallied with that of the decoy money. In the aforesaid facts, the absence of a specific charge that despite passage of reasonable time the Petitioner took no steps to regularise the unauthorized passengers does not vitiate the punishment both because it has caused no prejudice to the Petitioner and even if that observation is excluded from consideration the punishment still stands justified. The witnesses examined on behalf of the department included members of the raiding team. PW-1 was the decoy passenger Shri Gautam Nandi himself. The Petitioner cross examined each one of them. The findings of facts arrived at by the enquiry officer were therefore based on documentary and oral evidence which have been affirmed by the Appellate and Revisional authority. It cannot be said that the findings of the enquiry officer are perverse and based on no evidence. There are no allegations that evidence was admitted behind the back of the Petitioner or that proper opportunity of defence had not been provided. This Court will not reappraise the evidence to arrive at its own conclusions even if a different one was possible. There is no ground of any procedural impropriety in conduct of the departmental proceedings. The Petitioner has not alleged any malafides or victimisation.

12. The standard of proof in a departmental proceeding is based on preponderance of probabilities. The strict standard of proof applicable to criminal proceeding does not apply. If there is material, howsoever miniscule to support the charge, it being a matter of administrative discipline, the Court would be loath to interfere with the same.

13. The charges against the Petitioner were very serious in nature. He was in a fiduciary position of trust reposed in him by the railways. Being a government servant he had a bounden duty to act in the best interest of the government and public interest by proper discharge of duties for which he was being paid a salary. The power as TTE inhered in the chair that he held and not in himself. He was dealing with public money. The money that the railway recovers from unauthorized passengers travelling in AC coach is but a part of the public fund belonging to the national exchequer. No government employee has a right to keep government money as his personal property in barter. To do so, does not amount simply to a misconduct but also constitutes a criminal offence of breach of trust. This was a case of gross corruption. The Petitioner should thank his fortune for having got away so lightly. Such a light punishment in a gross case of corruption like the present may send the wrong signal to those who indulge in the same. The benefits of corruption may turn out to be more than the indictment that may follow which may itself further propel greater corruption. We do not wish to say more in the matter.

14. The punishment in corruption case of bribery was considered in (1976)

1 SCC 654 (Suresh Chandra v. State of Gujarat) observing as follows :-

“2. The petitioner is a tax inspector trapped in the act of taking a bribe of Rs 100 — a small sum and a small official — in the wide perspective of Indian public service. Maybe, it is the lesser minions who get caught and

purging public life of maxi-corruption by deterrent sentences is more desirable but less feasible. Both these alibis, perhaps valid outside court, cannot attenuate the quantum of punishment or the propriety of its severity. The watershed of pollution in the administration cannot be permitted to be crossed by misconceived judicial compassion or high level executive indifference. One public official who slips out of the processual meshes of the anti-corruption law is the hope of a hundred in hiding. Indeed the culprit in this case is but one sales tax inspector who has stumbled into a police-laid marked-note magnetic field as against many whose operations are too secretive for detection. If only all our tax authorities at all levels were stern, strict, wide-eyed, activist, of inviolable probity and indifferent to disingenuous pleas of evasion, from big tax-dodgers, inequality of wealth and income would, in a large measure, wither away — a social order devoutly to be wished. I refuse leave, sanguine that judicial relentlessness in this area may help sweep clean our public services, both at the higher and lower echelons.”

15. In (1997) 11 SCC 370 U.P.SRTC v. Basudeo Chaudhary the Supreme Court did not approve of the High Court substituting termination of service by Censure of the bus conductor on the ground that the loss caused was only Rs.65/- observing as follows :-

“4. Having regard to the findings that have been recorded by the Labour Court, it is evident that this is a case where the petitioner had tried to fabricate the record regarding recovery of fare to show that the passengers had travelled for a lesser distance from Khalilabad to Gorakhpur although they had actually travelled from Basti to Gorakhpur. The misconduct that was found established was thus serious in nature and the Labour Court has rightly upheld the punishment of removal from service that was imposed on the petitioner. The High Court was in error in interfering with the award of the Labour Court and in substituting the penalty of censure for removal from service on the view that there was only an attempt to cause loss of Rs 65 to the Corporation and the action of the Corporation terminating the services of the petitioner was not justified.”

16. In (2003) 3 SCC 605 (U.P. SRTC v. Hoti Lal) the respondent had allowed passengers to travel in the bus without valid tickets for a consideration leading to termination after departmental enquiry. The High Court held the punishment to be excessive. Setting aside the order it was held as follows :-

“10..... If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding the order of dismissal.

17. The order of punishment as affirmed by the Appellate and Revisional authority and confirmed by the Tribunal call for no interference.

18. The writ petition is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge