

(2013) 05 DEL CK 0327

In the Delhi High Court

Case No : Writ Petition (C) 5392 of 2012

Division Railway Manager

APPELLANT

Vs

A.K. Tiwari and Others

RESPONDENT

Date of Decision : 09-05-2013

Acts Referred:

Citation : (2013) 05 DEL CK 0327

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : V.S.R. Krishna, for the Appellant; Meenu Mainee, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—It is not in dispute that the excess amount recovered from the respondent, who was at the relevant time managing a Railway Ticket Counter, is Rs. 11/-. It is settled law that a Writ Court would be concerned with whether the Tribunal whose decision is challenged before the Writ Court has correctly understood and applied the law. On issues of facts, finding returned by the Tribunal have to be respected unless it can be demonstrated and shown that either the finding is perverse or ignores material evidence.

2. As per the department a vigilance raid was conducted at Kosi Kalan Station on July 20, 2007. A decoy passenger was sent to the Ticket Counter managed by the respondent and as per the allegation the respondent overcharged the decoy Rs. 11/-

3. It is not in dispute that the Railway Vigilance Manual, vide paragraphs 704 and 705 stipulated the manner in which a trap has to be laid and emphasises the need of association of a Gazetted Officer at the raid.

4. In the decision of the Supreme Court reported as Moni Shankar Vs. Union of India (UOI) and Another, the Supreme Court held that infraction of the instructions contained in the Vigilance Manual by themselves may not be enough

to vitiate the disciplinary proceedings but its effect in combination with other deficiencies has to be taken into account.

5. Concededly, in paragraph 10.1 of the impugned decision the Tribunal has correctly noted the law declared by the Supreme Court in *Moni Shankar's* case (supra).

6. In addition to the infraction of the instructions contained in Vigilance Manual, the Tribunal has further noted that the so called decoy passenger was a Group-D employee of the Indian Railways. He was a Porter. The Tribunal noted that the decoy had admitted that even on earlier occasions he had acted as a decoy passenger. We note that during cross-examination, the decoy passenger admitted that: "ticket babu was calling him and even then he did not come back to the ticket babu because he had to hand over the ticket to the vigilance team".

7. What is of greater importance is to note that the decoy passenger admitted that after he received the ticket which was preceded by he paying money to the respondent and as he has retraced his steps other passenger standing in the queue told him that the respondent was calling him back. Obviously the probable reason for the respondent calling back the decoy passenger was to return the excess fare which had been left behind. It is in this context that the act of a decoy passenger assumes importance.

8. For, if the decoy is a lowly paid employee of the Indian Railways, the raiding party can always tell him to pay a larger sum and on receipt of ticket not take back the balance and return. For example, a raiding party may know that the fare to a particular destination is Rs. 450/-. The decoy may be told to hand over a note in the denomination of Rs. 500/- and after receiving the ticket retraced the steps. The person issuing the ticket would be left with an excess of Rs. 50/. The trap would succeed.

9. This is why law has always placed emphasis on the fact that the trap witnesses should not be lowly paid street hawkers, vendors and porters etc. who are susceptible to pressure from the higher authorities.

10. As a Writ Court our concern would be whether the Tribunal has properly evaluated the issue of law and fact and not to re-appreciate the evidence. Finding that the approach of the Tribunal is in conformity with the law declared by the Supreme Court in *Moni Shankar's* case (supra), we dismiss the writ petition but without any order as to costs.

CM No. 11000/2012 (stay) & 11001/2012 (Addl. documents)

Dismissed as infructuous.