

(2011) 06 GUJ CK 0029

In the Gujarat High Court

Case No : Special Civil Application No. 5259 of 2005

Ravji Prabhudas Bhoi

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 23-06-2011

Acts Referred:

Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 6

Citation : (2011) 06 GUJ CK 0029

Hon'ble Judges : V.M. Sahai, J;G.B. Shah, J

Bench : Division Bench

Advocate : Om Prakash Khurana, for the Appellant; Avani S. Mehta. Advocate for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Sahai, J.—This petition has been filed by the Petitioner challenging the order dated 28.9.2001 passed by the Central Administrative Tribunal in Original Application No. 648 of 1996.

2. The Petitioner was removed from service by the Respondents after departmental disciplinary proceedings, wherein it was found that he has obtained appointment on the basis of the false certificate.

3. The Tribunal has considered the arguments of the learned Counsel for the parties and has given following reasons, which are extracted below:

7 (i) We now come to the merits of the case. The first contention of the applicant relates to the charge-sheet. According to him the charge-sheet is vague and pertains to the alleged misconduct of 1980 when he was not in Railway Service on a regular basis and as such the question is whether the same is covered under Railway Servants (D&A) Rules. He contends that though the charge-sheet has been issued in November 1993 it relates to the alleged misconduct of 1980. He further contends that though the charge-sheet was issued on 9.11.93 the report on which charges were based was given on 31.3.95 and hence the

authorities had made up their mind to issue the charge-sheet. In support of the above contention he relies upon the judgment of the Hon"ble Supreme Court in the case of Sawai Singh Vs. State of Rajasthan, Rules.

(ii) The Respondents have however stated that mere continuation on the post for a number of years on the basis of a fraudulently obtained appointment order does not create any equity in favour of an employee (Union of India v. N. Bhaskaran 1996 (1) SLJ SC 1). According to them as soon as the Respondents realized that the applicant had secured employment by producing a false certificate of working during 1980 they initiated action. They contend that the charge sheet is specific, the charges stand proved and no lacuna has been pointed out by the applicant against the Disciplinary proceedings.

(iii) We have examined the rival claims in this regard and find that the Respondents' case is that the applicant obtained appointment as a Tablet Porter by producing a false certificate of his working as a casual labour Hot Weather Water Mazdoor in the year 1980. Since the appointment itself is based upon the aforesaid certificate and if the certificate is found to have been false / fraudulent the applicant cannot claim any right to the post because but for such a certificate he would not have been given appointment to the post. Hence, the charge-sheet is neither vague nor can it be treated as defective merely on the ground that it pertains to an event that happened prior to his coming into Railway service. Moreover, as soon as the Respondents realized this, they initiated the disciplinary proceedings. In this regard, we would like to refer to Railway Board's instructions dated 1.6.68 incorporated in Railway Servants (D & A) Rules, 1968 which are reproduced below:

Disciplinary action for acts done by employees in their previous or earlier employment: A point has been raised whether disciplinary action can be taken against an employee for acts done by him in his previous or earlier employment. It is clarified that an employer is not precluded from taking action against an employee in respect of misconduct committed before his employment if the misconduct is of such a nature as has rational connection with his present employment and renders him unfit and unsuitable for continuing in service. A provision in the discipline and appeal rules that penalties can be imposed for "Good and sufficient reasons" as in Rule 6 of the Railway Servants (Discipline and Appeal) Rules, 1968 is an adequate authority for taking action in respect of misconduct of nature referred to above. When action is taken, the charge should specifically state that misconduct alleged is such that it renders him unfit and unsuitable for continuing in service.

As regards the alleged non-supply of report on the basis of which charges were proposed to be proved we find from the report of the I.O. that the applicant had confirmed during the preliminary inquiry held on 22.2.94 that he received charge-sheet Memo dated 9.11.93 along with all its enclosures. In view of this the contention now raised by the applicant is no more valid. In the light of the above discussions, the first contention is untenable and therefore, fails.

8(i) The next contention of the applicant pertains to the inquiry proceedings. According to the applicant no Presenting Officer (P.O.) was appointed and the I.O himself put question in the nature of cross-examination. He also contends that he was not supplied with the charged documents and though requested by him the Station Master Borsad who had issued the service particular certificate was not examined during the inquiry. In support of this contention he relies inter alia on the following judgments:

1989 (10) ATC 565

1990 (12) ATC 353

1990 (12) ATC 350

1990 (14) ATC 99

(ii) The Respondents have however stated that the inquiry conducted against the applicant was in accordance with rules, legal and valid and he was given full opportunity of defending himself during the inquiry. According to them there is no flaw or lacuna in the conduct of the inquiry. We have examined the rival claims and the judgments. At the outset we would like to state that the impugned action in this OA has been taken under Railway Servants (D&A) Rules. The judgment in Sachidanand Singh v. GOI and Ors. 1989 (10) ATC 565 pertains to denial of opportunity to inspect relevant documents in an inquiry; the judgment in K. Chalamaih v. DRM SCR Guatam and Anr. 1990 (12) ATC 353 is in regard to evidentiary value of a prosecution witness who retracts from his earlier statement in absence of any evidence on record in an inquiry, the judgment in Trindhya Panda v. Union of India and Ors. 1990 (12) ATC 350 relates to non-examination of witnesses by the I.O. on two occasions due to the absence of the delinquent employee and the judgment in V.D. Joseph v. Union of India and Ors. 1990 (14) ATC 99 pertains to cross-examination of prosecution witnesses in inquiry under CCS (CCA) Rules. Hence we do not consider that these judgments are of any help to the applicant.

(iii) As regards the allegation of the applicant that the I.O. put questions in the nature of cross examination we would like to reproduce the relevant portion of the Railway Board's letter dated 20.10.71 as incorporated in Railway Servants (D&A) Rules, 1968:

Where no Presenting Officer is appointed, there is no objection in Inquiry Officer to examine and cross-examine the witnesses, as he is appointed to find out the truth and such exam and cross-exam, is aimed at that end only.

The nomination of a presenting officer in disciplinary inquiry is not obligatory but only discretionary with the disciplinary authority in case where no presenting officer is appointed the inquiring authority may itself examine and cross-examine the witnesses to find out the truth in the charges.

From the above, it would be seen that in case where no P.O. is appointed the I.O.

may itself examine and cross-examine the witnesses to find out the truth in the charges. It has been held by the CAT, Calcutta in the case of Javapad Dhock v. Union of India 1988 (6) SLR 631 CAT, Calcutta, that non appointment of P.O. Examination of witnesses and cross examination of the applicant by the I.O. would not vitiate the inquiry proceedings. A perusal of the inquiry file made available to us by the learned Counsel for the Respondents reveals that the allegation is far from true and as the papers do not show any cross examination of the applicant by the I.O. Further the applicant never raised this plea in his defense or in his appeal. As far as the alleged non supply of charged documents is concerned, we find from the report of the I.O. that the applicant had confirmed on 22.2.94 before the I.O. about the receipt of charge-sheet along with all its enclosures. He had further stated on the same date that he had received part documents. On 20.4.94 he confirmed the receipt of copies of documents relied upon viz. Statement of SM BCHN and SS BO. He also completed inspection of relied upon documents viz. Attendance Register of staff under SS BO from January 1984 to December 1985 and Attendance Register of staff under SM BCHN from September 1983 to March 85 and he also look extracts thereof. As per the report of the I.O. the applicant requested for two additional documents out of which one was immediately given during the preliminary hearing and the other was called for from the D.A. The applicant accepted the genuineness of the documents and accordingly they were taken on record as Exh. P1, P2 & P3. The applicant thereafter affirmed his willingness to proceed with the regular inquiry. We also find that he never raised the issue about non-receipt of documents if any during the course of the inquiry or in the written brief submitted by him to the I.O. nor did he raise this point in his defense or in his appeal. As regard non-examination of SM Borsad who had issued the certificate we find that as per the list of witnesses by whom the charges are proposed to be proved SS BO (Mr. D.N. Rana) stands included as one of the witnesses and he has been duly examined during the inquiry. The SS BO (Mr. V.K. Chavla) is not listed in the above list and as such he was not examined. The Respondents in their written affidavit have stated that no application was given by the applicant for examining Mr. Chavla or the responsible clerk of DRM Office and if he had done so he would have certainly considered the same. According to them this contention is an after thought. We are in agreement with this. In view of this, the second contention also fails.

9.(i) The next contention of the applicant is that the charge is not proved by any direct evidence and hence it is a case of no evidence. He contends that the Railway Administration has not been able to prove that the service particulars regarding the duties performed/ produced by him was bogus. In this regard he relies inter alia upon the judgments already referred to in para 8(i) supra.

(ii) The Respondents have however stated that the applicant had secured employment by producing a false certificate of having worked during the year 1980 from SM BO when screening of old face casual labour was being conducted by Borsad Division. According to them on verification of the Muster Role of BO

station it was found that his presence was not marked in the Muster Roll (MR) during the period mentioned in the certificate produced by him. The said MR clearly shows that the certificate was false and the applicant had not worked during the relevant period.

(iii) We have examined the rival claims in this regard and find a lot of substance in the reply of the Respondents. A regular inquiry was conducted and reasonable opportunity provided to the applicant to defend his case. He was given a copy of the inquiry report and he submitted his defense. In this connection, it is relevant to reproduce para 5 & 6 of the report of the I.O. as under:

(a) On the basis of the evidence of D.N. Rana, SS/BO and PW-3 and Muster Roll, Exh.P/1 Colly. That Shri Ravji Prabhu's name is not found any where in the muster roll of BO station and that the certificate dated 28.8.85 Exh.D/1 issued by B.K. Chawla, Retd. SM/BO is false because the relevant muster roll does not show the name of Ravji Prabhu and his attendance.

(b) Ravji Prabhu has himself admitted in his written brief that certificate dated 28.8.85, Exh.D/1 was obtained by him from SM/BO and had submitted the same to DRM/BRC and he had applied for his engagement on the basis of the certificate.

(c) On the basis of the above evidence, it is proved that Ravji Prabhu had submitted a false certificate from SM/BO for having worked as Hot Weather Waterman in the year 1980.

CONCLUSION:

On the basis of the evidence adduced in the enquiry and the evaluation of the evidence herein above, the charges leveled against Shri Ravji Prabhu are fully substantiated.

It would thus be seen the I.O. has given his report after duly considering the evidence on record including the written brief of the applicant and the D.A. has awarded the penalty by a speaking order. As such we have no ground to accept the plea of the applicant that it is a case of no evidence and the charge is not proved. As such the judgments relied upon by him are not of any help to him. We do not wish to sit in appeal over the decision of a quasi judicial authority or to reappraise evidence and do not find any justification to go into the question whether the evidence is adequate or not. In view of this, the above contention also fails.

10(i) The only other contention of the applicant is that the order of D.A. is without any jurisdiction and that the orders of D.A. and A.A. are non-speaking.

(ii) As regards the contention about the D.A. not having jurisdiction we find that this plea has neither been raised during the course of the inquiry nor with the D.A. nor with A.A. and it has also not been raised in the pleadings. Hence, this cannot be permitted at the argument stage as a valid plea. We have however,

verified from the Delegation of Powers as given in the schedule annexed to the Railway Servants (D&A) Rules, 1968 and are satisfied that the plea is without any basis and the punishment has been awarded by the competent D.A.

(iii) As far as the impugned order of punishment dated 31.10.95 we reproduce the same as under:

REMOVAL FROM SERVICE.

Speaking orders: Shri R.M. Patel E) (HQ) CCG, after careful examination concluded that the certificate of working at BO by the employee is false. Shri D.N. Rana also stated that the certificate was given in good-faith it proves that the employee have not worked during said period moreover his name in muster is also not appearing thereby Shri Ravji Prabhu is held responsible for violation of Railway service Conduct Rules, 1966 Para 3(1)(i) & (iii) to maintain absolute integrity and behaved in a manner which is unbecoming of Railway servant as such he is removed from service."

From the above it would be seen that the DA has passed the order of punishment after careful consideration of the inquiry report and the evidence on record and has come to the conclusion that the applicant is held responsible for violation of Para 43(i), (ii) & (iii) of Railway Servant Conduct Rules, 1964 and has accordingly awarded the punishment of removal from service. Hence, the contention that the order is non-speaking is not tenable.

(iv) Similarly, as far as the order of the A.A. is concerned, we find that the applicant has not challenged the same in the O.A. although the same had been passed and communicated long before the filing of the O.A. Therefore, it does not lie in the mouth of the applicant to complain now during argument that the appellate order is non-speaking. If he has not received the order there is no question of the same being speaking or non-speaking. The contention is therefore, totally misconceived and hence cannot be sustained at all.

The other contentions raised on behalf of the Petitioner have also been dealt with by the Tribunal.

4. The learned Counsel for the Petitioner has placed reliance on the following decisions of the Hon"ble Apex Court:

1. Ex-Naik Sardar Singh Vs. Union of India (UOI) and Others,
2. Union of India and others Vs. Mohd. Ramzan Khan,
3. State of U.P. v. Shatrughan Lal and Ors., reported in 1998 SCC 1635;
4. Kuldeep Singh v. Commissioner of Police, reported in 1999 (L&S) 429;
5. Hardwari Lal v. State of U.P. and Ors., reported in 2000 SCC (L&S) 85;
6. Sharifkhan Mehboobkhan v. Union of India and Ors., reported in 2001 (1) ATJ 574;

7. Parmal Singh v. Union of India and Ors. reported in 2002 (1) ATJ 173;
8. State of U.P. and Ors. v. Sarojkumar Sinha, in CA No. 254/2008 decided on 02.02.2010;
5. We have gone through the decisions relied by the learned Counsel for the Petitioner. The said decisions do not apply to the facts of the present petition.
6. In the result, we do not find any illegality in the impugned order of the Tribunal. The petition fails and is dismissed. Rule is discharged.