

(2013) 11 AP CK 0074

In the Andhra Pradesh High Court

Case No : Writ Petition No"s. 15238 of 2000 and 3825 of 2005

Sri N. Venugopal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-11-2013

Acts Referred:

Citation : (2014) LabIC 282

Hon'ble Judges : L. Narasimha Reddy, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : Krishna Devan, for the Appellant; R.S. Murthy, learned S.C., for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—These two writ petitions are filed assailing the order dated 16-12-1999 passed by the Hyderabad Bench of the Central Administrative Tribunal in O.A. No. 1218 of 1997. For the sake of convenience, the parties are referred to, as arrayed in W.P. No. 3825 of 2005. The petitioner was on duty as Head Travelling Ticket Examiner on Train No. 7487 (Tirumala Express) from Tirupati to Vijayawada on the night, intervening 3/4-03-1994. He was entrusted with the duty of handling two First Class coaches - F-3 and F-4. The Vigilance Inspector of the South Central Railway checked the compartments, at Tenali Station. It was found that while in F-3 coach one unauthorized passenger was travelling, in F-4 coach two second class ticket holders were travelling by quoting fictitious freedom fighters pass numbers. Alleging that the petitioner did not exhibit devotion to duty, failed to collect the fares and penalties from the unauthorized passengers, a memorandum of charge dated 20-09-1994 was issued to him by the Disciplinary Authority. The petitioner submitted his explanation on 09-10-1994. Not satisfied with the explanation, the disciplinary authority appointed an enquiry officer. In his report, dated 22-02-1996, the enquiry officer held the charges as proved. On being furnished with the copy of the report, the petitioner submitted his representation on 11-03-1996. Taking

the same into account, the 4th respondent passed an order dated 05-07-1996, imposing the penalty of reduction to lower post in the lower timescale and further reduction of the pay to the minimum of the lower scale, with cumulative effect. On an appeal filed by the petitioner, the 3rd respondent modified the penalty to the one of non-recurring, but upheld the other form of penalty. The revision filed by the petitioner before the 2nd respondent was rejected on 21-07-1997.

2. Assailing the order of punishment, the petitioner filed the O.A before the Tribunal. He submitted that the two coaches were not adjacent to each other, but were separated by many coaches and thereby, he could not monitor both the coaches properly.

3. It was his case that after the Vigilance check was conducted, his signatures were not taken and even the passengers' statement was not recorded. It was also stated that in the course of departmental enquiry, several witnesses were examined in his absence, and that the punishment imposed against him was totally disproportionate.

4. In their reply, filed in the O.A., the respondents have pleaded that the petitioner resorted to acts of misconduct by allowing one of his relations, by name, Dhanunjay Naidu, to travel in the First Class coach without ticket. It was also pleaded that the defence of the petitioner that he did not notice two passengers in the other coach, since he was busy in verifying the tickets in one coach, is totally untenable. According to them, the prescribed procedure was followed and though the department examined as many as 7 witnesses and filed 12 documents, the petitioner did not adduce any evidence on his behalf.

5. Through its order dated 16-12-1999, the Tribunal disposed of the O.A by setting aside the punishment of reduction of pay in the grade i.e. Rs. 1200 - 2040/-, but sustained the punishment of reduction of the petitioner to the lower grade of the pay scale. Respondents in the O.A filed W.P. No. 15238 of 2000, feeling aggrieved by the order of the Tribunal. The petitioner, on the other hand filed W.P. No. 3825 of 2005, not satisfied with the relief granted by the Tribunal.

6. Sri Krishna Devan, learned counsel for the petitioner submits that the charges framed against his client were not proved and the checking officials have drawn certain inferences on the basis of their check. He contends that the signature of the petitioner was not obtained in the check report, and that in the departmental enquiry, proper opportunity was not given to him. Another contention raised by him is that the respondents did not follow the procedure prescribed under Rule 9(21) of the Railway Servants (Discipline and Appeal) Rules, 1968 (for short "the Rules"). He has placed reliance upon certain precedents. According to the learned counsel, the Tribunal ought to have set aside the order of punishment, in its entirety.

7. Sri R.S. Murthy, learned Standing Counsel for the respondents, on the other hand, submits that both the charges framed against the petitioner were proved

beyond any pale of doubt, and there was no justification for the Tribunal in setting aside one facet of the punishment. He contends that a detailed departmental enquiry was conducted, where oral and documentary evidence was adduced, and the enquiry officer has recorded a finding, holding that the charges are proved. Learned counsel further submits that at no stage of the proceedings, the petitioner raised any ground based upon Rule 9(21) of the Rules, and he cannot be permitted to raise the same for the first time before this Court. Learned counsel submits that the Tribunal ought to have dismissed the O.A.

8. Two charges framed against the petitioner were in relation to the acts and omissions on his part, while conducting two First Class bogies of an express train. In one compartment, a ticketless passenger was found and in the other compartment, two passengers holding second class tickets were found to be travelling on the basis of the fake identity cards of freedom fighters. The defence of the petitioner was that two bogies were separated by many coaches and he was unable to handle them properly. It was also alleged that the minor lapses are not attributable to his negligence or misconduct. Not satisfied with the explanation offered by him, the 4th respondent appointed an enquiry officer. A report running into 15 pages was filed. As many as 7 witnesses were examined and 12 documents were filed. All the witnesses were cross-examined by the petitioner herein. Nothing was elicited from them to doubt the truthfulness of their statement. On his part, the petitioner did not adduce any evidence. In the course of discussion, the enquiry officer made the following observations,

However, on going through the material records available in the case and the deposition of the witnesses, it has come to light that Sri Venugopal, COR had carried one unauthorized passenger in F-4 I Class coach and by his own statement given to the VIs (Ans. to Q. No. 20 Exh.P.9), thus he failed in the proper discharge of his duties as the COR, as the Railway dues from this unauthorized passenger was realized through a TTE on BZA platform as per the instructions of the VIs. The TTE had granted EFT bearing No. 740686 of 4.3.1994 for an amount of Rs. 608/- and the EFT in question was also signed by the said passenger. The coach Attendant Shri Ramaiah had deposed in the enquiry that the COR Sri Venugopal did not tell him to take this passenger without a ticket. Hence the CCA/TPTY had failed to check the bonafides of the passengers in the First Class coach.

Shri Venugopal is also charged with while functioning as COR and manning F-3 VSKP coach and F-4 Kakinada coach by train No. 7487 of 3/4.3.94 committed a serious misconduct in that he carried two passengers holding II Class ticket Nos. 59506 and 69507 Ex.TPTY to BZA in "D" Coupe of F-3 Coach by 7487 Exp. on quoting a fictitious F/fighters pass No. 29465 duly incorporating in the original and showed in amended chart also. Shri Venugopal has not issued proper EFT for conversion from general ticket passengers for an amount of Rs. 500/- collected from the passenger through the coach attendant with a mollified intention to pocket the same without remitting to Railways.

9. Ultimately it was held that the charges framed against the petitioner are proved.

10. The punishment of reduction of pay scale and further punishment of reduction of grade of pay from Rs. 550-750 to 1425-700 was imposed. In addition to that, in the lower grade of pay also, reduction was ordered to the lowest level, for a period of three years with cumulative effect. The Appellate Authority modified the second limb of the punishment to the one, without cumulative effect. On its part, the Tribunal has set aside the second limb of the punishment, as a whole. The result is that, the petitioner had to suffer the punishment of reduction in the grade of pay.

11. The charges framed against the petitioner were held proved by the enquiry officer and the finding was accepted by the 4th respondent. The Tribunal could have interfered with the findings, if only the findings in the enquiry report are based on no evidence. The evidence of as many as nine witnesses examined by the department was analyzed and the purport of the documents exhibited in the enquiry was considered. The lapse if at all was on the part of the petitioner to adduce any evidence on his behalf.

12. Learned counsel for the petitioner made extensive arguments on one aspect, viz., that the enquiry officer did not follow the procedure prescribed under Rule 9(21) of the Rules. The said rule requires the enquiry officer to inform the delinquent employee of the nature of evidence, that is adduced against him and the probable conclusions, that it may lead to. It is comparable to an exercise u/s 313 of Cr.P.C. He has also relied upon the judgment of the Supreme Court in *Moni Shankar Vs. Union of India (UOI)* and Another, The Hon'ble Supreme Court took the view that failure to comply with the requirement u/s 9(21) of the Rules would vitiate the entire proceedings.

13. In case there is non-compliance with Rule 9(21) of the Rules, in the instant case, the relief can certainly be granted, taking that into account. However, the question as to whether there was compliance with that provision is one, of fact. Had the petitioner raised the same before the Appellate Authority or the Tribunal, there would have been occasion for the respondents to put forward their version in this behalf. Neither in the departmental remedies of appeal and revision, nor in the O.A., before the Tribunal, the petitioner has raised that plea. For the first time it is raised before this Court. It is not a pure question of law; for us to permit the petitioner to raise it for the first time in the writ petition. It is fairly well-settled that issues or questions, which need verification of fact, cannot be raised for the first time before the superior Courts. We, therefore, do not find any basis to grant further relief to the petitioner.

14. Though the respondents contend that the Tribunal has acted as an appellate authority in analyzing the matter and reducing the penalty, we are not impressed by that argument. It has already been mentioned that the appellate authority itself felt that it is a case for modification of the punishment. We agree with the

finding of the Tribunal that the reduction of pay scale to the minimum, after reduction of the grade of pay, amounts to double punishment. For all practical purposes, the petitioner was reverted to a lower grade, and that itself is a punishment. There cannot be any basis for pushing the petitioner further down, to the starting level of the grade of pay, to which the petitioner was reverted. That cannot be supported in law or on facts. Hence, W.P. No. 15238 of 2000 is dismissed.

15. Hence, both the writ petitions are dismissed. The miscellaneous petitions filed in these writ petitions shall also stand disposed of. There shall be no order as to costs.