

(2011) 09 RAJ CK 0089
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2765 of 2003

M.F. Khan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-09-2011

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2012) 2 WLN 407

Hon'ble Judges : Narendra Kumar Jain, J;A.M. Sapre, J

Bench : Division Bench

Advocate : S.K. Malik, for the Appellant; Manoj Bhandari, for the Respondent

Final Decision : Dismissed

Judgement

Narendra Kumar Jain-II, J.—This writ petition is filed by applicant of OA No. 232/2001 under Art. 227 of the Constitution of India against an order dt. 13.08.2002 passed by the Central Administrative Tribunal, Jodhpur Bench (herein after for brevity called "the Tribunal") deciding the aforementioned Original Application. By the impugned order dt. 13.08.2002, the Tribunal dismissed the Original Application filed by the writ petitioner and declined to grant him any relief claimed therein.

2. Facts of the case lie in a narrow compass. They however need mention in brief to appreciate the issue involved in the writ petition.

3. The writ petitioner is a Railway employee. At the relevant time, he was working as Commercial Inspector at Jodhpur. On 17.07.1999, he was found to have travelled from Makrana to Howraha by misusing and forging one Railway pass. He was then charge-sheeted for this act done by him under the Rules beside facing criminal cases under criminal laws. In the Departmental Inquiry proceedings it was rebvealed that he admitted the substance of charge leveled against him in the charge sheet. The inquiry was then held and he was found guilty of charge leveled against him. The appointing authority then concurred

with the findings of Inquiry Officer and awarded to writ petitioner penalty of reduction of pay from Rs. 6725-6200/- to Rs. 5500-9000 for three years with cumulative effect. It is against this order, the writ petitioner felt aggrieved and filed OA before CAT, out of which this writ petition arises. The Tribunal by impugned order dismissed the OA and upheld the penalty order, which has given rise to filing of the writ petition by the delinquent employee, contending inter alia that no case had been made out for imposition of any penalty much less what has been imposed on him and hence, it be set aside and writ petition as also OA out of which this writ petition arises be allowed.

4. The question therefore that arises for consideration is whether the Tribunal was justified in declining to grant relief prayed for by the petitioner while rejecting his Original Application?

5. For this purpose, we consider it apposite to reproduce relevant observation made by the Tribunal:

"5. In this connection, we consider it appropriate to reproduce below the relevant portion of rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. It reads as under:

9 (9) (a) (iii)

"Where all the articles of charge have been admitted by the Railway Servant in his written statement of defence, the disciplinary authority shall record its findings on each charge, after taking such further evidence as it may think fit and shall act in the manner laid down in Rule 10."

In the instant case, the applicant has admitted all the charge in his written statement of defence and therefore the disciplinary authority has proceeded in terms of the above rule and imposed the penalty on the applicant. We, therefore, do not find any infirmity or illegality in the action of the disciplinary authority in imposing penalty upon the applicant. The applicant has also tried to implicate another person by name Shri Ramesh Kumar Jangid, Commercial Inspector, Railway Station, Jodhpur. In fact, in his own statement dt. 17.09.2000, the applicant has admitted that he was advised by his friends to admit his guilty of getting reservation of Pass No. 698812. Therefore, the pleading of the applicant that he was pressurized by Mr. Ramesh Kumar Jangid cannot be accepted. In these circumstances, we do not find any merit in this application and the same is liable to be dismissed.

6. The learned counsel for the applicant relied on many judgments to substantiate that the imposition of penalty on the applicant was illegal. We have perused those judgments. We do not find it necessary to reproduce them. It is a clear out case where the applicant has tried to defraud the Railways and there are rules whereby penalty can be imposed on the delinquent officer, if he admits the charges.

Therefore, we pass the order as under:

The O.A. is dismissed but in the circumstances of the case, without any costs."

6. Mere perusal of afore-quoted observation would go to show that the contention of the writ petitioner that he admitted guilt under pressure of higher officer, was not found correct by the Tribunal and consequently, the Tribunal upheld penalty imposed by the competent authority.

7. Since we are completely in agreement with the reasoning and conclusion arrived at by the Tribunal, therefore, we need not to burden our order by repeating the facts and contentions of parties in much detail, except to the extent necessary.

8. Learned counsel for the petitioner while assailing the order contended that no case is made out for imposition of penalty and that there is no material to hold him guilty.

9. In reply, learned counsel for the respondents supported the impugned order contending that no case is made out for any interference in the impugned order. It was urged that due inquiry was held in which writ petitioner participated and admitted the charges leveled against him in the charge-sheet. It was also urged that yet adequate evidence was adduced by Railways to prove the mischief done by the writ petitioner by traveling on a fake pass. It was urged that looking to the serious nature of misconduct/ charge and the fact that it was duly proved in inquiry proceedings, even the major punishment could have been awarded to writ petitioner in place of minor one awarded.

10. We have given our thoughtful consideration to the submissions made by the learned counsel for the rival parties and have carefully perused the evidence on record available before us.

11. It is clear that Tribunal examined the record of disciplinary proceedings and found that one Liyakat Ali as required to go to Jodhpur on 16.06.1999 and for that Duty Pass was required to be issued in his favour but the said the Pass was never issued to him. On the other hand, the writ petitioner utilized Holder's Pass in his favour by writing his own name, for going from Makrana to Howrah in place of Liyakat Ali. Not only that, even the reservation slip was prepared by the writ petitioner himself, by changing the Pass Number from 590812 to 698812 in his own handwriting. In this way, the petitioner took advantage of some other person's Pass fraudulently for traveling from Makrana to Howraha. Not only that, the petitioner vide his letter dt. 20.10.1999 also accepted his guilt, which reads as under:

12. It is therefore, clear that the petitioner accepted his guilt apart from the fact that it was otherwise proved on evidence in the departmental proceedings.

13. Learned counsel for the petitioner vehemently assailed the impugned order of the Tribunal by relying upon judgment of Hon''ble Supreme Court in Jagdish Prasad Saxena vs. State of Madhya Bharat (now Madhya Pradesh) AIR 1961 SC 1070 as also Division Bench judgment of this Court in State Bank of Bikaner &

Jaipur vs. Jagdish Chandra Khadgawat 1986 (2) SLR 424. On their perusal, we find that both the decisions are distinguishable on facts. In the case of Jagdish Prasad Saxena (supra), charge sheet was issued to delinquent employee on the basis of admission made by him while in the case of SBBJ vs. Jagdish Chandra Khadgawat (supra), process of enquiry was dispensed with in view of said admission. In the instant case, in contrast in due process of disciplinary proceedings, the delinquent-petitioner was found to have admitted his guilt, which stood fortified from the scrutiny of relevant record as well.

14. In our opinion, therefore, once the charge leveled in the charge sheet stands proved in domestic inquiry conducted under the Rules, then it is for the appointing authority to decide what punishment should be imposed upon the delinquent employee as prescribed under the Rules. In this case, the punishment could be even higher than what was imposed on the employee because of nature and gravity of the charge. The writ petitioner should, therefore, feel fortunate that he was given lesser one.

15. In view of aforesaid discussion, we find absolutely no justification in departing from the view taken by the Tribunal. In our opinion, the order passed by the Tribunal is proper and legal. It does not call for any interference. The writ petition, therefore, fails and is hereby dismissed.