

ishwar Singh Vs. Union of India and Others

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Aug-19-2010

Judge : Honourable Mrs. Meera Chhibber, Member (J) & Honourable Mr. Shailendra Pandey, Member (a)

Appeal No. : O.A. No. 2090 of 2009 M.A. No.1405/2009

Appellant : ishwar Singh

Respondent : Union of India and Others

Advocate for Pet/Ap. : For the Applicant : Ms. Meenu Mainee with Shri B.S. Mainee, Advocates. For the Respondents : Shri Rajinder Khatter, Advocate.

Judgement :

Mrs. Meera Chhibber, Member (J) :

Applicant has challenged order dated 11.5.2004 (page 21) whereby punishment of reduction of pay by six steps from Rs.5,250/- to Rs.4875/- in the same scale of Rs.4500-7000 for a period of three years with cumulative effect has been imposed on the applicant. Order dated 6.10.2006 (page 23) whereby appeal was rejected and order dated 20.7.2007 (page 23) whereby the punishment imposed by the disciplinary authority was reduced to reduction in pay by six steps in same time scale for two years with cumulative effect after holding that charge No.1 was not proved.

2. It is stated by the applicant that a charge sheet was issued to him on 25.9.2002 with the following allegations:-

“That the said Shri Ishwar Singh, REC-II/IRCA/NDLS while working as such on date 22.4.2002 and manning counter No.139 was subjected to vigilance check at about 08.50 hrs. and was found to have been indulged in the following irregularities:

1. That Shri Ishwar Singh produced Rs.2405/- short in the total Government cash during the course of check and a futile attempt was made to cover up the amount from a tout. By collecting less amount and thereby producing short in the Government Cash, Shri Singh favoured the tout for his personal gain. The tout being a representative of RTA namely M/s. Travel Planners Pvt. Ltd.

2. Shri Ishwar Singh issued Ticket No.20029298, 20029299, 20029300, 20029301, 200029303, 20029305, 20029306, 20029308, 20029309, 20029311 and 20029312, i.e., 12 tickets in total tendered by a single party claiming to be an employee of M/s. Travel Planners Pvt. Ltd. out of the total 23 requisitions dealt, none of the 12 requisitions were having the stamp of the said RTA. Issue of 12 tickets almost in a sequence to a single party proves beyond doubt that Shri Singh was indulged in malpractice in connivance with the said person.

By the above act of omission and commission, the said Shri Ishwar Singh, ECRC/IRCA now SSB failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Railway Servant and thereby contravened Rule (i), (ii) and (iii) of Railway Service Conduct Rules, 1966”.

3. The Inquiry Officer gave his report holding therein that both the charges were proved (page 53 at 66) and the punishment was imposed on the applicant. Orders were passed without dealing with the grounds taken by the applicant, therefore, he had filed a detailed representation but that has not been decided, therefore, applicant had no other option but to file the present OA.

4. The orders are challenged on the ground that in the charge-sheet statement of Anand Singh Chauhan was relied upon but he was not produced in the witness

box for enabling the applicant to cross examine him. In these circumstances no reliance could have been placed on his statement. To substantiate this, counsel for the applicant placed reliance on Railway Board's letter dated 15.11.1984.

5. Moreover, paras 704/705 of the manual were not complied in as much as no independent person was associated in the raiding party, therefore, it vitiated the enquiry. Reliance was placed on Moni Shankar's judgment.

6. She also submitted that the applicant had applied for additional documents but they were not supplied which amounts to denial of right to defend. Counsel for the applicant thus prayed that O.A. may be allowed.

7. Respondents have taken preliminary objection to the maintainability of the O.A. on the ground that it is barred by limitation. The last order was passed on 20.07.2007, whereas O.A. has been filed on 27.07.2009, i.e. after 2 years. They have further stated that there is neither any General Manager of Grievance Cell, Northern Railway nor any representation dated 18.09.2007 or reminder dated 22.04.2008 has been received by the respondents. Since there is no justifiable ground to condone the delay, the M.A. as well as O.A. both are liable to be dismissed.

8. On merits, they have explained that a Vigilance check at about 08.50 hrs by a vigilance team was conducted upon the applicant Eand RC-II/IRCA/NDLS on 22.04.2002 who was manning counter No.139. A major penalty charge sheet was served to him. Proper enquiry was held. Copy of the Inquiry Officer's report was sent to the applicant who gave his reply. After considering the evidence which came on record, the Disciplinary Authority had passed the order. The appeal was rejected but the revisionary authority reduced the punishment which was not possible unless he had applied his mind to the fact of the case. It is, therefore, wrong to suggest that orders have been passed without application of mind. Since punishment has been given on the proved charge, it calls for no interference, therefore, the O.A. may be dismissed. Counsel for the respondents relied on the judgment given by Hon'ble Supreme Court in H.B. Gandhi Vs. Excise and Taxation Officer-cum-Assessing Authority, Karnal and Others Vs. M/s Gopi Nath

and Others reported in 1992 (Suppl.) (2) SCC 312 wherein it was held as under:-

Judicial Review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact”.

9. We have heard both the counsel and perused the pleadings as well. Since preliminary objection has been taken by the respondents to the maintainability of the O.A., we would first have to deal with that. Admittedly, the O.A. is barred by limitation because revision was decided on 20.7.2007 whereby penalty was reduced from reduction in pay by six steps from Rs.5500/- to Rs.4750/- in same scale of Rs.4500-7000 for three years with cumulative effect to two years with cumulative effect, whereas the present O.A. has been filed on 27.7.2009, i.e. 2 years after the revision was decided. The period of limitation as per Section 21 of the Administrative Tribunals Act, 1985 is one year from the date of cause of action.

10. Applicant has filed M.A. No.1405/2009 for seeking condonation of delay. The only ground taken is that he had filed representation to the General Manager, Grievance Cell on 18.09.2007 against the order of revision. However, counsel for the applicant couldn't show us any provision under which representation could have been filed to the General Manager, Grievance Cell after his matter was decided up to the revisionary authority. On the contrary, respondents have specifically stated that there is no General Manager, Grievance Cell in Northern Railway. Moreover, no such representation was received. Applicant should be asked to give proof of it. In rejoinder, applicant has not been able to prove this fact. Perusal of the representation (which is stated to have been filed by the applicant to the General Manager, Grievance Cell has been annexed on page 95) shows that it doesn't have any acknowledgement. It is thus clear that no such representation was filed by the applicant. It has been annexed as an after thought to get over the limitation. In any case the law has been settled by the Hon'ble Supreme Court in S.S. Rathore vs State of Madhya Pradesh reported in AIR 1990 SC 10, wherein it has been clarified as follows:

“This principle has no application when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are

not governed by this principle.”

11. The latest judgment given by the Hon'ble Supreme Court in Union of India and Another vs. M.K. Sarkar reported in 2010 (2) SCC 175, it has been further clarified that cause of action has to be considered with reference to the original cause of action.

12. From above, it is clear that representation which is not been provided in law wouldn't extend the limitation. In the instant case, last order was passed by the revisionary authority on 20.07.2007, therefore, his cause of action would have to be reckoned from 20.7.2007, therefore, the OA is barred by limitation. No other ground has been taken by the applicant in application for condonation of delay. In view of above we do not find any merit in the MA. The same is accordingly dismissed.

13. Since delay has not been condoned, the O.A. being barred by limitation is also dismissed at the admission stage itself. No costs.

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