
(2006) 09 AHC CK 0038
In the Allahabad High Court

Dinesh Kumar

APPELLANT

Vs

Union of India (UOI) and Asstt. Security Officer, Railway
Protection Force

RESPONDENT

Date of Decision : 15-09-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 7 ADJ 616

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard Sri Rajesh Nath Tripathi, learned Counsel for the petitioner and Sri Lal Ji Sinha, learned Counsel appearing for the respondents.

2. By this writ petition the petitioner has prayed for quashing the dismissal order dated 17th March, 1990 communicated by letter dated 28th December, 1991 and further to accord all benefit and privilege of continuity of service.

3. Brief facts necessary for deciding the writ petition are; the petitioner was working as Constable in the Railway Protection Force in the year 1989. The disciplinary authority initiated disciplinary proceedings against the petitioner in accordance with the provisions of Railway Protection Force Rules, 1987 by serving a charge sheet dated 1st January, 1990. The petitioner was charged of being absent from his post on 8th December, 1989 and of misbehaviour with H.C. Mishra, Sub Inspector at 13.25 hours and also of breaking the chair kept in the office. In particulars of charge it was stated that petitioner being under influence of liquor reached at Post Agra East at 13.25 hours where H.C. Mishra, Sub Inspector, Ram Swaroop, Hawaldar, Kartar Singh Constable and Bhagwan Sahai were present. The petitioner is alleged to have misbehaved and abused the Sub Inspector and broken the chair on which he was asked to sit. The entry of the said incident was made in the Roznamcha. The charge sheet mentioned the name of witnesses and the report of H.C. Mishra, Sub Inspector and other

evidences were also mentioned in the charge sheet. The charge sheet was replied by the petitioner. The inquiry proceedings were held in which petitioner appeared on 23rd February, 1990. His statement was recorded. In his statement he admitted that he has received the charge sheet and has also received all the concerned papers in the charge sheet. He denied the charges. On a question put that whether he want to produce any witness in defence, he replied that if necessary he will give the names of such witnesses subsequently. He asked that one H.K. Singh be permitted to represent him in the inquiry. On 23rd February, 1990 the statements of Bhagwan Sahai, H.C. Mishra, Sub Inspector were recorded. All the witnesses were cross examined by the petitioner and his representative. No defence witness was examined by the petitioner. The Inquiry Officer found the charge proved on the basis of the evidence on record and returned finding of guilt. The Regional Security Commissioner passed an order on 22nd May, 1990 dismissing the petitioner from service. The disciplinary authority held that Constable misbehaved with the Sub Inspector which is a serious breach of indiscipline and to discourage such indiscipline conduct awarding of deterrent punishment is only solution. The petitioner filed an appeal against the said order which appeal has been dismissed by the order dated 13th December, 1990. This writ petition has been filed challenging the aforesaid two orders.

4. Sri Rajesh Nath Tripathi, learned Counsel for the petitioner, challenging the impugned orders, contended that order dismissing the petitioner from service has been passed in violation of principles of natural justice. He submitted that petitioner was not served with the copy of the inquiry report nor was issued any show cause notice before awarding the punishment. Learned Counsel for the petitioner further submitted that medical test of the petitioner was not done to prove intoxication and Ram Lakhan, Constable against whom petitioner had made allegation was not examined. Reliance has been placed by counsel for the petitioner on the judgments of the Apex Court in *Hardwari Lal Vs. State of U.P. and Others*, 1986 UPLBEC 594 and judgment of this Court in *Devi Lal Shah v. Union of India and Anr.* (1991)1 UPLBEC 480.

5. Learned Counsel appearing for the respondents, refuting the submissions of counsel for the petitioner, submitted that disciplinary inquiry was held in full compliance of the principles of natural justice. The petitioner was served all the relevant documents listed in the charge sheet. He had also cross examined the witnesses whose statements were recorded in the inquiry. He further submitted that non examination of Ram Lakhan was not relevant since he was not even alleged to be present at the place of incident. Learned Counsel for the respondents further submitted that no prejudice can be said to have been caused by non supply of the inquiry report and further the dismissal order having been passed prior to judgment of the Apex Court in *Union of India and others Vs. Mohd. Ramzan Khan*, the law laid down by the Apex Court in the said judgment shall not help the petitioner. The counsel for the respondents has placed reliance on two judgments of the Apex Court in support of his submission that dismissal order passed prior to judgment in *Union of India's* case (*supra*) cannot be held

to be illegal due to non supply of inquiry report as per the law laid down by the Apex Court in S.P. Viswanathan (I) Vs. Union of India (UOI) and Others, and Commandant, Central Industrial Security Force and others Vs. Bhopal Singh, Learned Counsel for the respondents has also placed reliance on the judgment of the Apex Court reported in State of Punjab and Others Vs. Ram Singh Ex. Constable, for the proposition that police service being a disciplined service it requires maintenance of strict discipline.

6. I have considered the submissions and perused the record.

7. The main thrust of the argument of learned Counsel for the petitioner to challenge the dismissal order is violation of principles of natural justice specially non service of inquiry report and non giving of show cause notice before passing the dismissal order. The writ petitioner himself has filed copy of the statement of witnesses recorded in the disciplinary inquiry as Annexures- 3, 4, 5, 6, 7 and 8 to the writ petition. A perusal of the aforesaid annexures indicate that petitioner participated in the inquiry and cross examined the witnesses. In the supplementary counter affidavit copy of the dismissal order has been brought on the record. The disciplinary authority in the order has noted that Inquiry Officer submitted the report holding the delinquent constable guilty of charge. The petitioner in his statement (Annexure-3. to the writ petition), in reply to the question as to whether he has received copy of all the documents relating to charge sheet, has clearly stated that he has received all the documents. The petitioner also appointed his defence representative as one Har Kawal Singh, Sub Inspector, who also participated in the inquiry. The petitioner having participated in the inquiry and cross examined the witnesses it is fully proved that full opportunity was given to the petitioner in the disciplinary inquiry.

8. Now remains the submission of the petitioner regarding non supply of the inquiry report. The dismissal order was passed on 22nd May, 1990. The Apex Court in Union of India's case (supra) had held that delinquent is entitled for the report of the Inquiry Officer, which holds the delinquent guilty. The said judgment was delivered by the Apex Court on 20th November, 1990. The Apex Court in its subsequent judgment in S.P. Viswanathan's case (supra) held that the judgment in Union of India's case (supra) is prospective in its application. The judgment of the Apex Court in Union of India's case (supra) came for consideration by the Constitution Bench of the Apex Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., The Constitution Bench in the said judgment held that the judgment of the Apex Court in Union of India's case (supra) would be applicable only to those orders of punishment which were passed by disciplinary authority after 20th November, 1990. In another case, i.e., Commandant, Central Industrial Security Force's case (supra) the question arose as to whether the orders of dismissal passed prior to judgment of the Apex Court in Union of India's case (supra) can be invalidated on the ground of non supply of the inquiry report. In the aforesaid case the respondent, Bhopal Singh, was removed from service on 16th June, 1982 as a result of disciplinary proceedings. The

removal was challenged in the High Court. The learned Single Judge allowed the writ petition on the ground that he was not served with the copy of the inquiry report during the disciplinary proceedings. The judgment in Union of India's case (supra) was relied by the High Court. The Division Bench also dismissed the appeal against which judgment SLP was filed. The Apex Court allowed the appeal, set-aside the judgment of the High Court and took the view that removal order was not vitiated since it was passed prior to judgment in Union of India's case (supra). Following was laid down by the Apex Court in paragraphs 4 and 5, of the said judgment:

4. Union of India and others Vs. Mohd. Ramzan Khan, has since been considered by a Constitution- Bench of this Court in Managing Director, ECIL, Hyderabad v. B. Karunakar (Civil Appeal No. 3056 of 1991 with connected cases) decided on October 1, 1993 reported in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., . The Bench formulated seven questions for consideration. Questions Nos. VI and VII are as under:-

(vi). From what date the law requiring furnishing of the report, should come into operation?

(vii) Since the decision in Union of India and others Vs. Mohd. Ramzan Khan, has made the law laid down there prospective in operation, i.e., applicable to the orders of punishment passed after 20th November, 1990 on which day the said decision was delivered, this question in turn also raises another question, viz. what was the law prevailing prior to 20th November, 1990?

5. The relevant findings of the Bench are reproduced as under Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., :-

It will, therefore, have to be held that notwithstanding the decision of the Central Administrative Tribunal in H.C Patel's case 1985 (2) 26 Guj LR 1385 (supra) and of the Gujarat High Court in Premnath K. Sharma's case 1988 (3) SLJ 449 (supra) and of the other courts and tribunals, the law was in an unsettled condition till at least 20th November, 1990 on which day the Union of India and others Vs. Mohd. Ramzan Khan, was decided. Since the said decision made the law expressly prospective in operation the law laid down there will apply only to those orders of punishment which are passed by the disciplinary authority after 20th November 1990. This is so, notwithstanding the ultimate relief which was granted there which, as pointed out earlier, was per incuriam. No order of punishment passed before that date would be challengeable on the ground that there was a failure to furnish the inquiry report to the delinquent employee. The proceedings pending in Courts/tribunals in respect of orders of punishment passed prior to 20th November, 1990 will have to be decided according to the law that prevailed prior to the said date and not according to the law laid down in Mohd. Ramzan Khan's case(supra). This is so notwithstanding the view taken by the different Benches of the Central Administrative Tribunal or by the High Courts or by this Court in R.K. Vashisht case, 1993 Supp.(1) SCC 431

9. In view of the fact that in the present the dismissal order was passed on 22nd May, 1990, the judgment of the Apex Court in Commandant, Central Industrial Security Force's case (supra) is fully attracted and dismissal order cannot be set aside on the ground that it was passed without service of the inquiry report.

10. Learned Counsel for the petitioner has submitted that the copy of the inquiry report was served on the petitioner along with the dismissal order. Copy of the order communicating the dismissal order has been filed as Annexure-10 to the writ petition which clearly mentioned that findings of the inquiry report dated 18th March, 1990 has been enclosed along with the letter. The petitioner in the writ petition has not stated that he did not receive the inquiry report along with the dismissal order. No infirmity has been pointed out in the inquiry report even in the writ petition. Even in the writ petition nothing has been brought on the record on which this Court may come to the conclusion that there was any infirmity in the procedure or in the findings of guilt recorded by Inquiry Officer which can be set-aside in the writ jurisdiction. The witnesses who were present at the time of incident appeared in the inquiry and supported the charge. The Inquiry Officer having come to finding that charge is proved, this Court cannot sit in appeal over the findings recorded in the disciplinary inquiry. Thus the dismissal order is not liable to be set aside on the ground of non service of the inquiry report.

11. The next submission of counsel for the petitioner is that no show cause notice was given to the petitioner before passing the dismissal order. No rule could be pointed out in the Railway Protection Force, 1987 requiring for giving show cause notice after receipt of the inquiry report. Further in view of the judgment of the Apex Court in Managing Director, E.C.I.L. Hyderabad's case (supra) holding that the judgment in Union of India's case (supra) is prospective in nature, the said submission is also not sufficient for setting aside the dismissal order. Learned Counsel for the petitioner has placed much reliance on the judgment of the Apex Court Haridwari Lal's case (supra). In the said case the Apex Court set-aside the dismissal order on the ground of non examination of Virendra Singh, who was complainant in the case and Jagdish Ram, who was supposed to have witnessed the incident. The Apex Court took the view that the evidence of Jagdish Ram who took the appellant to the hospital was best person to speak about its veracity. The view of the High Court that non examination of above two witnesses was not material was not approved: In the present case the witnesses, who were present at the time of incident were examined in the inquiry. The person with whom the appellant misbehaved, namely, H.C. Mishra had appeared in the inquiry and was also cross examined by the petitioner and his defence representative. The copy of the statement and cross examination has been brought on the record as Annexure CA-1. The other witnesses who were said to be present at the time of incident, namely, Hawaldar Ram Swaroop, Constable Kartar Singh and Bhagwan Sahai also appeared in the inquiry who were cross examined by the petitioner. The submission of the petitioner is based on the non examination of Ram Lakhan. Ram Lakhan is a constable against

whom petitioner made allegation that he went at his residence and took Rs. 4,200/-from his wife. From the charge sheet it is clear that when the petitioner misbehaved with H.C. Mishra, Ram Lakhan was not present nor he was mentioned as witness in the charge sheet. Ram Lakhan is not even said to be present at the time of occurring of incident even according to petitioner's case. In this view of the matter non examination of Ram Lakhan cannot be said to be fatal to the inquiry. The judgment in Hardwari Lal's case (supra) was on its own facts and does not help the petitioner.

12. The next judgment relied on by learned Counsel for the petitioner is Ram Chander's case (supra). The Apex Court in the said judgment held that appellate authority is required to pass reasoned order. The copy of the appellate order has been brought on the record along with the supplementary counter affidavit. The order of the appellate authority is Annexure-2 to the supplementary counter affidavit. The appellate authority has noted seven contentions raised on behalf of the petitioner and has given reasons for not accepting those contentions. The order of appellate authority is a reasoned order and the judgment of the Apex Court in the said case does not help the petitioner. The judgment in Devi Lal Shah's case (supra) is also relied by counsel for the petitioner. In the said case the order of removal was passed on 15.3.1990. Learned Single Judge of this Court in the said case relied on the judgment of the Apex Court in Union of India's case (supra) and set-aside the dismissal order on the ground that inquiry report was not given to the writ petitioner. In view of the judgments of the Apex Court in Commandant Central Industrial Security Force's case (supra) and S.P. Viswanathan's case (supra), the punishment order passed prior to 20th September, 1990 cannot be invalidated on the ground of non supply of the inquiry report. In Devi Lal Shah's case (supra) this Court also referred to Rule 152.2 of Railway Protection Force Rules, 1987 and observed that the purpose of Rule 154 appears to be that the copy of the report should be given to the employee before passing the order so that the employee may make his submissions against the report of the Inquiry Officer also. Paragraph 5 of the said judgment is extracted below:

5. Sri Lal Ji Sinha has also referred to Rule 154(2) of Railway Protection Force Rules, 1987 (hereinafter referred to as the Rules) which read as below:

"While communicating the order proposing the punishment a copy of the findings of the enquiry officer shall also be given to the party charged.

Relying on this Rule Shri Sinha submitted that there is no violation as under this Rule the purpose is to supply the copy of the enquiry report for being used in filing appeal and as the copy of the report was subsequently supplied to the petitioner the requirements of the Rule have been complied with. I am not impressed by this submission also of Shri Sinha as the use of the report of the charged employee should be permitted before the disciplinary authority also and not before the appellate authority alone. The purpose of Rule 154 appears to be that the copy of the report should be given to the employee before passing the

order so that the employee may make his submissions against the report of the enquiry officer also. Though the Rule is not happily worded but it has to be interpreted in the manner that it is in consonance with the principles of natural justice. The copy of the report if given before passing of the impugned order, the charged employee may make submission before the disciplinary authority also and he may record reasons for accepting or not accepting the same. If this procedure is adopted the appellate authority would be in a better position to appreciate the submission of the employee in appeal. The words "while communicating the order proposing punishment" used in Rule 154(2) of the Rules refer to the period between receipt of report of enquiry office and communication of order for supplying the report to the charged employee during which period the disciplinary authority was seized of the matter for making assessment about the report for passing order. In phraseology used in Rule 154(2) would have been entirely different had the intention of legislative authority was different i.e. to give copy of report along with the order.

13. From paragraph 5 of the said judgment as quoted above, it is clear that this Court read Rule 154.2 as requiring that while communicating the order proposing the punishment a copy of the finding of inquiry shall be given. Emphasis has been given by the Learned Judge on proposing the punishment. The above rule has been misquoted in the said judgment. The correct words are not "order proposing the punishment" but are "order imposing the punishment". Rule 154 deals with action on the inquiry report. A look in the entire Rule 154 will delineate the object and purpose of the Rule. Rule 154.1 to 154.7 are quoted below:

154.1 If the disciplinary authority, having regard to its own findings where it is itself the Inquiry Officer or having regard to its decision on all or any of the findings of the Inquiry Officer, is of the opinion that the punishment warranted is such as is within its competence, that authority may act on the evidence on record. However, in a case where it is of the opinion that further examination of any of the witnesses is necessary in the interest of justice, it may recall the witness, examine him and allow the party charged to cross-examine him. After that, it may impose on the party charged such punishment as is within its competence according to these rules.

154.2 While communicating the order imposing the punishment, a copy of the findings of the Inquiry Officer shall also be given to the party charged.

154.3 Where such disciplinary authority is of the opinion that the punishment warranted is such, as is not within its competence, that authority shall forward the records of the inquiry to the appropriate disciplinary authority who shall act in the manner as hereinafter provided.

154.4 The disciplinary authority, if it is not itself the Inquiry Officer may, for reasons to be recorded, remit the case to the Inquiry Officer for further inquiry and report. The Inquiry Officer shall thereupon proceed to hold further inquiry

according to the provisions of Rule 153 and submit to the disciplinary authority to complete records of such inquiry along with his report.

154.5 The disciplinary authority shall, if it disagrees with the findings of the Inquiry Officer on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

154.6 If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the minor punishments should be imposed on the party charged, it shall, notwithstanding anything contained in Rule 158, make an order imposing such punishment.

154.7 If the disciplinary authority, having regard to its finding on all or any of the articles of charge and on the basis of evidence on record, is of the opinion that any of the major punishments should be imposed on the party charged, it shall make an order imposing such punishment and it shall not be necessary to give to the party charged any opportunity of making representation on the punishment proposed to be imposed.

14. Rule 154.2 categorically provides that copy of the finding of the Inquiry Officer shall be given while communicating the order imposing punishment. Further Rule 154.7 makes it abundantly clear that it shall not be necessary to give party charged any opportunity of making representation on the punishment proposed. From the scheme as delineated in Rule 154 it is clear that after receiving the inquiry report the disciplinary authority shall pass punishment order and it will not be necessary to give opportunity to the charged officer of making representation against the punishment proposed. Thus according to Rule 154 the submission of counsel for the petitioner that the petitioner was entitled for notice before passing the final order of punishment cannot be accepted. In above view, the judgment in *Devi Lal Shah's case* (supra) also does not help the petitioner in any manner.

15. The submission of the petitioner's counsel that he was not sent for medical examination for proving intoxication also does not help the petitioner. This ground taken by the petitioner also in the appeal. The eye witnesses were examined in the inquiry and the main charge against the petitioner was of misbehaviour with the Sub Inspector. The statement of eye witnesses cannot be said to be irrelevant materials relied in the disciplinary proceedings. Thus on this submission also the dismissal order is not liable to be set-aside.

16. In view of the foregoing discussions, non of the submissions raised by counsel for the petitioner has any substance. The charge against the petitioner having been proved in the disciplinary inquiry on the basis of evidence collected during inquiry, there is no ground for interference by this Court under Article 226 of the Constitution with the punishment awarded to the petitioner.

17. The writ petition lacks merit and is dismissed.