
(2010) 11 DEL CK 0088
In the Delhi High Court
Case No : Writ Petition (C) 4058 of 2008

Naresh Batra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-11-2010

Acts Referred:

Railway Services (Conduct) Rules, 1966 — Rule 3.1

Citation : (2010) 11 DEL CK 0088

Hon'ble Judges : Pradeep Nandrajog, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : Meenu Mainee, for the Appellant; Geetanjali Mohan, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Naresh Batra, the petitioner herein was appointed as a Mobile Booking Clerk and in the year 2004 was posted at the Railway Booking Office, at HNKM (Hazrat Nizamuddin) Railway Station.

2. The Vigilance Department of the Railways claimed to have received information of ongoing malpractices at the booking office at HNKM railway station. As per the complaint, at the booking window, the persons concerned were overcharging the passengers while issuing tickets. On 25.3.2004 a vigilance team comprising of Shri S.S Bawa and Shri Ashwani Kumar Sharma both Sr.VPs/ NDBH set a trap in which they associated two railway officers to act as the decoy and the shadow witness. Shri Som Pal PPR/NDLS was made to act as the shadow witness and Shri Ashish Kujur TTE/CH was to act as the decoy customer.

3. As planned on 25.3.2004 the two men from the Vigilance Department accompanied by the decoy and the shadow witness reached HNKM Railway Station. Sh. Ashish Kujur who was to act as a decoy passenger positioned himself in the queue at the counter No. 15 of the booking office which was manned by the petitioner. When his turn reached, he asked for 3 II M/Exp.

Tickets from HNZN to JSG. The petitioner allegedly demanded Rs. 1075/- from him as against the due fare of Rs. 675/- thereby charging an excess of Rs. 400/- over and above the due tariff. The vigilance team was signaled and the petitioner was subjected to a check. Shri Ram Sirkhan CBS/HNZN was called to draw the proceedings of the check, while the check was being conducted petitioner produced Rs. 70137/- as the available government cash, which as per the ITC accountant should have been Rs. 69798/-. Therefore, an excess of Rs. 339/- was found to be available with the petitioner. A statement of the petitioner was recorded in which he explained as under:

When this passenger was taking tickets, at that time another passenger came from outside the line and was inquiring about railway fare from another window; I told him the railway fare of Rs. 1075/-. At that time, the JSG passenger asked for three tickets and I could remember only about Rs. 1075/- and due to the crowd/rush I took the amount of Rs. 1075/- by mistake.

4. On 10.8.2004, a charge-sheet was issued against the petitioner alleging as under:

Articles of charges on the basis of which action under D&AR is to be taken against Shri Naresh Batra MBC/HNZN while working as such on 25.03.2004 in booking office HNZN committed misconduct/misbehavior in as much as that he was detected to have committed following serious lapses:

(1) That he was found responsible for demanding and accepting Rs. 1075/- against the due fare of Rs. 675/- for one II M/Exp. UTS ticket ex HNZN to JSG No. C20110153 for three adults i.e. Rs. 400/- excess charged from decoy passenger due to his mala fide intention for his personal gain.

(2) He siphoned off some amount to hide his misdeed besides Rs. 400/- overcharged from the decoy passenger he produced only Rs. 339/- excess in his govt. cash, which was got deposited in govt. cash vide MR No. 308712.

By the above acts of omission and commission Shri Naresh Batra MBC/HNZN failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Railway servant, thereby contravened the provisions of Rule 3.1 (i)(ii) and (iii) of Railway Service Conduct Rules 1966.

5. At the inquiry 5 witnesses were examined being Sh.S.S.Bawa and Sh.Ashwani Kumar Sharma from the Vigilance Branch, Sh.Ashish Kujur, who acted as the decoy passenger, Shri Som Pal, who acted as a shadow witness and Sh.Ram Sirkhan.

6. Relevant would it be to note that all of them supported the indictment. Sh.Ashish Kujur deposed that he acted as the decoy passenger and when he asked for being issued 3 tickets from HNZN to JSG the petitioner demanded fare in sum of Rs. 1075/- which he paid as against the normal fare of Rs. 675/-. Sh.Som Pal who acted as the shadow witness corroborated Sh.Ashish Kujur. Relevant would it be to note that questions put to Sh.Ashish Kujur as to in how

many cases he had acted as a decoy were held inadmissible by the inquiry officer and Sh.Ashish Kujur could not be cross-examined on said issue. Sh.Som Pal admitted during cross-examination that he had been associated, in the past, by the Vigilance Inspectors about 2 or 3 times prior.

7. The statement recorded at the spot and as made by the petitioner on 25.3.2004, relevant part whereof has been noted in para 3 above was proved by the witnesses of the prosecution.

8. During the inquiry the petitioner filed an application before the Inquiry Officer praying that the documents listed in the application, being relevant for the defence may be directed to be produced.

9. The inquiry officer passed an order on 30.11.2005 directing the production of the documents and notified the date as 16.12.2005 on which date the documents were not produced and the presenting officer informed that the same had yet to be located. Proceedings were adjourned for 5.1.2006 on which date once again the documents could not be produced. The petitioner thereupon filed an application stating that as his promotion was due he desired the inquiry to proceed ahead. He requested that the witnesses may be summoned in order to avoid delay in finalizing the inquiry and hence, on 5.1.2006 the inquiry officer notified that he would be recording the evidence of the prosecution.

10. The inquiry officer indicted the petitioner. The inquiry report was supplied to the petitioner and considering his response the disciplinary authority passed an order dated 5.9.2006 removing petitioner from service. Appeal filed was rejected vide order dated 14.11.2006. Revision filed against the appellate order was rejected on 19.1.2007.

11. Aggrieved by the three orders dated 5.9.2006, 14.11.2006 and 19.1.2007 the petitioner filed OA No.1150/2007 before the Tribunal in which he raised three issues: (i) The mandate of para 704 and 705 of the Indian Railway Vigilance Manual, 1996 were violated inasmuch as a trap required the participation of two gazetted officers and none being associated, the evidence pertaining to the trap had to be rejected; (ii) The decoy passenger Sh.Ashish Kujur was not permitted to be cross-examined on the question of his past association with the Vigilance team and thus the petitioner was denied the opportunity to expose Ashish Kujur being a stock witness; similarly qua the shadow witness Sh.Som Pal it was urged that it was apparent that he was a stock witness. It was pleaded that law treats trap witnesses as interested witnesses and for said reason the taint of Sh.Som Pal and Sh.Ashish Kujur who were stock witnesses became grave; and lastly (iii) By not bringing on record the documents production whereof was sought by the petitioner, the defence was prejudiced.

12. Relevant parts of para 704 and 705 of the Indian Railways Vigilance Manual, 1996 may be noted. They read as under:

704. Traps. - (i) - (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 condition, 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 SP, SPE, 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 SPE 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)

705. Departmental traps. - For departmental traps, the following instructions in addition to those contained under Para 704 are to be followed:

(a) The investigating officer/Inspector should arrange two gazette officers from Railways to act as independent witnesses as far as possible. However, in certain exceptional cases where two gazette officers are not available immediately, the services of nongazetted staff can be utilized.

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 of the independent witnesses and the decoy indicating the numbers of 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 wherefrom 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 as a witness in case the accused refuses to sign the recovery memo, and sealing of the notes in the envelope.

13. The Tribunal has not dealt with the contentions urged but has held that the contemporaneous statement made by the petitioner on 25.3.2004, contents whereof have been noted by us in para 3 above was a confession and was sufficient to indict the petitioner. We reproduce the reasoning of the Tribunal. The same is as under:

Shri Mainee, the learned Counsel representing the applicant, would, however, contend that the trap was illegal and no independent witness was associated, which would be against the relevant instructions contained in the vigilance manual, and the vigilance officer acted as disciplinary authority. He further contends that the applicant was not examined after the witness had been examined and that the witnesses examined by the department were stock witnesses, and further, the orders passed by both the authorities are non-speaking orders. Even though prima facie, on the basis of available material there does not appear to be any merit in the aforesaid contention of the counsel representing the applicant, we do not think it necessary to go deep into the issue as the impugned orders are based upon confession of guilt of the applicant as well. When confronted with the position that the applicant had confessed his guilt, which fact was independently proved and a finding returned to that effect by the disciplinary authority, Shri Mainee would contend that such a finding has been recorded only in the preliminary report. The counsel does not appear to be briefed or instructed properly, as surely, such a finding is recorded by the disciplinary authority after the enquiry officer had submitted his report. Shri Mainee would then contend that the applicant had not made any confession. When, however, asked as to whether the finding of the disciplinary authority based upon the confession of guilt of the applicant has been specifically challenged, the learned Counsel would so assert, but is unable to point out any such challenge laid in the OA. He indeed read some paras which do not mention

a word with regard to finding recorded by the disciplinary authority as mentioned above, least a challenge thereto. Once, the guilt of the appellant is proved on the basis of confession made by him, it will be an exercise in futility to go into the issues raised by the learned Counsel representing the applicant, as noted above. Confession or admission, as the case may be, are binding upon the maker thereof unless the same are successfully and on cogent grounds withdrawn, explained or shown to be erroneous. As mentioned above, the confession said to have been made by the applicant has not been even challenged.

14. Ms. Meenu Mainee, learned Counsel for the petitioner reiterated the three submissions urged before the Tribunal, which three have been noted by us in para 11 above. In addition, learned Counsel urged that the statement of the petitioner, contents whereof as noted by us in para 3 above was far from a confession and thus, learned Counsel urged that the Tribunal gravely erred in holding that the confession of the petitioner was sufficient to indict the petitioner.

15. As regards the plea that para 704 and 705 of the Indian Railway Vigilance Manual 1996 were violated, suffice would it be to state that in the decisions reported as *The Chief Commercial Manager, South Central Railway, Secunderabad and Others Vs. G. Ratnam and Others*, followed in the decision reported as *Moni Shankar Vs. Union of India (UOI)* and Another, the Supreme Court has held that the said paragraphs are mere executive instructions and do not have the force of law akin to a Rule and in any case would be applicable at a criminal trial and not a departmental inquiry. In the latter judgment it was held that if apart from not following the said two rules, it was shown that there were other illegalities/irregularities, the cumulative effect thereof had to be considered. Thus, the first contention urged that since two gazetted officers were not associated at the trap, the evidence thereto had to be ignored is rejected by us.

16. As regards the third submission that the defence was prejudiced on account of documents required to be produced as per order dated 30.11.2005, as noted by us in para 9 above, the petitioner himself requested the inquiry officer to proceed with the inquiry because the documents in question could not be traced and two adjournments had already been granted. The petitioner himself was interested in the inquiry to proceed as his promotion was held-up. That apart, it is a settled law that mere non-production of a document is immaterial, unless it is shown that non-production thereof has caused prejudice. No prejudice caused has been shown.

17. That leaves us to deal with two more issues, being submission No. 2 urged before the Tribunal and the plea urged before us that the Tribunal erred in treating the petitioners statement, contents whereof have been noted in para 3 above, as a confession.

18. Since in *Moni Shankar's* case (supra) it has been held that if apart from ignoring para 704 and 705 of the Indian Railways Vigilance Manual, 1996 there

are other illegalities/irregularities, the cumulative thereof must be considered. Thus, we consider the second submission with reference to the said observations of the Supreme Court and needless to state the same would require us to keep in our vision the fact that gazetted officers were not associated in the trap.

19. As such, law treats trap witnesses to be interested witnesses as they would have a bias to prove the trap. It is in this context that it assumes importance to note that Som Pal admitted to have acted as a witness for the Vigilance on two or three earlier occasions. The inquiry officer denied petitioner right to cross examine Ashish Kujur on said aspect. Now, it was relevant to ascertain whether Ashish Kujur was acting as a stock witness. We thus find two taints. The first is that Vigilance team associating Som Pal who admittedly was a stock witness. The second taint was when the inquiry officer prohibited cross examination of Ashish Kujur on the issue of his being associated with the vigilance team in the past as their witness. Thus, the testimony of Ashish Kujur and Som Pal would become highly tainted testimony and unless corroborated in the full, would merit no worth.

20. But, in the absence of any mala fides being alleged against Sh.S.S.Bawa, Sh.Ashwani Kumar Sharma and Sh.Ram Sirkhan, we see no reason why the said three persons be not believed, more so for the reason Sh.Ram Sirkhan had no concern with the trap and was summoned immediately after the trap was executed and was made a witness to the various memos which were prepared at the spot. Though the Tribunal may be wrong in opining that the statement made by the petitioner is a confession, but what the petitioner stated by way of explanation is important and substantially corroborates, through the mouth of the petitioner what the witnesses of the prosecution have deposed. The petitioner spoke: "When this passenger was taking tickets, at that time another passenger came from outside the line and was inquiring about railway fare from another window; I told him the railway fare of Rs. 1075/-. At that time, the JSG passenger asked for three tickets and I could remember only about Rs. 1075/- and due to the crowd/rush I took the amount of Rs. 1075/- by mistake."

21. The petitioner did not dispute having received Rs. 1075/- from the decoy passenger. His explanation that when he was speaking to the decoy passenger, another passenger who was not in the line enquired railway fare from another window and he told said passenger that the fare was Rs. 1075/and when the decoy passenger asked for three tickets he could only remember Rs. 1075/- and hence took Rs. 1075/- by mistake is too preposterous a version to be accepted as it seeks to admit receipt of Rs. 1075/- but render an explanation which is wholly ridiculous.

22. Thus, notwithstanding the taint in some part of the prosecution evidence, the remainder evidence if viewed in light of the explanation rendered by the petitioner clearly establishes the indictment as per the standard of proof required to be achieved at a domestic inquiry which is a notch below the standard of proof required at a civil trial being "Preponderance of Probabilities"; at a domestic

inquiry proof by very strong presumptive evidence is also sufficient.

23. Since we have already dealt with the nature of the statement made by the petitioner, disagreeing with the Tribunal that the same is a clear admission of guilt, but qua the said statement, holding as above in para 21, we conclude by concurring with the final view taken by the Tribunal, but not the reasoning of the Tribunal.

24. A feeble attempt was made to urge that the penalty imposed was disproportionate, but noting that the ugly head of corruption rears itself repeatedly and at the railway counters things are far from satisfactory, we do not feel that the penalty imposed is disproportionate.

25. The writ petition is dismissed.

26. No costs.