

(2022) 11 DEL CK 0037

In the Delhi High Court

Case No : Civil Writ Petition No. 13605 Of 2019

Babu Khan

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision : 03-11-2022

Acts Referred:

Railway Protection Force Rules, 1987 — Section 153, 153.8

Citation : (2022) 11 DEL CK 0037

Hon'ble Judges : Suresh Kumar Kait, J;Saurabh Banerjee, J

Bench : Division Bench

Advocate : Rajat Aneja, Palak Vaisisth, Anju Gupta, Roshan Lal Goel

Final Decision : Allowed

Judgement

Saurabh Banerjee, J

1. As pleaded by petitioner, after appointment as a Constable in the Railway Protection Special Force on 27.09.1996, he faced personal turmoil resulting in him being diagnosed with a mental disorder 'Paranoid Schizophrenia'. Since then he has been receiving continuous treatment and medication for the same.

2. During the course of duty, respondent no.2 issued a chargesheet dated 30.09.2009 under Rule 153 of the Railway Protection Force Rules, 1987 [hereinafter referred as "RPFR"] framing two charges against the petitioner as under:

1. Cons/06SF9625243/Babu Khan of 'B' Coy 6BN/RPSF in the OR of Adjutant dated 15.09.2009 at Bn. HQrs by saying that if he had got coerce the Administration to post him to Bn. HQr by saying that if had he got ammunition, then he would have opened fire in the Battalion campus, at Rail Bhavan or would shoot himself etc. if he is not immediately posted in HQr or if any DAR action is taken against him for overstay/absenteeism/etc.

2. He has been habitual of absenting/absconding from legitimate Govt. duty

without any information and showing disobedience, violation and neglect of orders of seniors and superiors.

3. Based upon the report of Enquiry Officer, the Disciplinary Authority vide order dated 10.08.2010 held the petitioner 'guilty' of the aforesaid charges and awarded the punishment of Compulsory Retirement from service with immediate effect. Thereafter, both the Appellate Authority vide order dated 28.09.2010 and the Revisional Authority vide order dated 18.03.2011 affirmed the order of the Disciplinary Authority, resulting in filing of earlier writ petition being W.P.(C) 6312/2011 titled Babu Khan v Union of India & Anr. before this Court. The said petition was disposed of vide order dated 21.03.2013 with directions as under:-

1. The recommendation dated 06.02.2010 of the enquiry officer as well as the orders dated 10.08.2010 passed by the Disciplinary Authority, 28.09.2010 passed by the Appellate Authority and 18.03.2011 passed by the Revisional Authority are hereby set aside and quashed.

2. In view of the above, the petitioner shall be reinstated in service. However, the petitioner shall not be entitled to any backwages.

3. The matter is remitted to the disciplinary authority to take a fresh view in the matter and make appropriate directions taking into consideration all circumstances including the medical status of the petitioner; nature of charges involved as well as the period which is lapsed since issuance of the charge sheet. The disciplinary authority shall thereupon take a decision whether it still requires to hold a de novo enquiry, from the stage that it stood vitiated, i.e., after issuance of the charge sheet.

4. In the event the authority takes a view, the facts and circumstances of the case require a fresh enquiry, the authority shall ensure that the principle of law and natural justice are strictly complied with.

5. Given the findings of the medical examination, which we noticed herein before, it shall be open for the disciplinary authority to direct appropriate medical examination.

6. In view of the time, which has elapsed, the disciplinary authority shall proceed expeditiously in the matter."

4. In compliance thereof, the respondents reinstated the petitioner without any medical examination and conducted a de-novo enquiry qua the same chargesheet. Once again, based upon the report of Enquiry Officer, the Disciplinary Authority vide order dated 02.09.2014 held the petitioner 'guilty' of the abovesaid charges and awarded the punishment of Compulsory Retirement from service with immediate effect. Similarly, once again, both the Appellate Authority vide order dated 21.07.2015 and the Revisional Authority vide order dated 31.05.2018 affirmed the order of the Disciplinary Authority. Hence the present writ petition seeking quashing of the said Office Order(s) dated 02.09.2014, 21.07.2015 and 31.05.2018; reinstatement with full back wages/

consequential benefits; and restraining respondents from taking any coercive action.

5. Learned counsel for petitioner contended that there is a non-compliance of directions of the order dated 21.03.2013 passed in the earlier writ petition as after his reinstatement by the respondents, no proper medical examination was conducted for ascertaining the status of the petitioner at the time of the de-novo enquiry as per norm.

6. Relying upon Rule 153.8 of the RPFR, learned counsel for petitioner submitted that during the de-novo enquiry, the petitioner was not provided a 'friend' and the so-called 'friend' provided by the respondents later was the 'driver' of the Enquiry Officer, who never represented him properly. Alleging personal bias against the said Enquiry Officer, the learned counsel contended the same is a violation of principles of natural justice.

7. Learned counsel for petitioner also contended that the decision of Disciplinary Authority dated 02.09.2014 imposing punishment of compulsory retirement is perverse and suffers from patent illegality as there being no application of mind, the same is cryptic.

8. Relying upon the various medical documents wherein the petitioner, though a patient of 'Paranoid Schizophrenia', has been declared asymptomatic and fit to work without arms, learned counsel contended that despite thereto, respondents kept posting the petitioner deliberately to different hard stations without adhering to his request of being posted at the Headquarters and without adhering to para 574 of the Indian Railway Medical Manual, wherein a list of posts where a staff suffering/ having recovered from mental illness can be posted. In any event, the petitioner is fit to work without arms and has been diligently performing his services but has been the target of vindictive conduct of his superiors.

9. Per contra, learned counsel for respondents relying upon three letters dated 17.04.2010, 15.06.2010 and 07.07.2010 by the Commanding Officer, Headquarters, 6th Battalion/RPSF, Dayabasti, Delhi to the Railway Medical Authority wherein it specifically asked "whether the above activities as done by the Constable Babu Khan are deliberate or due to the disease of Paranoid Schizophrenia" and its response dated 19.07.2010 by the Sr. DMO/Psych/ Northern Railway Central Hospital, New Delhi wherein it was specifically opined that "Such goal directed behaviours towards only his superiors and unwilling to do duty appears to be deliberate and not due to the mental disease of paranoid schizophrenia which are also associated with any other features which has not been mentioned or consulted by his family members to the doctor" accordingly, contended that the habitual absenteeism and absconding from duty without information and authority did not appear to be as a result of the petitioner suffering from paranoid schizophrenia.

10. Learned counsel for respondents also contended that as the petitioner was

reinstated and placed under suspension till completion of the de-novo enquiry pursuant to order dated 21.03.2013 passed in the earlier writ petition, the medical examination was not required.

11. Learned counsel for respondents lastly contended that in view thereof, all fresh proceedings were carried out in compliance of the said order dated 21.03.2013 and the impugned Office Order(s) dated 02.09.2014, 21.07.2015 and 31.05.2018 need not be set aside.

12. After carefully perusing all the documents on record and hearing learned counsel for the parties, we now proceed to adjudicate the issues relating to the petitioner suffering with a mental disorder 'Paranoid Schizophrenia'. As there is no dispute qua that, we are not required to opine about the same, however, what needs to be adjudicated is the extent of same and the effect(s) thereof.

13. Admittedly, the two charges in the chargesheet dated 30.09.2009 are relating to 'Paranoid Schizophrenia' of the petitioner and according to us are inter-dependent upon his mental condition. Though the petitioner is suffering from a mental disorder 'Paranoid Schizophrenia', he has been declared asymptomatic and is fit to work without arms and was diligently performing his services. The same has not been disputed by the respondents at any stage till now. It has never been the case of the respondents that the petitioner is suffering from an extreme form of 'Paranoid Schizophrenia', which is/can be degenerative or that he cannot perform his duties by taking due care and precaution. In our view, if a chance is given, he would be able to discharge his duties, albeit of course with some assistance and guidance from the respondents. In any event, since the respondents have not called for any fresh medical examination from their side to ascertain the exact status of his suffering, it does not belie for the respondents to take a contrary stand and deny the same.

14. No doubt 'Paranoid Schizophrenia' is a mental disease relating to a particular pattern of behaviour resulting in hallucinations, delusions, fears or like, it is caused from and is dependent upon a combination of surroundings, triggers, events or happenings. Generally, the general conscience of one suffering from 'Paranoid Schizophrenia' does not fail for long as it is characterised by momentary lapses for a short duration and not for lengthy periods. The said lapses are moreover in the nature of fits of occasional bouts. However, those suffering from 'Paranoid Schizophrenia' require constant guidance, assistance, medication and treatment as they may act erratically and their behaviour may be fluctuating. They are, by and large, neither harmful to the people at large nor a threat to the society. But, yes, they may, in a fit of rage, be a danger for some time. Those again depend upon the conditions, situations and surroundings prevalent then and most of all the gravity of the illness involved and may not, by and large, be present in all cases. The same is evident from the present case where apart from the incidents detailed in the chargesheet dated 30.09.2009, there is no mention of any other instance(s) attributable to the said mental condition of the petitioner. The petitioner is neither harmful nor is a threat. If

there was ever a danger from him, he would/ could have acted more gravely then and after that till now. That is not so.

15. According to us, the de-novo enquiry conducted by the respondents was done in a very rudimentary manner, especially whence they were aware of the mental condition of the petitioner and also when they themselves were all throughout relying upon the three letters dated 17.04.2010, 15.06.2010 and 07.07.2010 and the response thereto dated 19.07.2010 (supra). Reliance upon the said old documents shows the nonchalant attitude of the respondents. In our opinion, the order dated 21.03.2013 was very clear in all respects. Had the respondents any doubt, they were free to seek clarification(s), if any, at any stage, but they never sought any, dispels all doubts. The law also recognises such cases like that of the petitioner and gives them chances, as specified in Rule 153.8 of RPFR reproduced hereunder:

"153.8 The enrolled member charged shall not be allowed to bring in a legal practitioner at the proceedings but he may be allowed to take the assistance of any other member of the Force (hereinafter referred to as "friend") where in the opinion of the Inquiry Officer, the enrolled member charged cannot put up his defence properly. Such "friend" must be a serving member of the Force of or below the rank of Sub-Inspector for the time being posted in the same division or the battalion where the proceedings are pending and not acting as a "friend" in any other proceedings pending anywhere. Such "friend" shall, however, not be allowed to address the Inquiry Officer nor to cross-examine the witnesses."

16. It is but strange that the petitioner was not provided a 'friend' for most of the time and the so-called 'friend' provided by respondents was the 'driver' of the new Enquiry Officer before whom the enquiry proceeding was going on. This raises serious concerns as to the impartiality of the respondents and thus, there was no occasion to proceed in the said manner.

17. We feel the respondents were half-heartedly complying and have half-heartedly complied with the directions stipulated in the order dated 21.03.2013 as they failed to take the most relevant factor, i.e. mental condition of the petitioner into consideration. We hold that the proceeding before the Enquiry Officer was vitiated and there was indeed gross negligence and violation of principles of natural justice by the respondents.

18. According to us, the respondents should have taken the mental condition of petitioner into consideration and could have given the benefit of doubt to impose a punishment of minor penalty upon him rather than sticking onto the same position as what was before passing of order dated 21.03.2013 in the earlier writ petition. At the end of the day, the petitioner had not caused any harm or injury or any irreparable damage or loss or caused any such wrong which cannot be undone or pardoned or condoned, however, was merely absenting from duty. The respondents ought to have ascertained the reasons for his absenting, more so, whence they were aware that he is suffering with 'Paranoid Schizophrenia'. There

was no proper application of mind while passing the impugned orders.

19. Although, according to us, as per order dated 21.03.2013 passed in the earlier writ petition, the respondents were not specifically directed to conduct a fresh medical examination of the petitioner and they were not at fault, but, it would have been prudent to verify the latest mental condition of petitioner. The respondents did not do so and instead chose to rely upon the old documents of the petitioner. Plethora of medical documents filed by petitioner before us show both his latest condition and medication, which we candidly infer, have been ignored by respondents as there is no iota of averments made qua them by anyone from the respondents.

20. Whereas the respondents, for reasons unknown, in complete non-adherence to para 574 of the Indian Railway Medical Manual, wherein a list of posts where a staff suffering/ having recovered from mental illness can be posted, instead repeatedly transferred the petitioner from one hard station to another, again, without considering his mental condition. This is despite the fact that the Doctors had already opined that the petitioner is fit to work without arms and also whence the petitioner himself was willing to perform his duties without arms. As there were no recurring events like the ones mentioned in the chargesheet, there was no occasion for the respondents not to act in the fitness of things in accordance with the para 574 of the Indian Railway Medical Manual and in the interest of their own organisation and the petitioner. The petitioner deserved a chance atleast.

21. The petitioner, all throughout in his representation dated 21.07.2014 before the Disciplinary Authority, in appeal dated 17.09.2014 before the Appellate Authority and in review dated 18.07.2017 before the Review Authority, had been alleging bias, violation of principles of natural justice and malafide. All the three Forums have mechanically proceeded to pass respective final impugned Office Order(s) dated 02.09.2014, 21.07.2015 and 31.05.2018 without rendering any finding qua any of the allegations raised by the petitioner. Thus, each of the impugned Office Order(s) dated 02.09.2014, 21.07.2015 and 31.05.2018 are liable to be set aside. The respondents had every opportunity to improve upon their case and show better conduct by taking benefit of the order dated 21.03.2013 passed in the earlier writ petition whereby a new lease was given to them, but, alas, the respondents failed to do so and again repeated the same mistake as before.

22. In view of the prevailing position qua those suffering with the mental disorder 'Paranoid Schizophrenia' and present scenario, we feel that the response dated 19.07.2010 (supra) cannot be termed as conclusive and cannot come to the aid of the respondents in the present case as the same is very general and not particular to the facts and circumstances herein. Each individual suffering with the mental disorder 'Paranoid Schizophrenia' has to be dealt differently just like each Doctor prescribes different medicines to different patients suffering from similar disease(s). The respondents could not have applied a straight jacket

formula as the situations of those suffering from this mental disorder 'Paranoid Schizophrenia' differ from person to person and from stage to stage.

23. Accordingly, considering the present case, especially the overall conduct of the respondents, we hereby allow the present writ petition and quash the Office Order dated 02.09.2014 issued by the Disciplinary Authority; the Office Order dated 21.07.2015 issued by the Appellate Authority; and the Office Order dated 31.05.2018 issued by the Revisional Authority. Having held so, we also direct the respondents to reinstate the petitioner with 50% backwages with effect from 02.09.2014, albeit, without any consequential benefits, within four weeks from passing of this order. However, it is made clear that the past service of the petitioner for the said period with effect from 02.09.2014, shall be reckoned for the purpose of pensionary benefits only.

24. In view of the above, the respondents are directed to post the petitioner in adherence with para 574 of the Indian Railway Medical Manual, keeping in mind that the petitioner is, admittedly, suffering with a mental disorder 'Paranoid Schizophrenia'. However, at any stage in future, if the medical examination(s) conducted by the respondents prove(s) otherwise, i.e. the petitioner is found not suffering with the mental disorder 'Paranoid Schizophrenia', the respondents shall be free to proceed and act accordingly after passing appropriate reasoned direction(s)/order(s) in furtherance thereof.

25. The present writ petition is allowed and disposed of in view of the above terms.