(2010) 08 MAD CK 0178

In the Madras High Court

Case No : W.A. No. 1394 of 2008

S. Singaravelu APPELLANT

Vs

General Manager, Southern Railways and Presiding Officer, Central Government Industrial Tribunal cum Labour Court RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 13(1)(A), 9(13)(1)
Railway Services (Conduct) Rules, 1966 — Rule 3(1)

Citation : (2011) 2 LLJ 510

Hon'ble Judges : K.K. Sasidharan, J;Elipe Dharma Rao, J

Bench : Division Bench

Advocate : Balan Haridoss, for the Appellant; R. Thiyagarajan, Assisted by V.G. Suresh Kumar, for R. Vellaichamy, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Sasidharan, J.—The appellant challenges the order dated 13.07.2007 in W.P. No. 13196/2001 confirming the award dated

06.06.2001 in I.A. No. 485/2001 on the file of the Central Government Industrial Tribunal cum Labour Court, Chennai.

Facts in brief:

2. The appellant was an employee under the Southern Railway at Madras. While he was functioning as clerk, he was issued with a charge memo

dated 23.07.1986 alleging that he has misappropriated an amount of Rs. 10,070/- during December 1984 by making false entries in the railway

records to appear as if he has refunded the said amount on the basis of a cancellation slip. The appellant submitted his explanation on 27.06.1987

denying the charges levelled against him. According to the appellant, he was on duty in the counter on 15.12.1984 and the refund was made based

on cancellation endorsed by the cancelling Clerk accompanied by a refund application. Refund was made only to the person who presented the

same across the counter.

3. The explanation submitted by the appellant was not found to be convincing and as such, the first respondent initiated departmental proceedings

against him. The matter was also referred to the Central Bureau of Investigation.

4. During the course of enquiry, as many as ten witnesses were examined and 28 documents were marked. Witnesses were cross examined by the

appellant. However, no defence evidence was adduced on the side of the appellant.

5. The Enquiry Officer on the basis of the pleadings and oral and documentary evidence arrived at a conclusion that the charges framed against the

appellant were proved. Accordingly, second show cause notice was issued to the appellant. The appellant submitted his version and on a

consideration of the same, the Disciplinary Authority imposed the punishment of compulsory retirement. The said order was challenged

unsuccessfully before the Appellate Authority.

6. The matter was taken to the Central Administrative Tribunal in I.A. No. 485/2001. Before the Industrial Tribunal, documents in Ex.W-1 to W-

15 were marked. However, there was no oral evidence adduced on either side. The Industrial Tribunal came to a conclusion that the action of the

Railways in ordering compulsory retirement of the appellant was just and proper, on account of the volume of evidence adduced against him.

Accordingly, award was passed against the appellant on 6 June 2001. The award of the Industrial Tribunal was challenged in W.P. No.

13196/2001.

7. Before the learned Single Judge, the appellant contended that he was denied the opportunity of fair hearing by the Enquiry Officer as he was not

permitted to have the assistance of a legal practitioner in spite of the fact that the Presenting officer was a legally trained professional. It was also

contended that even on facts, no case was made out against the appellant as his act was only making payment on the basis of an endorsement

made by the cancelling Clerk.

8. The learned Single Judge found that the enquiry was conducted in a fair manner with due participation of the appellant. The appellant cross

examined the witnesses in detail. According to the learned Single Judge, CBI Inspector was not a legal practitioner and as such, there was no

violation of the statutory regulation governing the railway employees. The learned Single Judge opined that the materials produced before the

Enquiry Officer as well as the Industrial Tribunal were sufficient to come to a definite conclusion about the misconduct committed by the appellant.

Accordingly, the writ petition was dismissed. It is the said order which is challenged in this writ appeal.

Submission on Appeal:

9. The learned Counsel for the appellant made extensive submissions both on the ground of violation of statutory regulation as well as on facts.

10. According to the learned counsel, Rule 9(13)(1)(a) of the Railway Servants (Discipline & Appeal) Rules, 1968 gives a right to the delinquent

to engage a legal practitioner in case the Presenting Officer appointed by the Disciplinary Authority was a legal practitioner. It was the contention

of the learned Counsel that the Presenting Officer was none other than a CBI Inspector and he being a legally trained personnel, the appellant

should have been given the same benefit by permitting him to engage a legally trained person. The learned Counsel also made an attempt to re-

appreciate the evidence in order to prove that no case was made out against the appellant. The learned Counsel submitted that failure on the part

of the railways to produce the cancellation form is a pointer to show that the claim of the Railways that the refund was made without an

endorsement in the ticket was baseless. The learned Counsel further contended that failure on the part of the Department to examine the hand-

writing expert caused serious prejudice to the appellant as he was denied the chance of putting questions with respect to the signature as found in

the cancellation form.

11. The learned Senior Counsel for the Railways submitted that the charges framed against the appellant were very serious in nature and as such,

the Disciplinary Authority was justified in imposing the punishment of compulsory retirement. According to the learned Senior Counsel, the

appellant was given sufficient opportunity to adduce evidence. He has also cross examined the witnesses. Therefore, it was not open to him to

contend that the enquiry was not conducted in a fair and proper manner.

Analysis:

12. The appellant was working as a clerk in the southern railways at Chennai. During the material time, he was working in the ticket counter. On

15.12.1984, he was in charge of the refund counter. He had refunded a sum of Rs. 10,070/- on the BPT 085444 AT 18.15 hours and it was

recorded as given to one Raghavan, ECRC on 29.10.1984 for 95 adults for journey on 30.12.1984 in Train No. 145 Navjeevan Express from

Ahmedabad to Madras. The appellant made it appear as if the demand was made at the instance of a passenger who came for cancellation. The

fraud played by the appellant was detected by the Railways and accordingly, he was charge-sheeted.

13. The charge sheet reads thus:

Annexure I

Statement of articles of charges framed against

Shri S. Singaravelu, ECRC/MAS.

That the said Sri. S. Singaravelu, while functioning as Enquiry cum Reservation Clerk, Reservation Office, Madras Central, Southern Railway,

Madras committed misconduct and failed to maintain absolute integrity and devotion to duty and did acts of which were unbecoming of a railway

or Government servant inasmuch as he has granted and misappropriated an amount of Rs. 10070/- in or about 15.12.1984 by 18.15 hours,

belonging to railway office, by making false entries in Railway records as if he had refunded the said amount on demand for cancellation by a

bonafide passenger on the passenger foil of B.P.T. No. 085444 purported to have issued on 29.10.1984 for 95 adults for journey on 30.12.1984

in Train No. 145 Navajeevan Express from Ahmedabad to Madras Central in violation of office procedures and he thereby violated Rule 3(1)(i),

3(1)(ii) and 3(1)(iii) of the Railway Service (Conduct) Rules, 1966.

(P.G. Thyagarajan)

Sr. Divisional Commercial Supt.

Annexure II

Statement of imputation of misconduct in support of articles of charges framed against Shri S. Singaravelu, ECRC/MAS.

Shri. S. Singaravelu, was working in the Central Railway Station, Madras as Enquiry-cum-Reservation Clerk in 1984 and as such, his duties

included Reservations, Cancellations of tickets at the request of the passengers and repayment of fares after due deductions as and when he is

rostered for the particular job.

Shri S. Singaravelu worked in the Indrail Counter for a long time, and he was on duty on 04.11.84 also. Blank paper ticket book was supplied to

Indrail counter for the issue of tickets to only foreign passengers. On 11.11.84, Sri P. Govindarajalu, then Sr. Booking Clerk verified and found

that the said B.P.T. Book contains all leaves. Sri. Leon Trotsky, another Enquiry-cum-Reservation Clerk worked in that counter from 12.11.84 to

19.11.84. From 20.11.84 onwards the above said P. Govindarajalu worked there. And on 21.11.84, he found that passenger foil of B.P.T. No.

085441 in ''H'' series was missing, though he found record foil and account foil of the said B.P.T. NO. 085441 were intact without entries.

Immediately he reported the matter to the higher officers and the Asst. Commercial Supdt. (ACS) sent internal and external circulars on 22.11.84

to watch and prevent the misuse of the missing B.P.T passenger for No. 085441. And all officials were made aware of the missing foil. And the

internal circular was attached in the circular book.

On 15.12.84, Shri Singaravelu while working in refund counter, recorded as if he had refunded Rs. 10070/- on the BPT No. 085444 at 18.15

hours purported to have been issued by one Ragavan, ECRC on 29.10.84 for 95 adults for journey on 30.1284 in train No. 145 Navajeevan

Express from Ahmedabad to Madras Central, on demand by a passenger for cancellation. But the contents of the said ticket showed that it was

for the journey from Madras to Ahmedabad. For making the alleged refund, Shri. Singaravel borrowed Rs. 10200 from other counter clerk Sri. D.

Dakshinamurthi as official loan.

As per usual procedure, all refunds would be checked on the next day by another clerk in the ABR counter. Thus, this refund of Rs. 10070/- was

to be checked on 16.12.84 by another clerk Sri. Md. Ellais. Md. Ellais was posted to ABR Counter and Sri.Singaravelu to current counter No.

68, on 16.12.1984. But Sri. Singaravelu persuaded the Chief Reservation Supervisor Smt. T.S. Seethalakshmi to post him back to ABR Counter

by posting Sri. Md. Ellais to counter No. 68. Smt. Seethalakshmi readily obliged Sri. Singaravelu without written request and hence Sri. Singaravel

worked in ABR Counter on 16.12.84 and Sri. Md. Ellais willingly worked in Counter No. 68. Thus Singaravel avoided the checking of refund of

Rs. 10070/- that he made on 15.12.84 by another official on 16.12.84. Hence it was not detected. On 27.4.85 this item of fraud was detected by

a Travelling Inspector of Accounts who came to check the refunds exceeding Rs. 2000/- as per the orders of Financial Adviser and Chief

Accounts Officer.

In fact, there was no application of refund of the above said BPT by any passenger. There was no endorsement and cancellation of the said ticket

by the reservation and cancellation clerk namely Shri. Ganeswara Rao. Without passenger''s application and without endorsement and cancellation

of ticket by Shri. Ganeswara Rao, Sri. Singaravelu ought not have refunded the amount. Further it is seen that the BPT No. was really 085441

which was altered to as 085444. Shri. Singaravel know the missing BPT No. 085441. No verification was done by Shri. Singaravelu with record

foil and reservation records.

The discrepancies found in passenger foil of 085444 on which refund was shown to have made are as follows:

1. Issue of single ticket for 95 passengers which is unusual.

2. Ticket was issued from Madras to Ahmedabad for which message charges of Rs. 3/- were collected.

3. Message No. MC-22/29/7/RJ of 29.10.84 is not at all tallying with the message book.

4. Raghavan ECRC who is said to have issued it never worked in Central Station.

5. Train No. 145 was from Ahmedabad to Madras but ticket issued was from Madras to Ahmedabad.

6. Train No. 145/30.12.84 is shown in the ticket 30.12.1984 was Sunday. It is Navjeevan Express. It did not run on Sundays.

7. The application for cancellation was not there.

8. The ticket did not contain the names of 95 persons.

There was no unusual crowd of passengers on 15.12.1984 as per the ABR Statement which prevented Sri.Singaravel to check the passenger foil

properly.

Sri. Singaravelu did not follow procedures in refund. There was no application for refund. Since he has worked in Indrail counter, he know that

ticket No. 085441 was missing. The ticket No. 085441 which is a missing passenger foil not accounted at Madras central. The BPT Book kept in

the Indrail counter and last issue was in 1983 of BPT No. 085437. RAT Foils H.085444 contained all the three foils such as record foil, account

foil and passenger foil. This ticket should have come to Sri. T. Ganeswara Rao for cancellation before refund was arranged by Sr. Singaravel. The

message No. MC/22/29/7.RJ of 29.10.84 is an imaginary number since the ticket was for a journey from Madras to Ahmedabad, message

charges could not have been collected. Sri. Singaravelu conveniently taken the duty of verifying the physical availability of tickets. On the next day

i.e. on 16.12.1984 after performing duty upto 2100 hours on 15.12.1984. Sri Dakshinamurthy the R-16 counter says that he had handed over a

sum of Rs. 10,200/- in the lump sum to Sri. Singaravelu at the fag end of the duty limits. According to ABR Statement, the refund was made at

6.15 p.m. but as per the cash book of R-14 and R-16 it is quite evident that Sri. Singaravelu pocketted the amount. Sri T. GAneswara Rao,

ECRC of Cancellation Counter denied that he made cancellation works. It does not contain his signature. Inspite of these defects Sri. Singaravelu

says that he returned the amount to a passenger, which cannot be believed. He did not consult his shift supervisor when he made huge amount as

refund. He had taken pains to take loan from Sri. D. Krishnamurthy for alleged refund.

Thus Sri. S. Singaravelu cheated the Railway and defrauded the amount of Rs. 10,010/-.

Investigation conducted by the CBI Madras and found that Sri. S. Singaravelu, ECR Clerk, has thus failed to maintain absolute integrity and

devotion to duty and did acts aforesaid interalia of which were of unbecoming of a Railway or Government Servant and thereby he violated Rule

3(1)(i), 3(1)(ii) and 3(1)(iii) of the Railway Service (Conduct) Rules, 1966.

14. The appellant submitted his explanation to the charges. According to the

appellant, he was on duty at the refund counter on 15.12.1984. As

per the prevailing procedure, whenever tickets are cancelled, it would be checked for their correctness and cancelled at the counter of issue and

those cancelled tickets have to be taken to the refund counter by the concerned applicant. It was only in the said process, he refunded a sum of

Rs. 10,070/-. Therefore, it was a bona fide action taken by the appellant on the basis of an entry made by the cancellation clerk with respect to

such cancellation. The explanation submitted by the appellant was not accepted by the railways which resulted in the appointment of Enquiry

Officer.

15. The appellant sought the assistance of a legal practitioner, as according to him, the Presenting Officer was a legally trained personnel. The said

request was rejected on the ground that the Presenting Officer was only a Police officer. The enquiry proceedings would show that witnesses were

cross examined by the appellant. The matter involves the procedure prevailing in the Railways with respect to the cancellation of tickets which was

well within the knowledge of the appellant. It was only on the basis of such experience, he cross examined the witnesses and attempted to elicit

answers favourable to him. The Presenting Officer was not a legal practitioner. He was only an officer of police force deputed to CBI. Therefore,

strictly speaking, Rule 13(1)(A) which permits the delinquent to engage a legal practitioner was not attracted in the subject case.

16. The enquiry report clearly gives an indication that the appellant was involved in the misconduct in question. The chain of events clearly gives an

idea about the modus operandi adopted by the appellant for the purpose of defrauding the railways.

17. Admittedly, on 15.12.1984, the appellant was on duty in the refund counter. It is a matter of record that on 21.11.1984, the railways found the

passenger foil of B.P.T. No. 085441 in ''H'' series missing. Though the record foil and account foil of the BPT were intact without entries, the

passenger foil was not there. This loss was reported by the concerned clerk to the superior officers of the railways which made the railways to

issue an internal circular on 22.12.1984 about the missing of BPT Passenger foil so as to prevent the misuse of the said passenger foil. On

15.12.1984, the appellant was working in the refund counter and he recorded as if he had refunded Rs. 10070/- on BPT No. 085444. According

to the appellant, he was not having enough money for payment and as such, he borrowed from another clerk as official loan.

18. The events which took place subsequent to the refund clearly connects the appellant with the charges. The refund was made on 15.12.1984.

As per the usual procedure, all refunds would be checked on the next day by another clerk in the ABR Counter. It is a matter of record that on

16.12.1984, the Reservation Supervisor allotted the work of refund checking to Mr. Mohammed Ellais. The appellant was posted in current

counter No. 68. However, the appellant persuaded the Chief Reservation Supervisor to post him back to the A.B.R. Counter. Chief Reservation

Supervisor without smelting anything agreed for such shifting. Accordingly, the appellant was made to check refund voucher by sitting in the refund

counter. Obviously, this was to avoid the checking of refund of Rs. 10,070 that he made on 15.12.1984. Since the appellant himself was in charge

of the refund voucher, the Railway was not having the benefit of checking the refund made by the appellant on 15.12.1984. It was only on

27.04.1985 this fraud was detected by the Travelling Inspector of Accounts, as he was expected to check refunds exceeding Rs. 2,000/-. The

enquiry Officer found that the very procedure adopted by the appellant was not as per the Rules. There was no endorsement of cancellation in the

alleged ticket by the reservation and cancellation Clerk. Refund was made without an application and without an endorsement by Shri. Ganeswara

Rao who was in charge of the cancellation at that point of time. It was also proved that the roll No. BBT 085441 was altered to 085444. All these

factors clearly points out at the appellant.

19. Witnesses were cross examined at length by the appellant. Though the appellant submitted reply to the charges and cross examined the

witnesses, he has not entered the witness box. Therefore, he failed to make use of the opportunity to explain his position before the Enquiry

Officer. It was only by way of pleadings, the appellant has come up with justification for the refund made by him.

20. We have perused the entire materials for the purpose of ascertaining as to whether there were some materials produced before the Enquiry

Officer to come to a finding that the appellant was involved in the misconduct in question. The report of the Enquiry Officer gives a clear picture

about the misconduct committed by the appellant and the way in which he defrauded the railways. The matter was once again examined by the

Central Industrial Tribunal. The Tribunal being the final Court on facts, examined the issue in the light of the pleadings and documents and arrived at

a definite conclusion that the appellant was guilty. The issue was once again considered by the learned Single Judge. In fact, the learned Single

Judge scanned the evidence adduced before the Enquiry Officer and opined that the materials were sufficient enough to take further action against

the appellant.

21. Jurisdiction of this Court under Article 226 of the Constitution of India in respect of departmental proceedings are very limited. This Court is

mainly concerned about the decision making process rather than on the merits of the proceedings before the departmental authorities.

22. In State of U.P. and Another Vs. Man Mohan Nath Sinha and Another, , the Supreme Court considered the jurisdictional limit of Courts in

departmental proceedings. The Supreme Court held thus:

The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner

inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have

disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing

themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no

reasonable person could ever have arrived at that conclusion, or on similar grounds.

23. In B.C. Chaturvedi Vs. Union of India and others, , the Supreme Court considered the scope and ambit of judicial review in matters regarding

departmental proceedings and observed thus:

12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to

ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of

the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the

inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on

some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion.

But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein,

apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is

entitled to hold that the delinquent officer is guilty of the charge. The Court/ Tribunal in its power of judicial review does not act as appellate

authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the

authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules

prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion

or finding be such as no reasonable person would have ever reached, the Court/ Tribunal may interfere with the conclusion or the finding, and

mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate

the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant.

Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal.

24. The procedure adopted by the Enquiry Officer could by no stretch of imagination be treated as an unfair one. The appellant was given

sufficient opportunity to cross examine the witnesses and to prove his defence. Though the appellant cross examined the witnesses at length, he

evaded the witness box for the reasons best known to him. The Enquiry Officer scanned the available materials in the light of the oral as well as

documentary evidence and arrived at a categorical conclusion that the charges framed against the appellant were proved. It is trite that even if there

is some evidence to connect the delinquent with the misconduct, the same would be sufficient for taking further action against the employee. In

view of the overwhelming evidence adduced by the Department against the appellant, we are not in a position to take a different view. We do not

find any merit in the contentions raised by the appellant.

25. In the result, the writ appeal is dismissed. No costs.