IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.2062 OF 2020

Jayendra s/o Kirtikumar Shah … Petitioners

Versus

Union of India,
through its Chairman,
Railway Board,
New Delhi and others … Respondents

Mr. M.M. Sudame, Advocate for Petitioner.
Mr. N.P. Lambat, Advocate for Respondents.

CORAM : NITIN JAMDAR &
ANIL S. KILOR, JJ
DATE : 20 JANUARY 2021

P.C.:

Heard the learned Counsel for the parties.

2. The Petitioner has challenged the order passed by the Central Administrative Tribunal, Nagpur, dated 24 October 2019 dismissing Original Application No.2132 of 2016 filed by the Petitioner challenging the orders of punishment passed by the Respondents, dated 11/27 February 2014; the order passed in Appeal dated 9 March 2015; and the order passed in Revision dated 22 December 2015, whereby the Petitioner was compulsorily retired from service.

3. The Petitioner at the relevant time was working on the post of Chief Ticket Inspector. A statement of charge was served on the Petitioner on 20 November 2012 on the ground that the Petitioner had not declared the personal cash properly while performing his duty on 16 October 2011 while on the train and the Petitioner had issued a ticket amount to Rs.255/- to a passenger. Also that the Petitioner had declared a cash of Rs.959/- in “Sign-on Register”, which was Rs.533/- more than his private cash of Rs.426/- found in his possession during the vigilance check. Both the charges were proved against the Petitioner. The Appeal, Revision and the Original Application filed by the Petitioner were rejected.

4. The learned Counsel for the Petitioner firstly contended that the charge is based on Clause 2249 of the Indian Regulations Commercial Manual, Volume II, which Clause does not refer to the post occupied by the Petitioner. The learned Counsel submitted that Clause 2429(b) refers to only the staff working in the offices and not mobile staff, such as the Petitioner, and there was no mandate to declare the private cash daily before taking up their duties. The Tribunal has dealt with this submission. The Tribunal has found that the periodical instructions were issued by telemaxes, placing the mandate of declaring the personal cash in respect of mobile staff, such as the Petitioner. This factual finding has not been controverted by demonstrating that no employee occupying the posts, such as the Petitioner, or the mobile staff declare the personal cash. Therefore, this finding that the

instructions are now the part of Clause 2429 cannot be considered as a perverse view. Apart from this position, Clause 2429 itself states that specific categories of staff to whom instructions will apply will be notified. Therefore, this contention cannot be accepted.

5. The learned Counsel then submitted that there is no such mandate to maintain particular amount of cash throughout the journey and for mobile staff, sometimes the amount is required to be spent. He submitted that the entire charge is based on the intention to commit the misconduct, which itself cannot be considered as misconduct. This submission cannot be accepted. The mandate of declaring private cash is for a specific reason so as to keep an account of money if received through illegal means. Therefore, the declaration of private cash should be of the correct amount. If the correct amount is not declared, it cannot be tallied with the amount received through illegal means. Therefore, the Petitioner was under the mandate to declare the correct private cash.

6. According to the Petitioner, the private cash was correctly declared as Rs.959/-. That being the position, it was for the Petitioner to explain when the Petitioner was accosted during vigilance check and was found with the cash of Rs.426/-. The Disciplinary Authority, Appellate Authority and also the Tribunal found that the explanation of the Petitioner was not bona fide. The learned Counsel for the Respondents has drawn our attention

to the order passed by the Disciplinary Authority which refers to the Petitioners immediate explanation that the Petitioner did not disclose the correct private cash because he was in a hurry due to arrival of the train and later in the inquiry, another theory is putforth that the Petitioner met a businessman and there was a transaction of Rs.510/- and the amount was spent on tea and snacks. Such completely divergent explanations were rightly found to be not bonafide by the authorities and the Tribunal. The contention of the Petitioner that he was only replying to the specific query in the inquiry cannot be accepted, as this was his explanation for shortfall in the cash.

7. This being the position, we find that the Tribunal has rightly disbelieved the version of the Petitioner. The contention of the Petitioner that he was being proceeded with for an attempt to commit misconduct, is not correct as not declaring the correct private cash was also the misconduct.

8. In view of above, there is no reason to exercise writ jurisdiction under Articles 226 and 227 of the Constitution of India. The Writ Petition is dismissed. No order as to costs.

(ANIL S. KILOR, J) (NITIN JAMDAR, J)

Lanjewar

Prashant Lanjewar

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