
(2010) 10 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 826 CAT of 2007

A.C. Kohli

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-10-2010

Acts Referred:

Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 11, 14, 18, 20, 25

Citation : (2011) 161 PLR 456

Hon'ble Judges : Ritu Bahri, J; M.M. Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The Petitioner who has been working as Travelling Ticket Inspector with Northern Railways has approached this Court with a prayer for quashing order dated 5.1.2007 (P.4) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for brevity "the Tribunal") holding that the Petitioner was responsible for carrying eight irregular passengers and an amount of Rs. 170/- was found excess in government cash which was deposited later on. Accordingly, charges were proved and he has been compulsorily retired from service as a measure of punishment in accordance with law.

2. Brief facts of the case are that the Petitioner was appointed as Ticket Collector in the Indian Railways on 1.8.1978 and he was to superannuate on 31.8.2008. It has come on record that after his initial appointment as Ticket Clerk he was promoted to the post of Travelling Ticket Examiner, Head Travelling Ticket Examiner and Travelling Ticket Inspector. When the Petitioner was working as Travelling Ticket Inspector a charge sheet was issued to him levelling following charges:

1. That, he was found responsible for carrying eight irregular passengers holding II M/Exp. Ticket in his manned coach C 2 which were allowed by him and he did not regularize them upto Ghaziabad due to malafide intention for his personal

gain. During Vigilance check they were regularized vide EFT No. 619345 to 619438.

2. An amount of Rs. 170/- was also found excess in his government cash which was deposited vide EFT No. 619439 used as Money Receipt.

3. He submitted his reply to the charge sheet and Shri Y.K. Tyagi conducted the enquiry against him and the Enquiry Officer recorded the findings on charge No. 1 holding that the Petitioner was responsible for carrying eight irregular passengers holding II M/Exp. Ticket in his manned coach C2 which were allowed by him and he did not regularize them upto Ghaziabad with a malafide intention for his personal gain. Those passengers were regularized during vigilance check vide EFT No. 619435 to 619438 after collecting the amount as per Ex.P.4/1 to Ex.P.4/4. The Charged Officer clarified and accepted the fact that he allowed and regularized the passengers after the departure of the train from Ghaziabad at the instructions of the Vigilance Team and then collected the difference of fare from Ghaziabad accordingly. The departmental witnesses affirmed the aforesaid version.

4. The other charge was also found proved as the amount of Rs. 170/- was found in excess in his government cash, which was deposited vide EFT No. 619439 used as Money Receipt without any objection (P. 1). The Enquiry Officer found that on the basis of oral and documentary evidence both the charges were proved although charge No. 1 was not proved completely. Thereafter a show cause notice was issued to the Petitioner for imposition of major penalty and the Petitioner submitted his explanation in the form of reply. The Divisional Commercial Manager, Ambala Cantt. who is the disciplinary authority imposed upon the Petitioner the punishment of reduction in pay by one step in the same scale with cumulative effect for one year vide order dated 19.1.2006 (P.1).

5. The Petitioner asserts in para 13 of the petition that he wanted to prefer an appeal under Rule 18 of the Railway Servants (Disciplinary and Appeal) Rules, 1968 (for brevity "the Rules") to the Sr. Divisional Commissioner Manager Ambala. As a fact it must be stated that no appeal was ever preferred. According to the Petitioner 45 days time for filing the appeal under Rule 18 of the Rules was to commence from 25.2.2006 when copy of the punishment order was received and not from the date of the order of punishment which was passed on 19.1.2006. All this happened before the remedy of appeal could be availed by the Petitioner. The period for filing appeal expired on 10.4.2006. However, it is alleged that he received a show cause notice dated 14.3.2006 (A.5/P.1) from the Revisional Authority i.e. Respondent No. 2 proposing to enhance the punishment. The Petitioner submitted his reply on 5.4.2006 (A.6/P.1). The Revisional Authority then passed an order dated 9.5.2006 retiring him compulsorily from service w.e.f. 1.6.2006. The action of the Respondents retiring him compulsorily w.e.f. 1.6.2006 was challenged before the Tribunal and primarily two contentions were raised. Firstly, that the Revisional Authority has illegally exercised his power by issuing show cause notice to the Petitioner for enhancement of punishment

before the expiry of 45 days which is the period of limitation for preferring an appeal and secondly that the enquiry officer held that charge No. 1 was not proved and the findings recorded by him did not prove any mis-conduct.

6. The Tribunal found that the period of 45 days was to begun from the date of the order which was 19.1.2006 and the period of 45 days was not to count from 4.3.2006. The Revisional Authority had issued show cause notice on 14.3.2006. Therefore it could not be argued that the Revisional Authority issued show cause notice before the expiry of 45 days provided for filing of appeal. On the other argument, the Tribunal held that a sum of Rs. 170/- was found in excess in government cash which was in possession of the Petitioner. The explanation tendered by him was not accepted. The recovery of Rs. 170/- in excess from the applicant could not be disputed.

7. None has appeared in support of the petition nor any one has appeared to oppose the same.

8. In order to determine the first issue, it would be necessary to first examine the revisional power conferred by Rule 25 of the Rules which reads as under:

PART VI REVISION AND REVIEW

25. Revision.-

1. Notwithstanding anything contained in these rules

i. the President, or

ii. the Railway Board, or

iii. the General Manager of a Railway Administration or an authority of that status is the case of a Railway Servant serving under this control, or

iv and v(d)(a) xx xx xx xx

b. subject to the provisions of Rule 14, where it is proposed to impose any of the penalties specified in Clauses (v) to (ix) of Rule 6 or the penalty specified in Clause (iv) of Rule 6 which falls within the scope of the provisions contained in Sub-rule (2) of Rule 11 or to enhance the penalty imposed by the order under revision to any of the penalties specified in this sub-clause, no such penalty shall be imposed except after following the procedure for inquiry in the manner laid down in Rule 9, unless such inquiry has already been held, and also except after consultation with the Commission, where such consultation is necessary.

2. No proceeding for revision shall be commenced until after the expiry of the period of limitation for and; or

ii. the disposal of the appeal where any such appeal has been preferred:

Provided that the provisions of this sub-rule shall not apply to the revision of punishment in case of Railway accidents.

3 and 4. xx xx xx

5. No action under this rule shall be initiated by an appellate authority other than the President; or b. the revising authorities mentioned in item (v) of Sub-rule (1)- after more than six months from the date of the order to be revised in cases where it is proposed to impose or enhance a penalty or modify the order to the detriment of the Railway servant, or more than one year after the date of the order to be revised in cases where it is proposed to reduce or cancel the penalty imposed or modify the order in favour of the Railway servant.

Provided that when revision is undertaken by the Railway Board or the General Manager of a Zonal Railway or an authority of the status of a General Manager in any other Railway Unit or Administration when they are higher than the appellate authority, and by the President even when he is the appellate authority, this can be done without restriction of any time limit.

Explanation: For the purposes of this sub-rule the time limits for revision of cases shall be reckoned from the date of issue of the orders proposed to be revised. In cases where original order has been upheld by the appellate authority, the time limit shall be reckoned from the date of issue of the appellate orders.

9. A close scrutiny of the aforesaid Rule would show that power of revision has been vested in the competent authority and the rule begins with non obstante clause which would obviously mean that Rule 25 dealing with revisional power has an overriding effect. Sub Rule (1)(v)(b) further provides that the competent authority could enhance the penalty besides vesting in it other powers. Sub Rule (1)((v)(d) lays down the procedure for enhancing the penalty. Accordingly it is provided that the railway servant has to be given reasonable opportunity of making a representation against the proposal for enhancement of penalty.

10. A more significant feature of this Rule for the purpose of this matter is Sub-rule 5(b). According to Sub-rule 5(b) no period of limitation is applicable in cases where the power of revision is to be exercised by the Railway Board or General Manager of Zonal Railways or an authority of the status of the General Manager in any other railway unit or administration which is higher than the appellate authority. In the aforesaid case the power of revision could be exercised without restriction of any time limit. The question thus is whether the period of 45 days provided under Rule 20 of the Rules for filing of an appeal has to await the exercise of revisional jurisdiction by an authority higher than the appellate authority. It would be profitable to read Rule 20 of the Rules which provides for filing of an appeal. The Rule 20 of the Rule reads as under:

20. Period of limitation for appeals.- No appeal preferred under this part, shall be entertained unless such appeal is preferred within a period of forty-five days from the date on which a copy of the order appealed against, is delivered to the Appellant; Provided that the appellate authority may entertain the appeal, after the expiry of the said period, if it is satisfied that the Appellant had sufficient cause for not preferring the appeal in time.

11. A perusal of the aforesaid rule would show that an appeal must be preferred within a period of 45 days from the date on which a copy of the order appealed against is delivered to the Appellant. However, Rule 25 of the Rules dealing with the revisional power opens with non obstante clause and also clothe the revisional authority provided it is higher than the appellate authority to exercise revisional power without restriction of any time limit.

12. On the basis of the aforesaid interpretation it is evident that the order dated 19.1.2006 has been revised by the Divisional Railway Manager, Northern Railways, Ambala Cantt, which is an authority higher than the Senior Divisional Commercial Manager, (Sr. DCM) Ambala Cantt. Moreover, on facts it has become evident that the Petitioner did not ever file any appeal and the show cause notice for exercise of power of revision was received by him on 14.3.2006. Any appeal against the aforesaid order could have been filed within a period 45 days from the date of receipt of the order of punishment as per the provisions of Rule 20 of the rules. However, no appeal was preferred. The period of 45 days would not apply in case of power of revision is to be exercised by an authority higher than the appellate authority. The reasoning adopted by the Tribunal, therefore would not be correct as the explanation appended to Rule 25(5) of the Rules would not be attracted for deciding the period of 45 days for filing of appeal. However, the conclusion remains the same. Accordingly, the writ petition fails and the same is dismissed.