

Union of India and Anr Vs. Shiv Kumar

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Court : Delhi

Decided On : Mar-04-2015

Judge : Kailash Gambhir

Appellant : Union of India and Anr

Respondent : Shiv Kumar

Advocate for Pet/Ap. : Ms. Rashmi Malhotra, Ms. Priyanka Bharihoke

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 5322/2014 UNION OF INDIA AND ANR Petitioners Through: Ms. Rashmi Malhotra, Ms. Priyanka Bharihoke, Advocates Versus SHIV KUMAR Respondent Through: None. CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MR. JUSTICE I.S. MEHTA

ORDER

0403.2015 % KAILASH GAMBHIR, J.

(ORAL) 1. By this petition filed under Articles 226 and 227 of the Constitution of India, petitioners seek to challenge the order dated 25.03.2014 passed by learned Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.3642/2012.

2. Addressing arguments to assail the impugned order Ms. Rashmi Malhotra, the learned counsel for the petitioners submits that the two passengers were found

travelling in Train No.2423, having boarded from Patna and were subjected to vigilance check by vigilance team between Ghaziabad and New Delhi. During checking they were found to be travelling without ticket. The respondent never lodged any complaint against them till the vigilance team could apprehend them between Ghaziabad to New Delhi Station. Counsel also submits that the learned Tribunal has gone wrong in observing that there was no malafide on the part of the respondent and it was a case of sheer negligence on his part. Counsel also submits that it was the duty of the respondent to have properly carried out the checking of the passengers to find out that no passenger is travelling without ticket.

3. We have heard the submissions made on behalf of the petitioner.

4. It is a settled legal position that generally the findings recorded by the inquiry officer shall not be interfered with, however, this would not mean that the Court will not interfere with in those cases where the order of the Inquiry Officer is inconsistent with the rules of natural justice or where the order is in violation of statutory rules prescribing the mode of inquiry or where the conclusions/findings reached by him are based on lack of evidence. The Supreme Court in *Kuldeep Singh v. The Commissioner of Police & Ors.*, (1999) 2 SCC10 held:

6..... The power of judicial review available to the High Courts as also to this Court under the Constitution takes in its stride the domestic inquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority.

5. In *State of Andhra Pradesh v. Sree Ram Rao* (1964) IILLJ150SC the question was whether the High Court, under Article 226 could interfere with the findings recorded by the Inquiry officer, the Supreme Court held that the findings, recorded in a domestic inquiry, can be characterized as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. .

6. In the present case, following charges were levelled against the respondent by memorandum dated 06.09.2004 issued under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968:

That the said Shri Shiv Kumar TS. JIT. DEE, N.Rly. while working as such on 25.11.2003 in train No.2423 was subjected to vigilance check between GZB, NDLS and he was detected to have committed a serious irregularity in as much as: During the check it was detected that two passengers were found travelling in berth No.25, 26 of A/2 without having any ticket. But he neither charged them nor handed over to the GRP for further action despite repeated request by the Vigilance. As such he failed to recover the railway dues amounting to Rs.11200/- from the passengers and caused loss to the Railway revenue. Hence Shri Kumar JIT DEE was responsible for the above gross irregularity.

7. The inquiry officer submitted the inquiry report taking a view that the charges against the respondent were proved. However, the disciplinary authority took a different view. Based on the evidence adduced before the Inquiry Officer, the disciplinary authority reached to the conclusion that the respondent had made all possible efforts to collect railway dues from the said two passengers but they refused to pay. Disciplinary authority also observed that the vigilance team headed by Shri Dev Muni, was present before the Station Manager (Commercial), where the two ticketless travellers were brought. In the meantime, two members of the Parliament came to the office of the Station Manager (Commercial) and spoke to the Vigilance Officer and explained that both the travellers were their companions. The Disciplinary Authority has also considered the copy of the memo given by the Members of Parliament in that regard and the statements of the defence witness that it was the applicant who informed the Vigilance Inspector about the two passengers in the AC two Tier, who had refused to pay the railway dues. Therefore, the Disciplinary Authority rightly came to the conclusion that it was not at the instance of the Vigilance Inspector that the ticketless travellers were found but at the instance of the respondent. The Disciplinary Authority also found that no evidence has been placed on record to prove malafide on the part of the respondent.

8. In such circumstances we do not find it appropriate to uphold the decision of the Inquiry officer, especially when first of all nothing has been placed on record to show any malafide intention of the respondent and secondly when evidence themselves prove that it was at the instance of the respondent that the ticketless travellers were found. We are quite anguish to find that the person who had informed the Vigilance Inspector about the unauthorised travel by two passengers in AC Two Tiers was only sought to be blamed for having permitting the said two passengers unauthorizedly in the said train. We can understand how difficult would it have been for the respondent to lodge a complaint with the Vigilance against the said travellers had those two members of Parliament not complained. In the present case, even after the respondent showed the courage to lodge a complaint, the petitioner instead of taking action against the member of Parliament and their companions, unauthorisedly, caught hold of the respondent for no fault. We fail to understand that in such like cases, the Government come forward to challenge the order, which in any case cannot be appreciated. Finding no merit in the present petition filed by the petitioner, the same is hereby dismissed. KAILASH GAMBHIR, J.

I.S. MEHTA, J.

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