

(2004) 02 GUJ CK 0082

In the Gujarat High Court

Case No : Special Civil Application No. 7324 of 1996

Vahaljibhai Damabhai Solanki

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 17-02-2004

Acts Referred:

Gujarat Civil Services (Discipline and Appeal) Rules, 1971 — Rule 6

Citation : (2004) 02 GUJ CK 0082

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : J.R. Nanavati, for the Appellant; M.S. Rao, AGP, for the Respondent

Judgement

Ravi R. Tripathi, J.—The present petition is filed challenging the order dated 16th September, 1996 (Annexure-I to the petition) whereby the punishment of the petitioner is substituted from removal to compulsory retirement. It is stated by Mr. J.R. Nanavati, learned Senior Counsel appearing for the petitioner, that even on account of this punishment of compulsory retirement, a stigma remains attached to the career of the petitioner and he is deprived of the post retiral benefits like pension, etc.

2. The facts of the case are that the petitioner was serving as a District Education Officer (D.E.O.), Ahwa District: Dang, the post to which he was transferred in March-1974 and continued to serve till 16th February, 1976. It is the case of the respondent authority that while his tenure as D.E.O., Dang between December-1974 to July-1975, the petitioner claimed First Class fare by making false claims, though he did not actually travel by First Class in Railway. A Chargesheet dated 23rd February, 1998 was served to the petitioner and he was called upon to state as to why the above charge, if held proved, should not be considered as good and sufficient ground for imposing upon him any of the punishment specified in Rule-6 of G.C.S. (D & A) Rules, 1971. Along with the chargesheet, a statement of imputations was annexed setting out the dates on which the petitioner travelled between Ahmedabad and Bilimora. It was stated in

the statement of imputations that "on enquiry with the Rly. Authorities, it is learnt that no first class tickets were issued on these days from concerned stations." It is further stated in the statement of imputations that, "he had, therefore, not travelled by the 1st class, but had claimed the 1st class fare. He had, thereby, made false T.A. claims of his travel by the 1st class in Rly. Whereas he had not actually travelled in it." Along with the chargesheet, a statement of evidence was also enclosed wherein the documents which were referred to and relied upon were mentioned i.e. (i) a letter addressed by Directorate of Education to the Railway Station Master, Bilimora; (ii) a letter addressed by the Senior Superintendent, Ahmedabad Railway Station, to the Director of Education; (iii) a letter addressed by the Directorate of Education to the Railway Station Master, Ahmedabad; and, (iv) a letter addressed by the Station Master, Bilimora to the Directorate of Education. It is surprising that the authorities did not rely upon the T.A. Bills, which will be the basic and fundamental documents in connection with the charge in question. Not only that, even after judgement and order dated 27th May, 1996 of this Court in Special Civil Application No. 1084 of 1986, the authorities did not consider various aspects, which, the Court had directed in terms to consider while deciding the case of the petitioner afresh.

3. When a person claims that he has travelled from Bilimora to Ahmedabad by First Class and if it is not impermissible for him to travel that distance in different breaks (parts) i.e. by travelling from Bilimora to Surat; from Surat to Vadodara; and from Vadodara to Ahmedabad, the certificate issued by the Station Master, Bilimora to the effect that on a given date, no ticket from Bilimora to Ahmedabad was issued for First Class, cannot disprove the aforesaid claim of the person concerned. To prove that the person had not travelled by First Class from Bilimora to Ahmedabad, some convincing evidence was required and more so, after the judgement and order of this Court, which directed the authorities to look into the matter taking into consideration the contentions raised by the petitioner.

4. The learned Counsel appearing for the petitioner in Special Civil Application No. 1084 of 1986 raised various contentions, which are recorded by the learned Judge of this Court (Coram: S.K. Keshote, J.) [as he then was] in paragraph-3 of the judgement. The same are reproduced for ready reference and also to depict that how casually the authorities have approached the matter:

"3. The learned counsel for the petitioner contended that the respondents have not considered the defence of the petitioner properly. He has not only taken positive defence but also produced documentary and oral evidence in support of his defence that looking to the long distance between Ahmedabad and Bilimora on many occasions he travelled in piece-meal and he had purchased tickets for piece-meal journey, and the certificate of the Railway authorities are of no consequence. It has next been contended by the learned counsel for the petitioner that the delay in serving the charge sheet, i.e. about 3-1/2 years, has seriously prejudiced the case of the petitioner. This plea is taken by the petitioner

specifically in the reply to the charge sheet. It has been further contended by the learned counsel for the petitioner that T.A. bills which are the basis of the charges have not been produced by the department in the inquiry. These are the basic documents and non-production of the same has seriously prejudiced the defence of the petitioner. It has further been contended that none of the officers from the Railways has been examined by the respondents in the departmental inquiry, otherwise the petitioner could have cross-examined those witnesses and he would have been in a position to make out his defence. Lastly the learned counsel for the petitioner contended that the disciplinary authority has not considered the question of quantum of punishment. Taking into consideration all the aspects of the case at least extreme penalty of removal from service is highly excessive and disproportionate to the guilt."

After taking into consideration the aforesaid contentions, the learned Judge also took note of the contentions raised by the learned Counsel appearing for the respondent-authorities and thereafter, gave a specific direction to the authorities to consider the matter afresh. These directions are found in paragraph-5 of the judgement and order, which reads as under:

"5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. It is true that delay in serving the charge sheet in case may not be vital. But in some cases delay may vitiate the charge sheet. Delay has to be considered with reference to the charges levelled against the delinquent and the possible defence taken by him. Some time the defence may depend upon the memory of the delinquent. There may be certain facts which have to be brought on record in defence on the basis of memory. By passage of time it is possible that the delinquent would have not remembered those facts. Memory is not computer which may give accurate information by pressing a button. Here is the case where the petitioner has come up with the defence which cannot be said to be illusory. Looking to the distance between the two stations, i.e. Ahmedabad and Bilimora possibly, he had travelled in piece-meal. It is too difficult to expect from the petitioner to give minute details of his journeys of the dates which are subject matter of inquiry after 3-1/2 years. The petitioner has made specific grievance on this ground. Not only at the initial stage, but also at the stage of show cause notice he raised the same grievance. The disciplinary authority has not considered this aspect of the matter. Not only this, the grievance of the petitioner that the basic documents of the charge, i.e. T.A. bills, have not been produced has also not been considered. I do not find any substance in the contention of the learned counsel for the respondents that the petitioner had not prayed for producing those documents. The respondents should have produced those documents because those are the basic documents on which the charge against the petitioner has been framed."

From the perusal of the aforesaid observations, it is clear that the Court did feel that the production of T.A. Bills was necessary as the same were the basic documents. The Court has also observed that, 'the defence of the petitioner

cannot be said to be illusory." The Court has also said that, 'it is possible that the petitioner might have travelled in piece-meal.' The learned Judge has also taken note of the fact that the petitioner had made a specific grievance on this ground. Not only at the initial stage, but also at the stage of show cause notice, but, for the reasons best known to the disciplinary authorities, it did not consider these aspects of the matter. It is also important to note that the learned Judge was conscious of the fact that if the order of punishment (dated 15.02.1986) is quashed without giving an opportunity of hearing to the authorities to decide the matter afresh, it might cause injustice to the case of the authorities. Therefore, an opportunity was given to the authorities to decide the matter afresh only with a view to see that the cause is not hampered. Despite this, from the impugned order which is passed by the authorities, it is clear that the authorities did not pay any heed to any of the observations or directions given by this Court in its judgement and order dated 27th May, 1996 (in Special Civil Application No. 1084 of 1986).

5. In view of the aforesaid discussion, the only question which remains for the consideration of this Court is, 'as to whether in absence of the basic documents i.e. T.A. Bills, relying upon two letters written by the Railway Station Master, Ahmedabad and Railway Station Master, Bilimora, can it conclusively be held that the petitioner had not travelled from Bilimora to Ahmedabad and from Ahmedabad to Bilimora in First Class".

6. The contention raised by Mr. J.R. Nanavati, learned Senior Counsel for the petitioner, is that in absence of T.A. Bills, he is not able to ascertain and establish that in what particular manner, the journey from Bilimora to Ahmedabad was undertaken. He submitted that even at the time of issuance of the chargesheet, which was after 3 and 1/2 years of the alleged dates, the petitioner could have only stated that he had not made any false claim as he had travelled by First Class. It was never his case that it was a straight journey from Bilimora to Ahmedabad or vice versa, which can be negated by the letters issued by the Station Masters. He submitted that despite an opportunity given to the authorities, the authorities have not produced T.A. Bills and the authorities have not ruled out the possibility of the petitioner having travelled the distance in piece-meals and, therefore, the order under challenge is required to be quashed and set aside.

7. Mr. M.S. Rao, learned AGP for the respondent, strenuously contended that this is a matter where the petitioner is supposed to set an example of high moral values to the teachers, who in turn, are to set an example before the students, who shape the future of the country. He submitted that the matter of lapse/misconduct should be viewed very seriously and the order dated 16th September, 1996 be upheld as the authorities have shown indulgence and have reduced the punishment from removal to compulsory retirement. He submitted that if at all it was the case of the petitioner that he had travelled the distance from Bilimora to Ahmedabad and from Ahmedabad to Bilimora in piece-meal, it is

for the petitioner to prove the same and the authorities cannot prove the said fact in negative. The submissions of Mr. Rao does not find favour with this Court for the simple reason that the authorities have not produced the T.A. Bills and even for non-production of T.A. Bills, no acceptable explanation is coming forth. Mr. Rao, learned AGP, could not convince this Court that it can be conclusively said on the basis of the letters of the Railway Station Master, Ahmedabad and Bilimora that the petitioner had not travelled on a given date in piece-meal in First Class. If that is so, then, this Court has no other alternative than to accept the submissions of Mr.J.R.Nanavati, learned Senior Counsel for the petitioner, and quash the order under challenge in this petition.

8. It is stated in the order under challenge that by virtue of the interim order of this Court in Special Civil Application No. 1084 of 1986, the petitioner had continued in service. Therefore, on quashing of this order, the petitioner will be entitled to receive all the consequential benefits arising from such quashing.

9. In view of the aforesaid discussion, the order under challenge dated 16th September, 1996 cannot be allowed to stand. The same is quashed and set aside. The respondent is directed to treat the order nonest and pay the petitioner all consequential benefits including that of his retirement benefits. Rule is made absolute. No order as to costs.