
(2013) 05 DEL CK 0545
In the Delhi High Court
Case No : Writ Petition (C) 8224 of 2011

Rajesh Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-05-2013

Acts Referred:

Citation : (2013) 200 DLT 442 : (2014) 3 SCT 593

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

Bench : Division Bench

Advocate : Meenu Mainee, for the Appellant; Kumar Rajesh Singh, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—A penalty of "removal from service" was inflicted upon the petitioner vide order dated July 24, 2007 which, upon appeal being filed was reduced to "a penalty of reduction in the pay-grade to the lowest grade of pay with cumulative effect" for a period up to October 31, 2014. The petitioner proceeded to file O.A. No. 2583/2009 before the Central Administrative Tribunal which was dismissed vide impugned order dated November 16, 2010. The petitioner, Rajesh Singh, was working as Dy. Chief Yardmaster with the Indian Railways and was posted at New Delhi Station Yard. A raid was conducted by the Vigilance Department of the Indian Railways wherein a trap was laid and the petitioner was allegedly caught red-handed accepting bribe of Rs. 300/- from a decoy agent (Shri Ashish Kujur, PW-7) to expedite the placement of a rake onto the platform.

2. On July 04, 2005, a charge memo for a major penalty proceeding was issued and served upon the petitioner, and needless to state the gravamen of the charge was that he had demanded and accepted Rs. 300/- from decoy customer/trader for preferentially placing empty coach rake of 2622 New Delhi-Chennai Tamil Nadu Express.

3. Before the Inquiry Officer 7 witnesses were examined by the department namely; PW-1 Shri Ramesh Chand, Station Superintendent; PW-2 Shri A.K. Verma, Chief Vigilance Inspector; PW-3 Sh. Mohd. Arshad, Sr. T.C. Moradabad; PW-4 Sh. Ashwini Kumar Sharma, Sr. Vigilance Inspector; PW-5 Sh. Nanak Chand, ASI/RPF; PW-6 Sh. Subesh Kumar, Constable RPF and PW-7 Sh. Ashish Kujur, TTE/Chandausi.

4. The petitioner did not examine any witness and hence the incriminating circumstances appearing against him in view of the evidence led were put to him.

5. As per the trap, Sh. Ashish Kujur T.T.E. Chandausi acted as the decoy customer and Mohd. Arshad Sr. T.C. Moradabad was deputed with the task of overhearing the conversation which Ashish Kujur was to have with the petitioner i.e. he was the shadow witness. The others except Sh. Ramesh Chand, Station Superintendent were members of the raiding party.

6. Sh. Ramesh Chand PW-1 deposed that he was the Station Superintendent and that the petitioner was working as the Dy. Chief Yardmaster, i.e. his testimony establishes petitioner working as a Dy. Chief Yardmaster. But, he stated that he never received any complaint against the petitioner pertaining to placing empty rakes in the concerned Train.

7. Ashish Kumar TTE Chandausi, PW-7, deposed that at the asking of the raiding party he functioned as the decoy customer and from the petitioner sought placement of rake of train No. 2622 early and the petitioner demanded Rs. 300/- for doing so. He paid Rs. 300/- to the petitioner and raised the signal for the vigilance team to apprehend the petitioner and recover Rs. 300/- and thereupon the raiding party apprehended the petitioner and recovered Rs. 300/- from his pocket. Mohd. Arshad Senior TC Muradabad deposed that he was associated in the raid and his role was that of a shadow witness to overhear the conversation between PW-7 and the petitioner. He stated that he overheard the conversation which took place between Ashish Kumar and the petitioner which preceded Ashish Kumar handing over Rs. 300/- to the petitioner. He corroborated Ashish Kumar with respect to petitioner demanding Rs. 300/- to facilitate early placement of the rake in the train bound for Tamil Nadu. A.K. Verma PW-2 the Chief Vigilance Inspector, Ashwani Kumar Sharma, Senior Vigilance Inspector PW-4, Nanak Chand, ASI/RPF PW-5 and Sh. Subesh Kumar (somewhere name written as Suresh Kumar) PW-6 corroborated being members of the raiding party and witnessed to recovery of Rs. 300/- from the petitioner.

8. In his defence statement made on December 15, 2006, admitting Rs. 300/- being recovered from his pocket, petitioner stated that the decoy forcibly put Rs. 300/- in his pocket and ran away and instantly the vigilance team surrounded him and made him write a confessional statement.

9. The Inquiry Officer in his report dated December 18, 2006 held that the charge stood established against the petitioner. The Disciplinary Authority sent the report to the petitioner for his response and in the response dated March 05,

2007 petitioner took a stand that the Vigilance Manual prescribed the guidelines in paragraphs 704 and 705 for conducting raids and that it was mandatory that two Gazetted Officers should be associated with the raid, failing which, two independent witnesses were to be associated, which was not so in his case.

10. Rejecting the representation against the report of the Inquiry Officer and agreeing with the same the Disciplinary Authority imposed penalty of removal from service upon the petitioner vide order dated July 24, 2007 against which appeal filed on August 30, 2007 was disposed of by the Appellate Authority on July 08, 2008 reducing the penalty to "reduction in the existing grade of Dy. Station Superintendent to the lowest level in the pay scale with cumulative effect for a period up to October 31, 2014". Revision Petition filed against the appellate order was rejected by the Revisional Authority on March 03, 2009.

11. Petitioner proceeded before the Tribunal under OA No. 2583/2009 and principally questioned the raid relying upon paragraph 704 and 705 of the Vigilance Manual, highlighting that in the absence of a Gazetted Officer being associated in the raid, the same had to be rejected.

12. Noting the law declared by the Supreme Court in the decision reported as *Moni Shankar Vs. Union of India (UOI) and Another*, the Tribunal held vide impugned order dated November 16, 2010 that mere non-compliance with paragraphs 704 and 705 of the Vigilance Manual would not render a raid null and void; taking note of the irregularities in the raid, if there was further taint in the evidence led at the inquiry, cumulative effect of the two had to be considered and a decision taken.

13. To put it pithily, the law declared by the Supreme Court would be that deficiencies/irregularities in the raid would be only one of the many factors to be taken into account while deciding in which direction the current will flow.

14. Paras 704 and 705 of the Vigilance Manual 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.

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 employees, particularly, gazetted officers, should assist and witness a trap whenever they are approached by any officer or branch. The Head of 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, 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...

15. It is not dispute that in the instant case no Gazetted Officer was associated in the trap and the raiding party did not take the precaution of associating independent witnesses. Each and every person who participated in the raid was a Railway employee. But this would be a mere irregularity.

16. As regards the raid, the testimony of the decoy customer Sh. Ashish Kumar PW-7 duly corroborated by the testimony of Mohd. Arshad PW-3, the shadow witness establishes beyond doubt that for early placement of the rake in the Tamil Nadu Express the petitioner demanded illegal gratification in sum of Rs. 300/- from Ashish Kumar and when tendered, petitioner received said sum and put it in his pocket. The testimony of PW-2, PW-4, PW-5 and PW-6 coupled with the testimony of PW-3 and PW-7 establishes said money being recovered from the petitioner. The petitioner accepted recovery of Rs. 300/- from his pocket but took a defence that Ashish Kumar thrust the money into his pocket and raised a hue and cry at which the raiding party apprehended him and recovered the money. It would be relevant to note that no such version was put to the witnesses of the department when petitioner cross-examined them. Thus, having admitted recovery of Rs. 300/- from his pocket, if the explanation given by the petitioner lacks credit worthiness, we would be having before us sufficient and adequate material to sustain the verdict of guilt. For the reason the petitioner never cross-examined the raiding party, the decoy customer and the shadow witness on the lines of his defence, we hold that there is adequate and sufficient material to sustain the verdict of guilt. The petitioner cannot therefore draw any advantage from the law declared by the Supreme Court in *Moni Shankar's* case.

17. On the quantum of punishment imposed, suffice would it be to state that original penalty of removal from service was watered down by the Appellate Authority by reducing the petitioner to the lowest in the time scale of pay with cumulative effect. The argument that the bribe demanded was a measly sum of Rs. 300/- and thereby the penalty imposed is shockingly disproportionate more so because this was the first wrong committed by the petitioner is rejected by us for the reason merely because the petitioner was caught for the first time taking a bribe does not mean that for the first time in his life the petitioner demanded and accepted bribe. On the subject of the penalty being disproportionate the law

is that levy of penalty lies within the discretion of the executive and unless it is so shockingly disproportionate that the conscious of the court would revolt, courts cannot and should not interfere with the penalties.

18. Railway is the largest employer in India. As a Deputy Chief Yardmaster, the petitioner had large number of public dealings, and we do not know how much illegal wealth may have been amassed by him. Keeping in view the position held by the petitioner, which was one of public trust, we do not find any disproportionality in the penalty imposed. The writ petition is accordingly dismissed but without any orders as to costs.