

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

+ **W.P.(C) 127/2017**

Reserved on: 20th September, 2017

Date of decision : 24th November, 2017

MAHINDER SINGHPetitioner
Through Mr.Rakesh Kumar Dudeja and
Mr.Anshul Grover, Advs.

Versus

UNION OF INDIA & ORS Respondents
Through Mr.Vijay Kumar Pandey and
Mr.Imran Alam, Advs.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J.

The petitioner, in the above petition, challenges before us the order dated 29.01.1998 passed by the Divisional Security Commissioner, Railway Protection Force (hereinafter referred as “RPF” in short), New Delhi removing him from the service with immediate effect. The petitioner further challenges the order dated 20.07.1998 passed by the Deputy CSC, RPF, Northern Railway, New Delhi dismissing his appeal against the above order.

2. Before we deal with the merits of the case, it is essential for us to give a brief background as to how this case has come before us.
3. The petitioner had challenged the above orders by way of a Civil Suit, being Suit No.900/2006/1999 filed before the Senior Civil Judge, Delhi praying for declaration that the above impugned orders be declared null and *void ab initio* and illegal and also for a direction to reinstate him in service.
4. The said suit was decreed in favour of the petitioner vide judgment and decree dated 23.12.2008 passed by the learned Senior Civil Judge.
5. Union of India and the Director General, RPF challenged the above judgment before the Court of District Judge, Delhi by way of RCA No.25/2009. Learned Additional District Judge vide his judgment dated 04.07.2009 allowed the said appeal and set aside the judgment dated 23.12.2008 passed by the learned Senior Civil Judge.
6. Aggrieved of the above order passed in appeal, the petitioner filed Regular Second Appeal, being RSA No.139/2009 before this Court. On 19.12.2016, relying upon the judgment of this Court in ***Union of India & Ors. v. Ishwar Singh***, RSA No.26/2016, this Court

was of the view that the Civil Court had no jurisdiction to try the suit filed by the petitioner and the only remedy available to the petitioner was by way of filing a writ petition under Article 226 and 227 of the Constitution of India. However, taking into account that the litigation was pending for more than 17 years and the objection to the maintainability of the suit was taken only at the stage of the Second Appeal, this Court directed that the Regular Second Appeal filed by the petitioner be treated as writ petition and be decided accordingly. The Regular Second Appeal was thereafter numbered as WP (C) 127/2017 and this is how the present writ petition comes up before us for adjudication.

7. The petitioner was working as a Constable in RPF and was last posted at RPF Headquarter, New Delhi. He was served with a chargesheet bearing No.9.RPF/DAR/153/2/97 dated 01.03.1997, leveling the following charges against him:

“(i) Constable Mohender Singh s/o Sh.Bhim Singh of R.P.F. Post New Delhi is hereby charged for the serious misconduct, gross negligence and dereliction of duty in that:

(a) On 04.02.1997 during the course of duty from 8/- to 16/- hrs. shift in goodsyard, NGL, he failed to prevent & detect the theft of Rly. Property from SLR-10436/A-1 compartment of Train No.2401

Sharamjivi Express stabled in his duty beat theft was committed by the criminals during his duty hours.

- (b) He failed to make over proper charge of his duty beat to Naik Jai Singh and Const. Subey Singh.*
- (c) He tried to conceal the crime which was committed from above SLR as he did not make any theft report and also burnt the Bardana which was recovered near the surrounding area in presence of Naik Jai Singh and Const. Subey Singh.”*

8. The allegation against the petitioner was that he was posted at duty in Goods Yard, NSL Car Shed, New Delhi from 8 a.m. to 4 p.m. shift on 04.02.1997. He was relieved by Naik Jai Singh and Ct. Subey Singh. Rake of train no.2401 Sharamjivi Express was stabled in his duty beat. On the same day, at around 8 p.m. two persons, namely Mohd. Yusuf and Devender Kumar @ Lala were arrested by the police at Chandni Chowk and 5 packets cardboard cartons, one bag (katta) containing 180 video cassettes and one bag containing engine parts were recovered from them. The bundle bore railway mark 974724/P-1 Ex.PNBE to NDLS. Both were arrested under Section 103 of Delhi Police Act (on 04.02.1997) and during interrogation they disclosed that they had stolen the above materials from a compartment SLR No.10436/A-1 of Railway Train Sharamjivi Express. They

further disclosed that they had committed theft by breaking open the seal of the Railway Coach at about 4 p.m. On receiving information it was confirmed that the SLR No.10436/A-1 compartment was pilfered, but the seal was re-fixed. On further investigation it was found that there were 8 packages missing from the said rake.

9. The petitioner was charge-sheeted and departmental enquiry was held against him. Nine witnesses were examined in front of the Inquiry Officer in support of the charge. The petitioner also produced a defence witness.

10. During the course of Departmental Inquiry, both Jai Singh and Subey Singh deposed that they took over the charge/duty from the petitioner. Just after the departure of the petitioner, on checking, Naik Jai Singh and Ct. Subey Singh found that SLR No.10436/A-1 had a cut tape and re-fixed seal. One empty bardana was also lying nearby having railway mark "Suraj Saini" in Hindi. As they were going to report this matter to the officer, they met the petitioner and told him about the seal condition. The petitioner accompanied them back to the spot. The petitioner set fire on the bardana and asked them to remain

at their duty beat while he shall go to the RPF post and inform the officer regarding the seal.

11. The Inquiry Officer in his report dated 28.10.1997 reported that the charges against the petitioner stood proved.

12. Based on the report of the Inquiry Officer and considering the submissions made by the petitioner, the Divisional Security Commissioner, RPF, New Delhi passed the impugned order dated 29.01.1998 removing the petitioner from service. As noted above, the petitioner preferred an appeal before the Additional Security Commissioner, RPF, Northern Railway, New Delhi. However, the said appeal was dismissed by the Deputy CSC, RPF vide impugned order dated 20.07.1998.

13. The petitioner has contended before us that his duty had ended at 4 p.m. while two persons carrying the goods stolen from the SLR were arrested only at around 8 p.m. He had also handed over the charge to Naik Jai Singh and Ct. Subey Singh on completion of his duty shift and therefore, it was not proved that theft occurred during his duty beat. He further contends that the statements made by two persons who had stolen the goods from the SLR namely Mohd. Yusuf

and Devender Kumar regarding having stolen the said goods at about 4 p.m., cannot be relied upon against the petitioner and in any case does not conclusively state that the theft had taken place in his duty beat. Learned counsel for the petitioner submitted that the statements made by Naik Jai Singh and Ct. Subey Singh, also cannot be relied upon against the petitioner as they were in the nature of co-accused and were in any case interested witnesses. It is lastly submitted by the learned counsel for the petitioner that the respondents had failed to produce the daily diary. It is therefore contended that this was a case of no evidence and therefore, the impugned orders are liable to be set aside.

14. At the outset we may note the principle of law that is applicable to exercise of jurisdiction under Article 226 of the Constitution of India while deciding the disciplinary action taken by the employer against the employee. It is well settled law that strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding

upholding the gravamen of the charge against the delinquent officer. The Court exercising the jurisdiction of judicial review would not interfere with the findings of the fact arrived at in the Departmental Enquiry Proceedings except in case of *mala fide* or perversity i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that findings. The Court cannot embark upon re-appreciating the evidence or weighing the same like an appellate authority. In ***State Bank of India & Ors. v Narendra Kumar Pandey***, (2013) 2 SCC 740, Supreme Court held that:

“It is a well-accepted principle of law that the High Court while exercising powers under Article 226 of the Constitution does not act as an appellate authority. Of course, its jurisdiction is circumscribed and confined to correct an error of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of the principles of natural justice.”

15. In ***State Bank of Haryana & Anr. v. Rattan Singh***, (1977) 2 SCC 491 Supreme Court held as under:

“In a domestic enquiry all the strict and sophisticated rules of the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible, though 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 Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations, and observance of rules of natural justice. Fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment, vitiate the conclusion reached, such a finding, even of a domestic tribunal, cannot be held to be good. The simple point in all these cases is, was there some evidence or was there no evidence-not in the sense of the technical rules governing Court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny by court, while absence of any evidence in support of the finding is an error of law apparent on the record and the court can interfere with the finding.”

16. The same view was taken by Supreme Court in the case of ***State Bank of Bikaner & Jaipur v. Srinath Gupta & Anr.***, (1996) 6 SCC 486, wherein it was held:

“It is now well settled that strict rules of evidence are not applicable and are not required to be followed in domestic inquiry. What has to be ensured is that the principles of natural justice are complied with and the delinquent workman has the opportunity of defending himself.”

17. Applying the above test to the present case, we find no merit in the submission made by the learned counsel for the petitioner. As stated, the strict rules of evidence do not apply to Departmental

Enquiry proceedings. Therefore, no grievance can be raised for reliance on the statement made by Naik Jai Singh and Ct. Subey Singh against the petitioner, though, they were accomplice and were also held guilty as also punished in separate proceedings. It is true that they were interested witnesses and would stand to gain if the blame was transferred to the petitioner instead of them, there was other evidence also available before the Inquiry Officer to reach at the conclusion of guilt against the petitioner.

18. In regard to their statement, the learned counsel for the petitioner further contended that they had reported about breaking of seal only on the next morning and after the theft had been detected. It is contended that therefore, their story was merely an afterthought. However, we are not inclined to accept the said contention.

19. In a departmental proceeding, the allegations are not to be proved like a criminal charge i.e. beyond any reasonable doubt. As noted above, the test is whether on the evidence produced a reasonable man, acting reasonably and with objectivity, arrive at a finding upholding the charge leveled against the employee. In the present case, we find that there was enough evidence against the petitioner in

form of recovery of stolen goods, disclosure made by Mod. Yusuf and Devender Kumar before police etc. to hold him guilty of the charges leveled against him. In any case we, as stated above, are not sitting as an appellate authority over the disciplinary proceedings/enquiry. The theft was beyond doubt. The rake involved was also beyond doubt. Attempt to cover up by re-fixing the seal has been established. The fact that the petitioner was on duty from 8.00 a.m. to 4.00 a.m. is unchallenged.

20. Regarding the non production of the daily diary entry, we fail to appreciate the arguments raised by the learned counsel for the petitioner. We have not been shown any document making a request for seeking production of the said daily diary. We have gone through the grounds urged in support of the appeal filed by the petitioner before the Additional Security Commissioner and find no such ground having been raised even in that appeal. In any case the relevance of daily diary entry to the fact of the present case has not been established, especially in the light of other evidence that had been led before the Inquiry Officer.

21. We may also examine the question of proportionality of the punishment awarded to the petitioner. Law in this regard is well settled. In *Union of India v. Dwarka Prasad Tiwari*, (2006) 10 SCC 388, wherein it was held that:

“Unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference.”

22. In *Union of India v. Diler Singh*, (2016) 13 SCC 71, Supreme Court further held that as a member of a discipline force, deviation from the discipline and failure to follow the rules would not normally warrant any leniency.

23. In the present case, the petitioner has been found guilty of not only negligence in his duty but also an attempt of cover up in the form of re-fixing of seal and burning of bardana. We therefore, do not find anything shocking in the punishment awarded to the petitioner.

24. In view of the above discussions, we find no merit in the petition and the same is dismissed with no order as to cost.

NAVIN CHAWLA, J

SANJIV KHANNA, J

NOVEMBER 24, 2017/vp