

(2015) 09 DEL CK 0013

In the Delhi High Court

Case No : Writ Petition (C) 6452 of 2015

Inder Kumar Sharma

APPELLANT

Vs

The General Manager, Northern Railway Baroda House and
Others

RESPONDENT

Date of Decision : 03-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Citation : (2015) 09 DEL CK 0013

Hon'ble Judges : G.S. Sistani, J; Sangita Dhingra Sehgal, J

Bench : Division Bench

Advocate : G.D. Bhandari, for the Appellant; J.K. Singh, SC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sangita Dhingra Sehgal, J—The present writ petition challenges the correctness of the order dated 08.12.2014 passed by the Central Administrative Tribunal in O.A. No. 3967/20110 by which the O.A. filed by the petitioner herein assailing the punishment of reduction of pay was dismissed.

2. The facts as are necessary for the adjudication of the present writ petition are as follows:

"The petitioner was appointed as Enquiry-cum-Reservation on 10.09.1999. While on duty at Gurgaon in the morning shift between 8:00A.M. to 2:00P.M. on 19.03.2009, two Vigilance Inspectors asked the petitioner to declare the private cash available with him. The petitioner produced Rs. 360/- from one pocket and Rs. 9,000/- from the other pocket. The explanation rendered for extra cash was that he had to purchase medicines for his mother who was ailing. On an inquiry being held, a charge sheet was served on the petitioner on 22.05.2009. The Inquiry Officer submitted his report on 18.11.2009. The petitioner made a representation against the inquiry on 01.12.2009. After examining the

representation of the petitioner the disciplinary authority proposed a penalty of reduction of pay by one step in the time scale for two years with cumulative effect by the order dated 28.01.2010 and an appeal against the said order was preferred on 12.03.2010. The Appellate Authority by an order dated 17.05.2010 issued a show cause notice for enhancement of penalty. Objection against the order was filed on 01.07.2010. By an order dated 07.07.2010, the penalty was enhanced by reduction of pay by three steps in the time scale for five years with cumulative effect. The Appellate Authority by an order dated 21/24.09.2010 reduced the penalty from five to four years with cumulative effect."

3. Mr. G.D. Bhandari, learned counsel for the petitioner submits that the learned Tribunal has failed to take into consideration that the inquiry was not conducted as per the procedure and rules. The petitioner was not given any opportunity to lead defence evidence. It is also contended that the Inquiry Officer, the Disciplinary Authority as well Appellate Authority failed to take into consideration the defence raised by the petitioner and the excess cash found with the petitioner was for procuring medicines for his ailing mother. It is also contended that the order dated 28.01.2010 passed by Disciplinary Authority shows complete non-application of mind as the order has not discussed the evidence on record.

4. Mr. G.D. Bhandari, learned counsel appearing on behalf of the petitioner has strongly urged that the impugned order is discriminatory and violates the Principles of Equity, Justice and Good Conscience. The counsel further clarified that the said order appears to have been passed on account of colourable exercise of powers due to which the impugned order is bad in law.

5. Learned Counsel for the petitioner has further contended that the departmental traps were not laid by the Vigilance Officers of the Railways in accordance with the provisions of the Indian Railway Vigilance Manual, 1996. Non-compliance of the provisions has vitiated the disciplinary proceedings and as a result thereof, the order of the authorities imposing penalty upon the petitioner is invalid and illegal.

6. Learned Counsel for the petitioner further contended that provisions of Rule 9(21) of the Railway Servant Discipline and Appeal Rules, 1968 have not been complied which has resulted in the violation of principles of natural justice. To substantiate his arguments learned counsel for the petitioner has relied upon the judgment of the Hon"ble Supreme Court *Moni Shankar Vs. Union of India (UOI) and Another*, (2008) 2 CLT 105 : (2008) 118 FLR 1092 : (2008) 3 JT 484 : (2008) 3 SCALE 455 : (2008) 3 SCC 484 : (2008) 1 SCC(L&S) 819 : (2008) 3 SLJ 325 in which the Apex Court held that though the paras 704 and 705 of Vigilance Manual may be departmental instructions but the said paras have to be substantially complied with and cannot be totally ignored.

7. Mr. J.K. Singh, Standing Counsel for Railway submitted that there has been no violation of Rule 9(21) of the Railway Servant Discipline and Appeal Rules, 1968

and the enquiry proceedings were conducted in accordance of settled Rules. The counsel further clarified that the petitioner himself chose not to present any defence witness and he was examined on 22.05.2009 in accordance with Rule 9(21) of the said Rules. In the light of above submissions the impugned order needs no interference.

8. We have heard learned counsel for the petitioner and learned counsel for the respondent, who had appeared on an advance copy.

9. In order to appreciate the respective contentions of the learned Counsel for the parties, we think it appropriate at this stage to refer to the relevant provisions of paragraphs 704 and 705 of the Indian Railways Vigilance Manual, 1996, which read as under:

"704. Traps

i.

ii.

iii.

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.

Para 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 railway employees, particularly, gazetted officers, should assist and witness a trap whenever they are approached by any officer or Vigilance branch. The Head of Vigilance 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, Railway 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 a witness in case the accused refuses to sign the recovery memo, and sealing of the notes in the envelope.

c) XXX

d) XXX

e) XXX"

10. With regard to the aforesaid instructions, learned counsel for the petitioner had submitted that the Tribunal had failed to consider that the instructions contained in paragraphs 704 and 705 of the Manual are mandatory in nature and their violation by the Investigating Agency in the process of laying traps against the petitioner have caused prejudice to the rights of the petitioner to defend his cause in the departmental proceedings which were initiated against him by the Authority on the basis of the defective and unfounded investigation reports prepared by the investigation officers.

11. Reliance is placed on the decision rendered by the Hon"ble Supreme Court in *The Chief Commercial Manager, South Central Railway, Secunderabad and Others Vs. G. Ratnam and Others*, AIR 2007 SC 2976 : (2007) 10 JT 378 : (2007) 10 SCALE 321 : (2007) 8 SCC 212 : (2007) 2 SCC(L&S) 851 : (2007) 9 SCR 259 : (2008) 1 SLJ 433 : (2007) AIRSCW 5419 in which the Apex Court has opined that non-adherence of the instructions laid down in Paras 704 and 705 of the Vigilance Manual would not invalidate a departmental proceeding, stating:

"17. We shall now examine whether on the facts and the material available on record, non-adherence of the instructions as laid down in paragraphs 704 and 705 of the Manual would invalidate the departmental proceedings initiated against the respondents and rendering the consequential orders of penalty imposed upon the respondents by the authorities, as held by the High Court in the impugned order. It is not in dispute that the departmental traps were conducted by the investigating officers when the respondents were on official duty undertaking journey on trains going from one destination to another destination. The Tribunal in its order noticed that the decoy passengers deployed by the investigation officers were RPF Constables in whose presence the respondents allegedly collected excess amount for arranging sleeper class reservation accommodation etc. to the passengers. The transaction between the decoy passengers and the respondents was reported to have been witnessed by the RPF Constables. In the facts and circumstances of the matters, the Tribunal held that the investigations were conducted by the investigating officers in violation of the mandatory Instructions contained in paragraphs 704 and 705 of the Vigilance Manual, 1996, on the basis of which inquiries were held by the Enquiry Officer which finally resulted in the imposition of penalty upon the respondents by the Railway Authority. The High Court in its impugned judgment has come to the conclusion that the Inquiry Reports in the absence of joining any independent witnesses in the departmental traps, are found inadequate and where the Instructions relating to such departmental trap cases are not fully adhered to, the punishment imposed upon the basis of such defective traps are not sustainable under law. The High Court has observed that in the present cases the service of some RPF Constables and Railway staff attached to the Vigilance Wing were utilised as decoy passengers and they were also associated as witnesses in the traps. The RPF Constables, in no terms, can be said to be

independent witnesses and non- association of independent witnesses by the investigating officers in the investigation of the departmental trap cases has caused prejudice to the rights of the respondents in their defence before the Enquiry Officers.

18. We are not inclined to agree that the non- adherence of the mandatory Instructions and Guidelines contained in paragraphs 704 and 705 of the Vigilance Manual has vitiated the departmental proceedings initiated against the respondents by the Railway Authority. In our view, such finding and reasoning are wholly unjustified and cannot be sustained."

It has been noticed in the above judgment that Paras 704 and 705 cover the procedures and guidelines to be followed by the investigating officers, who are entrusted with the task of investigation of trap cases and departmental trap cases against the railway officials. This Court proceeded on the premise that the executive instructions/guidelines do not confer any legally enforceable rights on any person and impose no legal obligation on the subordinate authorities for whose guidance they are issued.

12. After perusing the above judgment, we are of this considered view that the Hon"ble Supreme Court has held that executive instructions do not create any legal right in favour of any person. However, total violation of the guidelines together with other factors including violations of Principles of Natural Justice can be taken into consideration for the purpose of arriving at a conclusion as to whether the department has not conducted the enquiry by following proper procedure to prove the charges against the delinquent official.

13. The next issue which comes up for consideration is that whether the Inquiry Officer had examined the petitioner in accordance with the principle enshrined under Rule 9(21) of the Railway Servants (Discipline and Appeal) Rules, 1968?

14. The above mentioned Rule reads as under:

"The inquiring authority may, after the Railway servant closes his case, and shall, if the Railway servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Railway servant to explain any circumstances appearing in the evidence against him."

15. The Disciplinary Authority is the sole judge of facts. However, where appeal is presented the Appellate Authority has co-extensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In all disciplinary proceedings a reasonable opportunity for defending the case is required to be given to the charged officer and that extreme care should be taken to ensure that he is not made to suffer a penalty without ensuring that there is proper evaluation of evidence that has come in

records.

16. Learned Counsel for the petitioner has brought the non-compliance of the Rule 9(21) of the Railway Servants (Discipline & Appeal) Rules, 1968 to a sharp focus. As explained by the Hon''ble Supreme Court in Moni Shankar's case, Rule 9(21) is for enabling the charged officer to disclose or explain the circumstance appearing against him in the evidence that was adduced in the inquiry proceedings.

17. In disciplinary proceedings Rule 9(21) is analogous to Section 313 of Code of Criminal Procedure. The object of Section 313 of Code of Criminal Procedure is to enable the accused person to explain the circumstances appearing in the evidence against him. The answer given by the accused must be taken into consideration in such inquiry or trial and put in evidence for or against him. However, in a departmental inquiry/disciplinary proceedings, the scope of questioning the charged officers by the Inquiry Officer is not as wide as contemplated in Rule 313 of the Code of Criminal Procedure. In disciplinary proceedings, the scope of inquiry is to enable the accused the charged officer to get a reasonable opportunity of being heard in respect of the charges levelled against him.

18. Furthermore, Rule 9(21) of Railway Servants (Discipline & Appeal) Rules, 1968 stipulates that the Enquiry Officer (EO) shall generally question the Charged Officer (CO) on the circumstances appearing against him in the evidence for the purpose of enabling the CO to explain any circumstances appearing in the evidence against him. It goes without saying that examination of the CO under this provision shall be done on the basis of the circumstances appearing against the CO, as appreciated by the EO. This provision is to be resorted when the CO himself does not choose to appear as a witness exposing himself for examination, cross examination and re-examination, etc. The underlying idea is that EO should arrive at the findings only after appreciating the CO's defence on each and every allegation/circumstances appearing against him.

19. The learned Counsel for the petitioner referring to Moni Shankar Vs. Union of India (UOI) and Another, (2008) 2 CLT 105 : (2008) 118 FLR 1092 : (2008) 3 JT 484 : (2008) 3 SCALE 455 : (2008) 3 SCC 484 : (2008) 1 SCC(L&S) 819 : (2008) 3 SLJ 325 submitted that the said Rule 9(21) is imperative in character. In Moni Shankar's case, the nature of the defective inquiry is slightly different. In that case, the Hon''ble Supreme Court found fault with the presenting officer that even the minimum safeguard in regard to manner in which examination-in-chief was conducted has not been preserved and that the questions posed by him were leading questions. Anyhow, such insufficient mode of examination or re-examination was not seen resorted by the Inquiry Officer or by the presenting officer in this case.

20. After perusing the facts and circumstances of the present case, we are of this

considerable view that the petitioner in this case had adequate opportunity for bringing contra-evidence by way of defence and also for cross-examination of the witnesses. In a disciplinary proceeding, what should be looked into is whether the charged officer was in any way prejudiced by non-compliance or loose compliance of the procedural requirement in the rules. It is well settled that the omission of Inquiry Officer to put questions to the charged officer on the evidence appearing against him cannot be the sole ground for vitiating the departmental proceedings. However, in the present case, we have found that there is no such omission by the Inquiry Officer and the petitioner was examined in accordance to the above Rule. Thus, in our considerable view Rule 9(21) of Railway Servants (Discipline & Appeal) Rules, 1968 was properly followed.

21. We find no infirmity in the judgment of the Central Administrative Tribunal; resultantly the writ petition is dismissed.