
(2011) 02 DEL CK 0245
In the Delhi High Court
Case No : W.P.C. No. 7760 of 2003

R.K. Chauhan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-02-2011

Acts Referred:

Citation : (2011) 02 DEL CK 0245

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

Bench : Division Bench

Advocate : P.P. Khurana and Y.R. Sharma, for the Appellant; V.S.R. Krishna, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—On 22.11.1995 a memorandum was issued to the Petitioner proposing to hold an inquiry under Rule 153 of the RPF Rules 1987 on the charge that while functioning as an Inspector RPF Loco-shed, Central Railway, Jhansi he failed to maintain absolute integrity and devotion to duty and committed misconduct by demanding and accepting bribe in sum of Rs. 200/- from Babu Ram Verma as the balance payment of Rs. 4,500/-, which amount was recovered from his possession at 9:00 AM on 29.5.1993 at 509-B, Rani Laxmi Nagar, Jhansi.

2. The stand taken by the Petitioner was that he had no occasion to receive any bribe from Babu Ram Verma against whom he had already issued a charge sheet and the alleged consideration for the bribe, as stated by Babu Ram Verma, was the consideration by the Petitioner not to charge sheet him. It was the further stand of the Petitioner that it was ridiculous for him to have received Rs. 4,300/- as the alleged bribe money and still continued to persist to demand the balance Rs. 200/-. Accepting that he had received Rs. 200/- from Babu Ram Verma, the justification given was that he had lent money to Babu Ram Verma, who was his subordinate and had pleaded for Rs. 1,000/- to be advanced by way of friendly loan on the ground that he needed the money very urgently and that Babu Ram

Verma was returning Rs. 200/- to him. It was the case of the Petitioner that since he had charge sheeted Babu Ram Verma, he i.e. Babu Ram Verma had contrived a trap which was false.

3. At the departmental inquiry 7 witnesses were examined and all of them proved Petitioner accepting Rs. 200/- from Babu Ram Verma, but relevant would it be to note that no witness deposed that when Babu Ram Verma approached the Petitioner, the Petitioner demanded or asked whether Babu Ram Verma had brought the balance bribe amount and that thereupon Babu Ram Verma handed over the money.

4. Sh. N.P. Tiwari PW-1 Deputy SP CBI who had executed the trap deposed to the facts with which Courts are familiar pertaining to the preparatory steps taken and further deposed that on the day in question, when Babu Ram Verma handed over money to the Petitioner i.e. Rs. 200/-, the CBI officials recovered the money and took the phenolphthalein wash from the hand of the Petitioner, the solution turned pink. Relevant would it be to note that the witness did not claim having heard any conversation between the Petitioner and Babu Ram Verma when the money was handed over. Similar would be the position with the testimony of Insp.R.S. Sanger PW-2, Insp. Jayant Kashmiri PW-3 and Insp.B.C. Sharma PW-6.

5. As per the trap, two independent witnesses, Sh. Rajiv Kumar Saxena PW-5 an employee of United India Insurance Company and Tapan Kumar Singhal PW-7 an employee of New India Assurance Company were associated as independent witnesses to the trap and relevant would it be to note that neither of them deposed of having heard any conversation between the Petitioner and Babu Ram Verma when money exchanged hands.

6. However, relevant would it be to note that on being cross-examined, Rajiv Kumar stated that during trap, the behaviour of Petitioner was very cooperative and he produced documentary evidence to the CBI officers that he was in no position to extract any money from Babu Ram Verma. It is also relevant to note that question No. 4 put to Rajiv Kumar Saxena has been disallowed by the Inquiry Officer and we find that the question was relevant and its answer could have thrown light on what happened at the spot and to this extent it must be held that by disallowing the question, a prejudice has been caused to the Petitioner. In the inquiry proceeding it stands recorded as under:

Q-4 Is it true that after laying trap on 29.5.1993 Dy.SP CBIN.P. Tiwari scolded B.R. Verma and said that R.K. Chauhan has already submitted charge sheet on 25.5.1993 in CR No. 4/1993 against you? You have implicated a right man in a false case, action shall be initiated against you. After this B.R. Verma accepted his guilt and told that he implicated R.K. Chauhan because he implicated him falsely.

Objection by P.O.

Because the question is based on supposition and is leading question such type

of question should not be asked in finding inquiry.

E.O: The question is disallowed as it has been found to be a leading question.

7. Suffice would it be to state that leading questions can always be put to a witness under cross-examination.

8. Relevant would it also be to note that Tapan Kumar Singhal admitted during cross-examination that Petitioner's behaviour was very calm and he was very cooperative and that at the spot itself he had said that Babu Ram Verma had taken a loan from him and Rs. 200/- received by him was in partial return of the loan.

9. Of course, Babu Ram Verma who appeared as PW-4 stood his ground, but did not dispute his being charge sheeted by the Petitioner. He maintained that he had paid Rs. 4,300/- as bribe to the Petitioner and that the Petitioner had been demanding the balance Rs. 200/-.

10. The Petitioner examined 4 witnesses in defence all of whom were railway employees and deposed Petitioner having loaned money to Babu Ram Verma.

11. In view of the fact that there was evidence to establish that the Petitioner had already filed a charge sheet against Babu Ram Verma on 25th May and except the self serving statement of Babu Ram Verma, no other witness of the prosecution had deposed that they had heard the Petitioner demand any bribe, the Inquiry Officer exonerated the Petitioner. The Disciplinary Authority penned, a stated note of disagreement, but in fact conclusively opined against the Petitioner and forwarded the note for the Petitioner's response. The note of disagreement reads as under:

DISSENDING FINDINGS OF THE DISCIPLINARY AUTHORITY

Sub: Charge sheet under Rule 153 dated 22.11.95 issued against Shri R.K. Chauhan, IPF RPF Loco JHS, now at Wadi

The delinquent IPF Shri R.K. Chauhan, IPC JHS Loco, now at Wadi was issued with charge sheet under Rule 153 dated 22.11.95 for the following charge.

The said Shri R.K. Chauhan, while functioning as Inspector RPF Loco Shed, C. Rly. JHS, during the period 1993, failed to maintain absolute integrity and devotion to duty and committed misconduct inasmuch as he demanded and accepted a bribe of Rs. 200/- from Shri Babu Ram Verma as the balance payment of Rs. 4,500/- which was recovered from his possession in presence of the members of the trap party and independent witness namely Shri Rajiv Kumar Saxena, AO, United India Insurance Co. Jhansi and Shri Tapan Kumar Singhal, AAO New India Assurance Co. Jhansi at 9:00 A.M. on 29.5.93 at 509-B, Rani Laxmi nagar, P.S. Prem Nagar Dist. Jhansi and he thereby contravened Rule No. 3(1) of Railway Service (Conduct) Rules 1966."

The enquiry was entrusted to Shri Ratanlal, ASC RPF Gwalior vide DSC RPF JHS

letter No. 37/DE/153/97 dated 24.5.99. Shri Ratanlal, E.O. has conducted the enquiry giving him all reasonable facilities and submitted his proceedings on 13.3.2000 with the remarks that the delinquent IPF is not guilty of the charge framed against him.

I have gone through the entire case file carefully. After considering the evidence on record, I disagree with the findings of the E.O. The story of loan given by the delinquent IPF to Naik B.R. Verma does not hold any ground. It is crystal clear that it is an afterthought story. It is clear that the delinquent has taken a bribe from the said Naik. When he was trapped by CBI, he raised this point of loan. The delinquent IPF was trapped by CBI with Rs. 200/- . This shows t hat the delinquent IPF is guilty of the charge. Hence I hold him guilty of the charge. In view of this, the charge against the delinquent IPF is proved beyond any shadow of doubt. A copy of this finding along with the copy of findings submitted by E.O. is sent to the delinquent. He is instructed to submit his representation, if any within 15 days period as per Rules.

If no representation is received within a stipulated period, it will be presumed that he has nothing to offer in his defence and final decision will be taken as ex parte. Please note.

12. A perusal of the stated note of disagreement establishes that the Disciplinary Authority has recorded conclusive findings of guilt and it is apparent that the issue has been pre-judged and thus in view of the decision of the Supreme Court reported as Yoginath D. Bagde Vs. State of Maharashtra and Another, it has to be held that the stated show cause notice served upon the Petitioner and its consideration was an idle formality.

13. Be that as it may, proceeding ahead it may be highlighted that in the response filed to the note of disagreement the Petitioner highlighted that in the note of disagreement the finding that it was crystal clear that the defence of Petitioner having given a loan to Babu Ram Verma was an afterthought was wrong inasmuch as this was the stand taken by the Petitioner when the alleged trap was being executed and stood proved through the testimony of Tapan Kumar Singhal PW-7. Petitioner highlighted that his four defence witnesses had also deposed in conformity with his stand and that his defence was not an afterthought. Petitioner further highlighted that he was in no position to grant any benefit to Babu Ram Verma and thus he was in no position to extract any illegal gratification.

14. Without discussing, albeit simply noting, the contentions urged, vide order dated 19th January 2001 the Disciplinary Authority levied the penalty of compulsory retirement upon the Petitioner. Appeal filed by the Petitioner was rejected vide order dated 13.7.2001. Revision filed has been rejected vide order dated 2.9.2003 and we note that neither the Appellate nor the Revisional Order discusses the core issues repeatedly urged by the Petitioner that firstly he was in no position to confer any benefit upon Babu Ram Verma and thus there was no

occasion for him to demand any bribe; secondly there was no evidence, save and except the tainted evidence of Babu Ram Verma that Petitioner demanded any bribe when he received Rs. 200/-; thirdly that the defence taken by the Petitioner was not an afterthought and he has so stated even when the trap was being executed and lastly that there was no reason to disbelieve his defence witnesses.

15. Suffice would it be for us to record that evidence establishes that the defence of the Petitioner that he received Rs. 200/- from Babu Ram Verma by way of a loan being returned to him is not an afterthought and the Petitioner so said before the raiding party at the time of the incident. Evidence conclusively establishes that the Petitioner, who was an inspector in the railways had already issued a departmental charge sheet and had served the same upon Babu Ram Verma on 25th May and that there was thus no occasion for the Petitioner to confer any benefit upon Babu Ram Verma who ostensibly paid the bribe on 29th May. Except for the self serving statement of Babu Ram Verma, no witness has deposed of any bribe being demanded or Rs. 200/- being paid towards bribe. Overwhelming evidence supports the version of the Petitioner. It is unfortunate that the Disciplinary Authority pre-judged the issue by recording in the note of disagreement that the defence was an afterthought, ignoring that the defence was not an afterthought and was contemporaneously stated when the trap was executed. It is unfortunate that the Appellate and the Revisional Authority have taken no corrective action. It is unfortunate that the Appellate and the Revisional Authorities have skirted the issue and so has the Disciplinary Authority.

16. We note that there is a serious taint in the Disciplinary Authority pre-judging the issue by conclusively opining, while penning the note of disagreement, that the evidence conclusively establishes the guilt of the Petitioner and the law laid down by the Supreme Court in Yoginath D. Bagde's case (supra) is fully applicable. The Supreme Court had held that where the Disciplinary Authority disagrees with the findings of the Inquiry Officer, a tentative reason for disagreement have to be recorded and not a conclusive opinion, for the latter would amount to pre-judging the issue and would not be capable of any rectification by directing a post decisional hearing. Similar situation arose in Yoginath D. Bagde's case. The contention urged on behalf of the employer before the Supreme Court stands noted in para 36 of the decision which reads as under:

36. Mr. Harish N. Salve, learned Senior Counsel appearing on behalf of the Respondent, has contended that the disciplinary proceedings come to an end either when the delinquent is exonerated of the charges or when punishment is inflicted upon him on charges being proved. Since in the instant case, the Disciplinary Committee had given an opportunity of hearing to the Appellant before finally recommending to the State Government to dismiss him from service, the principles of natural justice were fully complied with and that too at a stage earlier than the stage when the curtain was finally brought down on the

proceedings. He contended that not only the findings recorded by the Enquiry Officer but the reasons for which the Disciplinary Committee had not agreed with those findings, were communicated to the Appellant to whom a notice was also issued to show-cause why he be not dismissed from service. He further contended that the Appellant submitted a reply in which he attacked the reasons for which the Disciplinary Committee had decided to disagree with the findings of the Enquiry Officer and, therefore, in the given circumstances of this case, it cannot be said that there was failure or denial of opportunity at any stage.

17. The contention has been repelled in para 37 of the said decision where it has been held as under:

37. The contention apparently appears to be sound but a little attention would reveal that it sounds like the reverberations from an empty vessel. What is ignored by the learned Counsel is that a final decision with regard to the charges levelled against the Appellant had already been taken by the Disciplinary Committee without providing any opportunity of hearing to him. After having taken that decision, the members of the Disciplinary Committee merely issued a notice to the Appellant to show-cause against the major punishment of dismissal mentioned in Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. This procedure was contrary to the law laid down by this Court in the case of Punjab National Bank (*supra*) in which it had been categorically provided, following earlier decisions, that if the Disciplinary Authority does not agree with the findings of the Enquiry Officer that the charges are not proved, it has to provide, at that stage, an opportunity of hearing to the delinquent so that there may still be some room left for convincing the Disciplinary Authority that the findings already recorded by the Enquiry Officer were just and proper. Post-decisional opportunity of hearing, though available in certain cases, will be of no avail, at least, in the circumstances of the present case.

18. Accordingly, we return a finding that removing the highly tainted evidence of Babu Ram Verma, it is a case of no evidence against the Petitioner. That apart, law laid down by the Supreme Court in Yoginath D. Bagde's case (*supra*) is fully attracted requiring the penalty to be quashed with no opportunity to be granted to recommence the proceedings from the stage of penning a tentative note of disagreement. We may additionally highlight that it doesn't stand to any credence that a bribe receiver who has received Rs. 4,300/- by way of bribe would be pestering somebody for the remainder Rs. 200/-, a petty amount. We additionally highlight that evidence establishes the Petitioner to be in no position to confer any benefit upon Babu Ram Verma, whom he had already charge sheeted and there is very strong evidence of Babu Ram Verma contriving against the Petitioner by way of revenge.

19. The writ petition is allowed. Orders dated 19.1.2002, 13.7.2001 and 2.9.2003 passed by the Disciplinary, Appellate and Revisional Authority are set aside. Mandamus is issued to reinstate the Petitioner in service with all consequential benefits. Compliance would be made within 10 weeks from today.

Petitioner is held entitled to costs in sum of Rs. 11,000/- which shall be borne by the Respondents.