

Radhey Shyam Vs. Union of India Through General Manager and Others

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Mar-01-2012

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

Appeal No. : O.A.No.502 of 2011 & M.A.No.316 of 2011

Appellant : Radhey Shyam

Respondent : Union of India Through General Manager and Others

Advocate for Pet/Ap. : For the Applicant: Yogesh Sharma, Advocate. For the Respondents: Shailender Tiwary, Advocate.

Judgement :

SHAIENDRA Pand EY, MEMBER (A):

1. In this OA, the applicant, formerly a Parcel Porter at Hapur Railway Station, has challenged the order dated 08.09.2009 imposing a penalty of reduction in the same time pay band for a period of five years with postponing future increments, the order dated 03.02.2010, in terms of which a penalty of compulsory retirement was imposed on him, the order dated 05.04.2010, passed by the Senior DCM, Moradabad Division, Moradabad, and the revisional authority's order dated 29.11.2010, rejecting his appeal. Also challenged is the show cause notice dated 19.11.2009, issued by the appellate authority, inquiry officer's report dated 30.04.2009 and the charge sheet dated 1.12.2008. The following relief(s) are

sought:

to pass an order quashing the order of the disciplinary authority dated 08.09.2009, the order dated 03.02.2010, order dated 5.04.2010 passed by Senior DCM, Moradabad Division, Moradabad, the revisional authority's order dated 29.11.2010, show cause notice dated 19.11.2009, charge sheet as well as inquiry officer's report dated 30.04.2009, declaring to the effect that the same are illegal, arbitrary and against the rules and consequently pass an order directing the respondents to re-instate of the applicant in service with all consequential benefits including the arrears of pay and allowance of intervening period.

Any other relief which this Tribunal deems fit and proper may also be granted to the applicant with the cost of litigation.

2. The brief facts of the case, as set out in the OA, are that the applicant while working as Parcel Porter at Hapur Railway Station, was subjected to a decoy check by Investigating Inspectors, Railway Board on 03.04.2008 and as a result of the said check wherein he was detected to have committed irregularities, he was issued a major penalty charge sheet dated 1.12.2008 by the disciplinary authority on the following allegations that 'Shri Radhey Shyam, Parcel Porter/Hapur, while working in parcel office at Hapur demanded and accepted Rs.100/- from the decoy passenger while booking a Scooter against PW. Bill No.F 688780 dated 03.04.2008. Sh. Radhey Shyam, Parcel Porter/Hapur is also found responsible for producing unaccounted money of Rs.180/- in his possession.'

2.1. On the applicant denying the charges, an Inquiry Officer was appointed in the case and after completion of the inquiry, a copy of the inquiry report was forwarded to the applicant vide letter dated 23.06.2009 against which, the applicant submitted his representation dated 07.07.2009. After considering of his representation, the disciplinary authority passed order dated 08.09.2009 imposing the punishment of reduction in the same time pay band of Rs.5200-20200 with grade pay of Rs.1800/- having basic pay Rs.8860/-, to pay Rs.8100/- for a period of five years with postponing future increments. On an appeal submitted by the applicant dated 22.10.2009, the appellate authority, vide its order dated 19.11.2009, issued a show cause notice to the applicant proposing to impose the

punishment of 'compulsorily retirement from service' (i.e. for enhancement of the punishment awarded by the disciplinary authority). The applicant submitted his representation dated 10.12.2009/21.12.2009, and thereafter, the appellate authority imposed the punishment of compulsorily retirement from service vide its order dated 03.02.2010. Further, the appeal made on 4.03.2010/11.09.2010 against this order, was rejected by the revisional authority vide its order dated 29.11.2010. Hence, the present OA has been filed seeking the aforesaid reliefs.

3. The main grounds of challenge to the aforesaid orders of the disciplinary and the appellate authority are the following:

that there had been large number of procedural irregularities in the conduct of the inquiry as a result of which the entire departmental proceedings stand vitiated. In this connection, it is stated that the copies of the relied upon documents and statement of listed witnesses were not supplied along with the charge sheet and the inquiry officer cross-examined the witnesses at length.

that the respondents have not followed the procedure laid down in Paras 704 and 705 of the Indian Railway Vigilance Manual (IRVM), and that this invalidates the departmental proceedings. In support, the learned counsel for the applicant has relied on the Judgment of the Hon'ble Supreme Court in *Moni Shankar v. Union of India and Anr.,* JT 2008 (3) SC 484.

That the charge sheet issued in this case is vague and uncertain and does not specify the specific misconduct and is, therefore, not maintainable. It is stated that the charge against the applicant is that he demanded and accepted Rs.100 while booking a scooter, but that it is admitted that the applicant was a parcel porter, whose duty was only to load the scooter in the train as per the direction of the booking clerk and that the scooter was booked by the booking clerk. Therefore, there was no question of the applicant demanding or accepting any money for booking purposes. Further, the Parcel Porter has no duty regarding 'cash'. Therefore, the entire proceedings are illegal and arbitrary.

that the appellate authority had made up its mind to enhance the penalty to compulsory retirement, for the reason that the applicant had submitted an appeal,

and that the issue of a show cause notice in this regard was a mere formality.

that once it was decided to conduct a regular inquiry the Inquiry Officer should have proved the charges only on the basis of evidence given by PWs during the regular inquiry but the inquiry officer has not recorded the statement of witnesses and has relied only on the statement which was recorded/written by the Vigilance Team at the time of trap, which is totally illegal in the eyes of law.

that the Inquiry Officer, in a biased manner, has not considered the statement of the witnesses who deposed in favour of the applicant and has also not considered the defence version of the applicant, which is illegal.

that the applicant was not granted personal hearing at any stage before passing of the impugned order.

that the impugned orders are non-speaking and unreasoned and are not sustainable in the eyes of law.

4.1. The respondents have opposed the OA and have stated that the applicant has concealed many relevant facts which go to the root of the matter. They have stated that the scope of judicial review is limited in disciplinary matters and that interference is warranted only in exceptional and rare cases. Further, the authorities concerned may impose appropriate punishments by recording cogent reasons in support thereof and only if the punishment imposed is shockingly disproportionate, would it be appropriate to direct the disciplinary authority or appellate authority to reconsider the penalty imposed.

4.2. It is further stated that, in the present case, the disciplinary authority, the appellate authority and also the revisional authority have passed their orders after considering all the facts and after following due procedure and keeping in view the gravity of the charges. They have also stated that a proper Dand AR enquiry was conducted by the Independent Inquiry Officer CEI/Headquarter giving full opportunity to the applicant to defend himself in the inquiry and the charge leveled against the applicant was proved. After serving a copy of the inquiry report and receiving the reply thereto from the applicant, the disciplinary authority, after going

through the charges, documents, evidence on record, analysis of prosecution and defence, inquiry report as well as the representation of the applicant on the inquiry report held the applicant responsible for the charge and awarded the aforesaid punishment. Thereafter, on an appeal filed by the applicant, the appellate authority considered the punishment to be inadequate for the reasons mentioned in the show cause notice dated 19.11.2009. After considering the applicant's reply, the punishment was enhanced to that of 'Compulsory retired from service' with immediate effect, and this was conveyed to the applicant vide letter dated 03.02.2010. The revision petition filed by the applicant was also rejected by the revisional authority vide its order dated 29.11.2010.

4.3. In view of the above, the respondents have sought dismissal of the OA.

5. We have considered the rival contentions of both the parties and have been through the pleadings on record.

6. At the very outset, it would be useful to refer to the legal position relating to judiciary interference in departmental proceedings, particularly with regard to the admissibility of evidence and the findings of the administrative authorities in disciplinary matters. The law in this regard has evolved through a series of pronouncements on this issue and may be summarized as follows:

(i) a departmental inquiry/proceeding is distinct from a criminal trial where the Evidence Act or Criminal Procedure Code is strictly applicable. The technical rules of evidence are not applicable in a departmental inquiry and the standard of proof required in a departmental proceeding is 'preponderance of probability' as opposed to 'proof beyond doubt' in a criminal proceeding [See: N. Rajarathinam v. State of Tamil Nadu, (1997) 1 Lab LJ 224 (SC) and State bank of Bikaner and Jaipur v. Srinath Gupta, (1997) 1 Lab LJ 677; and High Court of Judicature, Bombay v. Udaysingh (1997) 5 SCC 129; Noida Entrepreneurs Association v. Noida and Ors., (2007) 10 SCC 385]. In most departmental proceedings the act on the part of the Government servant concerned relates to dereliction of duty and the punishment imposed is with a view to maintaining discipline and efficiency of performance of a public service, as opposed to an act in a criminal trial which is one of violation of law.

(ii) the scope of judicial review in departmental proceedings is limited and a Tribunal/Court should ordinarily not interfere in them by re-appreciating the evidence adduced by the inquiry officer and substituting their own findings/conclusion for that of the administrative authorities, unless the findings/conclusion arrived at are based on absolutely no evidence or are totally perverse in the sense that no man of ordinary prudence could possibly arrive at such findings/conclusion in the facts and circumstances of the case. This is so because the power of imposing an appropriate punishment on a Government employee is within the discretion of the administrative authorities. The only exception to this general principle is if it is found that the inquiry proceedings have not been conducted fairly and are vitiated because of non-observance of the relevant rules and regulations or principles of natural justice (such as affording of reasonable opportunity to defend, etc.) or if the punishment is shockingly disproportionate to the proved misconduct of the Government servant concerned [See: State of T.N. v. S.Subramaniam, (1996) 7 SCC 509; State of Tamil Nadu v. T.V.Venugopalan, (1994) 6 SCC 302; U.P.S.R.T.C. v. Ram Chandra Yadav, JT 2000 (8) SC 198; M.P.State Agro Industries Development Corporation Ltd. V. Jahan Khan, (2007) 10 SCC 88].

In this connection, the following relevant extracts from two Apex Court Judgments may also usefully be referred to:

(i) In B.C. Chaturvedi Vs. Union of India and Ors. reported in AIR 1996 SC 484, it was held as under:-

“When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold

that the delinquent officer is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case”.

(ii) In *Chairman and Managing Director, United Commercial Bank and Ors. Vs. P.C. Kakkar* reported in 2003 (4) SCC 364, Hon'ble Supreme Court has held as follows:-

“11. It is settled that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the *Wednesbury's* case (*supra*) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision - making process and not the decision”.

Thus, interference on the part of the Tribunal is warranted only in cases in which the findings of the executive authorities and their orders are perverse and based on no evidence at all, and if the punishments imposed are shockingly disproportionate.

7. When we examine the present OA in the above backdrop, we have no hesitation in holding that the present case is not one that merits any interference on our part as it cannot be considered as being a case of 'no evidence' nor are the orders passed by the executive authorities such that no person of ordinary prudence would have passed them nor are the punishments imposed shockingly disproportionate to the proved misconduct, as discussed below.

7.1. The admitted facts in this case are that based on source information that staff working in the parcel office at Hapur Railway Station were including in Corporation, by demanding and accepting money over that due as railway freight, a decoy check was planned and conducted at the parcel booking office, Hapur. For the decoy check a team of three Vigilance Inspectors was deployed, and two constables drafted from the Railway Protection Force at Kanpur, were associated as independent witnesses. As a result of the check, the applicant was apprehended by the Vigilance Team while taking Rs.100 (two notes of Rs.50) from the decoy passenger for booking/loading of the scooter. Besides recovery of the decoy money, unaccounted money of Rs.180/- which he had not declared as private cash, was also recovered. A Dand AR Inquiry was conducted and the Inquiry Officer found him guilty of the charges. The applicant had also himself admitted in his statement (Ex.P-15) that (though later he had taken the plea that the statement was written by some one else and he signed it without knowing what he was signing) the passenger told him that his demand will be met on dispatching the scooter on date and thereafter, the applicant was caught by the vigilance team while accepting Rs.100/- (two notes of Rs.50) from the decoy passenger. The fact that the applicant had been caught red-handed by the team and the money given to him by the decoy passenger had been recovered from him, to our minds, constitutes adequate evidence in the case based on the principle of preponderance of probability. The disciplinary authority after going through the documents/evidence available on record, imposed the aforesaid punishment of reduction in pay and however, on appeal the appellate authority enhanced the punishment to that of Compulsory Retirement.

7.2 Although the applicant has stated that there were a large number of procedural violations he has not been able to show how these have prejudiced his defence in any significant way so as to make us come to a conclusion that he has not been subjected to a fair inquiry.

7.3. We may, at this stage, deal specifically with the submission of the learned counsel for the applicant that the inquiry stands vitiated because of non-adherence to the provisions of Paras 704 and 705 of the Indian Railway Vigilance Manual, which cover the procedures and guidelines to be followed by the investigating

officers in departmental trap cases. The instructions/guidelines provide for association of Gazetted Officers and independent witnesses in such cases. It is relevant to note in this connection that these are internal instructions of the Department which are required to be followed to the extent administratively possible. It may not always be possible to procure Gazetted Officers in all cases of vigilance traps, keeping the heavy and onerous workload of the Railways in mind. Also in the present case, for the decoy check at the parcel office at Hapur Railway Station, two constables were drafted from the office of the RPF, Kanpur to function as independent witnesses. There was no reason for the team to try and frame the applicant for an offence if he had not committed the same. Further, money was recovered during the check, and the applicants own statement signed by him is there. In the facts and circumstances of this case, we do not think that the instructions laid down in Paras 704 and 705 of the Indian Railway Vigilance Manual have been violated in such a way as to invalidate the departmental proceedings altogether. Thus, the case of Moni Shankar (supra) would not help the applicant.

In the case of Moni Shankar (supra) the Hon'ble Supreme Court, after dealing with the case of Chief Commercial Manager, South Central Railway, Secunderabad and Ors. v. G. Ratnam and Ors., JT 2007 (10) SC 378, observed as under:

"15. While we say so we must place on record that this Court in Chief Commercial Manager, South Central Railway v. G. Ratnam ((2007) 8 SCC 212) opined that non-adherence to the instructions laid down in Paras 704 and 705 of the Vigilance Manual would not invalidate a departmental proceeding, stating: (SCC pp. 220-21, paras 17-18):

"17. We shall now examine whether on the facts and the material available on record, non-adherence of the instructions as laid down in Paras 704 and 705 of the Manual would invalidate the departmental proceedings initiated against the respondents and rendering the consequential orders of penalty imposed upon the respondents by the authorities, as held by the High Court in the impugned order. It is not in dispute that the departmental traps were conducted by the investigating

officers when the respondents were on official duty undertaking journey on trains going from one destination to another destination. The Tribunal in its order noticed that the decoy passengers deployed by the investigating officers were RPF constables in whose presence the respondents allegedly collected excess amount for arranging sleeper class reservation accommodation, etc. to the passengers. The transaction between the decoy passengers and the respondents was reported to have been witnessed by the RPF constables. In the facts and circumstances of the matters, the Tribunal held that the investigations were conducted by the investigating officers in violation of the mandatory instructions contained in Paras 704 and 705 of the Vigilance Manual, 1996, on the basis of which inquiries were held by the enquiry officer which finally resulted in the imposition of penalty upon the respondents by the Railway Authority. The High Court in its impugned judgment has come to the conclusion that the inquiry reports in the absence of joining any independent witnesses in the departmental traps, are found inadequate and where the instructions relating to such departmental trap cases are not fully adhered to, the punishment imposed upon the basis of such defective traps are not sustainable under law. The High Court has observed that in the present cases the service of some RPF constables and railway staff attached to the Vigilance Wing were utilised as decoy passengers and they were also associated as witnesses in the traps. The RPF constables, in no terms, can be said to be independent witnesses and non-association of independent witnesses by the investigating officers in the investigation of the departmental trap cases has caused prejudice to the rights of the respondents in their defence before the enquiry officers.

18. We are not inclined to agree that the non-adherence of the mandatory instructions and guidelines contained in Paras 704 and 705 of the Vigilance Manual has vitiated the departmental proceedings initiated against the respondents by the Railway Authority. In our view, such finding and reasoning are wholly unjustified and cannot be sustained."

16. It has been noticed in that judgment that Paras 704 and 705 cover the procedures and guidelines to be followed by the investigating officers, who are entrusted with the task of investigation of trap cases and departmental trap cases

against the railway officials. This Court proceeded on the premise that the executive orders do not confer any legally enforceable rights on any person and impose no legal obligation on the subordinate authorities for whose guidance they are issued.

17. We have, as noticed hereinbefore, proceeded on the assumption that the said paragraphs being executive instructions do not create any legal right but we intend to emphasise that total violation of the guidelines together with other factors could be taken into consideration for the purpose of arriving at a conclusion as to whether the Department has been able to prove the charges against the delinquent official. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality. (See *State of U.P. v. Sheo Shanker Lal Srivastava* ((2006) 3 SCC 276 : (2006) SCC (LandS) 521) and *Coimbatore District Central Coop. Bank v. Employees Assn.* ((2007) 4 SCC 669 : (2007) 2 SCC (LandS) 68))

From the above, it is clear that it is only total violation of the guidelines (in the Vigilance Manual) together with other factors which need to be taken into consideration for the purpose of arriving at a conclusion whether the departmental proceedings need to be held to be invalid on account of non-adherence to some instructions.

In the instant case, as already noted above, this is not the case and, more importantly, there is sufficient evidence based on the principle of pre-ponderance of probability for the departmental authorities to have come to their conclusion of guilt of the applicant. The concerned authorities have reached their conclusions, after affording full opportunity to the applicant to defend his case, and there is no violation of the principles of natural justice. We also do not accept the contention of the applicant that the appellate authority had made up its mind to enhance the penalty imposed on him by the disciplinary authority to compulsory retirement only because he had submitted an appeal, as we find that he had proposed enhancement of the penalty and issued a show cause notice and only after considering the applicant's reply thereto, had passed his order.

7.4. As regards the submission of the applicant that the appellate authority and the revisional authority's order are non-speaking and unreasoned, we have perused the show cause notice dated 19.11.2009, served on the applicant by the appellate authority, and also the order passed by the appellate authority dated 03.02.2010 and order of the revisional authority dated 29.11.2010 and do not find that these orders have been passed without application of mind.

7.5. We repeat that it is settled law that in disciplinary proceedings the executive authorities must be allowed sufficient discretion to arrive at their own findings and impose appropriate punishments and that interference by this Tribunal would only be in very rare and in exceptional cases in which the orders issued are totally perverse. We do not find that the present case is one which would warrant interference on the part of this Tribunal, particularly in a case of corruption in which full opportunity has been afforded to the charged official to defend himself.

The OA is accordingly dismissed, with no order as to costs.

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