IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : SERVICE MATTER

WP(C) No. 1890/2004

Judgment reserved on: November 08, 2006.

Judgment delivered on: January 12th, 2007

Shyamlendu Kar ..... Petitioner
Through: Mr. K.B.Sinha, Sr. Advocate
with Ms. Kawaljit Kochar &
Mr.D.Jha, Advocates

versus

Union of India & Ors. ..... Respondent
Through: Mr. J.K.Singh, Advocate

CORAM
HON'BLE MR. JUSTICE MANMOHAN SARIN
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J.

1. Petitioner assails the order dated 25.5.2000, passed in OA No. 61/1997, by the Central Administrative Tribunal, Principal Bench, New Delhi (for short 'the Tribunal'). The Tribunal rejected the petitioner's Original Application, wherein he had challenged the penalty imposed upon him of reduction to the lowest in pay in the same time scale. His pay was reduced from the stage of Rs. 1440/- in the same time scale of Rs. 1200/-2040 (RPS) to Rs. 1200/- for a period of one year which had the effect of postponement of his future increment. He also sought that his period of suspension i.e. 19.8.1988 to 19.9.1988 be treated as period spent on duty for all purposes and also prayed for all consequential benefits.

2. Petitioner was working as Inquiry and Reservation Clerk in the Northern Railway, Reservation Office in the IRCA Building, New Delhi. On 3.8.1988, he was manning the Counter No.5 along with his helper Sh. Mohd. Islam. A decoy check was conducted by a team of Vigilance Inspectors on the basis of some information claimed to have been received that the staff of Current Reservation Counter at New Delhi Railway Station, dealing with the reservation of Train No. 16-Up (GT Express), were demanding and collecting extra money over and above the charges in allotment of berths to needy passengers.

3. Departmental proceedings were initiated against the petitioner. The Inquiry Officer in his report concluded that the aspect of demand of money by the charged officer was not proved. However, the aspect of acceptance of excess money by the charged officer was proved. The Inquiry Officer notes that only two witnesses attended the hearing. The other witnesses did not turn up on any of the sittings. Their examination was dispensed with in consultation with the defence.

4. The disciplinary authority (DTM, NDLS) imposed the aforesaid penalty, while accepting the inquiry report vide his order dated 25.6.1993. The DRM, Delhi rejected the departmental appeal of the petitioner vide order dated 13.4.1994. His further revision was rejected by the Chief Commercial Manager by his order dated 12.6.1996. Aggrieved by the aforesaid orders, the petitioner approached the Tribunal by filing OA No. 61/1997, which was dismissed by the order impugned herein dated 25.5.2000.

5. The Tribunal proceeded on the basis that the petitioner could not make a grievance of the four prosecution witnesses being dispensed with since the petitioner had consented to the same. The Revisional Authority had dealt with the arguments of the petitioner in his order dated 12.6.1996. In departmental disciplinary proceedings, it is rule of preponderance of probabilities, which is applicable and there is no requirement of proof beyond reasonable doubt as in a criminal trial.

6. Before us, the petitioner urges that the Tribunal has failed to appreciate that there was no evidence to come to conclusion that there was acceptance of money by him from the decoy for the issuance of two tickets in 16 UP GT Express from Delhi to Madras as alleged against him.

7. Before we proceed to consider the further submissions of the parties based on the inquiry proceedings and the report, we would like to state the scope of judicial review in matters arising out of disciplinary proceedings, particularly when it is claimed by the charged officer that there was no evidence in support of the charge proved by the Inquiry Officer or the disciplinary authority.

8. In State of Andhra Pradesh vs. Sree Rama Rao reported as AIR 1963 SC 1723, the Hon'ble Supreme Court held that the High Court exercising writ jurisdiction under Article 226 of the Constitution of India does not sit in appeal over the decision of the authorities. It is concerned with the competence of the authority conducting the enquiry, the adherence to procedure and the principles of natural justice. The Court cannot arrive at an independent finding on a review of the evidence on record. The Supreme Court also held as follows:

"The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds.

9. In Union of India vs. H.C.Goel reported as 1964 (4) SCR 718, a judgment relied upon by the petitioner before the Tribunal, the Hon'ble Supreme Court, inter alia, considered the same question in the following words:
".....the High Court under Art. 226 has jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all"..... "there can be little doubt that a writ of certiorari, instance, can be claimed by a public servant if is he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings which is the basis of his dismissal is based on no evidence."

10. The question whether there was no evidence to prove the charge against the petitioner is therefore open to be canvassed before us as it was before the Tribunal. The test to be applied to determine this question is set out in H.C.Goel (supra) as well as in Bank of India and Another vs. Degala Suryanarayana JT 1999 (4) SC 489. In H.C.Goel (supra) it was contended on behalf of the Government, that the Court ought to bear in mind the fact that the Government is acting with the department to root out corruption, and so, if the view taken by the Government is a reasonably possible view, the Court should not interfere. The Supreme Court concurred with this but observed:

"Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact that in carrying out the said purpose, mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules."

11. In Bank of India (supra) the manner in which the question of "no evidence" has to be examined was considered.
"Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of malafides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding."

12. Applying the test of a reasonable person, it is to be considered whether on an overall view of the material/evidence brought on record, it could be said that the charge of acceptance of money was not supported by any evidence.

13. The charge against the petitioner was that on 3.8.1988 while manning counter no. 5 at the second class current day reservation office, in connivance with Mohd. Islam, CC assisting

him, he demanded and accepted Rs. 20/- illegal gratification for allotting two berths by train number 16, GT Express, over and above the railway fare.

14. The statement of imputations of misconduct in support of the charge inter alia, stated that to investigate the information about the petitioner's alleged corrupt practices, a team of Investigating Inspectors decided to conduct a test check on the petitioners counter. For this purpose, the services of Sarva Shri SA Rahim, IPF and Ram Devan were requested to act as an independent witness and decoy passengers respectively. Accordingly, a test check memo was prepared. Two second class tickets were purchased from general counter for the purpose of this check. Identified money was provided to the decoy passenger. The investigating team took suitable positions from where they could be signalled by the decoy passenger. Shri Ram Devan, the decoy passenger fell in the queue along with other passengers and Shri SA Rahim stood behind him. When Ram Devan's turn came, he demanded two berths by 16UP from Shri S.Kar, RC, who was manning counter No.5. At the first instance Shri S.Kar, RC, refused to provide any berth on the plea that berths were not available. But Shri Ram Devan again requested Shri Kar to allot him two berths at any cost. Then, Shri Kar asked Shri Ram Devan to stand by the side and told him that the would try to help him out of the way. After a while Shri S.Kar accepted the requisition form and directed him to Shri Mohd. Islam, who was working as a helper, for further dealing. Shri Ram Devan paid Rs. 52/- to Shri Mohd. Islam. But Sh. Mohd. Islam after consulting Shri S. Kar demanded Rs. 20/- more. Shri Ram Devan paid Rs. 20/- to Shri Mohd. Islam who gave this amount to Shri Kar. Sh. Kar put Rs. 52+20 = 72/- in cash box along with other cash. Shri Mohd. Islam allotted berth numbers 23 and 31 to Shri Ram Devan in Coach No. S-12 and issued reservation ticket Nos. 39851 and 39852 (Coach No. SR 2825). All the above transactions were witnessed by Sh. SP Rahim who was standing close to Shri Ram Devan. Immediately on receipt of pre-arranged signal from Shri Ram Devan, all the Investigating Inspectors(Vigilance) Railway Board approached counter No.5 from inside the booking office and Shri S.Kar and Mohd. Islam were stopped from further transactions.

15. To prove the charge against the petitioner, it is the aforesaid facts which were required to be established by the respondent.

16. The list of documents relied upon in support of the Article of charge included the following:-

1.Requisition form submitted by Shri Ram Devan dated 3.8.1988. Ex. NDLS-MAS by 16 UP for 2 berths in 3-tier.
2.Reservation tickets No. 99851 & 52 and Rs. 34/- recovered from Shri Ram Devan in a sealed cover.
3.Statement of Sh. Ram Devan (2 pages)
4.Statement of Sh. S.P. Rahim.
5.Recovery memo of Rs. 34/- from Sh. Ram Devan.
6.Proceedings of decoy check/test check.

17. The charge could be proved by regularly bringing on record the aforesaid documentary evidence.

18. The list of witnesses in support of the charge framed against the petitioner included the decoy passenger and the independent witness.

19. In the present case admittedly, out of the six named witnesses, the prosecution did not produce four witnesses including the decoy Mr. Ram Devan and the independent shadow witness Mr. S.A.Rahim.

20. The entire case made out against the petitioner was based on the alleged transaction which took place between the decoy customer Shri Ram Devan, the petitioner and his helper Shri Mohd. Islam, in the presence of the independent witness Shri S.A.Rahim. The statement of imputation of misconduct which has been referred to above, shows that it was only the decoy customer Shri Ram Devan and the independent witness Sh. S.A.Rahim who could have given evidence with regard to the said imputations.

21. It is pertinent to note that in the departmental enquiry, the only two witnesses viz. Shri S.K.Gupta and Shri S.C.Bali who were produced to prove the charge, were not witness to the transaction.

22. From the evidence brought on record, as reflected from the enquiry report itself, it is clear that there was absolutely no evidence to link the petitioner with the acceptance of Rs.20/-. In the absence of the key witnesses i.e. the decoy and the independent witness, who alone could have thrown light on the alleged transaction, it cannot be said that there was any evidence to establish the charge of acceptance of the amount of Rs.20/- from the decoy customer by the charged officer i.e the petitioner. It is true that the strict rules of evidence do not apply to departmental proceedings, at the same time it is well settled that the principles of natural justice and fair play have to be complied with. Nobody can be condemned unheard and without being given an opportunity to meet the case set up against him. The decoy customer and the independent witness if produced, would have had to stand by their statements made earlier and to face cross examination by the charged officer who would then have had the opportunity of defending his alleged conduct. In the absence of this opportunity to the petitioner, the untested alleged earlier statements of these persons could not have been relied upon.

23. The enquiry officer as also the Tribunal have held the fact that the petitioner had consented to the four prosecution witnesses (which included the decoy customer and the independent witness) being dispensed with, as a factor against the petitioner, as if the same would estop the petitioner from raising a grievance about the said material witnesses not being produced in the enquiry for his cross examination. We feel that this approach is totally incorrect. The witnesses who were dispensed with were those named by the prosecution. It was for the prosecution to produce them for the purpose of establishing the charge against the petitioner. Obviously the petitioner could have had no grievance if the prosecution decided to give up those witnesses. The consent given by the petitioner to their not being produced cannot be taken to mean that the petitioner had thereby consented to the earlier statements made by these witnesses being admitted in evidence or as being true.

24. A perusal of the enquiry report also shows that even according to the prosecution, the money was accepted and collected by the helper i.e. Sh. Mohd. Islam and not by the charged officer i.e the petitioner. Merely because the amount of Rs.20/- was allegedly kept in the drawer of the petitioner, cannot lead to the inference that there was acceptance of the said amount by the charged officer. It could not be inferred that the petitioner knew that the said money was over and

above the fare for the tickets issued. This inference is nothing more than a conjecture and a surmise, since it is based on incomplete and unsubstantiated evidence.

25. We may also notice the observations made by the Chief Commercial Manager(Gen.) in his order dated 12.6.1996 passed in revision preferred by the petitioner. He expresses surprise that the decoy passenger and the independent witness were not produced.

26. However, he concludes that the charge of acceptance is proved since, according to him the charged officer "took the money taken by Sh. Mohd. Islam and deposited it in his drawer and did not count or return any excess money to the decoy passenger". We may only notice that one of the prosecution witnesses, Shri S. C. Bali, PW-2 had in fact stated that the transactions are done by the helper in good faith and that the charged officer was not supposed to check the working of the helper. The revisional authority in his order finds fault with the petitioner by stating that he "did not count or return any excess money to the decoy passenger." The misconduct of the petitioner according to the revisional authority is therefore his failure to count the money kept by Sh. Mohd. Islam in his drawer. This is neither the charge against the petitioner, nor the finding arrived at by the enquiry officer. This would also not be culpable since, at best, it would be a charge of negligence or carelessness, which cannot be described as being grave or leading to disastrous consequences. (Kindly refer to Union of India v. J. Ahmed, AIR (1979) 2 SCC 286). On the contrary the enquiry officer records "I do not agree with the version of the charged officer that he did not count the money handed over by Shri Mohd. Islam, his helper presuming that the amount collected may be correct." There is apparent contradiction between the enquiry report and the revisional order.

27. Applying the test of a reasonable man in the overall conspectus of facts and evidence in this case, we are of the view that it is wholly unreasonable to conclude that the petitioner had accepted the amount of Rs.20/- as alleged against him. The said conclusion drawn by the respondents and the Tribunal is nothing more than a conjecture and surmise and is not the result of an objective and reasonable assessment of the evidence brought on record. The Respondent failed to produce legal and best evidence available to prove the charge.

28. In the light of our aforesaid discussion, we set aside the order of the Tribunal dated 25.5.2000 and quash the enquiry report bearing No.VG II/277/90/114A, the order of penalty imposed by the disciplinary authority dated, 25th June, 1993; the appellate order dated, 13th April, 1994 and the order in revision dated 12th June, 1996.

29. We further direct that the petitioner should be placed back to the stage of Rs.1,440/- in the time scale of Rs.1200-2040(RPS) from the date the penalty was given effect, and his future increments should be refixed and he should be granted consequential pay re-fixation as also arrears of pay. The arrears of pay should be computed and paid to the petitioner within three months. If the arrears of pay are not paid to him within three months from the date hereof, the petitioner would be entitled to interest on the said arrears at the rate of 8% per annum for the period of delay in making payment thereafter. However, there shall be no order as to costs.

Sd./-

VIPIN SANGHI,J

Sd./-

MANMOHAN SARIN,J

January 12, 2007