
(2010) 05 DEL CK 0195

In the Delhi High Court

Case No : Writ Petition (C) No. 3623 of 2010

Sh. K.K. Sangal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-05-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 05 DEL CK 0195

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : Malaya Chand, for the Appellant;

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has challenged the order dated 30th April, 2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A.No.1753 of 2009, titled as "Sh.K.K.Sangal v. Union of India & others", dismissing the Original Application of the petitioner challenging the Charge Sheet dated 29th August, 2003, the Penalty Order dated 29th September, 2008 and the Appellate Order dated 29th May, 2009.

2. The allegations against the petitioner were that a preventive check was conducted by a team of officials of Headquarters Office/ New Delhi on 15th April, 2003, while the petitioner was working as a Head TTE. During the preventive check, the petitioner did not show his Government cash and the private cash with him and rather ran away to hide his misconduct of illegal money earned by him and also deliberately tried to snatch the EFT Book from the possession of the Vigilance team in which two foils of different serial numbers were torn. The charges which were framed against the petitioner were as under:-

1. He non-cooperated with the Vigilance Team as he did not show his Govt. Cash, private cash and run away during the check to hide his misdeed of illegal earned money.

2. He deliberately tried to snatch the EFT book from the possession of the Vigilance team in which two foils of different serial numbers were torn.

3. He issued EFT in the nominated coach no.C-1 train No.4681 of another TTE (Sh.Darsh Singh/COR/UMB) deliberately to create artificial earnings of two persons instead of one to mislead the railway administration.

4. He refused to sign the seizure memo of the EFT book (132341 to 132 400) found in his possession during the vigilance check.

5. He refused to show his travelling authority as well as checking authority during the vigilance check.

6. He made an attempt to divert the attention of vigilance team by way of saying about jumping out of the train and also lodge an FIR.

3. After the enquiry, on the basis of evidence led before the enquiry officer, it was held that all the charges were made out against the petitioner. The disciplinary authority, however, after examining the report of the enquiry officer and the reply of the petitioner to the enquiry report held that the petitioner was guilty of charge Nos.1 to 6 only and imposed the penalty of reduction in his pay from Rs.6800/- to Rs.6650/- in the Grade of Rs.5000-8000/- by order dated 29th September, 2008. The appeal filed by the petitioner against the said order was also dismissed by the appellate authority on 29th May, 2009.

4. Before the Tribunal, it was urged on behalf of the petitioner that the charges were not proved by the enquiry officer and out of eight documents demanded by him only four documents were permitted by the enquiry officer. The petitioner also contended that the punishment imposed upon him is harsh and does not commensurate with his alleged misconduct.

5. The pleas and contentions of the petitioner were refuted by the respondents contending, inter-alia that full opportunity to defend himself was provided to the petitioner and though the enquiry officer held that all the charges were proved against him, however, after considering the reply of the petitioner to the enquiry report, the disciplinary authority has held that only charge Nos.1 & 6 were made out against the petitioner.

6. The Tribunal noticed that the disciplinary authority took the lenient view on charge No.6 and punishment was imposed in respect of charge No.1. The plea of the petitioner that on the basis of the testimony of PW2 even the charge No.1 was not made out against the petitioner was repelled. The Tribunal has categorically held after perusing the evidence of PW2 that case against the petitioner is of not of no evidence and it cannot be said that the inferences arrived at by the disciplinary authority were based on no evidence. The Tribunal also relied on R.S. Saini Vs. State of Punjab and Others, , holding that the Court while exercising the writ jurisdiction will not reverse a finding of the disciplinary authority on the ground that the evidence adduced before it is insufficient. It was held that if there was some evidence to reasonably support the conclusion of the

enquiry authority, it is not the function of the Court to review the evidence and to arrive at its own independent finding. The enquiry authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings.

7. In the circumstances, it had been held by the Tribunal that the findings of the disciplinary authority are neither perverse nor mala fide and that prima facie there has been no violation of principles of natural justice in conduct of the proceedings.

8. The learned counsel for the petitioner has very emphatically contended that it is a case of no evidence and the reliance has been placed on the statement of PW2. The Tribunal had noticed that even on the basis of evidence of PW2, it cannot be held that case against the petitioner is of no evidence. If the vigilance team had not disclosed about its status to the petitioner, from this fact it cannot be held that the petitioner was not aware of vigilance raid conducted. Otherwise there was no need for the petitioner to run away from the preventive check and not showing the Government cash and the private cash which was with the petitioner. In the circumstances, on the basis of the entirety of the evidence, the plea of the petitioner that evidence of PW2 will not support the case of the department is not made out. On the basis of preponderance of probability, it cannot be held that the findings of the disciplinary authority about the charge Nos.1 & 6 made out against the petitioner are perverse or without any evidence.

9. Learned counsel for the petitioner is also unable to show as to which documents were not supplied to the petitioner which had prejudiced his case to such an extent that the entire disciplinary proceedings against the petitioner are liable to be quashed. The petitioner was a TTE in the train and in order to avoid the full ramification of the illegality committed by him during the preventive check, he ran away and did not show his Government cash and the private cash with him. Considering the entirety of the facts and circumstances, punishment of only reduction in his pay from Rs.6800/- to Rs.6650/- in the Grade of Rs.5000-8000/- cannot be construed to be not proportional to the misconduct attributed to the petitioner.

10. The charges before the disciplinary authority were not required to be proved like criminal trial beyond reasonable doubt. The disciplinary authority has taken a lenient view against the petitioner in respect of Charge Nos.6 and a penalty of reduction of one year only has been awarded to the petitioner in respect of Charge No.1. While drawing inferences, the disciplinary authority has not taken into consideration irrelevant facts or refused to consider the relevant facts, nor the findings of the disciplinary authority are based on assumption as no such plea has been taken by the learned counsel for the petitioner. The findings of the disciplinary authority cannot be construed to be based on surmises and conjectures and in the circumstances, there is no ground to interfere with the order of the Tribunal.

11. In the totality of the facts and circumstances, the learned counsel for the petitioner has not been able to make out a case of any such illegality, irregularity or perversity in the order of the Tribunal, which will necessitate any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition in the facts and circumstances of the case, is without any merit, and it is therefore, dismissed.