**(2011) 07 PAT CK 0194**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 17030 of 201

Anand Mohan Gupta APPELLANT

Vs

The Union of India (UOI) and Others RESPONDENT

**Date of Decision :** 18-07-2011

**Acts Referred:**

**Citation :** (2011) 59 BLJR 2711 : (2011) 4 PLJR 147

**Hon'ble Judges :** Shivaji Pandey, J;Shiva Kirti Singh, J

**Bench :** Division Bench

**Final Decision :** Allowed

# Judgement

Shiva Kirti Singh and Shivaji Pandey, JJ.—Heard learned Counsel for the Petitioner and learned Counsel appearing for the Railway Board.

2. The Petitioner has challenged the judgment and order of Central Administrative Tribunal dated 7th May, 2010 where by O.A. No. 636 of 2004 preferred by the Petitioner has been dismissed. As a result the order passed by the Railway Authorities imposing the penalty of reduction pay in three stages for a period of three years with cumulative effect has been allowed to stand after rejecting the plea advanced on behalf of the Petitioner that the charge contained in Article -1 did not amount to any misconduct and he was prejudiced on account of refusal by the authority to furnish him with enquiry report prepared by the Vigilance Team.

3. The relevant facts essential for disposal of the present writ petition may be noted in brief. The Petitioner was a senior booking clerk posted at Railway Station, at Gaya on 21.6.2000. According to materials on record and the facts noted in the enquiry report a Vigilance team from the Railway Board made a surprise inspection on that date at about 21.10 hours. From counter No. 4 in the Booking office where the Petitioner was working, the Government cash was found to be in excess by Rs. 175 and the same was deposited on the same date. In the declared private cash there was shortage of rupees six.

 

4. Article 1 of the charge is simply to the effect that on 21-6-2000 the Petitioner was performing duty on counter No. 4 in ''C'' shift and the Vigilance check led to detection of Rs. 175/- excess in Govt. cash. Article-II is not material because it only refers to shortage found in Govt. cash on three occasions in past amounting to total shortage of Rs. 156/-. According to the enquiry report Article-II was not found proved as a misconduct.

5. So far as facts mentioned in Article-1 are concerned there is no much dispute because clearly Rs. 175/- was deposited by the Petitioner on the same date. The submission advanced on behalf of Petitioner is that shift ''C'' was to end at 00.00 hours and the vigilance check was admittedly before the end of the shift and hence the present case does not show contravention of Rule 710 of Indian Railway Commercial Manual Vol. II which requires the excess amount to be deposited and not to be utilized to cover any deficiency in collections in the previous shift or train.

6. A perusal of the said Rule contained in Annexure-27 reveals that according to the said provision an excess represents the amount erroneously collected from the traveling public and hence it is required to be deposited as Government cash. The submission on behalf of the Petitioner is that a misconduct or dereliction of duty may arise only if the excess cash is not deposited after counting the same at the end of the shift. There cannot be any burden of counting before the shift ends. The further submission is that even if findings of excess Government cash creates a suspicion of deliberate excess collections from the traveling public, such suspicion cannot take the place of proof. It has been pointed out that throughout the disciplinary enquiry or proceeding no material has been adduced to show grievance raised by any public to support the aforesaid doubt.

7. In reply, learned Counsel for the Railways has taken us to the enquiry report contained in annexure-12 to submit that as per paragraph 1.3 of the report the Vigilance check was conducted upon some source information . That may be true but by itself, it cannot meet the requirement of adducing some evidence to substantiate the doubt that there was deliberate misconduct by collecting excess money from the traveling public.

8. It may not be possible to lay down a principle of general application that vigilance check conducted in course of a duty schedule cannot expose the misdeed of an employee of collecting excess money from the traveling public. The nature of complaint made and the nature of recovery made may prove misconduct of collecting excess money from the traveling public provided there is some evidence to show such misconduct but in the present case the allegations create only a doubt and it is well established that findings, even in a disciplinary proceeding, cannot be only on the basis of doubt. There must be some material available to prove the charge otherwise the proceeding will be vitiated on account of non-availability of any material.

9. On considering the arguments of both the sides and the materials on record,

 

we are of the considered view that in the present case no misconduct or dereliction of duty has been proved by the authority against the Petitioner as there is no material to sustain such charge. Hence, the order of punishment passed against the Petitioner as well as the impugned order of the learned Tribunal cannot be sustained. They are accordingly set aside. The writ petition is allowed. No order as to costs.