

(1991) 10 AHC CK 0034
In the Allahabad High Court
Case No : Writ Petition No. 4741 of 1988

A.B.Singh

APPELLANT

Vs

Deputy Chief Security Commissioner, Rly. Protection Force,
Northern Railway, New Delhi & Others

RESPONDENT

Date of Decision : 31-10-1991

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (1991) 10 AHC CK 0034

Hon'ble Judges : S.N.Sahay, J

Final Decision : Allowed

Judgement

S.N. Sahay, J.

1. These two writ petitions raise common questions and are, therefore, being disposed of by a common judgment. A.B. Singh, petitioner in Writ Petition no. 4741 of 1988 was SubInspector and Chaturi Lal, petitioner in Writ Petition 4740 of 1988 was Head Constable in the Railway Protection Force (for short, RPF) Northern Railway, & Lucknow. They were served with a chargesheet dated 4121985 by Commandant, RPF. It was alleged that Darshan Kumar, a business man of Kanpur, purchased 25 metric Tonnes of out up tyres from Alambagh stores and they were loaded on 2 trucks on 791985. But before the materials could be taken out, the petitioner A.B. Singh, who was under suspension and the petitioner, Chaturi Lal, approached Darshan Kumar posing as Octroi officials and took Rs. 550 from him. On coming to know the truth, Darshan Kumar submitted a written complaint to IPF, xxi Company that the petitioner, A.B. Singh, has subsequently given the money to the petitioner Chaturi Lal. Immediately an entry was made in Roznamacha. Petitioner, Chaturi Lal was also called by 1PF, XXI Company. S.N. Singh and he admitted that the petitioner, A.B. Singh, had received Rs. 550 from the said businessman and had handed over the same to him. Then petitioner, Chaturi Lal was taken by L.B. Pandey and J.L. Asthana, SubInspectors to CIB Office Lucknow, where petitioner, Chaturi Lal took out Rs.

550 from the almirah and handed over the same to the said SubInspectors, who prepared Baramadagi at the spot and made entry in the Roznamcha on return. Petitioner, Chaturi Lal also stated that petitioner, A.B.Singh, posed himself as Octroi Officer and received Rs. 550 illegally from the said businessmen. On the basis of the aforesaid facts, both petitioners A.B. Singh and Chaturi Lal were charged under rule 3 of the Railway Servant Conduct Rules for acting in an unbecoming manner.

2. The Commandant RPF (Sri M. P. Tewari) by order dated 341986 appointed Sri R. K. Misra, Assistant Commandant, to inquire into the charges framed against the petitioners. He held inquiry against both the petitioners jointly and in due course submitted a common report dated 16101987. He held that from oral and documentary evidence, it was established beyond any shadow of doubt that A. B; Singh impersonating as Octroi Officer received Rs. 550 from Darshan Kumar and subsequently gave it to Chaturi Lal for retaining the same and both of them had committed misconduct within the meaning of rule 3 of Railway Service Conduct Rules, 1966. He further held that considering the gravity of the offence committed by the petitioners, no punishment other than removal from service would meet the ends of justice and keep the prestige of the force. Hence, he submitted the whole case to CSC/NDLS for disposed since removal of SubInspector, A. B. Singh, was beyond his powers. Upon receiving the report of the Inquiry Officer a notice dated 1031988 was issued by Deputy CSC/RPF to the petitioners to show cause why the penalty of removal from service should not be imposed on them. Both the petitioners submitted representations in reply to the show cause notice. The representation of A.B. Singh dated 141988 and the representation of Chaturi Lal dated 441988 were considered and rejected by the Deputy Chief Security Commissioner. He observed that in these representations the petitioners have not put forth even a single new point or argument which was not made by them earlier and were considered at the stage of issue of the show cause notice and there being no force the same are rejected. The Deputy Chief Security Commissioner proceeded further to observe that both the petitioners were afforded all reasonable facilities to defend their cases and grave charges for impersonating as Octroi officials and for taking money from the businessmen have been proved beyond reasonable doubt against them. He was of the opinion that such delinquent personnel should not at all be allowed to remain in force. Therefore, directed by order dated 1051988 that both the petitioners be removed from service with immediate effect.

3. In order to assail the validity of the order dated 1051988 which has been impugned by means of these writ petitions, it has been urged on behalf of the petitioners that it was illegal on the part of the respondents to hold a joint inquiry against the petitioners. It may be stated that the petitioners are governed by the Railway Protection Force Act, 1957. Both the petitioners are members of the Force within the meaning of Section 2 (C). In view of the provisions of sections 4 and 5, the Commandant, Assistant Commandant and Deputy Chief Security Commissioner are superior officers while SubInspector is

an officer and Head Rakshak is a rank holder in the Force. Under section 9(1) any superior officer may, subject to the provisions of Article 311 of the Constitution and to such rules as the Central Government may make under the Act, dismiss, suspend or reduce in rank any member of the Force whom he shall think remiss or negligent in the discharge of his duty, or unfit for the same, or award any one or more of the other punishments specified in the Section. Section 9 (2) provides that any member of the Force aggrieved by an order made under sub section (1) may appeal against the order to such authority as may be prescribed and the decision of the said authority thereon shall be final, According to Section 10, every superior officer and every member of the Force shall for all purposes be regarded as railway servants.

4. The Railway Protection Force Rules, 1959 has been framed by the Central Government under the said Act. Rule 41 specifies the penalty which may for good and sufficient reasons, be imposed on a member of the Force and removal from service is one of the penalties so specified. Rule 43 provides that the disciplinary authority in respect of the member of Force for the purposes of imposing any particular penalty or the passing of any disciplinary order shall be authority specified in this behalf in schedule II in whose administrative control the member is serving and shall include any authority superior to such authority. The entries in schedule II indicate that the penalty of removal may be imposed on all members of the Force by the Inspector General, Chief Security Officer, Deputy Inspector General and Deputy Chief Security Officer. The Security Officer/Commandant/Assistant Inspector General may impose the penalty of removal on all members of the Force except Inspectors and SubInspectors. This penalty can be imposed on Senior Rakshak and Rakshak by Assistant Security Officer/Assistant Commandant also.

5. Rule 44 lays down the procedure for imposing major penalties. Sub rule (1) provides that without prejudice to the provisions of the Public Servants (Inquiry) Act, 1850, no order imposing on a member of the Force any of the penalties specified in clauses (a) to (d) of Rule 41 shall be passed except after an enquiry held as far as may be in the manner hereinafter provided. Sub rule (2) provides that the disciplinary authority shall frame definite charges on the basis of the allegations on which the inquiry is proposed to be held. Such charges together with a statement of the allegations on which they are based shall be communicated in writing to the member of the Force and he shall be required to submit, within such time as may be specified by the disciplinary authority a written statement of his defence and also to state whether he desires to be heard in person, Sub rule (3) enables the member of the Force for the purposes of preparing his defence to inspect and take extracts from such official records, as he may specify and empowers the disciplinary authority to refuse such permission if such records are not relevant for the purpose or it is against the public interest to allow him access thereto. For the purposes of sub rules (2) and (3) the expression 'disciplinary authority' includes the authority competent under the rules to impose upon the member of the Force any of the penalties specified

in clauses (e) to (h) of Rule 41. Sub rule (4) provides that on receipt of the written statement of defence, or if no such statement is received within the time specified, the disciplinary authority may itself inquire into such of the charges as are not admitted or, if it considers it necessary so to do, appoint a superior officer or an officer not lower in rank than an Inspector or a Board of Inquiry as the inquiring authority to conduct the inquiry. Sub rules (5) and (6) relate to the details of the inquiry. Sub rule (7) provides that at the conclusion of the inquiry, the inquiring authority shall prepare a report of the inquiry recording its findings on each of the charges together with reasons therefor. If in the opinion of the such authority the proceedings of the inquiry establish charges different from those originally framed, it may record its findings on such charges, provided that findings on such charges shall not be recorded unless the member so charged has admitted the facts constituting them or has had an opportunity of defending himself against them. Sub rule (8) pertains to the record of the inquiry and sub rule (9) lays down that the disciplinary authority shall, if it is not inquiring Authority, consider the record of the inquiry and record its findings on each charge. Then under sub rule (10) the disciplinary authority may pass appropriate orders regarding the imposition of penalty and in this connection if he proposes to impose one of the major penalties which include removal from service then a duty is cast on him to furnish a copy of the report of inquiring authority and to give a show cause notice in respect of the proposed penalty to the charged person and to consider his representation, if any, before passing orders regarding imposition of penalty.

6. Besides the aforesaid rules, there are certain regulations also, known as Railway Protection Force Regulations, 1966 which have been framed under the said Act. Regulations 20 and 21 relate to the conduct of departmental inquiry. It is provided in regulation 20 (iv) and (v) that on receipt of the written statement of defence, the disciplinary authority will normally hold the enquiry himself (except in a few cases where it becomes expedient to appoint a Superior Officer or an officer not lower in rank than an Inspector for Head Rakshaks and below only (or a Board of Inquiry) as the Inquiring Authority and this will be done in Form No. R. P. F./E16 (B).

7. From a perusal of the above mentioned provisions it is evident that there is no specific provision with regard to joint inquiry. The matter has been left to the discretion of the disciplinary authority. Normally the inquiry should be held by the disciplinary authority himself but he may consider the facts and circumstances of a particular case and may appoint another person as Inquiry Officer if it is expedient to do so. By necessary implication, the disciplinary authority has to apply his mind and to decide whether a common Inquiry Officer should be appointed or common Inquiry should be held or not. The guiding principles in all such matters would necessarily be as to how to give due effect to the provisions of Article 311(2) of the Constitution. As provided in Section 9 of the Act itself, no penalty can be imposed on a member of the Force except in accordance with the provisions of Article 311. According to Article 311(2) no member of the Force

shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges. Therefore, whenever it is proposed to hold a joint inquiry it must be determined whether such a course of action would or would not give a reasonable opportunity of being heard to the member of the Force in respect of the charges framed against him. If it appears to the disciplinary authority that the right of a member of the Force to reasonable opportunity of being heard would be prejudiced by the holding of a joint inquiry, then it would be illegal and unconstitutional on his part to direct that joint inquiry may be held.

8. In the instant case, it will appear from the charges framed against the petitioners that both of them were witnesses against each other in the matter of taking and retaining an illegal gratification from Darshan Kumar, although the facts alleged in the chargesheet indicate that all the facts constituting the episode were part of the same transaction. The statement of Chaturi Lal would have served as material piece of evidence to establish that A.B. Singh had taken money from Darshan Kumar. Likewise, the statement of A. B. Singh would have either confirmed the complicity of Chaturi Lal in retaining the money or would have gone a long way to exonerate him. The report of the Inquiry Officer shows that neither of the petitioners was examined as witness and as a matter of fact no opportunity was given to A.B. Singh to cross-examine Chaturi Lal during the inquiry proceeding. Therefore, there can be no doubt that by holding a joint inquiry, the provisions of Article 311 (2) have not been complied with in the instant case and the petitioners have been deprived of the right to reasonable opportunity of being heard.

9. It may be incidentally mentioned that the Railway Board has also issued a circular no. 52E O/26 E (DA) dated 13/11/1972 on the subject of joint inquiries in common proceedings. It is stated in para 3 of this circular that in view of the above position the Board observe that while there is no objection to hold a joint inquiry under rule 13 of the Railway Servants (Discipline and Appeal) Rules, 1968 so long as the defendants are not made witnesses against each other, it would be against the principles of natural justice to hold a joint inquiry of several persons each of whom is to be a witness against the other. It is further provided that in latter type of cases separate inquiry should be held. The petitioners are not governed by these rules directly; but the logic of the provision contained in this circular would be equally applicable to the petitioners also. It may be mentioned that the appointment of Sri R.K. Misra, Inquiry Officer, has also been challenged by the petitioner A.B. Singh on the ground that he was appointed by the Commandant who is not the punishing authority and as such Sri Misra had no authority or Jurisdiction to act as an Inquiry Officer. There seems to be force in this contention also.

10. In view of the conclusions arrived at above, it is needless to examine the other contentions of the parties. The reason is that the inquiry has not been

properly conducted and the entire proceedings right from the stage of the service of chargesheet upon the petitioners till the passing of the impugned order are vitiated. The learned counsel for the respondents has contended that the writ petition is not maintainable because the petitioners have not availed of their statutory right of appeal which is an efficacious alternative remedy. Reliance has been placed on *Virendra Sharma v. Union of India*, 1988 Lucknow Civil Decisions 313 in support of this contention. On the other hand the learned counsel for petitioners has relied on *Baburam v. Zila Parishad* AIR 1969 Supreme Court 556 and *Hirday Narain v. Income Tax Officer, Bareilly* AIR 1971 Supreme Court 33 for the purpose of showing that a writ petition should not be dismissed on the ground of alternative remedy at the time of hearing and if a clear violation of principles of natural justice has been established, the existence of alternative remedy does not take away the jurisdiction of the Court under Article 226 of the Constitution, but only regulates the manner in which the discretionary power conferred by Article 226 is to be exercised. In view of the circumstances of this case, it will not be in the interest of justice to dismiss the writ petition on the ground that the petitioners have alternative remedy and to direct the proceedings to protract on account of the filing and disposal of appeal and other incidental proceedings.

11. For the above reasons both the writ petitions are allowed and the impugned order dated 10/5/1988 is quashed and it is directed that the disciplinary proceedings shall be started afresh against the petitioners from the stage of the service of chargesheet upon them and shall be concluded and the matter shall be disposed of according to law. No orders as to costs.

(Petition allowed)