

(2010) 08 DEL CK 0344

In the Delhi High Court

Case No : Writ Petition (C) 13412 of 2009

Ram Prakash Kesharwani

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-08-2010

Acts Referred:

Citation : (2010) 08 DEL CK 0344

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

Bench : Division Bench

Advocate : M.K. Bhardwaj, for the Appellant; Neeraj Atri, Vineeta Atri, Jairaj Mudgal and Himanshu Kaushik, for the Respondent

Judgement

Pradeep Nandrajog, J.—Penalty imposed upon the petitioner of reduction of pay by four stages for a period of five years without cumulative effect has been upheld by the Tribunal vide impugned judgment and order dated 17.10.2008 and as a result O.A. No. 775/2008 filed by the petitioner has been dismissed.

2. A perusal of the reasoning of the Tribunal as per para 5 of the impugned decision shows that the Tribunal has been influenced by the fact that it stands proved that two persons broke the queue and the petitioner received the reservation requisition forms from them but threw the forms when he saw the raiding party approach. The Tribunal has observed that if the evidence led is read "in between the lines" it would be crystal clear that the petitioner has acted in an irregular way and with an ulterior motive. The relevant observations of the Tribunal which we have noted read as under:

When the CO had seen those two persons not coming in queue, he would have asked them to come in queue instead of receiving reservation requisition forms. Why should he receive the reservation requisition forms when they did not come in queue? The motive is obvious and we are sure that the witness, who gave evidence 17 months after the incident, had twisted the facts to the advantage of the applicant herein and we do not hesitate to say that he was

manage. If we read in between lines, it is crystal clear that the applicant had acted in an irregular way with an ulterior motive.

3. The charge against the petitioner was that while manning counter No. 549 at the Reservation Office, Ghaziabad on 19.08.2005, he was having cash shortage of Rs. 15/- which he could not explain and secondly he got two filled-in reservation requisition forms in his possession for preparing tickets ignoring priority of queue passengers, which he threw out across the window, on seeing the vigilance team.

4. It is important to note that there was no charge that the petitioner received requisition forms from persons who broke the queue.

5. As regards Article I of the charge, which has been held as proved by the Inquiry Officer, we find no discussion in the impugned decision of the Tribunal, but suffice would it be to note that, as conceded by learned Counsel for the respondent, as per applicable guidelines framed by it, shortage or excess by Rs. 30/- had to be ignored.

6. The reason for the same appears to be that many times passengers do not take back small change on account of it not being available and many times the booking clerk does not insist on receiving petty change, if not available with the customer.

7. Thus, it is Article II of the charge which is the focus of consideration.

8. It may be noted at the outset that Article II of the charge as framed does not state that the petitioner had allowed persons to break the queue and took from them reservation forms, but threw them away when the raiding party came. The charge simply is of having kept two filled in reservation forms for issuing tickets, ignoring priority of passengers in the queue.

9. It is apparent that the Tribunal has gone off at a tangent.

10. The reason why the Tribunal did so, is the fact that the witness to the alleged incident i.e. Jamil Ahemad PW-4, on cross examination denied having seen persons breaking the queue and handing over two requisition forms. It is apparent that a superfluous question put to the witness during cross examination had led the Tribunal at a tangent.

11. Now, the fact of the matter remains that neither was the charge nor is there any evidence that the charged officer received two reservation requisition forms from persons who had broken the queue and thus what has been read between the lines by the Tribunal i.e. the petitioner did so on account of some illegal gratification is incorrect.

12. But, learned Counsel for the petitioner concedes that there is evidence that two filled up reservation forms were thrown out by the petitioner when the raiding party came and proof of said fact is the statement of PW-4 recorded at the spot by the raiding party which has been treated as the examination-in-chief

during inquiry. In the said statement. PW-4 Jamil Ahemad has stated:

I came for reservation of Railway Ticket on 19.08.2005. I was standing at number 5 in the queue at window No. 549 when my turn reached I gave my reservation slip or form to Mr. Kesharwani. At the same time vigilance team came for raid and Mr. Kesharwani threw two filled reservation form from the window. The details of the said two form are given below. Upon the request, myself picked the said two forms and handed over the same to vigilance team.

13. It is apparent that the petitioner had pre-filled reservation forms which he would have certainly used to issue tickets and when he saw the raiding party he threw the said two forms.

14. Experience tells us that people manning railway counters leave their seats from time to time under the pretext of visiting the toilet and in this way, on return, they can bring back pre-filled forms obviously to issue tickets. These pre-filled forms could be the ones that are handed over to them by touts.

15. The conduct of the petitioner of throwing out the two pre-filled forms shows his guilty mind and the obvious guilt was that the petitioner knew that the game was up and he had to explain as to who were the persons in whose name the reservation form was filled up and for whom the petitioner would have got issued two tickets. He wanted to get rid of the forms and thus he threw them away.

16. In such kinds of cases it is difficult to bring on record full evidence of the motive of the delinquent and thus one would have to draw inferences based on conduct.

17. Thus, we conclude by holding that charge No. II stands proved.

18. But we agree with learned Counsel for the petitioner that in the absence of any further evidence, merely because the petitioner had with him two pre-filled forms which he threw when the raiding party came and keeping in view the fact that no excess cash was found in his person, the penalty imposed is disproportionate to the gravity of the offence and certainly can be called shocking to the conscious of the Court. We note that the penalty is of reduction of pay by four stages for a period of five years.

19. We accordingly dispose of the petition quashing the penalty imposed upon the petitioner but remand the matter before the disciplinary authority to levy a penalty, which needless to state would be less than the penalty imposed.

20. The petitioner is permitted to appear in person before the disciplinary authority who would hear him on the issue of penalty and thereafter would pass a reasoned order justifying the quantum of penalty imposed.

21. No costs.