

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8200 OF 2004

Rajesh Verma

...Petitioner

Versus

Union of India & Ors.

...Respondents.

...

Mr. Mihir Desai, Sr. Advocate with Ms. Rishika Agarwal for the
Petitioner.

Mr. Suresh Kumar with Ms. Mohini Chaugule, for Respondents.

...

**CORAM: NITIN JAMDAR &
SANDEEP V. MARNE, JJ.
DATE : 03 AUGUST 2023.**

P.C.:

1. By this petition, Petitioner challenges judgment and order dated 23 April 2004 passed by the Central Administrative Tribunal (**Tribunal**) dismissing Original Application No. 520 of 2003. In his Original Application, Petitioner had challenged order dated 31 January 2002 passed by the Disciplinary Authority imposing penalty of removal from service, the order of the Appellate Authority dated 09 July 2002 rejecting appeal, order of the Revisional Authority dated 23 August 2002 rejecting Revision Petition as well as order dated 17 February 2003 rejecting Mercy Petition.

2. Briefly stated, facts of the case are that Petitioner was appointed in Railway service on the post of Commercial Clerk on 31 July 1995. On 30 August 1997, he was posted as Booking Clerk at window No. C-4 in the computerized Current Booking Office at Kurla Terminus in shift duty from 16.00 Hrs. to 24.00 Hrs. A decoy check was conducted against Petitioner on 30 August 1997 by utilizing services of a decoy passenger Shri. Ranjit Kanujia, RPF constable. The decoy passenger was accompanied by Shri. S. K. Mishra, RPF Constable to witness the transaction between Petitioner and decoy passenger. The decoy passenger was given currency note of Rs.500/- for purchasing a ticket. Accordingly, the decoy passenger approached Petitioner at the ticketing window and requested for ticket from Kurla Terminus to Ara. The ticket fare was Rs. 214/- and after accepting currency note of Rs.500/- Petitioner was expected to return an amount of Rs.286/-. However, he returned only Rs.280/- to the decoy passenger. The decoy passenger went back to the vigilance team and handed over the amount returned by Petitioner. Thereafter, check was conducted by the vigilance team at the ticketing counter manned by Petitioner, in which it was found that Rs.58/- were short in his railway cash. An amount of Rs.450/- was recovered from steel cupboard kept behind Petitioner's window. Based on the decoy check conducted on 30 August 1997, a Memorandum of chargesheet dated 15 July 1998 came to be issued to Petitioner alleging three charges. In the first charge, it was alleged that the Petitioner overcharged decoy passenger by Rs.6/-. In the second charge, it was alleged that an amount of Rs.58/-

was found short in the railway cash and in the third charge, it was alleged that an amount of Rs.450/- was found in the steel cupboard behind his counter kept by Petitioner to avoid detection of his monetary gains by overcharging passengers. Disciplinary enquiry was conducted into the charges by appointing an Inquiry Officer. The Inquiry Officer submitted his report holding that all the charges levelled against Petitioner stood proved. Petitioner was supplied with the copy of report of the Inquiry Officer, against which he submitted representation dated 26 November 2001. After considering Petitioner's representation, the Disciplinary Authority passed order dated 31 January 2002 holding Petitioner guilty of the charges and imposed penalty of removal from service.

3. Petitioner preferred Appeal on 15 March 2002 before the Appellate Authority, who was pleased to reject the Appeal by order dated 09 July 2002. Petitioner thereafter filed Revision Petition dated 12 August 2002, which was turned down by the Revisional Authority by order dated 23 August 2002. It appears that Petitioner also preferred the Mercy Appeal under provisions of paragraph No.402 of Indian Railway Establishment Code seeking fresh appointment in Railway administration as a new entrant. The Mercy Appeal was placed before the Divisional Railway Manager, Mumbai who was pleased to reject the same.

4. Petitioner thereafter filed Original Application No.520 of 2003 challenging the aforesaid orders passed by the Disciplinary Authority, Appellate Authority, Revisional Authority as well as order passed in Mercy Appeal. The Tribunal was pleased to dismiss the

Original Application by its judgment and order dated 23 July 2004, which is subject matter of challenge in the present petition.

5. Appearing for Petitioner, Mr. Desai the learned senior advocate assisted by Ms. Rashika Agarwal the learned counsel would submit that the entire inquiry is vitiated on account of failure to follow the procedure laid down in paragraph No.704 and 705 of the Indian Railway Vigilance Manual. That the procedure mandates utilization of services of two gazetted officers while conducting decoy check. That in the present case, decoy check was conducted by utilizing services of two Constables working in RPF, both of whom were not gazetted officers. That the vigilance check was pre-planned and it was always possible for the railway administration to arrange services of gazetted officer for conducting vigilance check. In support of his contentions, the learned counsel would rely upon the judgment of the Apex Court in **Moni Shankar Vs. Union of India**¹ as well as judgment of Division Bench of this Court in **Union of India Vs. Chandrakant Sakharam Joshi**².

6. Learned counsel appearing for Petitioner would further submit that an amount of Rs.6/- could not be returned immediately to the passenger on account of non-availability of change and the decoy passenger was requested to wait for return of the balance amount. That the cupboard in which amount of Rs.450/- was allegedly found, was not in exclusive custody of Petitioner. That the said cupboard was available for use by all the staff working in booking office and the same was

1 (2008) 1 SCC (L&S) 819.

2 2023 SCC OnLine Bom 602

actually in custody of Chief Booking Supervisor. That therefore the amount allegedly recovered from the said cupboard cannot be presumed to be the one earned by petitioner by overcharging passengers. That the findings are therefore based on surmises and conjunctures and hence perverse. We are also taken through the findings recorded by the Tribunal with regard to inconsistent statements made by the independent witness about the manner in which the cupboard was opened by the vigilance team. It is therefore submitted that the findings are based on no evidence, the same are perverse and liable to be set aside.

7. We have also heard Mr. Suresh Kumar learned counsel appearing for railway administration. He would oppose the petition and support the order passed by the Tribunal.

8. After having heard the learned counsels appearing for the parties and after perusal of pleadings and record of the case, we find that Petitioner essentially raised three points before the Tribunal viz. (i) violation of procedure prescribed in paragraph Nos.704 and 705 of Indian Railway Vigilance Manual, (ii) perversity in the findings recorded in the inquiry and (ii) order of removal is passed by an incompetent authority. Before us, Mr. Desai would fairly concede that the correctness of findings recorded by the Tribunal about competency of officer to pass order of removal are not seriously questioned. We accordingly proceed to examine the first two points, sought to be urged before us.

9. On the issue of violation of provisions of paragraph No.704 and 705 of the Indian Railways Vigilance Manual, we find that paragraph No.705 provides that for laying departmental trap, investigating officer is required to arrange for two gazetted officers from railways to act as independent witnesses, as far as possible. However an exception has been made in cases where two gazetted officers are not available immediately and in such cases, services of non gazetted staff can be utilized. Provisions of paragraph No.704 and 705 of the Vigilance Manual are reproduced below:.

"704. Traps

(i) (iv)

(v) When laying a trap, the following important points have to be kept in view:

(a) Two or more independent witnesses must hear the conversation, which should establish that the money was being passed as illegal gratification to meet the defence that the money was actually received as a loan or something else, if put up by the accused.

(b) The transaction should be within the sight and hearing of two independent witnesses.

(c) There should be an opportunity to catch the culprit red handed immediately after passing of the illegal gratification so that the accused may not be able to dispose it of.

(d) The witnesses selected should be responsible witnesses who have not appeared as witnesses in earlier cases of the department or the police and are men of status, considering the status of the accused. It is safer to take witnesses who are Government employees and of other departments.

(e) After satisfying the above conditions, the Investigating Officer should take the decoy to the SP/SPE and pass on the information to him for necessary action. If the office of the S.P., S.P.E., is not nearby and immediate action is required for laying the trap, the help of the local police may be obtained. It may be noted that the trap can be laid only by an officer not below the rank of Deputy Superintendent of Local Police. After the S.P.E. or local police official have been entrusted

with the work, all arrangements for laying the trap and execution of the same should be done by them. All necessary help required by them should be rendered. (vi)-(vii).

705. Departmental Traps - For Departmental traps, the following instructions in addition to those contained under paras 704 are to be followed:

(a) The Investigating Officer/Inspector should arrange two gazetted officers from Railways to act as independent witnesses as far as possible. However, in certain exceptional cases where two gazetted officers are not available immediately, the services of non-gazetted staff can be utilised. All employees, particularly, gazetted officers, should assist and witness a trap whenever they are approached by any officer or branch. The Head of Branch detail a suitable person or persons to be present at the scene of trap. Refusal to assist or witness a trap without a just cause/without sufficient reason may be regarded as a breach of duty, making him liable to disciplinary action.

(b) The decoy will present the money which he will give to the defaulting officers/employees as bribe money on demand. A memo should be prepared by the Investigating Officer/Inspector in the presence of the independent witnesses and the decoy indicating the numbers of the G.C. notes for legal and illegal transactions. The memo, thus prepared should bear the signature of decoy, independent witnesses and the Investigating Officer/Inspector. Another memo, for returning the G.D. notes to the decoy will be prepared for making over the G.C. notes to the delinquent employee on demand. This memo should also contain signatures of decoy, witnesses and Investigating Officer/Inspector. The independent witnesses will take up position at such a place where from they can see the transaction and also hear the conversation between the decoy and delinquent, with a view to satisfy themselves that the money was demanded, given and accepted as bribe a fact to which they will be deposing in the departmental proceeding at a later date. After the money has been passed on, the Investigating Officer/Inspector should disclose the identity and demand, in the presence of the witnesses, to produce all money including private, and bribe money. Then the total money produced will be verified from relevant records and memo for seizure of the money and verification particulars will be prepared. The recovered notes will be kept in an envelope sealed in the presence of the witnesses, decoy and the accused as also his immediate superior who should be called as a witness in case the accused refuses to sign the recovery memo, and sealing of the notes

in the envelope. (c) (d)."

10. Thus, perusal of paragraph No.705 of the Vigilance Manual would indicate that utilization of services of two gazetted railway officers as independent witnesses is not a mandatory condition to be followed in each and every case. In case of non-availability of two gazetted railway officers, utilization of services of non gazetted staff is also permissible. We find that Petitioner did not set up a case of availability of two gazetted railway officers for conduct of vigilance check. There is complete absence of pleadings both before Tribunal as well as before us in this regard. Thus, the question whether two gazetted railway officers were available to act as independent witnesses in the decoy check, was not put into issue before the Tribunal nor the same is in issue before us. We therefore cannot uphold Petitioner's contention that the vigilance check as well as findings recorded in the disciplinary enquiry are vitiated on account of utilization of two RPF constables as decoy passenger and independent witness.

11. The Tribunal has held that the independence of RPF constables cannot be questioned as they form part of an independent set up. That the RPF staff utilized for trap are rotated frequently in order to meet the requirement of being independent. The Tribunal has however held that conduct of vigilance check cannot be kept pending awaiting availability of two gazetted railway officers. The Tribunal has further held that Petitioner has not levelled any allegations about independence of two

RPF constables. Therefore in the light of these findings, we are not in a position to hold that there is any violation of provisions of paragraph No. 704 or 705 of the Vigilance Manual during conduct of the vigilance check.

12. Reliance of Mr. Desai on judgment of the Apex Court in **Moni Shankar** (supra) and of Division Bench of this Court in **Chandrakant Sakharam Joshi** (supra) would be of no avail. Both in *Moni Shankar* and *Chandrakant Sakharam Joshi*, there were additional violations in the form of Inquiry Officer acting as presenting officer as well as failure to examine delinquent employee under Rule 9(21) of the Railway Services (Discipline and Appeal) Rule. In this regard, we reproduce paragraph 16, 17 and 20 of the judgment in *Chandrakant Sakharam Joshi* as under-

“16. Thus, in *Moni Shankar* after taking into consideration the cumulative effect of the illegalities/irregularities, the Apex Court set aside the order of the High Court and restored the order of the Tribunal which had set aside the order of penalty.

17. In the present case, all the 3 illegalities/irregularities that were involved in *Moni Shankar* (supra) are present. The procedure envisaged in paragraph No. 704 and 705 of Vigilance Manual has admittedly not been followed. The Inquiry Officer has acted as a presenting officer. Respondent's general examination under Rule 9(21) of the Rules has not been conducted. While presence of merely one factor may not be a sufficient reason to set aside the order of penalty, the cumulative effect of the 3 factors, as held in *Moni Shankar*, would be sufficient to set aside the same. Additionally, there is fourth common factor in two cases, viz. raising of presumption of illegal earning by mere possession of excess amount. Here the presumption is on account of two factors

20. Thus the legal position seems settled that mere violation of

procedure envisaged in Para 704 or 705 would, by itself, not render the proceedings invalid. However if there are multiple violation of procedures, as existed in *Moni Shankar*, the courts or tribunals would consider cumulative effect thereof. As observed above, there are three procedural violations in the present case on lines with *Moni Shankar*. We would have ignored the non-adherence to the procedure envisaged in para 704/705 of Vigilance Manual in the present case as the factum of recovery of sold tickets is not disputed by Respondent. Similarly, the inquiry officer conducting examination-in-chief would not be a ground, it itself, to render finding of guilt illegal in absence of any prejudice being demonstrated. However the third factor of violation of Rule 9 (21) is something which cannot be ignored.

13. In the present case, Petitioner has not set up any case of violation of provisions of Rule 9(21) of the Railway Services (Discipline & Appeal) Rules, 1968. In fact, alleged violation of paragraph No. 704 and 705 of the Vigilance Manual is the solitary infraction which is sought to be raised. This is not a case where there is multiple violation procedure/Rules in conduct of inquiry. Thus, following the ratio of the judgments in *Moni Shankar* and *Chandrakant Sakharam Joshi*, even if there was in indeed any violation of procedure under paragraph No.704 or 705 of the Vigilance Manual, the findings recorded in the inquiry cannot be said to be vitiated. We accordingly reject the first contention raised by Mr. Desai about violation of procedure prescribed in paragraph No.704 and 705 of the Vigilance Manual.

14. Coming to the second point urged by Mr. Desai about perversity in the findings recorded in the inquiry, we find that there is sufficient evidence available on record in support of charges. Petitioner does not dispute the fact that he did not return the amount of Rs.6/- to

the decoy passenger. The only point sought to be urged is that the same was not returned on account of non-availability of change. If indeed that was the position, Petitioner ought to have requested decoy passenger to step aside and wait for return of amount of Rs.6/-. However both decoy passenger as well as independent witness did not hear Petitioner making such a request. Therefore, there is no evidence on record to suggest that Petitioner had any intention of returning the amount of Rs.6/- to decoy passenger.

15. So far as amount recovered from the cupboard kept behind Petitioner's window is concerned, a finding is recorded in the inquiry report that the amount belonged to Petitioner. The said finding is recorded on the basis of location of the cupboard, which was immediately behind window of the Petitioner coupled with the fact that Petitioner had access to the same. In disciplinary inquiry, the test for proving charges is that of preponderance of probability, which appears to be satisfied in the present case. Also, recovery of amount of Rs. 450 from cupboard is not the solitary charge proved. The other grave charge of overcharging the decoy passenger is also proved in the inquiry by direct evidence.

16. We therefore do not find any perversity in the findings recorded during the course of inquiry. The scope of judicial review in findings recorded in a domestic inquiry is extremely narrow. In the present case, there is no infraction of principles of natural justice and the inquiry is conducted after following the provisions of Railway Servants (Discipline & Appeal) Rules, 1968. Petitioner has been given full

opportunity to cross-examine the witnesses as well as to lead his own evidence. The findings recorded in the inquiry are supported by evidence on record. In such circumstances the Tribunal could not have substituted its own findings in place of the one recorded by the disciplinary authority. Petitioner has unsuccessfully exhausted various departmental remedies of Appeal, Revision as well as Mercy Appeal, wherein correctness of finding recorded in enquiry has been considered by various hierarchical officers who are conversant with working of railway staff. Infact, filing of a mercy appeal by Petitioner requesting appointment as a fresh entrant would indicate an implied admission of misconduct. This is yet another factor which would assume importance in the light of the fact that what is invoked by Petitioner is writ jurisdiction of this Court.

17. Considering the overall conspectus of the case, we do not find that the Tribunal has committed any error in dismissing Petitioner's Original Application. The order of the Tribunal is unexceptionable. Writ Petition being devoid of merits, is dismissed without any order as to costs. Rule is discharged.

SANDEEP V. MARNE, J.

NITIN JAMDAR, J.

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