

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6129 OF 2005

Bishwanath Mukherjee	.. Petitioner
Vs.	
Union of India and ors.	.. Respondents

Mr.Mihir Desai, Senior Advocate, for the Petitioner.
Mr.T.J. Pandian, for Respondents.

**CORAM : SMT. V.K.TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

DATE : 8th FEBRUARY, 2018

ORDER (PER M.S.KARNIK, J.) :

1. Invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner challenges the judgment and order dated 30/09/2004 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai in OA/684/2003.

The facts of the case in brief are thus :

2. At the relevant time when the alleged incident took

place for which the petitioner was charge-sheeted, the petitioner was working as a Chief Parcel Supervisor at CST Station. In brief, charges levelled against the petitioner pertains to his fraudulently auctioning 163 betel leaves packages on 02/01/1998 which were unloaded at CST station on 31/12/1997 from train No. 182 Express Howrah to CST in connivance with Delivery Clerk - Shri S.P. Singh and Health Inspector Shri S.K.Ahire.

3. It is alleged that the petitioner conducted manipulated auction sale of 168 BELs for Rs. 2,000/- as against the prevailing market value for Rs. 80,000/-. It is also alleged that in connivance with Health Inspector - Shri Ahire, the petitioner obtained certification for 163 packages BBl stating that it is 70% damaged on 02/01/1998 whereas actual damage was only 10% as revealed in joint Inspection Note of the same packages by 3 Health Inspectors in presence of Vigilance team and Shri Ghumgaonkar, CPS(B/I) on 03/01/1998. The petitioner is alleged to have committed manipulation in the

weight of packages also. It is the charge that these manipulations were preplanned and deliberately made to justify the low auction amount realised during the fraudulent auction mentioned in Article – I with ulterior motive. The petitioner was charged for failure to maintain absolutely integrity & devotion to duty thus acted in a manner unbecoming of a Railway servant thereby contravened the provisions of Railway Service (Conduct) Rules, 1966.

4. The memorandum of charge-sheet was served on the petitioner on 11/11/1998. The Enquiry Officer submitted his report dated 31/03/2000 holding charges levelled against the petitioner as proved. The petitioner made representation dated 14/06/2000 against the Enquiry report. The disciplinary authority imposed punishment of removal from services on the petitioner vide order dated 20/07/2000. The petitioner filed Appeal before the Appellate Authority on 29/08/2000. By order dated 07/12/2001, the Appellate Authority substituted penalty of removal of service to reversion to two grades below and fixed

his pay at initial stage for 5 years with cumulative effect. The revision filed by the petitioner to the General Manager Mumbai CST was disposed of without interfering with the order passed by the Appellate Authority. The petitioner's challenge to these orders before the Tribunal failed.

5. Learned Senior Counsel for the petitioner Shri Mihir Desai invited our attention to the order dated 07/12/2001 passed by the Appellate Authority and order dated 29/11/2002 passed by the Revisional Authority. Learned Senior Counsel also invited our attention to the findings recorded by the Tribunal. Learned Senior Counsel would contend that the Appellate Authority had clearly held that this was a case of wrong identification of packages in as much as the Appellate Authority found that packages identified by the Vigilance Team are not the same as the ones unloaded from the train No. 182 -Up on 31/12/1997. In his submission, having arrived at this finding, there was no justification for the Appellate Authority to have observed that the petitioner has not followed the correct

procedure for auction. In his submission, there was no charge on the petitioner of not following the correct procedure for auction and therefore, the Appellate Authority was not justified in reducing the penalty and on the contrary should have exonerated the petitioner of all the charges levelled against him.

6. Learned Senior Counsel further invited our attention to the deposition of P.W.3 – Shri S.K. Ahire. In his submission the certificate submitted by Shri Ahire does not record the time of inspection. Learned Senior Counsel would therefore contend that the finding of the Appellate Authority that examination certificate issued by Shri Ahire has been issued after auction is over is based on no evidence. Learned Senior Counsel would therefore contend that the respondents have not placed any material on record in the form of gate-pass or auction report which would have clearly spelt out the procedure followed while conducting the auction. Learned Senior Counsel contends that in the absence of these materials, the Appellate Authority was not justified in coming to the conclusion that the petitioner is

guilty of arranging auction in an inappropriate manner.

7. Learned Senior Counsel further invited our attention to the deposition of Shri S.P. Singh -Head Parcel Clerk. In his submission therefore there is absolutely no material to show that the auction has been arranged by the petitioner in an inappropriate manner.

8. Learned Counsel for the respondents on the other hand supported the order passed by the Tribunal. He submits that the Appellate Authority has taken a lenient view and has reduced the penalty to reversion by two grades below. He submits that on the basis of the materials on record, the Enquiry Officer came to the conclusion that charges levelled against the petitioner stand proved. In his submission the Appellate Authority found that the petitioner did not follow correct procedure for auction and examination certificate by the Health Inspector has been issued after the auction was over. He invited our attention to the deposition of P.W.3 - Shri Ahire wherein he

has categorically mentioned in answer to question No. 2 that certification took place at around 18.30 hours. In his submission therefore the finding of the Appellate Authority that the examination certificate by the Health Inspector has been issued after the auction is over is based on evidence. In his submission, the High Court in exercise of its writ jurisdiction under Article 226/227 of the Constitution of India cannot re-appreciate the evidence on record in duly conducted disciplinary enquiry.

9. Heard learned Counsel. We have gone through the material portion of evidence recorded during the course of enquiry. We have also perused the report of the Enquiry Officer and the orders passed by the Appellate and Revising Authority. It would be material to reproduce the order passed by the Appellate Authority which reads thus :

“The consignment were received at CSTM by 182 Up on 31.12.1997 at 23.15 hours The loading summary from Howrah indicate that all the packets were for CSTM and not for CLA(T). Out of the total 279 betel leave packages, 116 were delivered on the platform and balance were 163 packages. The loading summary indicate that BBLs are having weight of either about 20-25 kgs each or about 7-8

Kgs each, i.e. none are of the weight of 10 kgs.

The consignments were unloaded at PF 13 from the train whereas the joint note has been prepared for consignment placed at PF 14/15.

The case has been made out that the party which purchased the BBLs in public auction had not removed the purchased material and this was checked by the Vigilance Team. Nowhere it is mentioned that how the Purchaser was given the delivery or money refunded for delivery not given.

From the above, it appears that it is a case of wrong identification of packages. The packages identified by Vigilance Team are not the same as ones unloaded from 182 UP on 31.12.1997.

However, the CE has not followed the correct procedure for auction. The consignment was not segregated in different lots as per the condition and damage to be assessed by CHI. It has been clearly established in the enquiry that total integrity has not been maintained in regard to the timings. The examination certificate by CHI has been issued after the auction is over.

In view of the above, I hold the CE guilty of arranging auction in an inappropriate manner.

I decide to reduce the penalty of "Removal from service" to "Reversion to two grades below and fixing his pay at initial stage for 5 years with cumulative effect."

The intervening period from the date of "Removal from Service" to the date of joining is regularized as leave due to the CE."

10. We find the Articles of Charge clearly mentions that in connivance with Health Inspector - Shri Ahire the petitioner obtained certification for the 163 packages of BBI stating that it is 70% damaged on 02/01/2018 whereas the actual damage was only 10% as revealed in Joint Inspector Note of the same packages by 3 Health Inspectors in presence of Vigilance team

on 03/01/1998. The officer was clearly charged for these manipulations which were preplanned and deliberately made in order to justify the low auction amount realised during the fraudulent auction mentioned in Article I of the Memo of Charge with ulterior motive on the part of the petitioner. In these circumstances the Appellate Authority based on the evidence on record came to the conclusion that the petitioner has not followed the correct procedure for auction and that the consignment was not segregated in different lots as per the condition and damage to be assessed by Health Inspector. The Appellate Authority has come to the conclusion that it is established in the enquiry that total integrity has not been maintained by the petitioner in regard to the timings, in as much as, the examination certificate by the Health Inspector Shri Ahire has been issued after auction is over. It is in these circumstances the Appellate Authority held the petitioner guilty of arranging auction in an inappropriate manner.

11. We do not find that this is a case of no evidence.

There is evidence on record to show that the examination certificate was issued by the Health Inspector after the auction is over. It is not possible for us to re-appreciate the evidence on record. The findings of the Enquiry Officer and Appellate Authority are based on the evidence on record. The findings are not perverse or contrary to law. The Appellate Authority has taken a lenient view. In our opinion, the punishment of reducing the penalty of removal from service to reversion to two grades below fixing pay of the petitioner at initial stage for 5 years with cumulative cannot be said to be disproportionate to the charges proved against the petitioner.

12. There is thus no infirmity in the order passed by the Tribunal. Writ Petition is accordingly dismissed. Rule is discharged with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)