

(2011) 07 GUJ CK 0147

In the Gujarat High Court

Case No : Special Civil Application No. 7476 of 1997

Dhanjibhai Premalbhai Rathva

APPELLANT

Vs

Chief Security Commissioner, Western Railway, Mumbai and
Ors

RESPONDENT

Date of Decision : 29-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Railway Property (Unlawful Possession) Act, 1966 — Section 3

Citation : (2012) 133 FLR 427 : (2012) 1 GLR 229

Hon'ble Judges : V.M. Sahai, J;G.B. Shah, J

Bench : Division Bench

Advocate : K.M. Sheth, for the Appellant; Ramnandan Singh, Respondent Nos. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Shah, J

1. We have heard Mr. K.M. Sheth, learned Counsel for the petitioner and Mr. Ramnandan Singh, learned Counsel for the respondents. This Special Civil Application has been filed by the petitioner under Art. 226 of the Constitution of India challenging the order dated 30-6-1996 passed by the Commissioner of Divisional Security, R.P.F., Western Railways, Vadodara by which the petitioner was removed from service, vide order dated 31-12-1996 passed in Appeal and the order dated 23-6-1997 passed in the Revision Application filed by the petitioner. The facts of the case in brief are that the petitioner, Dhanjibhai Premalbhai Rathva was working in Railway Protection Force as Constable with Asarwa Railway Police Station at the relevant time. On 3-12-1995, an incident of theft occurred in which detergent cakes of Nirma were alleged to have been stolen. The petitioner was suspended from service on 6-12-1995 pending inquiry on the charge of negligence of duty. In the departmental inquiry, it was held by the respondents that the petitioner was guilty of the charges. He was removed

from service by order dated 30-9-1996. The petitioner had preferred appeal against the same which came to be dismissed by the appellate authority by order dated 31-12-1996. Thereafter, the petitioner filed revision against the order of the Appellate Authority which was also rejected by the Revisional Authority by order dated 16-8-1997. Thereupon, the petitioner preferred the present petition invoking the jurisdiction under Art. 226 of the Constitution of India. A parallel criminal complaint came to be filed against the petitioner and other persons under Sec. 3 of the Railway Protection (Unlawful Possession) Act, 1966.

2. Learned Counsel Mr. K.M. Sheth for the petitioner has contended that though the petitioner requested the Inquiry Officer not to proceed with the departmental inquiry as criminal case is pending in the Criminal Court at Ahmedabad, but no reply had been given to the effect that whether his request was granted or not and the inquiry proceedings were held ex-parte. It is contended by the learned Counsel that the charge against the petitioner is not proved as there was no evidence. He has submitted that Mr. M.S. Yadav, Supervisor had got information through Constable Sursingh that the petitioner had informed Sursingh that there was defect in the lid of the container at the time of giving charge and since it was midnight, on the next day i.e. 5-12-1995 on opening the container, they found some detergent cakes were missing.

3. On conducting preliminary inquiry one Baldev Chhagan accepted that the present petitioner had asked him to commit the theft of the detergent cake and it was proved that the theft had taken place during the duty hours of Dhanjibhai, the petitioner. Mr. Sursingh to whom the petitioner informed about the defective lid of the container, gave statement that he was never informed about the defective lid of the container by the petitioner and that he had completed his duty and had given charge to Mr. Mahavir. Therefore, there is contradiction and the statements made by the Supervisors Mr. Yadav and Mr. V.P. Singh are not supported by the statement of Mr. Sursingh. Statement of Baldev, the person who had accepted that the petitioner provoked him to steal the detergent cakes is not on record. He has further submitted that there is no direct evidence against the petitioner as alleged in the charge-sheet. He has submitted that during the pendency of the writ petition, the petitioner was acquitted by the learned Metropolitan Magistrate, Court No. 7 at Ahmedabad in Criminal Case No. 487 of 1996. Subsequently, the petitioner filed a Civil Application being No. 1916 of 2011 for amendment of the petition for taking the ground that he had been acquitted in the criminal case. The Civil Application was allowed by the Court by order dated 31-3-2011.

3.1. In support of his argument, learned Counsel for the petitioner has placed reliance on Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, wherein in Para 13 it is held as under :

"There is consensus of judicial opinion on a basic principle that proceedings in a criminal case and departmental proceedings can go on simultaneously, except where departmental proceedings and criminal case are based on the same set of

facts and the evidence in both the proceedings is common. Basis for this proposition is that proceedings in a criminal case and departmental proceedings operate in distinct and different jurisdictional areas. In departmental proceedings, factors operating in the mind of the disciplinary authority may be many, such as enforcement of discipline, or to investigate level of integrity of delinquent or other staff. The standard of proof required in those proceedings is also different from that required in a criminal case. While in departmental proceedings, the standard of proof is one of the preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt."

4. Mr. Ramnandan Singh, learned Counsel appearing for the respondent has submitted that after the charge-sheet was issued, the petitioner was asked several times to remain present before the Inquiry Officer to defend his case, but he never remained present on the ground that as the criminal case is pending before the Court and on the same charge departmental inquiry cannot be initiated. Though, it was informed to the petitioner by the Mandal Security Commissioner that the charges contained in the said charge-sheet differ from R.P.U.P. Act, the petitioner had chosen not to accept the relevant documents relating to charge-sheet and considering the petitioner's said conduct, this petition shall be dismissed on that count only. Thus, thereafter also in spite of giving sufficient opportunity by way of issuing notice to the petitioner, the petitioner chosen not to remain present and co-operate in the departmental inquiry. Thereafter, the Inquiry Officer was compelled to conduct the inquiry ex-parte and came to the conclusion that the charge is proved and accordingly the disciplinary authority has passed removal order which is just and proper and the order is upheld by the appellate authority and the revisional authority. Therefore, the learned Counsel urged that no interference is required by this Court.

5. We have gone through the above referred submissions made by the learned Counsel for the parties in light of the documentary evidence forthcoming on the record. We are of the considered view that before we proceed further with this case, with a view to bring the conduct of the petitioner on record the relevant portion of the inquiry report dated 21-5-1996 at pages Nos. 40 to 45 which are in Hindi language and the English version of the same is reproduced hereunder which reflects the effort made by the Inquiry Officer to secure presence of the petitioner during the inquiry and the manner in which the petitioner avoided the same :

"5. Details of corruption :

The Inspector Asarva forwarded a report in connection with this case vide Report No. Special/Aqurrence/2/95 Asarva dated 18-12-1995 to the Mandal Security Commissioner, Vadodara. On its basis, after dismissing the constable, a charge-sheet was issued vide No. R.P.I. 404/4/3/96 dated 2-1-1995. In this connection, the first date of the inquiry was fixed on 16-1-1996 at 11-00 hrs. at the office of Inspector, Vadodara Yard and Shri K. C. Jain, Asstt. Security Commissioner,

Vadodara was appointed as the Inquiry Officer. The delinquent constable had received the aforesaid charge-sheet through the Inspector, Vadodara raised objections. In his reply, as per letter No. R.P.E. 40/4/3/96 dated 22-1-1996, it was informed by the office of the Mandal Security Commissioner that the charges contained in the said charge-sheet differ from R.P.U.P. Act, despite this the aforesaid constable refused to accept the charge-sheet as well as the documents relied upon in connection with the charge-sheet.

After deciding the date of 5-2-1996 for implementation of the inquiry, the Inquiry Officer & Asstt. Security Commissioner, Vadodara issued Notice vide Vishjanch 03/96 dated 30-1-1996, this note was also refused to accept by the delinquent constable.

Thereafter, the Inquiry Officer issued notice vide No. V. Jo. 3 of 1996 dated 10-2-1996 fixing the next dated 12-2-1996 for inquiry, the delinquent constable has also refused to accept the said letter. Then, in order to offer last opportunity, the Inquiry Officer again issued second notice on 13-2-1996 wherein the date of inquiry was fixed on 24/25-2-1996, which was also refused to accept by the constable. Along with the said notice, one copy of the notice was also issued by Registered A.D. post which was returned and received with remarks of refusal on the date of service by M. Su. A.T.O. Office, Vadodara. Thereafter, on account of illness of Shri K.C. Jain the Inquiry Officer & Asstt. Security Commissioner, Sub-Chief Security Commissioner, Churchgate issued a letter No. S-I-C. 29/07/06/348/96 dated 13-3-1996 and appointed the undersigned as the Inquiry Officer. In its compliance the Mandal Security Commissioner, Vadodara issued a letter vide their letter No. R.P.E. 40/04/96 dated 28-3-1996 and informed the undersigned and the delinquent constable. The delinquent constable also refused to accept this letter. When the Inquiry Officer & Asstt. S.C.T. Officer, Ratlam received the.....in the first week for the purpose of holding inquiry of the charges levelled against the delinquent constable, a notice was issued vide Notice No. A.S.C/Rat/Vi.Ja/4/96 dated 10-4-1996 fixing the next date 23-4-1996 of departmental inquiry at the office of Inspector, Vadodara Yard. The delinquent constable denied to accept the aforesaid letter, but the delinquent constable having appeared before the Inquiry Officer go this written statement registered wherein it has been submitted by him that the Departmental Inquiry against him was fixed on 23-4-1996 he had already received information in that regard, but he expressed his inability for attending the departmental inquiry because of the reason that inconnection with the said chapter, he has been charged with theft in case under R.P.A.U.P.E. which is on hearing in the Ahmedabad Court. Thus, soon after the decision was passed by the Court, he appeared in the inquiry. In this connection, the Inquiry Officer made an entry in the rojnama of Vadodara Yard, the endorsement of which is made on 23-4-1996 vide No. 34 at 12 hrs. Thereafter, with a view to offer a last opportunity to the delinquent constable, the Inquiry Officer fixed the last date of the inquiry on 18-5-1996 at Asarva Police Station. The delinquent constable did not remain present in the inquiry on the fixed date. Therefore, after making the entry in respect of his absence in the

daily-book (rojnama) of Asarva Police Station the proceedings of the inquiry was initiated ex-parte. After the delinquent constable had received the charge-sheet he has been refusing to accept whatever letters which have been issued in connection with the inquiry subsequently. The entry in this regard has been made in the rojnama from time to time. The ex-parte inquiry was initiated against the delinquent constable and the statements of the witnesses of complaining party were recorded. The description thereof is as under."

6. The main submission made by the learned Counsel for the petitioner is that though the petitioner had requested the Inquiry Officer at the initial stage not to proceed with the departmental inquiry as the criminal case is pending in the Criminal Court at Ahmedabad, still no reply had been given to the effect that whether the said request was granted or not and the inquiry proceedings were held ex-parte. As referred above, in its report, the Inquiry Officer has categorically stated that vide reply dated R.P.E. 40/4/3/1996 dated 22-1-1996 it was informed by the office of the Mandal Security Commissioner that the charges contained in the said charge-sheet differ from the R.P.U.P. Act. This reply of the Inquiry Officer had not been challenged by the petitioner before the higher forum, if at all he had any grievance against the same. On the contrary, it has been submitted by the petitioner that he had not been informed at all regarding the decision taken by the Inquiry Officer relating to his request. As referred above, right from the beginning sufficient opportunity has been given to the petitioner at all stages, but he appears not to have availed the same for the reason best known to him, and ultimately, came with a totally false case that he has not been informed at all whether the request made by him not to proceed with the inquiry has been granted or not. Considering the above facts forthcoming on the record, we find no substance in the above submission made by the learned Counsel for the petitioner.

7. So far as the reliance placed by the learned Counsel for the petitioner on the decision of the Apex Court in Capt. M. Paul Anthony (supra), we find ourselves in agreement with the ratio laid down by the Apex Court in the above decision but the same is not applicable to the present case for the reason that after the request made by the petitioner not to proceed with the departmental inquiry till the criminal case pending before the Criminal Court is decided, had been rejected by the Inquiry Officer and he had specifically informed the petitioner that the charge contained in the said charge-sheet differ from R.P.U.P. Act. The said decision of the Inquiry Officer had not been challenged by the petitioner and thus it had attained its finality. Thus, in our view, now the petitioner cannot say that as he has been acquitted by the learned Metropolitan Magistrate in the criminal case for the same charge, this Court should set aside the order of removal of the petitioner from service dated 30-6-1996 and the order dated 31-12-1996 passed in appeal and the order passed by the revisional authority on 16-8-1997 under Art. 226 of the Constitution of India. In our view, after receiving the reply dated 22-1-1996 by the Inquiry Officer who had not granted the request made by the petitioner, the petitioner should have challenged the decision before higher forum

which had jurisdiction or he should have co-operated and participated in the departmental proceedings. Thus, sufficient and enough opportunity had been given by the Inquiry Officer to the petitioner but he had remained absent and his deliberate and wilful decision to remain absent had compelled the Inquiry Officer to pass ex-parte order on merits considering the documents available on the record. In any event, we are of the opinion that under the above circumstances, the acquittal in a criminal case does not lead automatic reinstatement and also does not render the departmental proceedings invalid. On the other hand, the departmental authorities in the inquiry conducted against the petitioner had clearly found the petitioner negligent for the theft in question and it was a grave misconduct on the part of the petitioner.

8. Learned Counsel for the petitioner has submitted that there is no direct evidence against the petitioner as alleged in the charge-sheet and so as he had been acquitted by the Criminal Court, now he should be reinstated in service with continuity of service and with 100% back wages. As discussed above, the Apex Court in *Kendriya Vidyalaya Sangathan and Others Vs. T. Srinivas*, specifically held that the approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. It has further held that in the disciplinary proceedings the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him are established and if established, what sentence should be imposed upon him. The Apex Court in the above case, further noted that the standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are distinct and different. Thus, on the one hand the petitioner remained absent throughout the proceedings relating to the departmental inquiry, and therefore, the Inquiry Officer conducted an inquiry ex-parte and the decision taken by the disciplinary authority had been upheld by the highest authority and now the petitioner cannot raise grievance that there is no direct evidence against the petitioner as alleged in the charge-sheet. Thus, we find no interference is called for by this Court in the impugned orders passed by the appellate and revisional authority. In the result, this Special Civil Application No. 7476 of 1997 deserves to be dismissed and is accordingly dismissed- Rule is discharged. There shall be no order as to costs.