
(2023) 03 CAL CK 0053
In the Calcutta High Court
Case No : IA No. CAN 1 Of 2021

Amit Kumar

APPELLANT

Vs

Union Of India And Ors.

RESPONDENT

Date of Decision : 15-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 226, 311(2), 323A
Railway Protection Force Rules, 1987 — Section 39, 39(1), 39(2), 39(3), 40, 133, 135, 148, 149, 150, 153(2)(1), 211, 248(1)
Prevention of Corruption Act, 1988 — Section 7
Railway Protection Force Act, 1957 — Section 9

Citation : (2023) 03 CAL CK 0053

Hon'ble Judges : Subrata Talukdar, J;Saugata Bhattacharyya, J

Bench : Division Bench

Advocate : Achin Majumdar, S.N. Dutta

Final Decision : Dismissed

Judgement

Subrata Talukdar,J

In this appeal the Judgement of the Hon'ble Single Bench dated 31st of March, 2022 in the writ petition being WPA 21986 of 2019 is under challenge. The challenge in the writ petition was thrown by the present appellant/ writ petitioner to a Disciplinary Proceedings (DP) instituted by the South Eastern Railway (SER) against the writ petitioner who was a member of the Railway Protection Force (RPF).

The Hon'ble Single Bench recorded the submissions placed by the appearing parties and, inter alia, found as follows:

First, in relation to the challenge thrown by the appellant/ the writ petitioner to his order of suspension which, it was alleged was not issued in contemplation of a DP. It was held that having regard to Rule 211 of RPF Rules, 1987 (for short the 1987 Rules), there is a provision of appeal against the order of suspension. Accordingly, the appellant/ the writ petitioner was granted leave by the Hon'ble

Single Bench to prefer an appeal strictly in terms of Rule 211 (supra). In the event it was further directed that if such appeal is filed within a period of thirty days from the date of delivery of the Judgement and Order by the Hon'ble Single Bench, i.e., on and from the 31st of March, 2022, the Appellate Authority (AA) shall proceed to dispose of such appeal within a reasonable time thereafter without taking the point of limitation.

Second, the Hon'ble Single Bench proceeded to consider the point of alleged invalidity of the Charge-Sheet (CS) as raised by the appellant/ the writ petitioner on the ground that the DP instituted on the basis of such CS failed the tests laid down in Rule 248.1 of the 1987 Rules (supra).

Having regard to the provisions of Rule 248.1(supra), the Hon'ble Single Bench did not find any irregularity in issuance of the CS against the appellant/ the writ petitioner by the Divisional Security Commissioner. The Hon'ble Single Bench held that in terms of Rule 248.1, either the Controlling Officer or any officer of and above the rank of Security Commissioner in the case of Inspectors/ Assistant Security Commissioners, can hold an enquiry based on a public complaint if the Disciplinary Authority is of the opinion that the charges are verifiable. The Hon'ble Single Bench also found that the requirement of conducting a preliminary enquiry under Rule 248.1 before the initiation of the DP is not mandatory. Therefore, there is no infirmity in the CS as issued by the Divisional Security Commissioner and the DP should be allowed to proceed to its logical conclusion in terms of the 1987 Rules.

The Hon'ble Single Bench further noticed that the appellant/ the writ petitioner had filed a representation dated 30th October, 2019 addressed to the Divisional Security Commissioner on the permissibility of initiating a DP under the 1987 Rules during pendency of the criminal proceedings arising out of the self-same charges against the appellant/ the writ petitioner. Since the representation of the appellant has remained unanswered, the Hon'ble Single Bench directed the Divisional Security Commissioner to first take a decision on such representation before proceeding with the DP. The decision of the Divisional Security Commissioner shall be taken within a specified time and then communicated to the appellant/ the writ petitioner.

The following arguments have been raised on behalf of the appellant/ the writ petitioner:

wp) That the impugned Judgement has been passed on a misconception of Rule 248.1 of the 1987 Rules. Rule 248.1 deals with the preliminary enquiry to verify a public complaint but is not in the nature of an enquiry connected to a regular DP.

wp1) Under Rule 248.1 such preliminary enquiry must be conducted by the Security Commissioner himself or by an officer above the rank of Security Commissioner. Such would be evident from the Table of Officers incorporated by way of a Chart to Rule 248.1 (supra) .

Having regard to above legal position, any Inspector of the RPF has no power to conduct a preliminary enquiry under Rule 248.1 against the appellant who is himself in the rank of an Inspector. The Hon'ble Single Bench erred in not appreciating the distinction between a preliminary enquiry under Rule 248.1 and a regular DP.

wp2) Furthermore, the direction of the Hon'ble Single Bench upon the Security Commissioner to dispose of the representation of the appellant/ the writ petitioner dated 30th October, 2019 under Rule 248.1 (supra) has resulted in a gross miscarriage of justice against the appellant. By the said speaking order, the Disciplinary Authority of the appellant failed to distinguish between Rule 153.2.1 of the 1987 Rules and Rule 248.1, also of the said Rules.

While Rule 153.2.1 becomes operative after issuance of the CS and hence concerns a regular DP, Rule 248.1 is confined only to a preliminary enquiry.

wp3) That the appellant is facing both criminal and departmental proceedings based on identical charges. The appellant was also placed under suspension on the ground of pendency of the criminal proceeding. The suspension order of the appellant was revoked on the condition that such suspension shall be ultimately guided by the final adjudication of the criminal proceedings which is pending before the Learned CBI Court, Bhubaneswar.

Furthermore, witnesses in the said criminal proceeding are also included as witnesses in the DP. Importantly, since it is alleged that the appellant has tarnished the image of the RPF, it was incumbent that the DP should include the CBI officers as witnesses. By not including officers of the investigating agency, i.e. the CBI as witnesses in the DP, the appellant has been deprived of the opportunity to cross-examine such witnesses and thereby to demolish the so-called public complaint relied upon against him in the DP.

In support of the above argument, the authority reported in 1999 5) SLR 651 at Paragraph 3 is relied upon.

wp4) With reference to the simultaneous pendency of both criminal proceeding and the DP, the position is taken by the appellant that the DP should be kept in abeyance for the purpose of ensuring that the defence of the appellant in the criminal proceeding is not jeopardised.

In support of such legal proposition, the unreported decision of the Hon'ble Court in FMA 3521 of 2014 is relied upon.

wp5) It is also pointed out that when a CS is framed by an authority subordinate to the appointing authority of the appellants, law provides that such subordinate authority must obtain the prior approval of the appointing authority before framing charges. Such prior approval would be in compliance with Article 311 (2) of the Constitution of India.

In support of such proposition AIR 2014) SC 88 at Paragraphs 39, 40 and 46 is

relied upon.

On the basis of the above arguments, the appellant has prayed for setting aside of the DP or, alternately to keep the DP in abeyance till disposal of the criminal proceeding.

Per Contra, the respondent/RPF has argued as follows:

r) That a case was registered against the appellant/ the writ petitioner by the CBI under Section 7 of the Prevention of Corruption Act, 1988 (for short the PC Act). The case was registered on the basis of a written complaint by the owner of a hotel near Baripada Railway Station. The FIR was recorded by the CBI on 28th of October, 2019 and the appellant was in judicial custody between 28th of October 2018 to 11th of September 2019.

r1) In view of the criminal proceeding, the appellant was suspended on 29th of August 2018 invoking Section 9 of the RPF Act 1957 (for short the 1957 Act) read with Rule 133 of the 1987 Rules. DP was instituted against the appellant by issuing a CS. The primary charge against the appellant was of discreditable conduct and corruption. The institution of the DP has been challenged in the writ petition being WPA 21689 of 2019, the final Judgement and Order whereof dated 31st March, 2022 is the cause for challenge in this appeal.

r2) The argument of the appellant that the CS was not issued within thirty days is not sustainable in a scenario when the activity of the appellant as complained of in the CS is found to be prejudicial to the interests of the State or a criminal case involving moral turpitude is pending against him. This has been clearly specified in the third proviso to Rule 135 of the 1987 Rules.

The third proviso to Rule 135 (supra) waives the requirement of thirty days in cases where a delinquent officer has been placed under suspension on grounds prejudicial to the interests and security of the State or, on the ground of a criminal case involving moral turpitude pending against him.

r3) Relying on Rule 150 of the 1987 Rules it is contended that both can be pursued simultaneously. Rule 150 reads as follows:

“150. Effect of departmental punishment of prosecution:

Any punishment specified in rules 148 and 149 which has been imposed on an enrolled member of the Force shall not affect his liability to prosecution and punishment under this Act or under any other law for the time being in force.”

r4) In the context of Rule 150 (supra) it is clarified that both Rules 148 and 149 of the 1987 Rules, inter alia, provide for a category of punishments to be imposed in a DP against any member of the RPF. Since Rule 150 does not prohibit liability to prosecution and punishment under another law for the time being in force, there is no legal bar in continuing with both the criminal proceeding and the DP against the appellant.

In this connection the authority reported in 2005) 7 SCC 764 at Paragraph 11 is relied upon on the ground that the tests of burden of proof in a criminal proceeding and in a DP are different, the former being beyond reasonable doubt and the latter based on a preponderance of probability.

r5) There is therefore no impediment to suspend the appellant on the basis of the criminal proceeding and in this regard the provisions of Rule 135 of the 1987 Rules are reiterated.

Rule 135 reads as follows:

"135. Public interest shall be the guiding factor in deciding whether or not a member of the Force, including when he is on leave, should be placed under suspension:

Provided that before taking a decision on suspension, the competent authority may consider whether the purpose would be served if the member is transferred from his post or sanctioned leave:

Provided further that charge on which a member has been placed under suspension shall be furnished to him within a period of thirty days from the date of suspension after which the incumbent shall be deemed to have been reinstated if no such charge is made available to him:

Provided further that the above provision of thirty days shall not apply to cases where a member has been placed under suspension on grounds that he has engaged himself in activities prejudicial to the interest and security of the State or a criminal case involving moral turpitude is pending against him."

r6) With reference to Rule 248.1 of the 1987 Rules, reliance is placed on Rule 39.1, 39.2 and 39.3 which read as follows:

"39.1 The Divisional Security Commissioner shall be directly responsible to be Chief Security Commissioner concerned for better protection, security the smooth movement of railway property as well as for efficient administration of the Force in his jurisdiction and shall deal with all establishment matters concerning the enrolled members of the Force placed under his control.

39.2 He shall exercise such powers in respect of establishment and other matters as are given in Schedules II to IV and under the extant Railway Rules.

39.3 The Divisional Security Commissioner shall devise ways and means for providing better protection and security to railway property in his division and matters connected therewith and shall carry out such directions as may be given to him on the subject by the Chief Security Commissioner concerned or on his behalf by any other superior officer of the Force."

r7) It is thus clarified that in view of Rules 39.1, 39.2 and 39.3 (supra), the Divisional Security Commissioner shall possess all administrative powers with the right of exercise of such powers as provided in Schedule II to IV of the 1987

Rules. Such exercise of powers by the Divisional Security Commissioner shall also include the powers of delegation and hence the preliminary enquiry conducted by the delegatee against the appellant suffers from no infirmity qua Rule 248.1 of the 1987 Rules.

r8) Having regard to the contents of Rule 153 of the 1987 Rules, it is contended that there has been no infraction of the statutory provisions governing the conduct of a DP against the appellant. Equally, the principles of natural justice have not been violated. The appellant has been given the opportunity to contest the DP as per Rules and by honouring the principles of natural justice. Placing reliance on the judicial authority of 2010) 11 SCC 71 at Paragraph 13, it is submitted that it is not an absolute proposition of law that prior to initiation of the DP, the delinquent officer/ in this case the appellant, shall be called upon to file his reply.

r9) Since the criminal proceedings and the DP stand on different footings by application of different tests of the burden of proof principle, (supra) it is not imperative that the CBI officers investigating the criminal case be made witnesses in the DP. Moreover, Rule 153 of the 1987 Rules provides for a procedure by operation of a special statute to be adopted for imposing major punishments. Such procedure has been followed in the facts of this case.

r10) Finally, the respondents take the position that there is no infirmity in the action of the Divisional Security Commissioner to issue the CS in place and stead of the principal Chief Security Commissioner. The provisions of Rule 39 of the 1987 Rules providing for the powers and responsibilities of the Divisional Security Commissioner are reiterated in this regard as well as the provisions of Schedule III of the 1987 Rules which, inter alia, provide that the Divisional Security Commissioner shall have the power to suspend all enrolled members of the force. Rule 39 read with Schedule III (supra) read in the light of Rule 40 of the said 1987 Rules provide for the powers and responsibilities of all superior and Subordinate Officers including the Divisional Security Commissioner. It shall be abundantly clear that prior to issuing of the CS the concerned authority had obtained sanction for prosecution from the appointing authority of the appellant for further course of action.

Having regard to the above points it is submitted that the order impugned of the Hon'ble Single Bench recognizes the correct legal position and requires no intervention.

Having heard the parties and considering the materials placed, this Court does not find the initiation and continuance of the DP against the appellant to be vitiated by perversity. This Court recognises the scenario emanating from a construction of Rule 248.1 (supra), which is in the nature of verifying a public complaint by way of a preliminary enquiry before proceeding departmentally against the appellant.

From the steps taken by the respondent/ RPF it does not appeal to the mind of

this Court that the provisions of Rule 248.1 have been breached. To the contrary, the disposal of the representation of the appellant by the Divisional Security Commissioner pursuant to the Order of the Hon'ble Single Bench reinforces the position that the respondent/ RPF found the public complaint to be verifiable and hence proceeded to hold the DP.

This Court also finds the arguments of the appellant/ the writ petitioner regarding simultaneous conduct of the criminal proceedings and the DP to be unworthy of acceptance since it is not an absolute legal proposition that in every case a DP must be halted to enable the criminal proceeding to reach its final outcome. In this connection, this Court reiterates the settled legal proposition that the tests of proof in either of the proceedings are fundamentally different.

With further reference to the legal position emanating from the different standards of proof attached to a criminal prosecution vis-à-vis a DP, the authority of *Re: Divisional Controller, Karnataka State Road Transport Corporation Vs. M.G. VittalRao*, reported in 2012) 1 SCC 442, may be usefully referred to in this discussion. Upon discussing a gamut of legal authorities on the point, the Hon'ble Apex Court at Paragraph 24 finally held as follows:

"24. Thus, there can be no doubt regarding the settled legal proposition that as the standard of proof in both the proceedings is quite different, and the termination is not based on mere conviction of an employee in a criminal case, the acquittal of the employee in criminal case cannot be the basis of taking away the effect of departmental proceedings. Nor can such an action of the department be termed as double jeopardy. The judgment of this Court in 1999) 3 SCC 679 *Capt. M. Paul Anthony (supra)* does not lay down the law of universal application. Facts, charges and nature of evidence etc. involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry."

In the facts of this case it is evident that the appellant's employer, RPF, discovered materials upon verification of the public complaint which were of a nature warranting a DP. Therefore, having regard to the discussion already made hereinabove, the employer/RPF instituted the DP in terms of the Special Statute being the RPF Act 1957 read with the RPF Rules, 1987.

Furthermore, it can be gathered from the materials placed before this Court that the substantial facts which constitute the basis for initiating the DP against the appellant have not been denied by the appellant. This Court notices an over-reliance on the part of the appellant/ the writ petitioner on technicalities connected to the DP without denying the substantial facts arising out of the verified public complaint. In this connection this Court must iterate the legal principles emanating from *Re: K.L. Tripathy Vs. State Bank of India*, reported in 1984) 1 SCC 43 wherein Sabyasachi Mukherjee J., speaking for the Hon'ble Apex Court, had held at Paragraphs 32 and 33 as follows:

"32. The basic concept is fair play in action administrative, judicial or quasi-

judicial. The concept fair play in action must depend upon the particular facts, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no dispute regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version or the credibility of the statement.

33. The party who does not want to controvert the veracity of the evidence from or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation of the facts, absence of opportunity to cross-examination does not create any prejudice in such cases."

Similarly, in the facts of the present case this Court has not noticed a real effort on the part of the appellant/ the writ petitioner to controvert the veracity of the evidence gathered against him. To the mind of this Court therefore the requirement of holding a DP on the basis of such evidence collected cannot be waived simply on the ground that the appellant without contesting the real facts raises technicalities qua Rule 248.1 (supra) connected to the public complaint. This Court therefore does not find that the appellant has satisfied the test of having suffered real prejudice in the event the DP is allowed to continue.

This Court accordingly recognizes the emphasis placed by the Hon'ble Single Bench upon allowing the DP to reach a just and final conclusion on the basis of the substantive facts which have emerged following a verified public complaint. The Hon'ble Single Bench has thus committed no error in refusing relief to the appellant/ writ petitioner which would have otherwise led to dilating and delaying the DP.

On a parity of reasoning connected to the different status enjoyed in law by a criminal proceedings and a DP, the presence of the CBI Officers as witnesses in the DP may not be an absolute requirement and the test of proof in the DP would depend on preponderance of probability based on its own evidence.

Before parting with this discussion it would be relevant to notice the limits of Judicial Review of a DP. It is well-settled that neither the Hon'ble Court or the Learned Tribunal can exceed its jurisdiction by re-appreciating the evidence in the DP and arriving at its own conclusion. In short, Judicial Review is not an

appeal from a decision. The following paragraph In Re: State of T.N. and another Vs. S. Subhramaniyam reported in 1996) 7 SCC 509 can be usefully referred to in the context of the above discussion.

"5. The only question is: whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own finding that the charge has not been proved. The Tribunal is not a court of appeal. The power of judicial review of the High Court under Article 226 of the constitution of India was taken away by the power under Article 323A and invested the same on the Tribunal by Central Administrative Tribunal Act. It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence has no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the court or tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to re-appreciate the evidence and would come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. This is consistent view of this Court vide B.C. Chaturvedi vs. Union of India [JT 1995 (8) SC 65], State of Tamil Nadu vs. T.V. Venugopalan [(1994) 6 SCC 302 para 7], Union of India vs. Upendra Singh [(1994) 3 SCC 357 at para 6], Government of Tamil Nadu & Anr. vs. A. Rajapandian [(1995) 1 SCC 216 para 4] and Union of India vs. B.S. Chaturvedi [(1995) 6 SCC 749 at 759-60]. In view of the settled legal position, the Tribunal has committed serious error of law in appreciation of the evidence and-in coming to its own conclusion that the charge had not been proved. Thus we hold that the view of the Tribunal is ex facie illegal. The order is accordingly set aside. OA/TP/WP stand dismissed."

A similar view has been expressed In Re: State of Andhra Pradesh Vs. S. Ramarao, reported in AIR 1963 SC 1723 and reiterated In Re: Director General of Police Railway Protection Force Vs Rejendra Kr. Dubey 2020 SCC Online SC 954. Since in the view of this Court this is not a case of no evidence but a case where evidence permits a DP to be held and the employer / RPF is proceeding with such DP in terms of its established Statute namely the RPF Act 1957 read with the RPF Rules 1987, this Court finds no reason to intervene with the Judgement and Order impugned of the Hon'ble Single Bench.

MAT 656 of 2022 with CAN 1 of 2022 stands accordingly dismissed.

Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree.