

(2011) 02 DEL CK 0005

In the Delhi High Court

Case No : Writ Petition (C) No. 8016 of 2010

Vijay Ram Srivastava

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 02 DEL CK 0005

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

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The Petitioner has challenged the order dated 25th August, 2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A No. 131/2010 titled as " Vijay Ram Srivastava v. Union of India and Ors?", dismissing the original application seeking quashing of charge sheet dated 30th September, 2008, the penalty order passed by the disciplinary authority dated 9th October, 2009 and order dated 7st January, 2010 passed by the appellate authority and transfer order dated 26th November, 2008 transferring the Petitioner to the Lucknow division and the major penalty imposed on the Petitioner reducing his pay with cumulative effect from Rs. 17,290/- in the grade of Rs. 9300-34800+4200 to Rs. 5200/- in the grade of Rs. 5200-20,200/- up to his retirement.

2. Brief facts relevant for adjudication of the disputes between the parties are that the applicant was on duty as Hd/YYE/L/DEE, on 29th November 2007 in Train No. 4033 Express PNP to LDH, and was manning the Coach No. A/1, B/1 & B/2. A preventive check was conducted by a team of H/Vig., Railway Board. Thereafter, on conducting the checking a major penalty charge sheet dated 30th September, 2008 was issued against the Petitioner on the charges that he was responsible for carrying two irregular passengers one in 3 AC and another in 2

AC for his personal gain and that he was also responsible for having Rs. 40/- excess in Government cash. The day chargesheet was issued to the Petitioner he was also debarred from cash handling duties and was grounded till the finalization of the D&AR case.

3. The Petitioner submitted a reply dated 6th November, 2008 to the charge sheet explaining that both the charges are false and baseless and that he has not committed any misconduct. According to the Petitioner on 29th November 2007 when he was posted in train No. 4033 between Delhi and Ludhiana, he checked coaches A1 and B1 and no extra passenger was found. He had checked B2 coach and had prepared an Extra Fare Ticket (EFT) for a sum of Rs. 3930/-. The Petitioner contended that the first Extra Fare Ticket was prepared for Rs. 360/- bearing EFT No. 000568 for which passenger gave Rs. 400/- and as he was not having Rs. 40/- for returning the balance amount. Therefore, he made a remark "balance Rs. 40/-" on the backside of the Extra Fare Ticket and returned the same to the passenger at the Ambala Railway Station and in the circumstances he did not have any excess money of Rs. 40/-.

4. Regarding the allegation of carrying the extra passenger, the Petitioner contended that one passenger namely Sh. Mahtab Singh had confirmed reservation ticket of coach No. S-2, berth No. 2, however, he by mistake entered into the AC coach when the train started from the platform and the Checking Inspector had directed the Petitioner to prepare the Extra Fare Ticket for him and charged the money from the passenger by threatening him. According to the Petitioner it is an admitted fact that Sh. Dharmender Kumar charged Rs. 200/- from the said passenger for which he had already been issued a major penalty charge sheet.

5. An enquiry officer was appointed who, after completion of inquiry in his report dated 22nd September 2009, held that the two charges stood proved against the applicant. A copy of the inquiry report was given to the Petitioner for his comments. Meanwhile the Petitioner had filed an original application being O.A No. 752/2009 against the order of grounding and debarring him from cash handling duties which was disposed of with a direction to the Respondents to complete the disciplinary proceedings, and also granted stay against the operation of order dated 30th September, 2008.

6. After conducting the enquiry both the charges made against the Petitioner of carrying two irregular passengers for personal gain and possessing extra Government cash were established and the disciplinary authority agreeing with the findings of the enquiry officer awarded the punishment of reduction of pay scale of the Petitioner with cumulative effect by order dated 9th October, 2009. The applicant then filed an appeal against the order of the disciplinary authority by appeal dated 28th October 2009. The appeal filed by the Petitioner was also decided by the appellate authority after giving him a personal hearing by communication dated 7th January, 2010, wherein the appellate authority upheld the punishment imposed by the Disciplinary Authority. Aggrieved by the order of

the appellate authority, the applicant filed an original application, before the Central Administrative Tribunal, being OA No. 131/2010 on 5th August 2010.

7. The Petitioner had challenged the various orders passed against him inter-alia on the grounds that the disciplinary authority as well as enquiry officer had not acted independently and had passed the order under pressure on the directions of the vigilance department; that the relevant documents that is the passenger statement was not supplied due to pressure of the vigilance department and it could not be withheld on the ground that it had not been cited as a document; that since Sh. Dharmender Singh had admitted the fact of accepting the money from the passenger and had been penalized for the same, the Petitioner could not be penalized for it; that the charge sheet was vague and not specific; that except for the complainant there was no evidence on record and that the enquiry officer had failed to consider certain relevant evidence in favor of the applicant; that the punishment imposed on the Petitioner was harsh and did not commensurate with his alleged misconduct and according to the circular of the Respondents having cash up to Rs. 100/- short or excess by the persons dealing with the cash, is not a misconduct.

8. The Tribunal noticed the pleas and contentions raised by the Respondents that the applicant had not deliberately joined at the Lucknow division and remained absent from duty from 11th November, 2009 without any interim order which amounted to a grave misconduct and he was asked to comply with the transfer order dated 26th November, 2008 but he rather filed the original application No. 131/2010 challenging the penalty imposed against him and his transfer order. The Tribunal while considering the pleas and contentions of the Petitioner had held that the Tribunal does not have to reappreciate the evidence especially as the Petitioner had failed to point out any perversity or illegality in the order of the disciplinary authority and the appellate authority. It has also been noted that two passengers without proper tickets were found during vigilance checking, one in A1 coach and the other in B1 coach and an amount of Rs. 40/- in excess in the Government cash was also detected. Since the Petitioner had not made any entry in the record that the excess amount had to be returned to a passenger consequently the plea raised by the Petitioner was not accepted. In the circumstances, it has been held that it is not a case of no evidence and on the basis of the evidence a probable conclusion could be reached by the disciplinary and appellate authority against the Petitioner which is not to be substituted by the Tribunal with its own inferences.

9. Perusing the disciplinary and appellate authority orders it has also been held that the orders are reasoned orders and the plea of the Petitioner that the authorities had passed cryptic orders was repelled. Relying on *Union of India v. B.K. Srivastava*, 1998 (1) ATJ 166 Tribunal has also held that on the findings of facts which are based on evidence there is no scope for the Tribunal to interfere as an appellate authority and to reappreciate the whole evidence. The Tribunal has also held that the chargesheet was issued to the Petitioner on the basis of

the report of the vigilance team which had conducted preventive checking and pursuant to chargesheet filed opportunity was given to the Petitioner to defend himself and on the basis of the enquiry report the disciplinary authority after agreeing with the same had imposed the punishment which cannot be termed disproportionate to the misconduct on the part of the Petitioner. In the circumstances it was held that there is no illegality or infirmity in the conduct of the departmental enquiry or the process by which the disciplinary authority and the appellate authority arrived at their decision and imposed the punishment on the Petitioner.

10. The Tribunal has specifically noted that there were no averments made by the Petitioner that the enquiry was not conducted properly or that no opportunity was given to the Petitioner to defend himself. Regarding the plea of the Petitioner that the copy of the passenger statement was not supplied the Tribunal noted that the statement of the passenger was not relied on by the enquiry officer. The pleas of the Petitioner that Sh. Dharmender Singh had admitted of having accepted the money and that the case of the Petitioner was of no evidence and the chargesheet being vague and not specific was also repelled as the charges could not be considered to be vague and Sh. Dharmender Singh also having taken the money from a passenger which was in the coach which was under the Petitioner cannot absolve the Petitioner of the misconduct on his part of carrying an illegal passenger. Regarding the circular under which having extra money or less money upto Rs. 100/- was held to be not applicable as it is not applicable in cases of irregular working of staff/vigilance/corruption matters.

11. We have heard the learned Counsel for the parties and have also perused the record of the disciplinary proceedings. Petitioner has contended that the transfer order dated 26th November, 2008 is also without any basis and he has relied on the grounds taken by him in the original application bearing O.A No. 131/2010 and pleaded that the pleas and contentions taken in the original application be also treated as part and parcel of the present petition. Perusal of orders of punishment passed by the disciplinary authority and the appellate authority reveal that they have considered the pleas and contentions and have passed reasoned orders. This Court while exercising its writ jurisdiction does not have to reverse a finding of the enquiry authority on the ground that the evidence adduced before it was not sufficient and probable inferences as has been drawn could not be drawn.

12. This Court, however, on perusal of some of the relevant evidence is of the view that the findings of the enquiry officer are plausible and the conclusion of the enquiry officer cannot be termed to be perverse or based on no evidence. The learned Counsel for the Petitioner has not pointed out any evidence which has not been considered or ignored by the enquiry officer which would have led to different inferences. In any case the enquiry officer is the sole judge of the facts so long as there is cogent and legal evidence to substantiate the findings. No such inadequacy in the evidence has been pointed out which will lead to

different inferences.

13. Regarding non supply of the statement of the passenger, it is apparent the same has not been relied on by the enquiry officer and in the circumstances non supply of the copy of the statement of the passenger would not prejudice the case of the Petitioner and to that extent we agree with the findings of the Tribunal. The learned Counsel for the Petitioner has not denied that on the basis of the charges made against the Petitioner if established, the major punishment of dismissal or termination could have been imposed by the Respondents. The penalty of reduction in the pay of the Petitioner, therefore, is a lenient punishment and cannot be termed to be disproportionate to the charges established against the Petitioner. In the circumstances, this Court is also of the view that the punishment imposed on the Petitioner is not disproportionate to the misconduct established against him.

14. No other point has been raised by the learned Counsel for the Petitioner. This Court has also perused the record of the enquiry especially evidence and documents. In the totality of the facts and circumstances the learned Counsel for the Petitioner has failed to make out any such grounds which will entail any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. There is no illegality or perversity in the orders challenged by the Petitioners. The writ petition in the facts and circumstances is without any merit and it is, therefore, dismissed. Considering the facts and circumstances, the parties are also left to bear their own costs.