
(1989) 01 RAJ CK 0041
In the Rajasthan High Court
Case No : CWP No. 2158 of 1983

Bhagirath Mal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-01-1989

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1989) 1 RLW 149 : (1989) WLN 440

Hon'ble Judges : S.N. Bhargava, J;P.C. Jain, J

Bench : Division Bench

Final Decision : Allowed

Judgement

P.C. Jain, J.—In this writ petition, the petitioner has prayed for issuance of an appropriate writ, order or direction to quash the order No. SDAE/40/3/1/19/83 dated 25th June, 1983, passed by the Assistant Security Officer, whereby he was removed from service. The petitioner has further prayed that the order dated 28th September, 1983, passed by the Security Officer in appeal, where by his appeal was dismissed, be also quashed.

2. Briefly stated the facts of the case are that the petitioner was appointed as Rakshak on 7th March, 1963, on the post of Rakshak at Mahsana, Rajkot. The petitioner remained posted from the date of his appointment till 1970, in Rajkot Div. at various places. The petitioner was there after transferred to Ajmer Div. and upto the date of his termination, he remained there. While the petitioner was working as Rakshak at Ajmer, Shri D.L. Joshi, respondent No. 3, came to be appointed as Assistant Security Officer at Ajmer in the year 1981. The petitioner has further said that while the petitioner was working as Rakshak at Mahsana, Shri Joshi was holding the post of Sub-Inspector there. The petitioner has further contended that his relations with Shri Joshi became strained at Rajkot as Shri Joshi wanted that the petitioner should indulge in unlawful activities. As the petitioner refused to do so, the relations between the two became strained. Consequently, Shri Joshi got the petitioner transferred from Mahasana to Morvi in

Rajkot Division. Shri Joshi got two promotions and consequently, he was promoted to the post of Assistant Security Officer. The petitioner has further stated that Shri Joshi was also transferred to Ajmer when the petitioner was working at Ajmer and he became the Controlling Officer of the petitioner. In the circumstances, Shri Joshi got an opportunity to take revenge against the petitioner and he started his campaign to harass the petitioner on frivolous grounds. The petitioner was censured on 20th March, 1981, for minor irregularity. He was also censured in January 1981 only because he was found at the main gate while discharging his duties. Shri Joshi also imposed a penalty of withholding of increment for six months with future effect for his remaining absent at duty beat. Shri Joshi also imposed punishment of withholding of increment for six months on the ground that on 20th October, 1981 and 13th January, 1982, the petitioner failed to mount on duty in time. The petitioner was again censured on 15th September, 1982. The case of the petitioner is that all these punishments were the out-come of ill-will which Shri Joshi had against him, though, in fact, the petitioner did not commit any irregularity as alleged against him. The petitioner has further alleged that on 16th March, 1983, he was suddenly placed under suspension by Shri Joshi, Assistant Security Officer on the ground that disciplinary action was contemplated against him, in connection with a case of theft of railway material which took place between 0 Hr. to 8 Hrs. on 16th March, 1983. The petitioner was thereafter served with a notice under Rule 47 of the Railway Protection Force Rules, on 21st May, 1983. It was alleged therein that the petitioner is a careless and negligent type of person and that he was found indulging in undesirable and dishonest practices. It was also alleged that he was associated with dishonest and bad elements who were reported in indulging pilferages of railway material and malpractices. It was also alleged against him that on 16th March, 1983, when he was on duty from .00 Hr to 8 Hrs. at New Power House, a theft of 118 field coil valued at Rs. 17,700/- took place after making a hole in Pucca wall of the Electrical Production Shop, Ajmer. The petitioner was further informed that the source of information are not prepared and willing to get themselves exposed in the open enquiry, and, therefore, it was not reasonably practicable to follow the procedure of department an enquiry under Rule 44 and recourse was taken under Rule 47.

3. The petitioner submitted a detailed reply to the notice denying all the allegations against him. The defence of the petitioner was that the place where theft had taken place was at the place which was about 200 yards away from the petitioner's duty place and the said place was within the beat of Sri Laduram Rakshak who was at the relevant time on duty at the place. Further case of the petitioner is that the persons involved in the said theft were later on arrested by the police and a criminal case is going on against them. In the investigation conducted by the Railway Protection Force and the police no one named the petitioner. The case of the petitioner is that without proper enquiry the services of the petitioner were terminated vide order dated 25th June, 1983 and that his appeal was also dismissed by the Security Officer without applying his mind.

4. The petitioner in this writ petition has assailed the order of termination of service dated 25th June, 1983 and the order passed by the Appellate Authority dated 28th September, 1983. The contention of the petitioner is that both the said orders are illegal, arbitrary and against the principles of natural justice and are, thus, liable to be quashed. The submission of the petitioner is that Rule 41 of Railway Protection Force Rules, 1959 (for short, the Rules) provides for nature of penalties which include removal from service. Rule 44 provides for procedure for imposing major penalties and under this Rule, an elaborate enquiry is to be held and full opportunity is to be given to the delinquent employee to meet the case of the department and to put up his defence and Rule 47 provides for special procedure in certain cases and it provides that where the disciplinary authority is satisfied, for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the said Rules, the Disciplinary Authority may consider the circumstances of the case and pass such orders as it deems fit.

5. A notice was given to the non-petitioners to show cause as to why the writ petition should not be admitted vide order of this Court dated 28th October, 1983. The respondents filed a reply. In the reply, the allegations made by the petitioner have been denied. It is contended that all the penalties were imposed against the petitioner in a lawful manner. It is also contended that the action under Rule 47(b) was perfectly legal and valid and the petitioner was rightly removed from service. It is also stated that respondent No. 2 applied his mind and took into consideration all the materials against the petitioner and the appeal was rightly dismissed.

6. Shri A.K. Bhandari, learned Counsel for the petitioner, has challenged the impugned orders on the following grounds:

1. That there was no circumstance or ground nor were there relevant facts or the objective material which could justify the formation of satisfaction of the Disciplinary Authority that it is not practicable to follow the procedure under Rule 44;

2. That dispensation of the enquiry was, by itself, not sufficient to prove that the charges levelled against the delinquent employee are automatically proved;

3. That the action of removal suffers from mala fides both in law and in fact.

7. Shri Bapna, learned Counsel for the respondent, on the other hand, submitted that the action of respondent No. 3 in dispensing with the enquiry was perfectly justified and the same is not justiciable. He has further submitted that the conclusions of the Disciplinary Authority as well as the Appellate Authority are well founded and based on material on record.

8. Shri Bhandari, learned Counsel for the petitioner, has mainly placed reliance on an unreported judgment of this Court in S.B. Civil Writ Petition No. 955/1981, Shekhar Taingur v. Union of India and Ors. decided on 24th May 1985.

He also placed reliance on:

- (1) R.K. Misra v. G.M.N. Railway, (Delhi), 1977 (2) SLR 127;
- (2) Balbeer Singh v. State of Punjab 1982 (2) SLR 37;
- (3) Arjun v. Union of India (All), 1983(1) SLR 284;
- (4) Union of India and Another Vs. Tulsiram Patel and Others,
- (5) Pramod Chand Mohanti v. Divisional Superintendent. Khurde Road Division, South Eastern Railway and Ors. 1977(1) SLR 276;
- (6) Virendra Prasad Mishra v. Union of India 1981 (2) SLR 451;
- (7) Kedar Nath Singh v. Union of India 1984 (2) SLR 347; and
- (8) Workmen of Hindustan Steel Ltd. and Another Vs. Hindustan Steel Ltd. and Others,

9. We have given our thoughtful consideration to the respective submissions made by the learned Counsel for the parties.

10. Rule 47 of the Railway Protection Force Rules, 1959 is as follows:

Not with standing any-thing contained in Rules 44, 45 & 46 where a penalty is imposed on a member of the Force (a) on the ground of conduct which has led to his conviction on a criminal charge or (b) where the disciplinary authority is satisfied for reasons to be recorded in writing, that it is not reasonably practicable to follow the procedure prescribed in the said rules, the Disciplinary Authority may consider the circumstances of the case and pass such orders therein as it deems fit.

11. Rule lays down that where the Disciplinary Authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the rules, the Disciplinary Authority may consider such circumstances of the case and pass such orders thereon as it deems fit. The aforesaid rule is practically in similar terms as Proviso (b) to Article 311(2) of the Constitution and Sub-clause (2) of Rule 14 of the Railway Servant (Discipline & Appeal) Rules, 1965. Proviso (b) to Article 311 empowers the authority to dismiss or remove a person or to reduce him in rank when he is satisfied that for some reason to be written, it is not reasonably practicable to hold such an enquiry, the authority may dismiss or remove such a person or reduce him in rank. Sub-clause (2) of Rule 14 provides that where the Disciplinary Authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an enquiry in the manner provided in the rules, the Disciplinary Authority may consider the circumstances of the case and make such others as it deemed fit. Thus, in both these provisions referred to above, it has been laid down that Disciplinary Authority has to record his reasons in writing as to why it is not reasonably practicable to follow the procedure prescribed for holding an enquiry and after recording the reasons the authority may dispense

with the enquiry. The objection raised by Shri Bapna that the Court cannot review the order of dispensation of the enquiry passed by the authority is not sustainable in view of the judgment of this Court in *Shekhar Taingur v. Union of India and Ors.* (supra) and the cases of the Supreme Court especially the cases of *Workmen, Hindustan Steel Ltd. v. Hindustan Steel Ltd.* (supra) and *Union of India v. Tulsiram Patel* (supra). In *Workmen, Hindustan Steel Ltd v. Hindustan Steel Ltd* (supra), the Supreme Court on the point of judicial review made the following observations:

The reasons must be germane to the issue and would be subject to a limited judicial review.

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Once the reasons are specified which are certainly subject to limited judicial review as in a writ for certiorari, the court would examine whether the reasons were germane to the issue or were merely a cloak, device or a pretence to dispense with the inquiry and to impose the penalty.

12. In *Union of India v. Tulsiram Patel* (supra), the Supreme Court also observed that the disciplinary authority is not expected to dispense with the disciplinary enquiry lightly or arbitrarily or out of ulterior motive or merely in order to avoid holding an enquiry or because the department's case against the Government Servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court in so far as this power of review is concerned and in such cases, the Court will strike down the order dispensing with the enquiry as also the order imposing penalty.

13. After having held that judicial review is provided against the order of dispensation of enquiry, let us now examine whether a case is made out for judicial review by the petitioner. In the instant case, the following grounds have been mentioned for dispensation of the enquiry:

(1) Since it is not reasonably practicable to hold an enquiry under the normal procedure as the reliable and independent Witnesses are not willing to get themselves exposed in the enquiry for the obvious reason;

(2) The main grievance of the learned Counsel for the petitioner is that such a reason is not germane to the issue of dispensing with the enquiry and further there is no evidence on record that the facts mentioned in the order for dispensation of the enquiry are true and correct.

14. In *Shekhar Taingur v. Union of India and Ors.* (supra), this Court also considered this aspect of the matter and made the following observations:

But in cases where the enquiry is sought to be dispensed with on the ground that no witness would come forward to depose against delinquent employee, it is necessary that there must be some material before the disciplinary authority to show that the delinquent employee has extended threats to the witnesses and

the witnesses have expressed their inability to oppose the enquiry. Mere possibility of use of violence in the future by delinquent employee against the witnesses would not be a relevant ground for dispensing with the enquiry.

15. In *Virendra Kumar v. Union of India* (Patna) 1982(2) SLR 3 almost the similar question was before the Court. The learned Division Bench in this regard observed as follows;

The second allegation states that the petitioner assaulted one of the Investigating Inspectors and also used filthy language so far as the Investigating Inspector and other are concerned. From this it is inferred that the petitioner could easily terrorise any independent witness who may be called by the administration in the enquiry. Here also, the ground appears to be too far-fetched. It is not stated or asserted that the petitioner had held out any threat to any person who was a witness or was going to be cited as a witness in the enquiry. The second ground also cannot, therefore, be a reasonable basis for holding that an enquiry was not practicable.

16. In *Arjun v. Union of India* (supra), a Division Bench of the Allahabad High Court faced with the same circumstances justified the dispensation of enquiry on the ground that there must be positive evidence with regard to the fact that the petitioner was found to be a trouble some employee and there was finding recorded against him that he created such a situation that no officer was prepared to hold an enquiry in respect of the charges which had been levelled against him. It was in view of the finding about conduct of the petitioner, the dispensation of enquiry was held to be justified.

17. In *Kedar Nath Singh v. Union of India* (supra), the enquiry was dispensed with solely on the ground that only eye-witnesses to the alleged incident was not likely to come forward and give testimony against the delinquent. The Division Bench of the Allahabad High Court held that such a ground was not germane to the consideration for dispensation of the enquiry.

18. From the authorities referred to above and the judgment of this Court in *Shekhar Taingur v. Union of India and Ors.* (supra), the following principles may be deduced:

(1) Dispensation of enquiry is no more the subjective satisfaction of the authority, but the discretion of the authority has to be exercised on objective facts on record;

(2) The practicability referred to under Rule 47 must be with reference to the following of the procedure laid down under Rule 44. The term "reasonable and practicable" has, what so ever, nothing to do with the prospective success of enquiry. Practicability is not to be confused with expectancy or the chances of success of the enquiry contemplated against the delinquent member of the Force;

(3) When the decision of the employer to dispense with the enquiry is questioned, the employer must be in a position to satisfy the Court that holding

an enquiry will be either counter-productive or may cause irreparable and irretrievable damages.

19. Coming back to the facts of the case. The ground on which the enquiry was dispensed with that it is not reasonable and practicable to hold an enquiry under normal procedure as reliable and independent witnesses are not willing to get themselves exposed in the enquiry for the obvious reasons. From the facts on record, there is nothing to indicate as to who are the independent witnesses and against them who exercised the threat. The ground, thus, appears to be far-fetched. Thus, in view of the proposition of law discussed above, we are of the opinion that the order dispensing with the enquiry cannot be sustained. Further there is some force in the contention of Shri Bhandari, learned Counsel for the petitioner that simply because the disciplinary authority took a decision for dispensing with the enquiry, that by itself would not be sufficient to pass an order of punishment against the delinquent. There must at least be some evidence to substantiate the charge against the delinquent employee.

20. In the premises aforesaid, the writ petition is allowed order dated 25th June, 1983, passed by respondent No. 2 and the order of the Appellate Authority dated 28th September, 1983. passed by respondent No. are quashed and set aside. The petitioner should be deemed to be in continuous service and shall be entitled to all consequential benefits. However, we make it clear that the authority will be entitled to proceed further in the matter in accordance with law.

21. In the circumstances of the case, there will be no order as to costs.