

(1998) 03 CAL CK 0027

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction, F.M.A. No. 1774 of 1997

Chief Security Officer, RPF and Others

APPELLANT

Vs

Ganga Prasad and Others

RESPONDENT

Date of Decision : 05-03-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 311(2)
Railway Protection Force Rules, 1959 — Rule 44, 45, 46, 47

Citation : (1998) 3 CALLT 106

Hon'ble Judges : Vinod Kumar Gupta, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Mr. Sourendra N. Sanyal, for the Appellant; Mr. Ashit Kr. Banerjee, for the Respondent

Judgement

1. This appeal is directed against a judgment of the learned Single Judge dated 21.4.1987, whereby the writ application filed by the respondents Nos. 1 and 2 against the order removing them from service was allowed. The facts relating to the filing of the appeal may be stated as under;

2. On 16.8.1983 the respondent Nos. 1 and 2 being the members of the Railway Protection Force in the Eastern Railway were on duty when Train No. EC 948 Down stopped at Down Home Signal, Bhaklarnagar between 15-30 hours to 15-35 hrs. A gang of about 15 criminals broke open one container attached to the said Train and committed a theft of 14 Television Sets valued at Rs. 27,711/-. The allegation against the respondent No. 1 and 2 was that both these persons were physically present on duty when this train stopped and the aforesaid theft occurred and yet they did not perform their duty properly resulting in the aforesaid theft. It was the allegation against the two respondents that it was within their knowledge that the theft was committed. Various other allegations were also levelled against them. Accordingly on 14.12.1983 the order removing them from the service of the appellant was passed in terms of Rule 47 of the Railway Protection Rules 1959. Under Rule 44 of these Rules a regular enquiry

including issuance of chargesheet, appointment of an Enquiry Officer, and other related safeguards are provided if any major penalty is to be imposed upon a member of the service and under Rule 45 a detailed procedure is prescribed for imposition of minor penalties. Under Rule 47 of these rules it is provided that, despite the aforesaid requirements under Rules 44 and 45 etc. Where it was proposed to impose a penalty on the ground that the disciplinary authority was satisfied for reasons to be recorded in writing that it was not reasonably practicable to follow the procedure prescribed in these Rules, it may consider the circumstances of the case and pass such orders as are deemed appropriate. For ready reference Rule 47 quoted verbatim hereinbelow:

"Notwithstanding anything contained in Rules 44, 45 and 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 thereon as it deems fit."

3. It was under the aforesaid special provision therefore, ostensibly under Article 311. Clause (2) of the Constitution of India that the impugned removal order was passed against the respondents. The following three paragraphs from removal order would indicate the background and the circumstances which led the disciplinary authority to, invoke Rule 47.

"From the enquiries got conducted through various sources, it has come to light that it was within the knowledge of the said RPF staff about the commission of the crime at that place and about subsequent concealment of the stolen property in the fields nearby but they did not take any action either to apprehend the criminals or to recover the stolen property. It has also come to light that the stolen property was removed by the criminals from the spot after obtaining the consent of the said RPF staff.

"In this particular case, some criminals were arrested who confessed about the commissions of the crime and the facts as mentioned above but they refused to give anything in writing as they feared that by disclosing the facts in writing and in open enquiry, their lives would be in danger.

"I am satisfied that it is not possible to proceed against HK 2517 Byas Muni Chowbey under normal Rules of 44, 45 and 46 of RPF Rules as the witnesses would not come forward to depose against them. I am also convinced that the said RK. 2517 Byas Muni Chowbey was involved in the crime which is unbecoming of a member of a disciplined force who is primarily entrusted with the responsibility of guarding and protecting the rail property and therefore, in exercise of the powers under Rule 47 read with para 13 of Chapter XI of RPF Regulation, I remove RK. 2517 Byas Muni Chubey from service with immediate effect".

4. What we therefore get from the language employed in the removal orders is that the disciplinary authority was of the opinion that even though some criminals who were allegedly involved in the aforesaid theft had been arrested and even had confessed about the commission of the aforesaid crime but because, they refused to give anything in writing for fear of their lives, regular enquiry under Rule 44 of the Rules was required to be dispensed with and recourse was to be had to Rule 47 of the Rules. Additionally it was stated in the removal orders that since the witnesses would not come forward to depose against the respondents, the holding of the enquiry was not possible. The third factor which was stated in the removal order was that the disciplinary authority was convinced that the respondents themselves were involved in the commission of the crime and since it was unbecoming of a member of a disciplined force, they deserved to be removed from service.

5. In the case of *Union of India and Another Vs. Tulsiram Patel and Others*, their Lordships of the Supreme Court have after elaborately discussing the scope of Article 311(2) of the Constitution of India, with reference to a Service Rule analogous to Rule 47 of 1959 Rules as in our case, clearly held that the test of reasonable practicability is indeed of paramount importance and (that unless it is really reasonably impracticable to hold the enquiry and that too for reasons to be recorded in writing, the holding of the enquiry being a valuable right cannot easily or casually be dispensed with. Even though their Lordships were of the opinion that the reasonable practicability of the holding of an enquiry is a matter of assessment to be made by the disciplinary authority, yet such assessment can neither be arbitrary or whimsical, nor can it be based on material which is wholly extraneous to the grounds or factors for which the dispensation may be resorted to. A disciplinary authority is not expected to dispense with the holding of disciplinary enquiry casually or arbitrarily, or out of ulterior motives, or merely to avoid enquiry, or even because of the department's case against the Government Servant is weak and might fail. With regard to the recording of reasons for dispensing with the enquiry, in *Tulsiram Patel* their Lordships were clearly of the view that the reasons must be recorded in writing and even though these may contain detailed particulars, but must not be vague or a just repetition of the language employed in the Rule;

6. In the case of *Satyavir Singh and Others Vs. Union of India (UOI) and Others*, , similar principle of law has been laid down by their Lordships. Paragraph 57 of the judgment reads as under:

"It is not a total or absolute impracticability which is required by Cl. (b) of the second proviso. What is requisite is that the holding of the enquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation."

With regard to the recording of reasons for dispensing with the enquiry the following observations in Paragraphs 62 and 63 of the judgment in *Satyavir Singh*, are relevant. These paragraphs are reproduced as under :-

"It will also not be reasonably practicable to afford to the civil servant an opportunity of a hearing or further hearing, as the case may be, when at the commencement of the inquiry or pending it the civil servant absconds and cannot be served or will not participate in the inquiry. In such cases, the matter must proceed ex parte and on the materials before the disciplinary authority".

"The recording of the reason for dispensing with the inquiry is a condition precedent to the application of Cl. (b) of the second proviso. This is a constitutional obligation and if such reason is not recorded in writing the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional, it is however, not necessary that the reason should find a place in the final order but it would be advisable to record it in the final order in order to avoid an allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated."

7. In the light of the aforesaid established position of law let us analyse as to whether the disciplinary authority was justified in taking recourse of Rule 47 of the Rules for dispensing with the enquiry and removing the respondents from service. We must observe that this is not a case where recourse to Rule 47 has properly been taken. We are also sure that in this case circumstances as discernable from the reading of the removal order and by a careful consideration of the original record did not warrant the dispensing of the enquiry. We have observed the original file of the case and find that there is nothing on record at all to suggest as to whether any steps at all were initiated at any stage at any level by any one to make any attempt to find out if any witness was forthcoming to depose in the case or not. This was not a case where any terror or violence was alleged in the establishment or in the office either against the respondents or the community of the personnel at large. It was a normal and ordinary case against two lowest members of the force of the rank "Rakshak" i.e. mere Constables. No reason has been given either in the record or in the removal order about whom there was any doubt or apprehension that if called he would not have appeared before the enquiry officer. In fact there are contradictions in the removal order itself which, on the one hand stated that some criminals who are involved in the commission of the crime or who had confessed to such commissioning after being apprehended did not agree to depose against the respondents and that the witnesses were not forthcoming. Surely, this Court cannot accept such an argument by a disciplinary authority when criminals involved in the commission of the crime have actually been apprehended, it is not open for the disciplinary authority that they would depose against the respondents.

8. The disciplinary authority has even charged the respondents for being involved in the commission of the crime. The disciplinary authority being a senior officer of the R.P.F. was under a duty and obligation, if he thought that the members of his force were involved in the commission of a crime, to initiate prosecution against such members and to ensure that it is taken to its logical conclusion.

Rather than doing that, he in a slipshod manner took recourse to Rule 47 and, by depriving the respondents of their rights under Rule 44 inflicted extreme penalty of removal from service. We totally agree with the learned single Judge that this is a case where the situation did not warrant adoption of the procedure or exercise of power under Rule 47. There is yet another factor which can be considered to be important with regard to the order of removal. The Ministry of Railways, Government of India issued a circular on 28.5.1979 in terms of Rule 47 of 1959 Rules whereby it directed all Establishments of R.R.F. to ensure that in cases recourse was to be had to Rule 47 and the enquiry would be dispensed with, no punishment should be inflicted against a member of the force except after giving him a show cause notice and taking into consideration his reply, if any. This executive instruction issued by the Central Government is supplemental to Rule 47 and in the circumstances in which it had been issued, its observance is almost by way of a mandatory requirement. In the absence of any reason to the contrary, therefore, it cast an obligation upon the disciplinary authority to issue a show cause notice before removal order could be passed against the respondents. We have not been shown or referred to any circumstance or reason as to why this mandatory instruction of the Central Government was not followed in this case and why a departure was made in the case of the respondents.

9. For the foregoing reasons, therefore, we are of the view that the order removing the respondents from service was bad in law. We wholly agree with the learned single Judge and while upholding his judgment, dismiss the appeal with costs.

B. Bhattacharya, J.

10. I agree.

11. Appeal dismissed