

(2013) 04 DEL CK 0185

In the Delhi High Court

Case No : Writ Petition (C) 4847 of 2012

Union of India and Others

APPELLANT

Vs

Jagdish Prasad

RESPONDENT

Date of Decision : 22-04-2013

Acts Referred:

Constitution of India, 1950 — Article 311(1)

Citation : (2013) 04 DEL CK 0185

Hon'ble Judges : Pratibha Rani, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : R.L. Dhawan, for the Appellant; Meenu Mainee, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Joining service under the Indian Railways as a Goods Clerk on June 30, 1980, the respondent was promoted to the post of Goods Supervisor on July 02, 2004, a post in the pay scale Rs. 5500-9000 by the Divisional Railway Manager, but it appears that the formal communication was sent under the signature of Senior Divisional Commercial Manager. It is trite that it is the order passed on the file which determines the authorship thereof and not the ministerial function of sending a communication pertaining to the same. On July 28, 2008 a Memorandum of Charges was served on the respondent alleging misconduct. The Articles of charge read as under:-

Article of Charge-1

He issued RR No. 352042 dated 09.2.2005 from MNQ to NJP in favour of M/s. Krishna Traders, Harchand Malik Street, Kolkata, in which he manipulated in record copy, distance was shown 1300 km whereas in the RR the distance was shown 1301 km, which shows his malafide intention.

Article of Charge-2

He has collected the freight of RR No. D 352042 dated 09.2.2005, Rs.

15,65,159/- in the receipt foil but in the RR he has mentioned the forged freight amounting Rs. 15,93,931/- i.e. he has mentioned an excess amount of Rs. 28,772/- in the RR to take the refund with the connivance of the party and undue benefit.

Sh. Jagdish Prasad, GS/MNQ by his above acts of omission and commission failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of railway servant by contravening rule 3.1(i), (ii) & (iii) of the Railway Services (Conduct) Rules, 1966.

2. Since the respondent did not deny the fact of recording a distance other than for which the goods were transported and as a result thereof conceded that the same would have entitled the holder of the Railway Receipt to obtain a refund in sum of Rs. 28,772/- which would be illegal, we need not note the evidence led at the domestic enquiry except the defence taken that in the area i.e. Mainpuri the criminals had virtually taken over; in the past 4-5 railway staff had been killed and thus he did the offending act out of fear and intimidation. It be noted that the goods were booked at Mainpuri Railway Junction to be delivered at New Jalpaiguri.

3. With reference to the defence, the respondent led no evidence that in the past 4-5 railway employees had been killed by the mafia. But to be fair to him, we must note that he relied upon a communication sent by him through courier on February 11, 2005 giving information that an irregularity in the form of distance mentioned in the Railway Receipt was recorded incorrectly. Therefrom, the respondent sought to establish his bona fides.

4. Ignoring the communication sent by him on February 11, 2005, the Inquiry Officer held respondent guilty. Concurring with the report of the Inquiry Office and not accepting respondent's justification, the disciplinary authority levied the penalty of reduction of pay at the bottom of the scale for a period of three years with cumulative effect. The respondent filed an appeal to the Senior Divisional Commercial Manager. On October 21, 2009 the said Senior Divisional Commercial Manager issued a show cause proposing to enhance the penalty to one of compulsory retirement to which respondent submitted a reply; and considering the same the Senior Divisional Commercial Manager levied the penalty of compulsory retirement as per reasoning contained in the order dated March 12, 2010 which reads as under:-

Appellant's contention seems to be afterthought to just cover up his misdeed. The appellant in his statement given to CCM (Refund) N.C. Rly/ALD dated 25.10.2007 and statement given to vigilance on 06.11.2007 has admitted that the said manipulation in preparation of RR was done on the behest of representative of party, who had assured him (appellant) that he will realize the freight from the merchant by showing the said RR, after that RR will be given back to him for necessary correction. But the representative of the party did not come back to get the RR corrected. The payment of freight and other charges

was made through demand draft (Ex. D-2 & Ex. P-3)

Keeping in view of foregoing paras it is amply clear that the appellant had manipulation in preparation of RR with the connivance of party, which is evidence from his submission to CCM (Refund) and to Vigilance N.C. Rly. ALD.

He had not apprized about the incidence to high-up, until he was subjected to enquiry by CCM (refund) N.C. Rly. ALD. on complaint of party. Further he deposed the same before the vigilance, during the course of investigation. The courier consignment, note produced by the appellant does not authenticate that he had sent the correct RR to CGS/NJP.

The appellant has not brought out any such point during the enquiry or to the reply of show cause notice to prove him innocent or even lessen the gravity of offence committed by him. The misdeed committed by appellant is a documented fact. The staff having fraudulent bent of mind cannot be retained in Railway service.

5. The respondent submitted an appeal against the order dated March 12, 2010 in which, apart from the merits of the evidence, he took the plea pertaining to the power of the Senior Divisional Commercial Manager compulsorily retiring him from service. Rejecting the appeal vide order dated August 07, 2010, the Additional Divisional Railway Manager opined as under:-

From the enquiry report it is clear that the charges as mentioned above have been proved against the revisionist. The revisionist himself accepted in the grounds taken in the revision appeal that the alteration was done by him to save his life. The revisionist in his statement dated 25.10.2007 given to CCM (Refund), N.C. Rly/ALD and statement dated 06.11.2007 given to vigilance also admitted that the said manipulation in RR was done on the behest of representative of party, who had assured him (revisionist) that he would realize the freight from the merchant by showing the said RR, after that RR would be given back to him for necessary correction.

The courier consignment note produced by the revisionist does not authenticate that he had sent the corrected RR to CGS/NJP. If it is taken for granted that the revisionist just after a day of concurrence sent the Record Copy to CGS/NJP to correct RR, through courier vide letter dated 11.02.2005, this fact should have been immediately brought to the notice of his higher officer of commercial department as well as to the notice of Enquiry Officer during Enquiry Proceeding. But the revisionist did not do so. This clearly shows that the revisionist made this story as an afterthought.

After going through the Service Record, it is found that the appointment of the revisionist has been made by the Sr. Scale Officer (DPO)/ALD). As such the punishment of compulsory retirement given by the J.A., Grade Officer (Sr. DCM/ALD) is in accordance with the law and there is no violation of Article 311(1) of the Constitution of India.

6. Respondent's challenge before the Central Administrative Tribunal has resulted in an inchoate finding in his favour pertaining to the merits of the indictment inasmuch as the Tribunal, without discussing the evidence, has blindly relied upon respondent's communication sent through courier, a finding returned by the Tribunal which needs to be set aside; being the result of a non-focused application of mind. Further, as would be noted hereinafter, the Tribunal itself has treated its inchoate finding as not amounting to a verdict on merits in favour of the respondent.

7. The Tribunal has also opined that only said authority could have imposed the penalty as was competent to do so under The Railway Servants (Discipline & Appeal) Rules, 1968.

8. Suffice would it be to state that as per the said Rules power to levy major penalties, which includes the penalty of compulsory retirement, is vested in the appointing authority. That takes us to the question as to who would be the appointing authority of the respondent with respect to the post of Goods Supervisor to which respondent was promoted.

9. With reference to the fact that the Divisional Railway Manager had passed the order promoting respondent, the view taken by the Tribunal is that it is the Divisional Railway Manager who was competent to pass the penalty order, and in our opinion correctly for the reason, the ministerial act of sending a communication pertaining to the decision cannot be equated with the decision.

10. Argument of learned counsel for the petitioners that the promotion order, annexed as Annexure A-5 by the respondent to the Original Application, evidences that it has been signed by the Senior Divisional Commercial Manager and thus it is he who would be the competent authority to levy the penalty is noted and rejected for the reason the Senior Divisional Commercial Manager has himself written, before signing:-

For Divisional Railway Officer

11. Suffice would it be to state that the argument is without any basis. It ignores the fact that the Senior Divisional Commercial Manager has not signed in his own right and on his own behalf. He has done so on behalf of the Divisional Railway Officer, by which we understand that it was intended to mean the Divisional Railway Manager. That apart, the promotion order on the file has been passed by the Divisional Railway Manager.

12. The view taken by the Tribunal pertaining to who should be the authority competent to pass the penalty of compulsory retirement being correct, we note that the Tribunal has permitted the petitioner to take corrective action, and therefrom we can additionally infer that the Tribunal itself has not held that the defence of the respondent was justified and hence no penalty could be imposed. For if on merits of the inquiry the finding was in favour of the respondent, there was no question of the matter being remanded for corrective action.

13. Clarifying with respect to the inchoate finding written by the Tribunal in para 8 of its opinion with respect to the merits of the indictment, we concur that the competent authority has not passed the penalty order of compulsory retirement requiring the competent authority to start from the stage when the wrong was committed.

14. The writ petition is accordingly dismissed. No costs.