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**Devpal Singh Meena and Ors. Vs. Union of India and Ors.**

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**Court** : Delhi

**Decided On :** May-13-2015

**Judge** : Pratibha Rani

**Appellant** : Devpal Singh Meena and Ors.

**Respondent** : Union of India and Ors.

**Judgement** :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on: April 29, 2015 Judgment Delivered on: May 13, 2015 % + W.P.(C) 7643/2014 DEVPAL SINGH MEENA & ORS Represented by: versus UNION OF INDIA & ORS Represented by: ..... Petitioners Ms.Saahila Lamba, Ms.Karuna Chhatwal and Ms.Kritika Seth, Advocates. ..... Respondents Mr.J.K.Singh, Advocates. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE PRATIBHA RANI PRATIBHA RANI, J.

1. Relevant facts necessary to be noted for adjudication of the present petition are that in the month of October, 2010 the petitioners, working on the posts of Assistant Sub-Inspector/Head Constable/Constable in Railway Protection Force (hereinafter referred to as the RPF), were posted at Outpost Narwana, RPF.

2. On November 1, 2010, the department issued a charge sheet to the petitioners and thus initiated the disciplinary inquiry under Rule 153 of RPF Rules, 1987. We note that one charge, identically worded, was framed against all the petitioners.

3. The charge framed against petitioner No.1, Dev Pal Singh Meena, reads as under:

Shri Dev Pal Meena ASI/RPF was issued charge sheet u/r 153 of RPF Rules 1987 vide No.9-DAR/153/102/2010 dated 19.11.2010 for the following charges:- He is accused for making false statement with the intention to misguide the Department and also to conceal material facts and the real crime. When he was posted as ASI at RPF Post Chowk, Narvana, Jind, on 17.10.2010, he stopped by at Tohana to Gaya load KM No.166/4, for 15 minutes. About 50 numbers of white sacks was found there however, even after recovering the said sacks no enquiry or investigation was conducted nor did he inform about the same at the post thus concealed the facts. Thus he has committed offence u/s 146(2) of RPF Act. (The charge framed against the remaining four petitioners is identically worded as the one framed against the petitioner No.1

4. The statement of imputation of misconduct in support of the charge framed against the petitioners reads as under:

Inspector/R.P.F./Rohtak, according to report No.R.P.F./E25/Part-1/Rohtak/10 Dated:

09. 11.2010, on dated 17.10.2010, Shri S.P. Singh, S.I./R.P.F./Jakhal with Shri Ram Niwas, A.S.I./R.P.F./Jakhal was on Nakabandi near Manav Rahit (unmanned) Gate K.M.

181. At about 22.30 hours, three persons were seen on the Buffers of the Goods Train passing thereby, information in this regard was given to Narwana Staff and ASI Devpal Meena (petitioner No.1). They stated that they are in the Section itself. Above said Goods Train, in which, wheat bags were loaded from Tohana to Gaya, stopped on vacuum drop at K.M. 166/4 and after staying for 15 minutes at 23/25 hours, it reached at Narwana, which was checked in Narwana by ASI Devpal Meena (petitioner No.1), Constable Ramdiya (petitioner No.4) and Constable Sukhvir (petitioner No.2). One Gate of Wagon No.WR983740 was found open, both the doors of which were got closed with the help of Rajesh and Raghuvir Kantewala and were got sealed. Thereafter, ASI Devpal Meena (petitioner No.1),

Head Constable Balwan Singh (petitioner No.3), Constable Raj Singh (petitioner No.5), Ramdiya (petitioner No.4) and Constable Sukhvir (petitioner No.2) reached at K.M. 166/4 Middle Railway Station Dharondhi and Narwana by motorcycles. In the white plastic bags, number of which was above about 50, wheat was lying alongside DN Line, which was collected near the Line itself by the RPF staff. In this work, help of one boy namely Rohtash son of Shri Jogi Ram resident of Village-Dharondi was also taken. S.I./R.P.F./Jakhal Shri S.P. Singh, as ASI Devpal Meena had the jurisdiction of Narwana Chowki, handed over the bags to him for further action and he left from the site/place of occurrence. They, despite being present at the place of occurrence, during their statement on 24.10.2010 before Inspector/R.P.F./Rohtak Shri O.P. Rawat, by reporting their absence at the place of occurrence, misled the administration and concealed the crime.

5. From a conjunctive reading of charge framed against the petitioners and statement of imputation of misconduct, the charge framed against the petitioners can be summarized as follows: On October 17, 2010 a goods train carrying gunny bags containing wheat departed from Tohana. On the said day i.e. October 17, 2010 at about 10.30 P.M. SI S.P. Singh and ASI Ram Niwas saw three persons in said train and reported said fact to the staff at outpost Narwana and petitioner No.1. The said train reached Narwana where it was checked by petitioners Nos.1 to 3 and a gate of one of the wagons of the train was found open. More than fifty gunny bags of wheat were found lying near a bungalow at the railway line by the petitioners, SI S.P. Singh and ASI Ram Niwas. The aforesaid gunny bags were gathered by the officials present there and help was also taken from a village boy viz. Rohtash. The petitioners did not report the aforesaid incident in the statements given by them to Inspector O.P. Rawat in the preliminary enquiry conducted by him in respect of the incident thereby misleading the administration and suppressing the commission of offence.

6. The petitioners denied the charge leveled against them and thus commenced the joint disciplinary enquiry against the petitioners.

7. At the enquiry, the department examined eight witnesses viz. (i) S.P. Singh PW-1; (ii) ASI Ram Niwas PW-2; (iii) SI Tejbir Singh Dagar PW-3; (iv) O.P. Rawat PW-

4; (v) Rohtas PW-5; (vi) Satpal Singh PW-6; (vii) Gurcharan Singh PW-7 and (viii) Semwal Babu PW-8.

8. Out of the afore-noted eight witnesses examined by the department, the material witnesses are three; (i) S.P. Singh PW-1; (ii) ASI Ram Niwas PW-2 and (iii) Rohtas PW-5. Witnesses; S.P. Singh PW1 and ASI Ram Niwas PW-2 deposed on the lines of statement of imputation of misconduct in support of the charge framed against the petitioners.

9. As regards witness Rohtash PW-5, we note that it is claimed by the department that on October 26, 2010 Rohtash (a resident of village Dharondi) had given a statement to Inspector O.P. Rawat (during conduct of preliminary enquiry by him in respect of the incident) to the effect that on October 17, 2010 at about 12.00 midnight he saw forty-fifty plastic bags containing wheat lying near the railway lines and helped the police officials in gathering said bags. At the departmental enquiry, Rohtash stated that he has no knowledge whatsoever about any incident of recovery of gunny bags on October 17, 2010; statement dated October 26, 2010 (recorded by Inspector O.P. Rawat) containing his thumb impression was not given by him and on one occasion he had affixed his thumb impression on a blank paper at the instance of one person.

10. In essence, the defence taken by the petitioners (culled out from the written statement of defence submitted by them and line of crossexamination of departmental witnesses adopted by them) was that the recovery of fifty gunny bags from the goods train in question is a completely false and concocted story. No storage whatsoever of gunny bags was found in the goods train which is evident from the fact that owner of the goods (gunny bags containing wheat) i.e. Food Corporation of India did not make any complaint or issued shortage memo regarding shortage of gunny bags while collecting gunny bags at the destination station i.e. Gaya or raised any claim in respect of said alleged shortage.

11. Vide his report dated March 29, 2011 the Inquiry Officer opined that the charge leveled against the petitioners stand proved. In so concluding, it was held by the Inquiry Officer that following facts stand proved from the evidence adduced by the department, which facts point towards the guilt of the petitioners:(i) On October 17.

2010 food grain special train started from Tohana with intact seals for its destination at Gaya. (ii) At the unmanned gate at KM No.181, two-three persons were seen on the buffer and this information was conveyed to Narwana Staff including petitioner No.1. (iii) At KM No.166/4 S.P. Singh PW-1 and ASI Ram Niwas PW-2, had seen the petitioners along with a villager near the railway lines and about fifty gunny bags containing wheat were lying there. The said gunny bags were collected from there and kept aside. (iv) No information was conveyed by petitioner No.1 either to DCR or Jind Post about fifty gunny bags containing wheat lying near KM No.166/4 nor were any proceedings regarding seizure of said bags conducted. (v) Senior Divisional Security Commissioner personally made inquiries from the petitioners and gist of the same was recorded by him in the Roznamcha of RPF Force, Narwana in his own handwriting. The questioning of the petitioners revealed that petitioner No.2 (a member of team of petitioner No.1) admitted having seen four-five bags near KM No.166/5-6. (vi) If Rohtash was not present near KM No.166/4 then there was no occasion for him to put his thumb impression on the statement recorded by Insp. O.P.Rawat, particularly when he admitted that he was not forced to do the same. PW-5 Sh.Rohtas claimed that he put his thumb impression on the paper at his house voluntarily. (vii) The statements of Gurcharan Singh PW-7 and Semwal Babu PW-8 establish that the food grain special train stopped for 15 minutes at KM No.166/4 due to vacuum drop and door of the one of the wagons was found open at Narwana which was resealed. The roznamcha entry Ex.PW4/C confirmed the presence of petitioner No.1 at the place of incident who made departure entry at 23:15 hours on October 17, 2010 whereas goods train reached Narawan at 23:25 hours. Further, the resealing memo Ex.PW-4/B establishes that the resealing of the wagon was done in the presence of the petitioners. However, the said facts have not been recorded in the arrival entry made by the petitioner No.1 and his team members (consisting of remaining four petitioners). (viii) Being Incharge of Narwana RPF Post it was the duty of the petitioner No.1 to record the correct facts in the Roznamcha and inform the superior officers. (ix) There was no material to suggest any tampering with the Roznamcha by SI S.P.Singh PW-1.

12. Vide order dated June 28, 2011 the Disciplinary Authority accepted the findings of the Inquiry Officer and imposed the penalty of withholding next due

increment of the petitioners for a period of three years with cumulative effect.

13. Aggrieved by the aforesaid, the petitioners filed appeal (s) before the Appellate Authority. Most significantly, the petitioners submitted photocopy of the unloading summary of the goods train in question to substantiate their defence (stand) that no shortage whatsoever of gunny bags was found in the goods train.

14. Before proceeding further, the unloading summary of the goods train in question relied upon by the petitioners reads as under:

20.10.20 unloaded 42 BCN/A wagon of wheat under strict supervision of ICCS concerned Manager (D) Manager (Q/C) I/C CISF FSD Gaya as well as Shed Incharge FSD Gaya (.) ICCS selected four wagons of wheat for 100% weighment through computer electronic weight bridge in DPOT Campus (.) Average weight comes of wheat 49.801 per bag total %age comes 0.437% of total bag and wt. Receipt.

15. Vide order dated September 29, 2011 the Appellate Authority rejected the appeal of the petitioners. One of the reasons which led the Appellate Authority to reject the appeal of the petitioners was that The appellant has taken the same plea in his defense which he had submitted in his defense reply and has not produced any new evidence on record to prove his innocence. Further, the Appellate Authority did not deal with unloading summary relied upon by the petitioners.

16. Thereafter the petitioners filed revision petition (s) before the Revisional Authority wherein they again submitted photocopy of the unloading summary of the goods train in question to substantiate their defence (stand) that no storage whatsoever of gunny bags was found in the goods train.

17. Vide orders dated November 26, 2011 the Revisional Authority rejected the revision petitions of the petitioners. One of the reasons which led the Revisional Authority to reject the revision petition of the petitioners was that The petitioner has taken the same plea in his revision, which he had submitted in his defense reply/appeal and has not produced any new evidence on record to prove his innocence Yet again, the Revisional Authority also did not deal with unloading

summary relied upon by the petitioners.

18. In these circumstances, the petitioners have filed the present petition under Article 226 of Constitution of India.

19. The main thrust of the submission advanced by the counsel for the petitioners was that unloading summary of the goods train in question established that the recovery of fifty gunny bags from the goods train in question is a completely false and concocted story. It was argued that had shortage of fifty gunny bags been found in the goods train the same would have found mention in the unloading summary. It was argued that non-mention of shortage of fifty gunny bags in the unloading summary of the goods train in question coupled with the fact that the owner of the goods (gunny bags containing wheat) i.e. Food Corporation of India did not make any complaint or issued shortage memo regarding shortage of gunny bags while collecting gunny bags at the destination station i.e. Gaya or raised any claim in respect of said alleged shortage leaves no manner of doubt that the recovery of fifty gunny bags from the goods train in question is a completely false and concocted story.

20. Per contra, learned counsel for the respondents argued that the reasoning of the Inquiry Officer in concluding that the charge framed against the petitioners stands established (which was accepted by the departmental authorities) is legally sound and valid and no fault can be found with the same.

21. From the afore-noted conspectus of facts, following facts emerge:- (a) Goods Train SPL No.686 having forty two wagons carrying 52933 gunny bags containing wheat department from Tohana. (b) The destination of said goods train was Gaya, Bihar. (c) The case of the department was that the theft of 50 bags of wheat was concealed. (d) The petitioners claims that a reading of the unloading summary of the goods train in question shows that no shortage of gunny bags whatsoever was found in the said goods train.

22. The core issue which needed to be decided in the present case was: whether there was shortage of gunny bags in the goods train in question. The unloading summary of the goods train (relied upon by the petitioners) was a very relevant

document in deciding the core issue which had arisen in the present case. The unloading summary was first time produced by the petitioners along with the appeal (s) and revision petition (s) filed by them before the Appellate and Revisional Authorities respectively. However, both the Appellate and Revisional Authorities did not care to deal with the unloading summary relied upon by the petitioners. We find that while deciding appeal (s) and revision petition (s) submitted by the petitioners both Appellate and Revisional Authorities have held that no new evidence was produced by the petitioners to prove their innocence, which is factually incorrect, in that the petitioners produced by the petitioners along with the appeal (s) and revision petition (s) filed by them to substantiate the defence taken by them that no recovery of fifty gunny bags from the railway lines is a false and concocted story and no shortage whatsoever was found in the goods train. In view of the fact that unloading summary produced/relied upon by the petitioners was most material document, it was incumbent upon the Appellate and Revisional Authorities to consider and deal with the same while deciding the appeal and revision petition (s) of the petitioners but they chose to not to do so. (We note that the respondents have not even adverted to the aspect of unloading summary of the goods train in question in the counter affidavit filed by them in the present case despite specific pleadings of petitioners in the writ petition in this regard.) 23. With respect to the unloading summary of the goods train, the contention of the respondents was that a perusal thereof would show that only four wagons out of forty two were selected for weighment and thus it was apparent that the weighment was by sample; taking four wagons as representative of the remaining forty two and thus the document would be irrelevant for the decision whether 50 bags of wheat were stolen.

24. The argument overlooks the fact that the petitioners relied not just on the unloading summary report but even on the fact that pertaining to the forty two wagons, after recording the serial number of the wagon, number of bags of wheat loaded in each wagon were noted; to wit on wagon No.SRA47926entered at serial No.1 it was recorded that 1256 bags were loaded weighing 64000 metric tons and in wagon No.CRA96305, 1275 bags were loaded and so on. Thus, the number of bags loaded in each wagon was recorded separately and so was the gross weight of the bags. At the point of destination the wagons were unloaded by counting the

bags and as regards the declaration of the weight, four wagons were picked up at random for weighment and upon the weight being found to be correctly disclosed it was treated that the disclosure of the weight in all forty two wagons was correct. In other words at the point of destination the number of bags upon unloading were counted.

25. We are simply noting the argument to bring home the relevance of the two documents and not to draw any conclusions therefrom for the reason the authenticity of the two documents is not in doubt. Both documents emanate from the railways. It may be true that during inquiry the writ petitioners did not move any application before the Inquiry Officer for the two documents to be produced, but once authenticity of the documents is not in doubt and their relevancy stares us in the face, we cannot but hold that the Appellate Authority before whom the two documents were relied upon as also the Revisional Authority ought to have considered the effect of the said documents because the defence taken by the appellants was that no such incident took place and evidence was fabricated against them. Surely, the Appellate Authority ought to have considered whether the two documents establish that all the bags of wheat which were loaded in the forty two wagons reached the place of destination and the consigner received all the bags. It assumes extreme relevance in the instant case that before the Inquiry Officer no evidence was led by the department that either the consigner or the consignee made any complaint that the number of bags entered in the railway receipt at the point of commencement of journey were less than what was received at the place of destination of the journey.

26. In these circumstances, the orders dated September 29, 2011 and December 26, 2011 passed by the Appellate and Revisional Authorities respectively are set aside. The Appellate Authority is directed to pass a fresh reasoned and a speaking order dealing with the two documents relied upon by the petitioners because these documents were neither considered by the Inquiry Officer nor the Disciplinary Authority for the reason they were not relied upon by the petitioners at that stage. We have already opined upon the relevance of the two documents. What inference needs to be drawn from the two and what would be the fate of the charge keeping in view the said two documents and other evidence led at the

inquiry would be decided by the Appellate Authority. The reasoned decision would be communicated to the petitioners within 12 weeks from today and if favourable to the petitioners would be with a consequential order paying to the petitioners the arrears after re-fixing their salary because the penalty imposed is withholding next due increment for three years with cumulative effect. If the decision is against the petitioners they would be entitled to remedy as per law.

27. No costs. PRATIBHA RANI, J.

**PRADEEP NANDRAJOG, J.**

May 13, 2015 st

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