

(2010) 04 JH CK 0018
In the Jharkhand High Court

Ajay Kumar Singh

APPELLANT

Vs

The Airport Authority of India

RESPONDENT

Date of Decision : 12-04-2010

Acts Referred:

Citation : (2010) 04 JH CK 0018

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—The present writ petition has been preferred against an order, passed by the disciplinary authority at Annexure 8 to the memo of petition dated 18th April, 2008, whereby, the disciplinary authority has imposed upon the petitioner a penalty of censure.

2. Learned Counsel for the petitioner vehemently submitted that on more than one occasion, the inquiry has been conducted and on both the occasions, the charge, levelled against the petitioner, has not been proved, as per the reports given by the Inquiry Officer on two occasions. It is further submitted by the learned Counsel for the petitioner that the charge levelled against the petitioner was to the effect that the petitioner has submitted an inflated T.A./D.A. Bill for staying at Hotel Nirmala, situated at Imphal. This charge was denied by the petitioner in reply to the show cause notice. Thereafter, Inquiry Officer was appointed and inquiry was conducted, wherein, by way of Ext. 7, the amount, which was actually paid by the petitioner at Hotel Nirmala, situated at Imphal, was presented before the Inquiry Officer. This bill clearly reveals the name of Hotel Nirmala, situated at Imphal. After recording the evidences of both the sides, the Inquiry Officer gave report dated 15th June, 2005 that the charges, levelled against the petitioner, are not proved. This inquiry report was not taken into consideration by the disciplinary authority and the disciplinary authority vide letter dated 7th November, 2005 passed an order that he is not agreeing with the report, given by the Inquiry Officer, and the matter was remanded for a fresh

inquiry.

3. It is submitted, at this stage, by the learned Counsel for the petitioner that neither a copy of the inquiry report dated 15th June, 2005 was ever given to the petitioner nor the disciplinary authority i.e. the Executive Director (P & A), Airport Authority of India, New Delhi, while passing the order dated 7th November, 2005 (Annexure 4 to the memo of petition) has ever given an opportunity of being heard to the petitioner. Thus, the report of the Inquiry Officer, which is in favour of the petitioner, was quashed and set aside *exparte* by the disciplinary authority and, as such, this action of the disciplinary authority is in gross violation of the principles of natural justice and, hence, the order, passed by the disciplinary authority dated 7th November, 2005 (Annexure 4 to the memo of petition) deserves to be quashed and set aside. Thereafter, once again the inquiry was conducted by the Inquiry Officer and again the petitioner presented the same document (Ext. 7), which reveals the payment made by the petitioner to Hotel Nirmala, situated at Imphal, while the petitioner stayed at that hotel. The respondents could not prove the charge against the petitioner and again the Inquiry Officer, who has conducted a fresh inquiry, has come to a conclusion that the charge, levelled against the petitioner, is not proved and the second time report given by the Inquiry Officer is dated 5th January, 2006, which is at Annexure 6/1 to the memo of petition. It is submitted by the learned Counsel for the petitioner that the disciplinary authority again did not agree with the said second inquiry report and issued a show cause notice dated 21st February, 2006 to the petitioner that why a punishment be not imposed upon him, by an order at Annexure 6 to the memo of petition and, thereafter, an order of punishment was issued by the disciplinary authority vide order dated 18th April, 2006 (Annexure 8 to the memo of petition), whereby, it has been held that "In any case, the facts and circumstances of the case do not support his total exoneration" and though there is no conclusive evidence, on the basis of probability, the disciplinary authority wanted to impose a minor penalty upon the petitioner and, therefore, a penalty of censure was imposed upon the petitioner. The petitioner is working as Senior Superintendent (Air Traffic Controller), Airports Authority of India, with the respondents and has not committed any misconduct, whatsoever, and has served sincerely, honestly, diligently and to the satisfaction of the respondents since 28th August, 1995. It is also submitted by the learned Counsel for the petitioner that the conclusion arrived at by the disciplinary authority is on the basis of "No evidence" and though there is no evidence against the petitioner, penalty has been imposed upon the petitioner. On the contrary, there is evidence in favour of the petitioner, as the petitioner has presented the payment receipt of Hotel Nirmala, situated at Imphal and the respondents are consistently saying that the petitioner has not made any payment to Hotel Nirmala, situated at Imphal, and has wrongly collected a sizable amount from the Airport Authority. This charge is not proved by the respondents, during course of both the inquiries and without any basis and without any evidence, a conclusion has been arrived at by the disciplinary

authority, disagreeing with even second inquiry report and, therefore, the order of punishment imposed by the disciplinary authority dated 18th April, 2006, which is at Annexure 8 to the memo of petition, deserves to be quashed and set aside. It is also submitted by the learned Counsel for the petitioner that against the order dated 18th April, 2006, passed by the disciplinary authority, a departmental appeal was preferred by the petitioner and the appellate authority has also passed an order dated 20th October, 2006, which is at Annexure 9 to the memo of petition. The appellate authority has also not properly appreciated the fact that the respondents have failed to prove the charge and on the basis of "No evidence" the disciplinary authority has imposed punishment upon the petitioner and the bill regarding payment to Hotel Nirmala, situated at Imphal, which has been presented by the petitioner, has not at all been considered, whereas some copy of a register of Hotel Nirmala, which has never been proved by the respondents, has been relied upon. The document presented by the respondents does not clearly state that whether this document is from Hotel Nirmala, situated at Imphal, or not. Nobody is proving that the said document was collected from Hotel Nirmala. The officer, who has signed that document, which has been presented by the respondents, was never examined as a witness. Thus, the source of the document, which has been presented by the respondents, is not proved nor the person, who has signed the said document, has proved the contents of the document. Nobody knows from where this document has been collected by the respondents whereas the petitioner has presented the payment receipt of Hotel Nirmala, situated at Imphal. The document presented by the petitioner clearly reveals the name of the said hostel. It also reveals the number of days during which the petitioner had stayed in the said hotel. It also clearly reveals how much amount was paid by the petitioner. Thus, explicitly clear document has been ignored by the respondents deliberately and absolutely an ambiguous document has been heavily relied upon by the disciplinary authority and, even the whole case is based upon "No evidence", then also, for the sake of imposing punishment, a punishment has been imposed upon the petitioner and, therefore, the order, passed by the appellate authority at Annexure 9 to the memo of petition dated 20th October, 2006 also deserved to be quashed and set aside.

4. I have heard learned Counsel for the respondents, who has submitted vehemently that the document, which has been presented by the respondents, was seized and recovered from Hotel Nirmala, situated at Imphal, by the Deputy Central Vigilance Officer. This document reveals that the petitioner has never stayed in the said hotel and this document has rightly been relied upon by the disciplinary authority and, therefore, though the petitioner has not stayed at Hotel Nirmala, sizable amount has been recovered by way of T.A./D.A. Bills and, therefore, the disciplinary authority has punished the present petitioner vide order dated 18th April, 2006 (Annexure 8 to the memo of petition), which has been confirmed by the appellate authority vide order dated 20th October, 2006 (Annexure 9 to the memo of petition) and, therefore, looking to the nature of

misconduct, the punishment imposed upon the petitioner by the respondents cannot be said to be shockingly disproportionate to the charge. Properly, the inquiry has been conducted, adequate opportunity of being heard has been given to the petitioner and, therefore, this Court should not interfere with the order of punishment, passed by the respondents and, thus, this writ petition deserved to be dismissed.

5. Having heard learned Counsel for both the sides and looking to the facts and circumstances of the case, it appears that:

(i) The petitioner was serving with the respondents as Senior Superintendent (Air Traffic Controller), Airports Authority of India, since 28th August, 1995, honestly, diligently, sincerely and to the satisfaction of the respondents. Never any charge-sheet has been issued upon the petitioner nor any punishment has been inflicted upon the present petitioner. The career of the petitioner is a spotless career so far.

(ii) The following charge was levelled against the present petitioner:

ARTICLE I

Shri Ajay Kumar Singh, when deputed on tour from Guwahati to Imphal w.e.f. 1/5/99 to 20/5/99, had manipulated to obtain inflated/bogus Hotel bills and had fraudulently preferred and claimed an excess amount of Rs. 10,890/- by dubious means for wrongful pecuniary gain for self. He, thus committed or caused to be committed falsification of documents and defrauded the Authority to the extent of Rs. 10,890/-

ARTICLE II

Shri Ajay Kumar Singh fraudulently preferred and claim excess amount of Rs. 10,890/- by submitting bogus Hotel Bills committing misconduct of fraud. He also derived undue pecuniary gain by keeping and using the amount worked out by way of interest accrued thereon @ 14% since January 99 till the date of refund on 14/5/03 on the amount of Rs. 10,890/- fraudulently preferred and claim by him.

(iii) Having receiving the aforesaid charge-sheet, the petitioner denied the same and, therefore, Inquiry Officer was appointed and the petitioner has presented a document, whereby, it is revealed that the petitioner had stayed at Hotel Nirmala, situated at Imphal, for a period running from 2nd May, 1999 to 20th May, 1999 and he has paid Rs. 550/- + Rs. 55/- (as tax) per day. This document, which is at Annexure B to the supplementary counter affidavit, filed by the respondents, was presented before the Inquiry Officer as Ext. 7, which reveals the name of Hotel Nirmala as also the address as well as the dates and the payment made. There is also a rubber stamp of the said hotel. There is also signature of the person, who has received the payment. There is also stamp of the word "Paid". Against this document, the respondents have presented, during the course of inquiry, some document, collected by the Deputy Central Vigilance

Officer from Hotel Nirmala, but, nothing is stated in the said document about the name of the hotel, the date and time when the said document was seized, nor there is any signature of the owner/proprietor of the said hotel, nor the person, who has counter-signed as a certified copy, has ever been examined as a witness by the respondents. Thus, a lump sum general document has been presented and confronted against the aforesaid accurate document of Hotel Nirmala and, therefore, the Inquiry Officer gave his report dated 15th June, 2005 that the charge, levelled against the petitioner, is not proved.

(iv) Copy of the said inquiry report was never given to the present petitioner.

(v) Thereafter, the disciplinary authority has passed an *ex parte* order, upsetting the order passed by the Inquiry Officer, dated 7th November, 2005 (Annexure 4 to the memo of petition). By this order, the disciplinary authority was not agreeing with the report given by the Inquiry Officer dated 15th June, 2005 and the matter was remanded for a fresh inquiry. The petitioner was never given any opportunity of being heard before passing the order dated 7th November, 2005.

(vi) Thereafter, again *de-novo* inquiry was conducted and again the aforesaid document was presented by the petitioner, which is at Annexure B to the supplementary counter affidavit, filed by the respondents, and again the respondents side i.e. Airports Authority presented the very same document and again, as stated hereinabove, against a vague and general document, accurate document was given a go-bye and again on the second time, the Inquiry Officer had also given a report that the charge, levelled against the petitioner, is not proved. This second time report was given on 5th January, 2006 (Annexure 6/1 to the memo of petition). It has been observed by the said Inquiry Officer in his inquiry report as under:

C Assessment of Evidence:

1. The only prosecution document which could prove the charge against the SPS is exhibit S-8, i.e. the daily occupancy sheets, said to have been issued by Hotel Nirmala. The whole charge is based on this document. But, this document does not contain any signs that it has been taken from the daily occupancy sheets of Hotel Nirmala. There is also no stamp on it, which can prove that this document has been taken from Hotel Nirmala.
2. The C.R.P.F commandant who has certified the Photostat copies of register, said to have been taken from Hotel Nirmala has also failed to certify that these pages are taken from the daily occupancy register of Hotel Nirmala, Imphal.
3. On the other hand, the defence documents (exhibit S-7) contain the name and address of Hotel Nirmala, which appears to be true.
4. As argued by SPS, the hotel has been charging different tariff on different dates for the same room.

(D) the findings:

1. The prosecution document appears to be incomplete and the P.O. Could not substantiate the charges against the SPS as the name of the hotel does not appears anywhere in the daily occupancy sheet produced by the Presenting officer.

2. No evidence also was produced by the P.O., which could prove that the daily occupancy sheets were the certified copies of the daily occupancy sheet of Hotel Nirmala.

(vii) In view of the aforesaid observations, the Inquiry Officer came to the conclusion that the charge, levelled against the petitioner, is not proved.

(viii) Again the disciplinary authority did not agree with the second report also and now he has given a show cause notice to the petitioner on 21st February, 2006 (Annexure 6 to the memo of petition) and the disciplinary authority ultimately passed an order dated 18th April, 2008 (Annexure 8 to the memo of petition) and in the impugned order, it has been observed as under:

AND WHEREAS, on careful consideration of the Inquiry Report, the representation dated 08.03.2006 submitted by Shri A.K. Singh and the facts and circumstances of the misconduct committed by him, the undersigned being the Disciplinary Authority has observed that the entire case of fraudulent TA/DA claim is based on the copy of the Daily Occupancy Register, which was collected by the Coy. Commandant, C.R.P.F. Since the Daily Occupancy Sheet did not show the name of the CO, it was concluded that he did not stay in the hotel and submitted bogus bills, as the actual tariff of Hotel Nirmala and the one shown on the bills submitted with his TA/DA claim, were at variance with each other. It is observed that the CO has not been able to produce any document or witness in support of his stay at Hotel Nirmala, which would conclusively establish his stay there. The CO had also expressed his inability to produce any witness in support of his contention that he had in fact stayed at the hotel. On the other hand, the document produced by a responsible officer of CRPF cannot be considered to be bogus probably when he has no interest in either the punishment of the CO or his exoneration. While there is a strong Preponderance of Probability of his submitting inflated bills, the same has not been conclusively established and therefore the benefit of doubt goes to the CO to a considerable extent. In any case, the facts and circumstances of the case do not support his total exoneration either as the CO has failed to produce any evidence/witness in support of his contention of staying at Hotel Nirmala. Since in this case, the amount of inflated TA/DA has been returned with penal interest and since the charges have not been conclusively established but do get support on the basis of probability, the undersigned being the Disciplinary Authority is of the considered opinion that the ends of justice would be met, if one of the minor penalties is imposed on Shri A.K. Singh.

(ix) Thus, in view of the aforesaid observations, it appears that no cogent and convincing evidence was ever presented by the respondents whereas the

petitioner has presented a document from Hotel Nirmala, situated at Imphal, which is payment receipt (Annexure B to the supplementary counter affidavit, filed by the respondents) and the said document was exhibited as Ext. 7, during course of inquiry.

(x) The respondents have not properly appreciated the document, presented by the petitioner whereas the respondents have relied upon a document, which never reveals the name of the hotel, which bears no signature of the owner of Hotel Nirmala and whosoever has signed on me said document, which is presented by the respondents, was never examined by the respondents. Nobody knows from where the said document was procured and, thus, the whole case of the respondents is based upon "No evidence" whereas the petitioner has presented very cogent and convincing evidence. This document is the only document, which is in dispute. Twice the inquiries have been conducted by the Inquiry Officer on two occasions and on both the occasions, charge was not proved, as per the inquiry report. However, the disciplinary authority has inflicted punishment upon the present petitioner, only on the basis of a probability, in the facts of the present case. There is no question of any probability of non-payment of the amount at Hotel Nirmala, situated at Imphal, by the petitioner, looking to the document at Annexure B to the supplementary counter affidavit, filed by the respondents. The disciplinary authority has never come to a conclusion that the document, presented by the petitioner, is false, fabricated and concocted piece of evidence.

6. In view of these facts, the conclusion, arrived at by the disciplinary authority vide order dated 18th April, 2006 (Annexure 8 to the memo of petition) and the conclusion, arrived at by the appellate authority dated 20th October, 2006 (Annexure 9 to the memo of petition) deserved to be quashed and set aside. Both these authorities have not appreciated the document, presented by the delinquent-petitioner of Hotel Nirmala, situated at Imphal. Both these authorities have not at all come to a conclusion that the document, presented by the present petitioner, was false, fabricated or concocted whereas the respondents have relied upon a document, which does not bear the name of the owner/proprietor of Hotel Nirmala, nor there is any signature of the owner/proprietor of the said hotel and the person, who has allegedly signed upon the said document, has also not been examined by the respondents.

7. In these set of circumstances, the whole conclusion arrived at by the disciplinary authority as well as the appellate authority is based upon "No evidence" and hence, the order at Annexure 8 to the memo of petition dated 18th April, 2006 as well as the order at Annexure 9 to the memo of petition dated 20th October, 2006 are hereby quashed and set aside.

8. This writ petition is, accordingly, allowed and disposed of.