IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7039 OF 2007

Shri Somesh M. Changrani ...Petitioner
Versus
The Union of India and ors. ...Respondents

Appearances:
Mr. Ramesh Ramamurthy and Mr. Saikumar Ramamurthy for the Petitioner.
Mr. T.J. Pandian for the Respondents / UOI.

CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.

DATE OF RESERVING THE JUDGMENT : 05th JULY 2018.
DATE OF PRONOUNCING THE JUDGMENT : 12th JULY 2018.

JUDGEMENT:

1] Heard learned counsel for the parties.

2] The challenge in this petition is to the judgment and order dated 10.03.2006 made by the Central Administrative Tribunal (CAT), Mumbai dismissing the petitioner's O.A. No. 216 of 2004, in which, the petitioner, had questioned the order dated 31.5.2002 made by the disciplinary authority removing the petitioner from service.

3] The petitioner was served with a charge-sheet dated 4.11.1999 when he was functioning as Junior Booking Clerk levelling two charges the against him. The enquiry was held and in the enquiry report, the enquiry officer has held that both the charges have been proved. The disciplinary authority upon due consideration of the petitioner's representation imposed penalty of removal from service upon the petitioner. The petitioner's appeal and review petition were dismissed. Now, the CAT, by the impugned judgment and order, has refused to interfere with the penalty imposed upon the petitioner. Hence, the present petition.

4] Mr. Ramamurthy, learned counsel for the petitioner, submits that the findings recorded by the enquiry officer are vitiated by perversity. He submits that this is a case of no evidence. He submits that the relevant evidence, including but not restricted to deposition of Mr. Tadpe had been ignored by the enquiry officer. On these grounds, Mr.Ramamurthy submits that the impugned judgment and order warrants interference.

5] Mr. Ramamurthy submits that from the material on record, it can be said that 42 sold tickets were found in the ticket cabin. However, there is no material on record to connect the petitioner with these 42 sold tickets. There is absolutely no evidence that the petitioner resold any of such tickets to the passengers and no witnesses have been examined in support of this factor. Mr. Ramamurthy submits that Mr. Tadpe had admitted that the petitioner had given a loan of Rs.200/- to Mr. Tadpe. If this Rs.200/- is accounted for, then, this leaves shortage of only Rs.13/- with the petitioner. The petitioner submits that necessary explanation was furnished even in respect of this shortage of Rs.13/-. In any case, Mr.Ramamurthy submits that for the charge of shortage of Rs.13/-, the penalty of removal from service would be shockingly disproportionate.

6] Mr. Ramamurthy submits that even in the departmental proceedings mere suspicion cannot take place of proof. He submits that burden of proving that the petitioner was indeed involved in reselling the sold tickets was upon the respondents and since the respondents have failed to discharge the same, the findings recorded by the enquiry officer and acted upon by the disciplinary authority warrant interference. He submits that the penalty is grossly disproportionate.

7] Mr. Pandian, learned counsel for the respondents, submits that the scope of interference with the findings recorded by disciplinary authority is extremely limited. He submits that this is not a case of no evidence or perversity of findings. He submits that oral as well as documentary evidence establishes the charges levelled against the petitioners. Once, 42 sold tickets were found at the petitioner's counter, reasonable inference had to be drawn that the petitioner was engaged in resale of such tickets in order to defraud the Railways. The onus had rightly shifted upon the petitioner and the petitioner, failed to discharge such onus. Mr. Pandian submits that the cash transactions between the petitioner and Mr. Tadpe were totally contrary to the Indian Railway Commercial Manual. The plea that some hand loan was advanced by Mr. Tadpe was rightly disbelieved by the enquiry officer and the disciplinary authority. The unauthorised acts of this nature, can never be sanctified. Mr. Pandian submits that the penalty imposed is appropriate and if such instances are detected, stern action is in fact warranted. For all these reasons, Mr. Pandian submits that this petition may be dismissed.

8] The rival contentions now fall for our determination.

9] In the charge-sheet issued to the petitioner, basically two charges were levelled against the petitioner, which read as under:

> *"<u>ARTICLE I:-</u>*
> *He was detected with 39 II/O/R and 3 II/O/S/ printed card tickets earlier issued and accounted for in previous dates with an intention to resell them.*
> *<u>ARTICLE II:-</u>*
> *He was detected having Rs.213/- short in his railway cash.*
> *Thus by the above, articles of charges jointly as well as each one of them, he has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a railway servant and thereby contravened the provisions of Rule No.3.1(i), (ii) & (iii) of Railway Services (Conduct) Rules, 1966."*

10] In support of the aforesaid charges, the following documents came to be produced during the enquiry proceedings.

> *"1. Cash Memo prepared and signed by Shri S.M. Changrani Jr. BC dt.13.3.99.*
> *2. Cash Proceeding Memo prepared and signed by him dt.13.3.99.*
> *3. M.R.No.A 859417 dt.13.3.99.*
> *4. Statement of CBS (G) Shri Y.P. Shukla dt.13.3.99.*
> *5. Statement of Shri Somesh M. Changrani*

dt.13.3.99.
6. Joint note dt.13.3.99 for ticket recovery.
7. Statement of Shri. G.K. Tiwari, RPF CT 2097 dt.13.3.99
8. 39II/O/R and 3 II/O/S tickets of various stations, as mentioned in Joint note dt.13.3.99.
9. Letter of CBS Mulund dt.5.7.99 confirming the accountal of 42 tickets."

11] Out of the aforesaid, the most relevant documents are cash proceeding memo and the joint note, which bear signatures of not only the witnesses but also the petitioner himself. In the enquiry proceedings, the sold tickets which were found at the counter or in the drawer next to the counter of the petitioner were also produced. The two vigilance officers, the Chief Booking Supervisor and yet another witnesses were also examined in the course of enquiry proceedings. In addition to these witnesses, Mr.Tadpe, Mr. A.G. Parab and Mr. S.S. Tarunke were also examined in the course of enquiry.

12] The documentary evidence on record is itself sufficient to reject the contention that the findings of the enquiry officer are based on "*no evidence*" or vitiated by perversity. There is ample material on record both in the form of documentary as well as oral evidence to show that 42 tickets already sold and accounted tickets were found at counter No.5 which was being manned by the petitioner from 1400 hours to 2200 hours. The joint note which was produced in the course of evidence and which bears the signature of the petitioner and which was prepared immediately after the raid mentions the details of the tickets which were recovered.

13] If, the petitioner, was serious with his contention that all such materials were never found at his counter, the petitioner would have certainly resisted the signing recovery note. The petitioner could have always put an endorsement on the recovery note to the effect that nothing was ever found. The petitioner could have protested within a reasonable period that the recovery note which he was made to sign did not reflect the correct position. Since, nothing of this sort was done, it cannot be said that the finding recorded by the enquiry officer as regards Article I of the charge is based on no evidence or is vitiated by perversity.

14] Again, insofar as the shortage of Rs.213/- is concerned, there is more than sufficient evidence to bring home this charge. In fact, even the petitioner had not seriously disputed this position. All that he has stated is that the petitioner had given an amount of Rs.200/- to Shri. Tadpe by way of hand loan. Since, at least 42 sold tickets were found with the petitioner, reasonable inference can be drawn that the petitioner was engaged in sale of already sold tickets. The shortage was for the purposes of accounting for the proceeds of such already sold tickets, just in case, the checking staff were to conduct a surprise check.

15] Precisely in order to prevent such a situation, the Commercial Manual, bars cash transactions *inter se* between Booking Clerks. There are also requirements of declaring personal cash before the Booking Clerks man the booking counters. The enquiry officer and disciplinary authority have not believed the transactions between Mr.Tadpe and the petitioner. Such transactions, in any case, are in breach of the procedures set out in the Commercial Manual. On the basis of such defences, the petitioner cannot allege any perversity in the findings recorded by the enquiry officer and disciplinary authority. Suffice to note that this is not a case of findings based on no evidence or findings which can be styled as perverse.

16] The scope of judicial review with the findings recorded by the disciplinary authority is quite limited. In ***Union of India & Ors. vs. P. Gunasekaran – AIR 2015 SC 545***, the Hon'ble Supreme Court has made it clear that in disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. Therefore, in the exercise of writ powers under Article 226/227 of the Constitution of India, the High Court shall not venture into reappreciation of the evidence. The High Court can only see whether the enquiry is held by a competent authority; in accordance with procedure prescribed in that behalf; issues of ere is violation of the principles of natural justice ; the considerations of extraneous evidence ; influenced by irrelevant or extraneous considerations or whether the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion. The High Court can also examine whether the disciplinary authority had erroneously failed to admit the admissible and material evidence admitted inadmissible evidence which is influenced the finding or whether the finding of fact is based on no evidence.

17] The Hon'ble Supreme Court, in *P.Gunasekaran (supra),* after positively stating what the High Court, in the exercise of its powers under Article 226/227 of the Constitution of India can do in a matter dealing with disciplinary proceedings, has further, in clear and unambiguous terms set out, what the High Court, in exercise of powers under Article 226/227 of the Constitution of India cannot do while exercising powers of judicial review in disciplinary proceedings. It is held that the High Court shall not re-appreciate the evidence, interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law, go into the adequacy of the evidence; go into the reliability of the evidence, interfere, if there be some legal evidence on which findings can be based; correct the error of fact however grave it may appear to be;

go into the proportionality of punishment unless it shocks its conscience.

18] Applying the aforesaid principles, we see no good ground to interfere with the view taken by the CAT in the present case.

19] We also see no merit in the contention that the penalty imposed upon the petitioner is disproportionate. The petitioner was discharging duties as a Booking Clerk. The petitioner was found with tickets, which had already been sold and accounted for and consequently, such tickets, had no business to be found at the booking counter once again. The inference drawn by the enquiry officer based upon recovery of sold 42 tickets and the shortage of Rs.213/- at the counter is quite reasonable inference that the petitioner was engaged in illegal sale of used tickets so as to defraud the Railways. Thus construed, it cannot be said that the penalty imposed upon the petitioner was disproportionate.

20] For all the aforesaid reasons, we dismiss this petition. Rule is discharged. There shall, however, be no order as to costs.

(M.S. SONAK, J.) **(ACTING CHIEF JUSTICE)**

Dinesh Sadanand Sherla Digitally signed by Dinesh Sadanand Sherla Date: 2018.07.12 15:13:41 +0530