
(2011) 04 DEL CK 0023
In the Delhi High Court
Case No : Writ Petition (C) 3342 of 1996

Raman Bihari Lal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-04-2011

Acts Referred:

Citation : (2011) 04 DEL CK 0023

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

Bench : Division Bench

Advocate : Mahesh Srivastava and Vaibhav Manu Srivastava, for the Appellant;
J.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The Petitioner Raman Bihari Lal questions the order dated 16.6.1988 by which penalty of removal from service was inflicted upon him as also the order dated 6.4.1994 passed in Appeal modifying the penalty to one of compulsory retirement; the apparent intention being that the Petitioner could earn such pension as would be payable proportionate to the service rendered.

2. The Petitioner was employed as a Constable with the Railway Protection Force and was charged as under:

Charges against constable Raman Bihari Lal s/o Bhikam Chand

Constable Raman Bihari Lal of Cash Guard Coy No. 22/Delhi is charged for an act of serious misconduct, fraud, cheating in that on 16/17.7.86:

1. He travelled without any proper authority in I class Coach No. 1481 of 30 Dn with the intention to defraud.

2. Refused to present the ticket/pass for check on demand by authorized railway servant.

3. Refused to pay the railway dues on demand.

3. The statement of imputation appended with the charge-sheet reads as under:

Statement of allegations

On 16/17.7.86 a Special Ticket Checking drive was conducted on 30 DN by Central Ticket Checking squad of Railway Board. During the course of this drive, constable Raman Bihari Lal s/o Bhikam Chand of cash Guard/Coy No. 22/Delhi was found travelling in cabin "c" of Ist class coach No. 1481 and taking wine with the Coach attendant Moti Lal.

He was asked for the ticket by a member of the checking squad (Shri Gulab Singh Chauhan, TTE/CTC after the train started from Hapur. The constable is reported to have told that he is working in the vigilance Cell/RPF at Moradabad. After hard discussions he showed one I Ind class privilege pass No. 110133 EXAD Ito Demapur with break journey at DLI, ALD, Guahati issued by AC NDLS on 31.3.86. The checking staff demanded Rlyh. Dues amounting to Rs. 156/- for travelling in Ist class upto NB, but the constable refused to pay. This pass was also not valid for journey between New Delhi and Moradabad as it had been used on 3.7.86 by travelling by 30 Dn. Meanwhile the train became slow at the outer signal of MORADABAD and constable Raman Bihari Lal got down from the moving train and escaped with the connivance of Shri Moti Lal, Coach Attendant (PC). Thus by acting in the above manner, constable Raman Bihari Lal committed an act of serious misconduct fraud and cheating which is unbecoming of a member of the Force.

4. An Inquiry Officer was appointed to record evidence and submit a report. 5 witnesses were examined before the Inquiry Officer and we note that the Petitioner produced no evidence in defence.

5. Ramesh Chand Saxena, Conductor/HQ/BE PW-1, deposed that on 16.7.1986 while on duty in train No. 30 DN Ex.NDLS to LKD he was informed by CA Moti Lal that a passenger had entered the train who refused to disclose his name and address and introduced himself as a RPF man and that the said person was refusing to show his ticket/pass despite several demands to the same. Therefore, he proceeded towards the coach in which the said passenger was travelling and on reaching the coach he was informed by CTI Ratan Lal that the said passenger had jumped off the train near outer signal/MORADABAD leaving behind a railway pass issued in his name.

6. Relevant would it be to note that since PW-1 deposed that by the time he reached the coach the passenger had fled, it would be obvious that when cross-examined on the point whether the Petitioner was the person in question, he obviously replied that he could not say whether the Petitioner was the person concerned.

7. Moti Lal (Coach Attendant) PW-2, deposed that on 16/17.7.1986 he was on duty in coach No. FC 1481 in train 30 DN when a passenger refused to show his ticket and said that he was travelling with the RPF Commandant and that he

would show his pass on reaching Moradabad. He reported the matter to Conductor R.C. Saxena (PW-1) on whose asking also the passenger refused to show the pass. 2 other staff member of Railway Board were called and after heated arguments the passenger produced the pass which was in the name of Raman Bihari Lal entitling the pass-holder to travel in a 2nd class coach. While the staff was checking the pass, the passenger jumped off the train when it slowed near outer signal/Moradabad. He stated that he could clearly recognize the passenger but during cross-examination stated that the Petitioner was not the passenger concerned.

8. Gulab Singh Chauhan (TTE) PW-3, deposed that on 16/17.7.86 he was on duty along with TTE Tajinder Singh and CTI Ram Lal. While checking tickets in the 1st class coach they were informed by R.C. Saxena that a passenger was traveling without ticket in coach FC 1481 and requested them to look into the matter. On reaching the said coach they found a passenger in C compartment who refused to show them his ticket and said that he was working in RPF Vigilance department. After heated arguments the passenger produced a pass which was a 2nd class pass issued in the name of Raman Bihari Lal. That the pass was not valid for traveling between Delhi and Moradabad as it had been used earlier. On noticing the same fare and penalty in sum of Rs. 156/- was demanded and Attendant Moti Lal was directed to keep an eye on the passenger while the remaining staff proceeded to check other passengers travelling without ticket. That on approaching outer signal/ Moradabad when the train slowed down, the passenger jumped off the train and ran away and that the Petitioner was the person traveling as a passenger without a ticket and without an authorization to travel in first class.

9. Tejender Singh TTE PW-4 deposed in sync with Gulab Singh Chauhan PW-3. He additionally stated that the petitioner was seen drinking with CA Moti Lal in coach No. 1481. He categorically recognized the Petitioner as the passenger who was intercepted by the railway staff and had jumped off the train.

10. Ram Lal CTI PW-5 deposed that on 16/17.7.1986 he was on duty in train No. 30 DN when the Conductor of F.C. Coach reported to him about a passenger travelling without a ticket. He directed G.S. Chauhan and Tajender Singh to check the 1st class coach and look into the matter. He was then informed by G.S. Chauhan that the passenger was carrying a 2nd class pass and on checking he found that the pass was not valid for travel between New Delhi and Moradabad and thus asked G.S. Chauhan to charge the said passenger. He stated that thereafter he went to AC-II Sleeper and at Moradabad he was informed about the passenger having escaped. On being questioned by the court he stated that he does not recognize the passenger.

11. The Petitioner made a statement in defence and also produced a missing report stated to have been lodged by him with the police at Agra as per which report the pass issued to him for traveling 2nd class had been lost and as per the Petitioner it appeared to be a case where somebody found the pass and misused

the same. The Petitioner denied being a passenger travelling without a ticket or an authority as alleged. The Petitioner also produced photocopy of a JTR which apparently showed that the train in question did not slow down at the outer signal of Moradabad Junction and wherefrom the Petitioner sought to urge that if the train did not slow down as alleged by the witnesses of the prosecution it was impossible for a human being to jump off a train running in high speed and manage to run away.

12. The Inquiry Officer submitted a report holding that the testimony of PW-3 and PW-4 nailed the Petitioner and with respect to the police complaint produced by the Petitioner recording that Petitioner's pass was lost it was opined that the complaint in question lacked in probity i.e. did not inspire confidence more so for the reason the Petitioner did not examine any witness. We may highlight that though not expressly so stated, the logic of the reasoning is that it is easy to procure acknowledgements with reference to the stamp of a police station on complaints where no FIR is registered and such kind of documents do not inspire confidence. With reference to the photocopy of the JTR produced by the Petitioner, it may be highlighted that JTR Register is supposedly to record the speed of the train and has to be maintained by the train guard and in respect thereof the Inquiry Officer opined that it was a matter of common knowledge that guards of trains do not accurately note the speed and thus believed the witnesses of the prosecution. Additional reason given was that it was a matter of common knowledge that as a train approaches a station its speed considerably decreases as the train has to come to a halt at a platform assigned for the train to halt at the railway station.

13. Concurring with the report of the Inquiry Officer and keeping in view the past service record of the Petitioner as per which we find that twice earlier the Petitioner was inflicted with the penalty of removal from service, one of which was set aside by a Court and the other had attained finality, and since removal from service is not a bar to be re-employed, the Petitioner was appointed afresh as a Constable and apart there from there were 5 minor penalties inflicted upon the Petitioner, the Disciplinary Authority passed the order removing the Petitioner from service, which as noted herein above was modified to one of compulsory retirement.

14. At the hearing of the writ petition, learned Counsel for the Petitioner urge that from the fact that the Petitioner had produced the complaint lodged by him with the police at Agra as per which the railway pass issued to the Petitioner was lost it was apparent that somebody else was misusing the pass and keeping in view that 3 of the 5 prosecution witnesses did not state that Petitioner was the person travelling unauthorizedly and in fact one of them categorically said that the person was not the person traveling unauthorizedly, the Inquiry Officer gave a report indicting the Petitioner on surmises. Similarly, with reference to the JTR counsel urged that the Inquiry Officer trivialized the same on surmises. Thus, counsel concluded by urging that it is a case of no evidence.

15. It has to be highlighted that the Petitioner was a Constable with the Railway Protection Force and the acknowledged copy of the complaint statedly lodged by him of his railway pass being lost could always be managed by the Petitioner. The Inquiry Officer has rightly observed that complaints which are non-cognizable can be manipulated with reference to the date on which they are lodged. We may add that unless corresponding daily diary entries are proved it would be difficult to accept, with reference to a date of receipt acknowledging receipt of a complaint at a police station to draw an inference that indeed the complaint was lodged on the date which is noted while acknowledging receipt. The Petitioner who was a Constable would be expected to know as aforesaid and his not producing defence evidence assumes significance. Further, if the pass was indeed lost, it would be the natural conduct of the Petitioner to inform the railway authorities so that a duplicate pass could be issued. Petitioner not having so done is another pointer in the direction that the Petitioner manipulated a false document.

16. As regards the JTR, it is not in dispute that the train halted at Moradabad Railway Station and thus it is but obvious that it slowed down at the outer signal. Commonsense and experience tells us so. The opinion of the Inquiry Officer on the subject is thus not a surmise or a conjecture.

17. If the railway pass issued to the Petitioner is held to be not lost, that it was with those who detected the Petitioner travelling unauthorizedly in a 1st Class compartment would be a matter of substance and would support the case of the prosecution that being entitled to travel in 2nd Class, the Petitioner was actually travelling in 1st Class and when called to pay the fine he ran away. That apart, merely because 3 witnesses of the prosecution chose to help the Petitioner, we see no reason to disbelieve the 2 truthful witnesses, but we need not bother ourselves on the subject for the reason, law is clear. This Court has not to sit in Appeal over the evidence led nor has this Court to decide on the adequacy or inadequacy of the evidence. As long as there is some evidence to sustain the charge, this Court cannot substitute its opinion with that of the Disciplinary Authority.

18. From the fact that the railway pass issued to the Petitioner authorizing him to travel in 2nd Class was produced by the two TTE's and the fact that the Petitioner never informed the department of having lost the pass and never demanded a duplicate pass to be issued and that the Petitioner did not lead evidence with reference to daily diary entries pertaining to the alleged complaint lodged by the Petitioner with the police at PS Nai Ki Mandi, Agra, the place where the complaint pertaining to the pass being lost was ostensibly lodged, we find sufficient evidence wherefrom a presumption can be drawn that the pass of the Petitioner reached the hands of the Raiding Party as per the incident laid against the Petitioner. We further find no reason to disbelieve the testimony of PW-3 and PW-4 which in any case is sufficient evidence at a domestic inquiry.

19. We conclude on the subject by recording our satisfaction that within the

scope of incriminating evidence, sufficient to sustain a charge at a domestic inquiry, available evidence is sufficient.

20. It was urged that the penalty imposed is disproportionate. As per the prosecution witnesses the differential fare and penalty to be paid was a meager sum of Rs. 156/-. Thus, it was urged that corrective action for the penalty needs to be directed to be taken.

21. We disagree. As noted by the Appellate Authority, in the past the Petitioner was inflicted 2 penalties of removal from service. The first had attained finality and since removal from service is no bar for being given fresh appointment in government service, the Petitioner was re-employed. The second penalty of removal from service was set aside, not on merits, but on technical grounds. There are 5 other minor penalties levied upon the Petitioner. He appears to be an incorrigible fellow.

22. It is settled law that past service record can be considered with reference to a penalty to be inflicted for subsequent misconduct.

23. We dismiss the writ petition but refrain from imposing costs.