
(2011) 03 DEL CK 0247

In the Delhi High Court

Case No : Writ Petition (C) No's. 18605-08 of 2004

Union of India (UOI) and Others

APPELLANT

Vs

M.K. Meena

RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 03 DEL CK 0247

Hon'ble Judges : Veena Birbal, J;Anil Kumar, J

Bench : Division Bench

Advocate : Chandan Kumar, for the Appellant; A.K. Trivedi, for the Respondent

Final Decision : Dismissed

Judgement

Veena Birbal, J.—By way of this petition under Article 226 of the Constitution of India, Petitioner has challenged the impugned order dated 13th July, 2004 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'the Tribunal') in OA No. 3042/2003 whereby the order of penalty of reversion imposed upon the Respondent has been set aside and it is directed that Respondent shall be entitled to all consequential benefits.

2. Briefly the facts relevant for disposal of the present petition are as under:

Respondent herein was appointed with the Petitioner on 5.6.1988. While working as a skilled worker, Respondent was appointed as Ticket Collector in the year 1996. In the year 1998, Respondent was promoted to the post of Traveling Ticket Examiner (in short 'TTE'). On 27.6.2000 while working as TTE a major penalty charge sheet was issued to the Respondent on the allegation of overcharging from a decoy passenger in Train No. 2622UP. Respondent denied the charges against him. An Inquiry Officer was appointed who conducted the inquiry proceedings and submitted a report wherein charges were proved against the Respondent. Against the report submitted by the Inquiry Officer, Respondent submitted a representation dated 21st March, 2001 to the Disciplinary Authority.

The Disciplinary Authority vide order dated 16th August, 2001 imposed the penalty of removal from service on the Respondent. Against the said order, the Respondent filed an appeal before the Appellate Authority and the same was rejected vide orders dated 22nd November, 2001. Against the said order, Respondent filed a revision petition before the Revisional Authority. The said Authority vide its order dated 23rd September, 2001 modified the penalty of removal from service to the reversion in the lowest grade of Rs. 3050-4590 fixing his salary at Rs. 3050/- for a period of 15 years with cumulative effect. Feeling aggrieved with the said order, Respondent filed OA No. 3042/2003 before the Tribunal against the orders of the Disciplinary Authority, Appellate Authority as well as order passed by the Revisional Authority.

3. The stand of the Respondent before the Tribunal was that it was a trap case. It was contended that under paragraphs 704 and 705 of Indian Railway Vigilance Manual (in short 'IRVM'), in a trap case if two Gazetted Officers as independent witnesses have not been associated the mandatory provision vitiates the trap, as such penalty imposed upon the Respondent was liable to be set aside. It was also contended that even charges on the basis of evidence in the departmental proceedings against the Respondent were not proved.

4. The Petitioner opposed the OA before the Tribunal by filing a reply. The stand of the Petitioner before the Tribunal was that the charges against the Respondent were duly proved. It was also contended that guidelines in paragraphs 704 and 705 of the IRVM pertain to only trap cases but the present was a decoy checking as such the compliance was not mandatory.

5. After hearing the learned Counsel for the parties, the Tribunal relying on the judgment of Central Administrative Tribunal, Hyderabad Bench in Sk. Abdul Salam v. The Divisional Railway Manager, S.C. Railway, Guntakal and Ors. reported in ATJ 2003(2) 118, which was decided on the basis of judgment of Division Bench of High Court of Andhra Pradesh in W.P. (C) No. 1489/2002, 26165 and 25111/2001 wherein it was held that the provisions of paragraphs 704 and 705 of the IRVM are mandatory in nature and non-observance of same vitiates the trap conducted and penalty imposed by disciplinary authority is liable to be set aside, held as under:

If one has regard to the above, we do not find any difference in the case in hand with that of Abdul Salam (supra). A raid conducted by the Vigilance on a decoy witness on a specific information as to complaint of over-charging is nothing but all the ingredients of a trap. Accordingly, the only witness which had been associated in the raid in the decoy check were Sh. Balbir Singh, a RPF Constable and Sh. R.R. Singh, another R.P.F Constable. In the aforesaid raid neither two gazetted officers from Railway as independent witnesses or even non-gazetted staff were associated. This was with a view that they must hear the conversation as to illegal gratification. The High Court of Andhra Pradesh's decision which has a binding precedent in absence of any ratio laid down to the contrary by the Delhi High Court provisions of paras 704 and 705 IRVM being mandatory in

nature are not followed as a procedure in the departmental trap. The enquiry as well as consequent orders are vitiated. Consequent orders passed on such illegal trap, which does not form an admissible evidence against applicant are also nullity in law.

In the result, for the foregoing reasons, OA is allowed. Impugned orders are set aside. Applicant must be entitled to all consequential benefits. No costs.

Aggrieved with the said order, the present writ petition is filed.

6. Learned Counsel for the Petitioner has contended that charges against the Respondent stood fully proved in the inquiry proceedings and the inquiry could not have been vitiated on the ground of non compliance of paragraphs 704 & 705 of IRVM. It is contended that the provisions of IVRM are only administrative instructions with no statutory force and are simply meant for the guidance of vigilance officers for conducting investigation and non-adherence of the same do not vitiate the departmental proceedings initiated against the Respondent by the Railway authorities. In support of the contention, learned Counsel has relied upon the judgment of the Supreme Court in *Moni Shankar Vs. Union of India (UOI) and Another*,

7. On the other hand, learned Counsel for the Respondent has contended that there is no illegality in the impugned order. No interference of this Court is required in exercise of its jurisdiction under Article 226 of the Constitution of India. It is contended that the Tribunal has rightly held that paras 704 and 705 of the IRVM pertaining to trap are mandatory in nature and have to be followed scrupulously.

The Tribunal has simply quashed the inquiry on the ground that Paras 704 and 705 of the IRVM are not followed.

8. We have heard counsel for the parties and perused the record. The inquiry has been quashed by the Tribunal on the ground that paragraphs 704 & 705 of IRVM are not followed.

9. In *Moni Shankar's* case (supra) the Railway Vigilance Manual's Paras 704 and 705 have been dealt with. The Apex Court has referred to its earlier decision in *The Chief Commercial Manager, South Central Railway, Secunderabad and Others Vs. G. Ratnam and Others*, wherein it is held that paras 704 & 705 cover the procedures and guidelines to be followed by the investigating officers, who are entrusted with the task of investigation of trap cases and departmental trap cases against the railway officials. The Court proceeded on the premise that the executive orders do not confer any legally enforceable rights on any person and impose no legal obligation on the subordinate authorities for whose guidance they are issued.

10. Relying on the aforesaid judgment, the Supreme Court in *Moni Shankar's* case (supra) has held that IVRM which is a set of executive instructions, though not binding, yet its violation could be taken into consideration along with other

factors to determine objectively whether charges were proved or not. The relevant para of the judgment is as under:

16. We have, as noticed hereinbefore, proceeded on the assumption that the said paragraphs being executive instructions do not create any legal right but we intend to emphasise that total violation of the guidelines together with other factors could be taken into consideration for the purpose of arriving at a conclusion as to whether the Department has been able to prove the charges against the delinquent official.

Keeping in view the above legal backdrop, the matter is examined.

The charges against the Respondent are as under:

Article-I

Shri M.K. Meena demanded Rs. 150/- extra from the decoy passenger as bribe to allot berth and overcharged Rs. 137 to the decoy passenger when he allotted a berth to him vide EFR J 934626.

Article-II

He declared private cash on a higher side without actually having it and adjusted his excess in railway cash against private case.

11. To prove the charges against the Respondent, the inquiry officer has relied upon the statements of decoy passenger Sh. Balbir Singh RPF CT 951 and Sh. R.R. Singh RPF CT 1563, an independent witness. The statement of Hazura Singh (Ex. P 1/6) who was traveling in the same coach made before the Vigilance team has also been relied upon for corroborating the demand of extra Rs. 150/- for allotment of berth. As per statements recorded by the vigilance team, co-passenger Hazura Singh was sitting in the same coach and had made two statements at the time of trap. In his initial statement made to the Vigilance team in the presence of Respondent there are no allegations against the Respondent. In the subsequent statement made on the same day in the absence of Respondent, he made allegations that Respondent had told the decoy passenger Sh. Balbir Singh that for allotment of berth Rs. 163/- would be charged and he had to pay Rs. 150/- extra for the same.

12. It is admitted position that the said statement was not made in the presence of Respondent. It was a subsequent statement. Hazura Singh has not been produced in the evidence. There is no explanation as to why he has made two statements on the same day. Petitioners ought to have explained the same. Further in the inquiry file produced by Petitioners, there is a letter/statement on record addressed to the Chief Vigilance Officer, Indian Railways by Hazura Singh to the effect that his initial statement was correct and the subsequent statement was made by him under pressure. Under these circumstances, Petitioners ought to have given explanation for the same. The Revisional Authority while reducing the penalty of 'removal from service' to the 'reversion' in the lowest grade of

Rs. 3050-4590 fixing his salary at Rs. 3050/- for a period of 15 years with cumulative effect has noted this aspect of the matter and has observed that Sh. Hazura Singh, co-passenger had changed his statement.

Further the oral testimony of witnesses i.e decoy passenger Sh. Balbir Singh and that of independent witness Sh. R.R. Singh stand contradicted from the amount recovered from the Respondent. The material on record shows that Respondent had declared Rs. 300/- as his private cash. As per allegations, he had charged Rs. 137/- extra from the decoy passenger for the allotment of berth and Rs. 163/- was actual amount charged for allotment of berth for which he had issued a receipt. However, after the alleged trap the total amount recovered from Respondent was Rs. 456/-, out of which Rs. 300/- was the amount declared by him as his private cash at the time of inception of journey and Rs. 163/- was the amount charged for the allotment of berth. The same is short by Rs. 7/-.

The Inquiry Officer has given a finding that Respondent had declared his private cash on a higher side without actually having it and adjusted excess railway cash as his private cash. On what basis, the finding is given that he had declared his private cash wrongly without actually having it. It is not explained by the enquiry officer. Even in the proceedings before this Court, counsel for the Petitioner has not been able to explain as to how such a presumption has been drawn. Even the Revisional Authority of Petitioners has noted this aspect of the matter and has held in its order dated 23rd September, 2001 that excess amount could not be proved in his private and railway cash, as such reduced the punishment from removal from service to reduction in last grade as is noted above.

13. On the basis of evidence on record, it cannot be held that the charges against the Respondent are established. The findings given by the enquiry officer in this regard are perverse finding.

We are conscious of the scope of judicial review in departmental proceedings under Article 226 of the Constitution of India is limited and we have examined the matter keeping in mind the legal position that this Court cannot re-appreciate the evidence like the Appellate Court. The jurisdiction of this Court would be to find out whether there is no evidence on record or whether on the evidence on record no person would come to the conclusion arrived at by the Inquiry Officer.

Further as noted above the two Gazetted officers were not associated as per requirement of paragraphs 704 & 705 of IRVM. No explanation has come on record in this regard despite the fact that it was a pre planned trap. It is not the case that it was an exceptional case where two Gazetted officers were not available. The provision of presence of two Gazetted officers at the time of trap has been laid down to obviate false cases. Even two independent witnesses were not associated at the time of trap.

In view of above discussion, no case is made out for interference of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is dismissed.