

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

WRIT PETITION No.7069 of 2003

03.08.2017

Between:

N.Vishwanatha Rao

..Petitioner

and

The Additional Divisional Railway Manager,
South Central Railway, Vijayawada and others

..Respondents

Counsel for the petitioner: Mr.B.Sudhakar Reddy

Counsel for the respondents: None appeared

The Court made the following:



ORDER: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

Feeling aggrieved by order, dated 19.10.2001, in O.A.No.1536 of 2000 on the file of the Central Administrative Tribunal, Bench at Hyderabad (for short 'the Tribunal'), the applicant therein filed this writ petition.

2. The brief facts of the case are that the petitioner, who was working as Travelling Ticket Examiner at Vijayawada, was subjected to vigilance trap on 30.07.1997, wherein, he was allegedly caught indulging in receiving bribes for allotment of berths. Based on the same, the following charges were framed against him:

"Article-I:

Has committed serious misconduct and failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a railway servant in that while working as TTE/S1/BZA by train No.7225 on 29-7-97 had demanded and collected Rs.140/- from a passenger without preparing receipt for allotting berth No.61 & 62 of S-1 coach which was found during vigilance check.

Thus Sri N.Viswanatha Rao, TTE/S1/BZA had contravened the instructions laid down in para 2430 of IRCM Vol.II and thereby violated rule No.3.1(I) (ii) and (iii) of Railway Services (Conduct) Rules, 1966.

Article-II:

Has committed serious misconduct and failed to maintain absolute devotion to duty and acted in a manner unbecoming of a railway servant in that while working as TTE/S1/BZA by train No.72225 on 29-7-97 had produced Rs.982/- excess in railway cash.

Article-III:

Has committed serious misconduct and failed to maintain devotion to duty and acted in a manner unbecoming of a railway servant in that while working as TTE/S1/BZA by train No.7225 on 29-7-97 he had failed to issue money receipt for the passengers after collecting amount from them for allotting berth."

The petitioner filed a written statement denying the allegations. An enquiry officer was appointed who held enquiry under the Railway Servants (Discipline and Appeal) Rules, 1968 (for short 'the Rules'). After completing the enquiry, the enquiry officer submitted his report holding the petitioner guilty of all the charges. The disciplinary authority imposed a penalty of reduction to lower grade of Rs.4000-6000/- with cumulative effect and loss of seniority for a period of three years. The appeal filed by the petitioner was partly allowed by the appellate authority modifying the penalty by reducing the period of loss of seniority to two years from three years and this order was confirmed by the revisional authority. Questioning the aforementioned orders, the petitioner filed O.A.No.1536 of 2000. By order, dated 19.10.2001, the Tribunal has dismissed the O.A.

3. At the hearing, Mr.B.Sudhakar Reddy, learned counsel for the petitioner, has advanced two submissions, viz, (1) the enquiry officer appointed to hold enquiry was of a rank equal to the rank of the petitioner and therefore, the same is contrary to Railway Board Circular No.149 of 1990, dated 15.11.1990, and (2) on merits, the departmental authorities as well as the Tribunal have not properly appreciated the evidence on record in holding that all the charges against the petitioner were proved.

4. As regards the first submission of the learned counsel for the petitioner, the aforementioned Circular, dated 15.11.1990, laid down that where the enquiry is not entrusted to one of the officials in the Inquiry Organization of the Head Office with the Senior Deputy General Manager, the enquiry officer for conducting enquiry against non-gazetted staff, should be sufficiently senior in rank to the charged official and from a department other than that to which the charged official belongs and for

an enquiry against Group 'C' staff, the enquiry officer should be at least a Group 'B' Officer. The learned counsel for the petitioner urged that the enquiry officer appointed is a Group 'C' officer to which rank the petitioner also belongs and that therefore, his appointment itself is contrary to the aforementioned Circular. A perusal of the order of the Tribunal shows that this issue does not appear to have been specifically raised. However, when we examine this issue with reference to the aforementioned Circular, we do not find any merit therein. The stipulation that the enquiry officer must be higher in rank to the delinquent is made to ensure that the enquiry officer is not overawed by the status of the delinquent, so that he will not soft-peddle the issue to the detriment of the departmental interests. In the instant case, the petitioner has not pleaded any specific prejudice caused due to the appointment of an enquiry officer equal in rank to him. In fact, the constitutional safeguard provided by Article 311(2) of the Constitution of India is that no person shall be removed by an authority other than by which he was appointed. Even assuming that the respondents have violated the aforementioned Circular by appointing a Group 'C' officer as an enquiry officer, the departmental proceedings cannot be held vitiated only for that reason, unless prejudice has been pleaded and proved by the petitioner. From the fact that no such prejudice is pleaded let alone proved by the petitioner, we do not find any merit in the first submission of the learned counsel for the petitioner.

5. As regards the second submission, detailed reasons have been assigned both by the disciplinary authority and also the Tribunal regarding the merits of the case. A perusal of the order of the Tribunal shows that it has re-appreciated the whole facts and rendered categorical findings

that not only that the departmental proceedings were properly conducted but also that the enquiry officer assigned germane reasons for holding the petitioner guilty of all the charges. Indeed, the petitioner has got a reprieve, at least partially, with the appellate authority reducing the period of reduction in rank to two years instead of three years. Having regard to the serious nature of the charges, which were duly held proved, the petitioner would have been liable for more stringent punishment, but, the appellate authority has diluted the punishment by showing lenience. This Court, in exercise of writ jurisdiction under Article 226 of the Constitution of India, would not re-appreciate the evidence and interfere with the findings, which are otherwise based on legal evidence.

6. For the aforementioned reasons, we do not find any merit in the Writ Petition and the same is, accordingly, dismissed.

7. As a sequel to dismissal of the writ petition, W.P.M.P.No.9229 of 2003 filed by the petitioner for interim relief shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

GUDI SEVA SHYAM PRASAD, J

03rd August, 2017
GHN