

Union of India and anr. Vs. Shri Sanjay Kumar Yadav

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Court : Delhi

Decided On : Sep-03-2013

Judge : Najmi Waziri

Appellant : Union of India and anr.

Respondent : Shri Sanjay Kumar Yadav

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on:

3. d September, 2013 + WP(C) NO. 5530 OF 201.& CAV 763/2013 and CM 1230607/2013 UNION OF INDIA & ANR. Petitioners Through: Mr.Abhishek Yadav with Mr.Kumar Dushyant Singh, Advocates. versus SHRI SANJAY KUMAR YADAV Respondent Through: Mr.Sanjeev Bhandari, Advocate. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE NAJMI WAZIRI % MR. JUSTICE NAJMI WAZIRI (Oral) CM No.12307/2013 Allowed, subject to all just exceptions. WP(C) No.5530/2013 & CM 12306/2013 (stay) 1. This Petition arises from the order of Central Administrative Tribunal, Principal Bench, New Delhi (Tribunal) in OA No.475 of 2011, whereby the order by the Disciplinary Authority, dated 22nd August, 2008 imposing a penalty of reduction to lower stage in the same time scale against the respondent herein was quashed and consequential WP(C) No.5530/2013 Page 1 benefits to him were restored. The petitioners were directed to refund the amount recovered from the respondent pursuant to the penalty order, which was impugned before Tribunal.

2. The facts of the case are that the respondent had been working as a Head Ticket Collector/Junior Inspector Tickets with the Northern Railways while he was posted at Haridwar. He was required to check two coaches namely S-4 and S-5 of train No.4266DN on 3rd October, 2006, which were to be attached from Haridwar. He started checking the passengers when the train left Haridwar. During the course of his duties, after about 20-25 minutes, a vigilance team entered the two coaches namely S-4 and S-5, when the train stopped at the next station Luxor (sic: Laksar), which is approximately 28 kms from Haridwar.

3. At Laksar, three attendants of a marriage party were found to have entered coach S-5 for having dinner with/from the leader of the marriage party, which party had confirmed reservation in the said coaches. These three persons held a valid IInd Class M/E tickets to travel in general coaches. However, since they were in reserved coaches without regular reservation, they were imposed with sleeper WP(C) No.5530/2013 Page 2 coach charges and penalty from Hardwar to Lucknow by the vigilance inspectors. There were no vacant berths available for allotment in the coach in which they were found. A child accompanying his parents was also booked accordingly while deeming him to be an adult. A memo dated 7th March, 2007 was issued against the respondent for major penalty proceedings under the following charges: A preventive check was conducted in train no.4266 Dn on 03.10.2006 between LRJ to NBD. During check, he is held responsible for carrying four irregular passengers having 2nd Class M/Exp. Tickets in his manned coaches not S-4 and S-5 who were got penalized by the vigilance and realized Rs.1,394/vide EFT No.736133 and 736134 dated 03.10.2006. It clearly shows his mala fide intention for personal gain. By the above act of omission and commission Sri Sanjay Kumar Yadav, STE/HW failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a railway servant, thereby contravened the provision of Rule No.3-1(i), (ii) & (iii) of Railway Services Conduct Rules 1966.

4. A copy of the Inquiry Report was served upon the respondent and he was accorded an opportunity to make a representation against the same before the disciplinary authority. A representation was made to WP(C) No.5530/2013 Page 3 the latter who, after taking into account the representation dated 26th May, 2008

and the personal hearing given to the respondent on 18th June, 2008, imposed upon the respondent a penalty of reduction to a lower stage in the same time scale, from Rs. 5,600/- to Rs. 5,000/- and for a period of three years. Against this order, an appeal was preferred before the Appellate Authority, in which the following order was passed, which inter alia reads as under:i.

5. Considering your defense that the running time between HW and LRJ is too short to check two sleeper coaches thoroughly and also considering the fact that no excess money was found in cash (Govt. as well as personal) from you and taking a lenient view I reduce the punishment to three stages in the same time scale to Rs.5150/- for a period of three years with cumulative effect. An application for review of the aforesaid order was rejected on 16th April, 2009 by the following reasoning: I have carefully considered your above appeal and complete case. You have been correctly punished against the charges levelled against you, which the appellate officer on your appeal after sympathy consideration made the correct decision by reducing your punishment. Apart this you have made allegation on appellate officer that he had not completely considered your appeal and that you are not held responsible for taking WP(C) No.5530/2013 Page 4 illegal passengers inside the coach, which is not correct and considered as wrong. Whereas the appellate officer had reduced your punishment. On the basis of above consideration, the review petition is dismissed.

6. An OA was preferred against the orders dated 22nd August, 2008, 23rd December, 2008 and 16th April, 2009, which were subsequently quashed by the Tribunal vide its order impugned in the present petition. The respondent had argued before the Tribunal: (a) that he was not allowed to produce the defence witness particularly Sh. C. S. Khosla, who was the leader of the marriage party and who had also alleged harassment at the hands of the vigilance team and had requested for refund of the excess payment charged from his team; (b) that the three passengers holding valid IInd Class tickets had indeed been travelling in the general coach and had come to the coach S-5 merely to take their dinner and were due to return to their compartment; (c) the charges in the enquiry report were not corroborated by any independent witness though there was a coach attendant and an A/C technician; (d) that all the berths in the said coaches were already

reserved, and no excess cash was found on the person of the respondent, and therefore, there could have been no WP(C) No.5530/2013 Page 5 basis for any allegation of illegal gratification by carrying irregular passenger; (e) the vigilance check was contrary to the vigilance manual; (f) the inquiry officer had proceeded on the presumption that the charges had already been proved.

7. The respondent had further contended in particular that the charge of carrying of irregular passengers can only be established by three factors i.e. (i) pre-meeting with the passengers, (ii) actual carrying and, (iii) monetary transaction. The respondent had also contended that in the inquiry report, none of these had been established. On the contrary, no excess cash (Government as well as personal) was found on the person of the respondent.

8. After recording the materials and submissions, the Tribunal quashed the order dated 22nd August, 2008 and set aside the penalty. The Tribunal concluded as under: The essence of the charge levelled against the applicant has been that he is responsible for carrying irregular passengers in the manned coaches with mala fide intention for personal gains. In his written defence, the applicant has, inter alia, stated that carrying can only be established by three factors, i.e. (1) pre-meeting with the passengers; (2) actual carrying; and (3) monetary transaction. In this case, nothing of this sort has happened. The charges were proved by the submission of two witnesses. The WP(C) No.5530/2013 Page 6 members of vigilance team and AFT issued by the applicant while charging three and half passengers. The checking of two coaches under the charge of the applicant was not completed when the vigilance team intercepted. Even after checking any one can otherwise enter from vestibule. Since no vacant berth was available there in two coaches and no cash was found with the applicant, the question of carrying irregular passengers mala fide for personal gain does not arise. In these circumstances, the charges levelled against the applicant cannot be sustained for their being no evidence.

9. Aggrieved by the said order, the writ petitioners contended that the impugned order be quashed on the grounds (a) that the respondent was negligent with mala fide intention and lacked devotion towards his work in having granted permission

to passengers for travelling irregularly in the coaches which were under his supervision; (b) that the scope of judicial review in respect of disciplinary proceedings is limited and the Tribunal ought to have been slow to appreciate the evidence, since they did not have the complete record of the case; (c) that the findings in the inquiry report conclusively established misconduct on the part of the respondent who had despite according him numerous occasions to produce evidence failed to do so; (d) the detention of three and a half passengers travelling in reserved sleeper WP(C) No.5530/2013 Page 7 coach established lack of devotion to duty and acting in a manner unbecoming of a railway servant; (e) that the respondent was unable to establish the fact about his defence witness Sh. C. S. Khosla travelling in the said coach on the date of vigilance check, and therefore, there was no relevance of the his being summoned as a defence witness.

10. Learned counsel for the petitioner also submitted that seeking to summon the said witness was only dilatory tactic adopted by the respondent with a motive to defeat an early conclusion of the enquiry and that the inquiry officer had rightly refused to summon the said person for recording of his evidence. That preponderance of probability and not proof beyond reasonable doubt is required to be established with respect to the guilt and misconduct of the respondent which had been duly established, in so far as he had not checked the two coaches assigned to him.

11. This Court has considered the facts of the case, the records, as well as the submissions on behalf of the petitioners and is of the opinion that insofar as the respondent had been denied the opportunity to lead his defence evidence, primarily through Sh. C. S. Khosla who was the WP(C) No.5530/2013 Page 8 leader of the marriage party in coach S-4, there was denial of natural justice to him. It would have always been open to the Inquiry Officer to determine whether the evidence of Mr. C. S. Khosla, when so recorded, was relevant or not. However, having precluded the defence from doing so had vitiated the entire proceedings for lack of fairness. The Tribunal has rightly noted that there were no vacant seats in the coach concerned which could have been allotted to any person desirous of having it allotted, and in any case, no excess money was found in cash (Government as well as personal) on the person of the Ticket Inspector

concerned.

12. Furthermore, the Tribunal gave due consideration to the fact that ordinarily, checking one coach takes about 45 minutes and thus logically the 20-25 minutes travelling time between Haridwar and Laksar was insufficient for the respondent to have completed his assigned duty of checking the two coaches. Even assuming that he had or could have completed checking of the two coaches S-4 and S-5 by the time the train reached to Laksar station, it was always possible for somebody without reservation to have entered the same coach through the vestibule connecting the coaches. It would have been WP(C) No.5530/2013 Page 9 physically impossible for the Ticket Inspector to keep a hawk's eye on both the coaches simultaneously.

13. This Court finds no infirmity in the order and reasoning of the Tribunal and no reason to interfere with it. The submissions of the petitioners are largely fact based, and on this the Court is of the view that given the scope of limited jurisdiction to re-appreciate findings of fact under Article 226 of the Constitution, the substitution of such finding is not warranted. The writ petition is without any merit and is accordingly dismissed. S. RAVINDRA BHAT, J (JUDGE) NAJMI WAZIRI, J (JUDGE) SEPTEMBER 3 2013 RN WP(C) No.5530/2013 Page 10

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