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Court : Central Administrative Tribunal CAT Mumbai

Decided On : Mar-05-2013

Judge : A.K. Basheer, Member (J) &Amp; the Honourable Mr. R.C. Joshi, Member (a)

Appeal No. : O.A.No. 222 of 2008

Appellant : Gopal Singh

Respondent : The Union of India, Through the General Manager Cst, Mumbai and Others

Judgement :

A.K. Basheer, Member (J)

1. Applicant while he was working as Senior Publicity Inspector at Solapur under the Central Railway had faced disciplinary proceedings under Rule 9 of the Railway Servant's (Disciplinary and Appeal) Rules 1968 on a charge that he had demanded and accepted illegal gratification of Rs.800/-from one Y.K.Magar who had been permitted to install a Glow Sign Board near the exit gate of platform Nos.2/3 in Daund Railway Station. The gravamen of the charge was that the applicant in his capacity as Publicity Inspector had met the licensee Shri Y.K.Magar, (owner of Hotel Yogiraj) and informed him that he was liable to pay

charges for both sides of the Glow Sign Board even though the Railway Administration had been collecting license fee only for one side. According to the licensee he was forced to pay Rs.1,200/to the applicant in order to settle the issue and escape from the liability to pay the alleged arrears of license fee for the previous three years. Even thereafter the applicant continued to harass the licensee demanding a further sum of Rs. 1000/-.

2. Ultimately the licensee approached the Vigilance Department and lodged a complaint pursuant to which on October 6, 2005 a trap was laid. The licensee was asked to make a telephone call to the applicant on his mobile in the presence of a witness Mr Gawali who was working as a Junior Clerk in the Office of Divisional MedicalOfficer. After the negotiation, it was agreed that the licensee would pay Rs. 800/-to the applicant as demanded by him. Eleven hundred rupee notes, numbers of which were pre-recorded, were handed over to the Licensee to be paid to the applicant at his office in the presence of the witness (Mr.Gawali). The Licensee and the witness went to the office of the Applicant in the afternoon on that day. The amount of Rs.800/-was accepted by the applicant in the presence of witness and it was kept in the drawer on the right hand side of his table. Immediately after the licensee and the witness left the office room, the Vigilance Party entered the office and recovered the amount in the presence of Assistant Commercial Manager Shri B.L.Kori. Charge Sheet was laid against the applicant thereafter.

3. The Enquiry Officer found that the charge leveled against the applicant had been duly established. The disciplinary authority accepted the above finding and passed an order of removal from service with 2/3rd of pension and gratuity towards Compassionate Allowance as provided under Rule 65 of the Railway Servant's (Pension Rules) 1993. A copy of the said order passed by the Disciplinary authority is on record as Annexure A.1. Later, the Appellate Authority by Annexure A.2 order confirmed the order passed by the Disciplinary Authority. The Revision Petition filed against the above two orders also ended with the same fate. These three orders passed by the Disciplinary, Appellate and Revisionary Authorities are under challenge in this Original Application.

4. It is vehemently contended by Shri Marne, who appears for the applicant that the impugned orders are ex facie illegal, arbitrary and vitiated. According to the learned counsel, the entire disciplinary proceeding was vitiated in the eye of law. He contends that the finding entered by the Enquiry Officer was based on uncorroborated evidence which under any circumstances could not have been relied upon.

5. Per contra it is submitted by learned counsel for the respondents that the disciplinary enquiry was conducted in a proper and legal manner and in due compliance of the Rules of Procedure and the applicant was afforded ample opportunity to defend himself at every stage. Therefore, it is idle for the applicant to allege that the enquiry was conducted in an illegal and irregular manner.

6. We have carefully perused the entire materials available on record. We have also gone through the Original enquiry file carefully and heard the learned counsel for the parties at length.

7. The Enquiry Officer in his Annexure A.7 report has elaborately dealt with every material piece of evidence that was produced by the prosecution. Six witnesses were examined in the Enquiry. P.W.1 was the complainant and P.W.2, the independent witness in whose presence the complainant had made the phone call to the applicant on his mobile as instructed by the Vigilance. According to the P.W.2, he had heard the conversation between the complainant (P.W.1) and the applicant on a parallel line in a Public Call Office. In the said conversation the amount payable as bribe was fixed after due negotiation between the applicant and the complainant. P.W.1 had lodged Ext. P.1 and P.2 complaints dated September 18, and October 16, 2005 respectively before the Vigilance. The trap was laid thereafter and the complainant was handed over eleven hundred rupee currency notes, (the numbers of these notes were duly recorded separately). P.W.2, the independent witness was instructed to accompany the complainant to the office of the applicant. The deposition of P.W.2 will show that the applicant had accepted the bribe from the complainant and put it in the drawer on the right side of his table. As soon as he came out of the office of the applicant along with P.W.1, a signal was given as instructed. The Vigilance Team consisting of three

officers (P.W.4 to 6), along with Assistant Commercial Manager in the Central Railway entered the cabin of the applicant and recovered the amount of Rs.800/- from the drawer of his table.

8. We do not propose to deal with the evidence on record elaborately. However, the Assistant Commercial manager who was examined as P.W.3 had categorically stated in his deposition that the amount was recovered from the drawer in his presence. The assertion made by this witness in his oral testimony was not challenged by the Defence Assistant in his cross-examination at all. There was not even a suggestion to the contra. Still further, P.W.3 had also stated that he had signed in the Cash Recovery Memo (Ext.P.7) which was prepared immediately after recovery of the amount from the drawer of the table. He also confirmed his signature in Ext.P9 statement given by him at that time. Similarly the evidence of P.W. 4 to 6 Vigilance Officers will clinchingly show that the entire trap was successfully executed.

9. The primary contention raised by the applicant is that the evidence of the complainant (P.W.1) could not have been relied upon since he was not available for cross-examination by the Defence Assistant. It is true that immediately after the chief-examination of this witness was over, he had left the place of enquiry on receipt of a phone call from somebody and therefore he could not be cross examined by the Defence Assistant. This fact is not in dispute. It is also not in controversy that the complainant did not appear before the Eqnuiry Officer thereafter, even though the applicant had made a request before the Enquiry officer to summon him again. It is seen recorded by the Enquiry Officer that P.W.1 had informed him while leaving the place on that day that he would not be able to attend the enquiry thereafter. The enquiry Officer however noticed that in Chief Examination, P.W.1 had categorically stated that he stood by what all he had stated in Ext. P.1 and P.2 complaints. He admitted his signature in Ext. P.5 and P.6 and also the statement given by him in Ext. P.9 and P.10. In answer to a question in Chief-Examination, P..W.1 asserted that he still maintained that the contents of the above documents were correct. Learned counsel for the applicant submits that the so-called evidence tendered by P.W.1 would not come to the aid of the prosecution in any manner. He contends that if the evidence of the

complainant is thus eschewed, the prosecution case will lose its foundation We are unable to agree.

10. We have carefully perused Ext. P.1 and P.2 complaints, the contents of which were admitted by P.W.1 in his Chief Examination. Apart from these complaints P.W. 1 was also a party to Ext. P.2, P.5, P.6, P.9 and P.10. Ext. P.5 (Trap Check Memo) was prepared by the Vigilance Team in the presence of P.W.1 and P.W.2. The bribe amount was handed over to the complainant (P.W.1) after recording the Numbers and P.W.2 was instructed to witness acceptance of the illegal gratification by the Delinquent Officer. He was further instructed that if the delinquent Officer enquired about the reason for his presence in his office along with P.W.1 he would tell the delinquent that he wanted to know the procedure to display the advertisement Boards. From Exh. P.6 (TCM.2) it could be seen that the Delinquent accepted the illegal gratification of Rs. 800 from the complainant and kept the same in the drawer of the table as stated by P.W.1 and P.W.2. The statement of P.W.1 in Ext. P.10 will also show that as instructed by the Vigilance Team, the money was handed over by him to the applicant who accepted and kept the same in the drawer of his table.

11. As has been noticed already P.W.1 had admitted his signature in Ext. P.1 and P.2 complaints as well as in Ext. P.5, P.6 and P.10. The evidence of P.W.2 the independent witness which is more crucial, will unambiguously show that Ext.P.5 and P.6 were prepared by the Vigilance Team in his presence. He had accompanied P.W.1 to the Office of the applicant. He had seen the delinquent accepting the bribe from the complainant and putting it in the drawer of his table. Recovery of the Notes was effected by the Vigilance Team in the presence of P.W.3, the Assistant Commercial Manager under Ext. P.7 Cash Recovery Memo. Therefore, in our view the non- availability of P.W.1 for cross-examination did not in any way cause any prejudice to the applicant in the peculiar facts and circumstances of this case.

12. In this context it is pertinent to note that the case of the applicant before the Enquiry Officer was that P.W.1 had forcibly put the money in the drawer of his table. This suggestion is seen to have been made by the applicant while cross-

examining P.W.2 and P.W.4. also. Significantly in the defence brief (Ext. P.6) submitted before the Enquiry Officer also, the applicant is seen to have reiterated this case while contending that he had neither demanded nor accepted the bribe from P.W.1. This defence will establish the prosecution case that eight hundred rupee notes (numbers of which were pre-recorded by the Vigilance Team) were recovered from the applicant. If we examine Ext. P.1 and P.2 complaints lodged by P.W.1 before the Vigilance Department and also Ext. P.5 and P.6 Trap Check Memos prepared by the Vigilance Team in the backdrop of this admission made by the applicant that money was in fact recovered from the drawer of his table, there can be no iota of doubt that the prosecution had satisfactorily proved its case. More importantly P.W.3, the Assistant Commercial Manager was a witness to the recovery of the money from the possession of the applicant. As has been mentioned earlier, the deposition of this witness was never challenged by the applicant in cross-examination.

13. It is also pertinent to note that no defence evidence was adduced by the applicant before the Enquiry Officer even though he had contended that P.W.2 could not have heard the conversation between him and P.W.1 through a parallel line from public call office since such a line was not available in that Public Call Booth. The evidence of P.W.2 along with Ext. P.5 as well as the evidence of P.W.4 to 6 has clearly established the case of the prosecution. The assertion made by the Vigilance Officers that there was a parallel line in the Public Call Booth in question was not successfully challenged or disproved by the defence.

14. Learned counsel for the applicant has invited our attention to the decision in Kuldeep Singh vs. Commissioner of Police and Ors. (1999) 2 SCC 10 in support of his argument that the punishment imposed on the applicant is liable to be set aside as finding of guilt was entered against him on the basis of no evidence at all. We have carefully gone through the above judgement. In our view, this judgement will not come to the rescue of the applicant in any manner. It was noticed by their Lordships in the above judgement that the complainant who allegedly made the payment to the delinquent employee (appellant) had categorically stated before the Enquiry Officer that he had not made any such payment. Similarly the other allegation that the appellant had paid only Rs. 800 to the three labourers and

retained the balance amount of Rs.200 with him was not established in any manner in the enquiry in asmuch as the three labourers were not examined by the Enquiry Officer. In spite of this lacuna, the Enquiry Officer had held that the charge against the appellant had been proved. The apex court held that the appellant could not have been found guilty of the charge leveled against him on the basis of the above evidence which was "no evidence at all".

15. In the case in hand, it has already been noticed that the applicant himself had admitted that the bribe amount was recovered from the drawer of his table. But his contention was that it was forcibly thrust in the drawer by the complainant. The evidence on record clearly established that bribe was demanded and accepted by the applicant. In that view of the matter, we have no hesitation to hold that the applicant has been found guilty on the basis of satisfactory evidence adduced against him.

16. Learned counsel for the applicant has also raised a contention that the alleged trap was not laid by the respondents as mandated in paragraph 705 of the Railway Manual (IREM). We have carefully perused the rule referred to above. In our view the contention of the learned counsel for the applicant cannot be sustained in the peculiar facts and circumstances of the case particularly, for the foregoing reasons stated by us.

17. Having carefully gone through the entire materials, particularly the Original Enquiry file and also having considered the various contentions raised by the learned counsel for the applicant we do not find any infirmity in the findings entered by the Enquiry Officer. In our view, Annexure A.1 to A.3 orders are eminently justified in the facts and circumstances of the case. There is no merit in any of the contentions raised by the applicant. No interference is warranted with these orders under any circumstances.

18. The original application fails and it is accordingly dismissed. Parties are directed to bear their respective costs.