

(2011) 02 DEL CK 0121

In the Delhi High Court

Case No : Writ Petition (C) No. 644 of 2010

Rajender Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-02-2011

Acts Referred:

Citation : (2011) 02 DEL CK 0121

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Rekha Palli, for the Appellant; M.P. Singh and A.S. Singh for UOI, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Vide order dated 9.4.2009 penalty of removal from service has been levied upon the Petitioner and the period from 26.2.2007 till date of the order during which Petitioner remained suspended has been directed to be treated as for suspension only and this we understand means that for the period he remained under suspension, the Petitioner would not be paid wages, but the period would be counted on duty for purposes of such benefits as would accrue to the Petitioner keeping in view the penalty levied.

2. It is hoped and expected that in future, the Disciplinary Authority would be more clear in what it intends to convey under the order passed.

3. Appeal filed by the Petitioner against the order dated 9.4.2009 has been rejected vide order dated 21.7.2009 and in the revision filed against the said order, the only relief extended to the Petitioner under the Provisional Order dated 16.11.2009 is to convert the penalty to one of Compulsory Retirement.

4. It is apparent that the Petitioner has challenged the orders dated 9.4.2009, 21.7.2009 and 16.11.2009. It all commenced when an incident took place at about 08:00 hours on 26.2.2006 at the Indira Gandhi International Airport.

5. The security of the airport was entrusted to Central Industrial Security Force (CISF) and at the international departure terminal at the security gate, where passengers and their hand baggages were screened for security check, the Petitioner was on duty as the shift incharge. Ct. Rajender Singh was on duty to ensure that the passengers waited in a queue and SI Swamy was sitting behind the x-ray machine to scan the hand baggage and SI Kutti was at the metal detector gate to physically frisk the passengers.

6. Two passengers, Raza Yonus and Mohd. Aquil were to catch a flight to Dubai and after obtaining the boarding pass had proceeded for security check. They placed their hand baggage at the x-ray counter and SI Swamy detected solidified milk i.e. "Khoya" in their hand baggage and since the security procedures did not permit the same to be carried in the hand baggage did not allow them to take the "Khoya" and did not affix the stamp of security check on the hand baggage. The two pleaded to be permitted to take "Khoya" with them and at that stage the Petitioner intervened to sort out the matter and it is alleged that he accepted bribe in sum of Rs. 500/- from Raza Yonus and when the money was being passed on the single note in denomination of Rs. 500/- fell down which was witnessed by two passengers Rajiv Jha and Swadesh Singhal, who as public spirited citizens raised a hue and cry requiring senior officers of CISF to reach the spot. There and then, statements of Raza Yonus and Mohd. Aquil as also of Rajiv Jha and Swadesh Singhal were recorded. The passengers left as the plane had to leave.

7. Since the statements of Raza Yonus, Mohd. Aquil, Rajiv Jha and Swadesh Singhal were inculpatory of the Petitioner, he was suspended and on 23.3.2007 a charge memo was served upon him listing the article of charge that while performing shift duty on 26.2.2006 at I/C SHA-03, IGI Airport he was caught red handed at about 08:00 hours while accepting Rs. 500/- as bribe from a passenger Raza Yonus for permitting him and his co-passenger to take a security banned item.

8. During inquiry Insp. Pawan Kumar, Raza Yonus, Rajiv Jha, Mohd. Aquil and Swadesh Singhal were examined as PW-1, PW-2, PW-3, PW-4 and PW-5 respectively.

9. Whereas Raza Yonus and Mohd. Aquil resiled from their statements recorded at the time of the incident and deposed that when the "Khoya" was detected in their hand baggage and being told that it was a banned item and hence they could not carry the same in their hand baggage, Petitioner reached near the x-ray machine and asked Raza Yonus to hand over his boarding pass and when he i.e. Raza Yonus took out the boarding pass from his pocket, a note in denomination of Rs. 500/- fell down and at that moment a gentleman came and started shouting why was he giving bribe. He tried to reason with that gentleman. The situation became chaotic. Other passengers gathered and the said gentleman went to senior officers and prepared a report himself which was signed by them.

10. It is apparent that the two disclaimed the contents of their written statements, which we note are in Hindi and both of them explained that they could neither read nor write in Hindi.

11. Swadesh Singhal PW-5 also did not support his earlier version and stated that his statement was given in confusion and that he had only witnessed two passengers having some conversation in the security area and it seemed that the Petitioner had taken some money, which receipt by the Petitioner was not witnessed by him.

12. Rajiv Jha who appeared as PW-3 stood by his version.

13. For purpose of clarity, we may note that Raza Yonus and Mohd. Aquil did not give the reason why Raza Yonus was asked to hand over his boarding card, but admittedly, evidence shows, that the same was cancelled and this means that the reason was Raza Yonus and/or Mohd. Aquil going back to the airline counter to obtain fresh boarding pass after requiring the "Khoya" packets to be taken as check-in baggage. It is also relevant to note that the security clearance stamp was not affixed on the hand baggage of the two passengers.

14. The defence of the Petitioner was that Rajiv Jha was a captain in the same airlines in which the two passengers were to travel, but was travelling as a passenger on the day in question. He wanted to break the queue and threw his weight around when he was not permitted to do so. Feeling humiliated, he seized upon the opportunity when Rs. 500/- note accidentally fell when Raza Yonus took out the boarding pass from his pocket and since it was preceded by Raza Yonus and Mohd. Aquil having a dialogue with the security staff to permit them to take "Khoya" in the hand baggage, which request was declined, he created a scene and managed to falsely implicate the Petitioner.

15. Holding that Raza Yonus and Mohd. Aquil as also Swadesh Singhal had been bought over and also holding that the contemporaneous statements, recorded in writing and as made by the three, inspired confidence and that the testimony of Captain Rajiv Jha established the Petitioner attempting to take bribe, the Disciplinary Authority levied a penalty of being compulsorily retired upon the Petitioner. The appeal was rejected. But, the Provisional Authority, vide order dated 2.4.2008 held that since the charge was of accepting bribe, but the evidence revealed an attempt to take bribe, the penalty could not be levied and accordingly vide order dated 2.4.2008 set aside the penalty and ordered the Petitioner being reinstated but permitted de-novo inquiry after issuing a fresh a charge memo.

16. A fresh charge memo was issued on 21.4.2008, alleging that the Petitioner attempted to accept illegal pecuniary gain of Rs. 500/- from Raza Yonus, a Dubai based passenger of IC -897, as a consideration for showing undue favor to him and his co-passenger by allowing them to take security banned item.

17. At the second stage of the inquiry Insp. Jai Prakash Goswamy, SI Swamy,

Rajiv Jha and Raza Yonus were examined by the prosecution as PW-1, PW-2, PW-3 and PW-4 respectively. Petitioner examined himself as a defence witness. Assistant Commandant Arvind Chauhan and Insp. Pawan Kumar were examined as Court Witnesses.

18. Insp. Goswamy, Assistant Commandant Arvind Chauhan and Insp. Pawan Kumar, who were not witnesses to the incident deposed with respect to the preliminary investigation conducted at the spot and statements recorded and relevant would it be to note their testimony brings out and in particular question No. 14 and 15 and the answer thereto by Assistant Commandant Arvind Chauhan who on being cross-examined by the Petitioner admitted that Raza Yonus was unable to write in Hindi and Captain Rajiv Jha had helped him in recording the statement.

19. Raza Yonus PW-4 stood by his earlier testimony and disclaimed once again the contents of his written statement recorded at the time of the incident. Captain Rajiv Jha stood by his earlier testimony, but relevant would it be to note that during cross-examination admitted that the Petitioner had put a stamp on the boarding pass of Raza Yonus and when questioned as to what was the meaning of the stamp which Petitioner had put on the boarding pass, ducked the answer by responding: ridiculous questions can only invite ridiculous answers. The Petitioner persisted with the question by drawing his attention that the question was not ridiculous because whether the stamping was of security clearance or of cancellation of the boarding pass was relevant and the answer given was that the description of the stamp would be available on the boarding pass and could be gathered therefrom.

20. Relevant would it be to note that when questioned about the arguments which he had a little earlier with the security personnel and the reason for the arguments, he answered that as far as he remembered that security clearance was being delayed due to shortage of personnel, but did not remember as to what was the exact matter of arguments between the Petitioner and him.

21. Suffice would it be to state that even at the second stage of the inquiry the boarding pass of Raza Yonus bearing the stamp of cancellation was available. Relevant would it be to note that SI Swamy who was posted for screening duty at the x-ray machine deposed facts fully supportive of what the Petitioner was stating by way of defence. It may also be noted that during the second stage of the inquiry Raza Yonus stated that Captain Jha had started fighting for breaking the queue. He once again reiterated that his stated written statement recorded at the spot was not in his hand and since the flight was getting delayed he signed the same on being asked to do so by Captain Rajiv Jha.

22. We note that in the inquiry report submitted by the Inquiry Officer on 17.3.2009, sent to the Petitioner for his response under cover of a memorandum dated 18.3.2009 he has held that Raza Yonus could not be believed when he said that he signed his statement on 26.2.2007 without knowing the contents thereof.

23. The Inquiry Officer once again held that the contemporaneous statement of Raza Yonus and the testimony of Captain Rajiv Jha established the Petitioner attempting to receive a bribe and we note that even on the second occasion the Inquiry Officer has not discussed the evidentiary value and the impact on the evidence of the fact that the boarding pass of Raza Yonus was affixed with a cancellation stamp, meaning thereby that Raza Yonus had wanted to go back to the check-in counter to obtain a fresh/duplicate boarding pass after checking-in the "Khoya" packets as check-in baggage. The testimony of SI Swamy that he did not affix the security clearance stamp on the hand baggage of Raza Yonus and Mohd. Aquil has also not been discussed.

24. The order dated 9.4.2009 passed by the Disciplinary Authority, accepting the report of the Inquiry Officer and levying the penalty of removal from service, notes the contention of the Petitioner that the boarding pass of Raza Yonus had the cancellation stamp affixed thereon has been noted by the Disciplinary Authority, but we note that the effect thereof has not been considered.

25. Surprisingly enough, we find it strange that when at the first stage the charge of receiving bribe was held established against the Petitioner, the same Disciplinary Authority had levied the penalty of compulsory retirement and pertaining to the charge of attempting to receive bribe, the same Disciplinary Authority has levied a higher penalty. Though this is irrelevant for the reason we find that ultimately, the Revisional Authority has reduced the penalty, but we just highlight that the quantum of sentence to be imposed, as even in judicial verdict, would always remain a matter of debate till proper sentencing guidelines are evolved.

26. Be that as it may, appeal filed by the Petitioner was dismissed and in the revision filed, only relief which the Petitioner got was of the penalty being reduced to one of compulsory retirement.

27. It be noted that neither the Appellate nor the Revisional Authority have considered the evidentiary value and the impact of the boarding pass of Raza Yonus being affixed with the stamp of cancellation.

28. It is settled law that where at a domestic inquiry relevant and material evidence is ignored it would be a case of the findings returned being vitiated in law resulting in discrimination against the aggrieved person inasmuch as law treats said person to have been treated with hostility. The concept of equality is that all individuals have to be treated fairly and with the same yardstick and if the yardstick to be applied to all is to consider all the relevant and material evidence, singling out anyone by not considering the relevant material would amount to a hostile discrimination.

29. Such decisions are liable to be corrected in exercise of the supervisory jurisdiction of the Court.

30. We return the finding that the Inquiry Officer, the Disciplinary Authority, the

Appellate Authority and the Provisional Authority have ignored a very material piece of evidence, being the boarding pass of Raza Yonus which had a cancellation stamp affixed thereon.

31. Men may lie but documents do not and nor do circumstances. That the boarding pass of Raza Yonus was cancelled by the Petitioner leads to only one conclusion that neither the Petitioner demanded nor Raza Yonus offered to pay any bribe. When Raza Yonus and Mohd. Aquil were not permitted to take "Khoya" in the hand baggage and since they were desirous of taking "Khoya" with them the only solution was to go back to the check-in counter of the airlines and obtain a fresh boarding pass after checking-in the "Khoya" packets as check-in baggage. Since the two passengers had entered the security area the boarding pass of one of them had to be cancelled and this fact conclusively establishes the version of the Petitioner and is fully supported by the testimony of SI Swamy as also that of Raza Yonus that when Raza Yonus took out the boarding pass from his pocket one currency note of denomination Rs. 500/- fell from his pocket. In this connection it would be also relevant to note that there is no discussion in the report of the Inquiry Officer, the order passed by the Disciplinary Authority, the order passed by the Appellate Authority as also the order passed by the Provisional Authority as to the effect of Captain Rajiv Jha admitting having an altercation with the Petitioner a few minutes prior when Captain Rajiv Jha was attempt to break the queue and was prevented from so doing by the Petitioner. The evasive answers of Captain Rajiv Jha on the issue have been ignored to be discussed by all four. This further vitiates the inquiry report and the three orders. It also assumes importance that Captain Rajiv Jha has not deposed of having heard Petitioner demand any bribe and Raza Yonus agreeing to pay any bribe.

32. It is unfortunate that Captain Rajiv Jha, a man with a blotted ego has managed to ensnare the Petitioner who has been fighting a running feud and has suffered due to the authorities not applying themselves correctly.

33. The writ petition is accordingly allowed. Impugned orders dated 9.4.2009, 21.7.2009 and 16.11.2009 are set aside. Petitioner is directed to be reinstated in service forthwith with full consequential benefits of pay and seniority. We hold that the suspension of the Petitioner was wholly unjustified. Had the Disciplinary Authority meaningfully applied its mind it should have dawned upon it that the boarding pass of Raza Yonus being cancelled by the Petitioner was proof of Petitioner's innocence and the document spoke for itself and certainly spoke than the tainted evidence of the tainted statements of Rajiv Jha who was instrumental in coercing three passengers and actively participated in their statements being recorded. Thus, we hold that the Petitioner would be entitled to full salary and all benefits of pay increment for the period he remained suspended.

34. Petitioner is awarded cost in sum of Rs. 11,000/- to be paid by the Respondents.