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

Reserved on: 22.03.2016
Pronounced on: 30.05.2016

\+ **WP(C) 9207/2014**

RAM NARESH ..... Petitioner
Through: Mr. Pawan Kumar Behl & Mr. Shailendra Verma, Advocates.

Versus

UNION OF INDIA & ORS. .... Respondents
Through: Mr. J.K. Singh, Standing Counsel for the Railways & Ms. Madhulika Aggarwal, Advocate

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J

1. This writ petition impugns the order dated 23.09.2014 passed in O.A. No. 2254 of 2013 by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) which, *inter alia,* rejected the petitioner's challenge to the punishment of his compulsory retirement from service.

2. The petitioner was employed by the Indian Railways on 14.10.1982. While working as Head Booking Clerk at Haridwar Railway station, he was served with a major penalty charge sheet as under:

> *"ARTICLE -1*
>
> *Rs.1458 (Rupees One Thousand Four Hundred Fifty Eight (sic) only) was found excess in his railway cash at the time of vigilance check.*
>
> *Thus by the above act of omission and commission the (sic) said Shri Ramnaresh, HBC/HW failed to maintain absolute integrity, devotion to duty and has acted in manner of unbecoming of a railway servant and has thereby contravened the provision of para 3.1 (ii) and 3.1 (iii) of the railway service conduct rule, 1966."*

3. The petitioner denied the charge. Thereafter, an inquiry was held and the Inquiry Officer (IO) submitted the report dated 01.02.2012, a copy of which was supplied to the petitioner. His representation against the same was rejected. The Disciplinary Authority (DA) imposed a punishment of dismissal from service on 12.05.2012. The petitioner's appeal against the same to the Appellate Authority (AA) on 15.06.2012, resulted in modification of the dismissal order to a penalty of compulsory retirement from service. A review application against the order of the Appellate Authority was dismissed vide order dated 22.04.2013 by the Revisionary Authority. The aforesaid orders were impugned before the Tribunal which having considered the arguments passed the impugned order dated 23.09.2014.

4. The facts of the case are that on 01.06.2011, while the petitioner was on duty, an excess cash amount of Rs.1458/- was recovered from him in person during the vigilance check. As per applicable rules booking clerks could not have more than Rs.500/- on their person while on duty. According to the prescribed procedure, booking clerks were required to

declare their personal monies for the day. For the relevant day, the petitioner had declared that he was in possession of personal cash of Rs.210/-. When the vigilance team asked him about the excess cash, he had replied that due to the heavy festival crowd a mistake had occurred when money was paid or returned to the public *(mele me adhik bhir hone ke kaaran len den me galti ho gae hai).* The petitioner was accorded full opportunity to prove his innocence. During the inquiry proceedings, the Cash Check Memo No. 008620 dated 01.06.2011 was produced by the prosecution as evidence to show that the petitioner had endorsed and declared private cash of Rs.210/-. Consequently, on the basis of the evidence on record, the IO found the charges to be proved against the petitioner. The DA agreeing with the said finding dismissed the petitioner from service but the AA had reduced the punishment to compulsory retirement from service.

5. The petitioner had impugned the penalty order before the Tribunal on various grounds including (i) a Vigilance Officer was made the Enquiry Officer; (ii) Private Cash Declaration Register (PCD) was never produced during the proceedings; (iii) there was no documentary or oral evidence in support of the charges; (iv) the orders of the DA and the AA were non speaking orders and had failed to take into account the points raised in the representations by the petitioner; (v) the reference by the DA about the petitioner being an habitual offender, his previous punishment, etc. were not the subject matter of the Charge Sheet and lastly (vi) that the penalty imposed was disproportionate to the charge proven in the enquiry.

6. The Tribunal has dealt with each of the contentions and found them to be untenable. We find no reason to differ with the said conclusion.

7. Private cash had already been declared by the petitioner before start of duty on the relevant day. Accordingly, the authorities have drawn an inference regarding the remaining or excess cash that it would be on account of the public being fleeced or over-charged by the petitioner for personal gains. It represented the amount illegally collected by the petitioner, which was not accounted for and would have been pocketed by him. This imputation would constitute serious misconduct. The Tribunal reasoned that it was evident from the copy of the Cash Check Memo (CCM), relied upon by the respondents (at page 65 of the paper-book), which bears the signature of the petitioner, that the petitioner had declared Rs.210/- as his private cash. Subsequently, the petitioner changed his stand in his written submission, when he belatedly claimed that he had also declared Rs.1500/- in the PCD register over and above the previously declaration of Rs.210/-. This was clear shift in stand and an after-thought. The Tribunal was of the view that in the initial check by the Vigilance Department, had not made any difference to the outcome of the Inquiry proceedings. Moreover, the petitioner had not objected to the inquiry officer nor had he questioned the fairness of the Inquiry Officer. No prejudice was caused or suffered as the inquiry was being conducted by an officer of the Vigilance Department. The IO had conducted the proceeding fairly and as per procedure. The petitioner was given fair and adequate opportunity to disprove the prosecution evidence and prove his defence.

8. Apropos non production of the PCD register, the Tribunal held that the applicant had declared private cash of only Rs.210/- in the Cash Check Memo. He had not mentioned or claimed initially that he had declared any other cash over and above Rs.210/- in the PCD Register. Even during cross examination of the prosecution witness, he did not mention anything about cash declared in the PCD register. It was only in the submitting his written statement of defence that the petitioner had stated that he had forgotten to mention about cash declared in the PCD Register and had signed the Cash Check Memo hurriedly at the instance of the Vigilance Inspector. The defence was rightly rejected. The Tribunal was of the view that non availability of the PCD register during the enquiry had not made any difference to the outcome.

9. The contention that the orders of the Disciplinary Authority, the Appellate Authority and the Revisionary Authority were non speaking was rejected. The Tribunal was of the view that a copy of the Inquiry Report had been made available to the petitioner and he had ample opportunity to make representation to the same. The Disciplinary Authority had agreed with the Inquiry Officer's report, and the Disciplinary Authority found and held that the defence submitted by the petitioner was not satisfactory, as it was concocted and based on imaginary grounds not substantiated by the evidence on record. Thus the order of the Disciplinary Authority was not a non-speaking order or an order passed without application of mind. Reliance was placed on the dicta in ***National Fertilizers Ltd. Vs. R.K. Khanna,*** 2005 SCC (L&S) 1006 and ***State Bank of Bikaner & Jaipur Vs. Prabhu Dayal Grover,*** 1995 SCC (L&S) 1376, that when the Disciplinary

Authority agrees with the findings of the Inquiry Officer, it need not pass a detailed reasoned order. Furthermore, the Appellate Authority had considered the appeal against the said order of dismissal and looking into the family circumstances of the petitioner had reduced the punishment to compulsory retirement. The Review application was dismissed by the Revisionary Authority who agreed with the findings of the Appellate Authority. The Tribunal relying on the dicta of the Supreme Court held that an order of confirmation in appeal or revision need not contain elaborate reasoning as is required in an order of reversal[1]. Hence, there was no infirmity or illegality in the orders of the Disciplinary Authority, Appellate Authority and the Revisionary Authority.

10. The learned counsel for the petitioner has insisted that non production of the PCD register is fatal to the Disciplinary Proceedings as the same would have proven that the petitioner had actually declared Rs.1500/- as private cash. We find the said argument untenable for the reason that, as noted above, the Disciplinary Authority in its order dated 22.05.2012 notes that monetary ceiling limit of personal cash for stationary staff was Rs.500/- only and custody of Rs.1458/- would show the ulterior motive. These facts and position of the Rules have not been assailed by the petitioner. In the circumstances, when the petitioner had himself declared an amount of Rs.210/- in the system as private cash and had also shown the same amount in the Cash Check Memo on that day, the contention must fail. The defence of declaration of Rs.1500/- in the PCD

[1] ***Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank vs. Jagdish Sharan Varshney and Ors.,*** (2009) 4 SCC 240

Register is clearly an afterthought because this plea was not raised during the inquiry proceedings. The witnesses were not cross-examined on the said line. It was a change and unacceptable shift in stand and defence of the petitioner was in the written statement. The petitioner had definitively declared in the system that he had only Rs.210/- on his person as private cash on that day. The subsequent change in stand that he had also declared Rs.1500/- in the PCD should not be accepted. The excess of Rs.1458/- which was found at the time of vigilance check, remained unexplained. Therefore, the imputation raised in the charge stands proven.

10. We find no reason to differ with the order passed by the learned Tribunal. The petition is without merit and is accordingly dismissed.

NAJMI WAZIRI, J

SANJIV KHANNA, J

MAY 30, 2016/acm