

(2005) 05 AHC CK 0106

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 37383 of 2001

Jogendra Singh

APPELLANT

Vs

Director General, Railway Protection Force, Ministro of
Railways/Railway Board, Inspector General-cum-chief
Security Commissioner, Railway Protection Force, Central
Railway and Sr. Divisional Security Commissioner, Railway
Protection Force, Jhansi Division

RESPONDENT

Date of Decision : 23-05-2005

Acts Referred:

Railway Protection Force (Amendment) Rules, 1992 — Rule 219, 219.1, 219.2
Railway Protection Force (Amendment) Rules, 1997 — Rule 219.4
Railway Protection Force Act, 1957 — Section 9(2)
Railway Protection Force Rules, 1987 — Rule 148.2, 153, 212, 212(2), 217

Citation : (2005) 6 AWC 6149

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : P.C. Misra, for the Appellant; Govind Saran and S.C., for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—Heard Sri P.C. Misra, learned counsel for the petitioner. Sri Govind Saran appears for the respondents and has filed a counter affidavit of Sri Subhash Chandra Sinha, Senior Divisional Security Commissioner, Railway Protection Force, Jhansi Division, Jhansi.

2. The petitioner has challenged orders dated 24.1.2001 and 24.6.2001 passed by Inspector General-cum Chief Security Commissioner, Railway Protection Force (RPF) Central Railway, CST Mumbai, and Director General, Railway Protection Force, Railway Board/Rail Bhawan, New Delhi respectively by which the petitioner after a departmental enquiry has been punished with penalty of compulsory retirement, and his appeal has been dismissed.

3. Brief facts giving rise to this writ petition are that a charge sheet for major

penalty under Rule 153 of Railway Protection Force Rules 1987 (in short RPF Rules 1987) was issued to the petitioner levelling charges of misusing special duty pass for travel from Agra to Allahabad, on the basis of a false ground of executing warrant in Case No. 1072 of 1996; and for being responsible of shortage of 84 bags of cement at Belanganj railway station on 17.2.1998, 22.2.1998, 9.3.1998 and 18.3.19098, while the petitioner was working as Assistant, Sub Inspector.

4. The enquiry was conducted by Sri R.S. Misra, A.S.C. Gwalior. which was later on entrusted to Sri B.R. Singh, ASC/RPF Jhansi. The Inspector General-Cum-Chief Security Commissioner was not satisfied with, the findings of the enquiry officer. He called for a fresh departmental enquiry from Senior DSC RPF Jhansi, reviewed the case and imposed the penalty of compulsory retirement from service under Rule 148.2 (e) of the RPF Rules 1987, after giving an opportunity to the petitioner by way of issuing a show cause notice, which was received and to which a reply was submitted by the petitioner. The appeal filed by the petitioner to the Director General/RPF Railway Board was dismissed on 24.6.1961.

5. Learned counsel for the petitioner submits that the initially Sri R.S. Misra, Assistant A.S.C. Gwalior was appointed the enquiry officer. Later on he was changed and Sri B.R. Singh, A.S.C. Jhansi was appointed as Senior Officer to conduct the enquiry. He submitted a report on 8.3.2000, exonerating petitioner from both the charges. In respect to first charge he found that the petitioner had validly travelled to Allahabad for serving summons and that by a mistake he had written the word "warrant" in place of "summons". The petitioner had admitted this mistake. It was bonafide. With regard to second charge the enquiry officer found that the petitioner was not responsible for keeping the records of goods in the Belanganj and that he was not given the charge of Belanganj post.

6. Learned counsel for the petitioner submits that this course of procedure was violative, of the procedure for holding departmental enquiries for major penalty and violated principle of natural justice. It was not open to the disciplinary authority to review the decision of his predecessor, unless and until there was some material irregularity resulting into miscarriage of justice. He submits that the powers under Rule 219.4. of the RPF Rules 1997 can be exercised by an authority who is superior to the authority making the original order and not by the successor of the same authority and further in case he had disagreed with the findings, the only course open to him was to remand the case to the authority which had made the order or any other authority directing it to make such further enquiry as it may be considered proper in the circumstances of the case. Lastly he submitted that mention of the word "warrant" in place of summons was only a bonafide mistake and that imposition of penalty of compulsory retirement to the petitioner at the age of 47 years was grossly disproportionate to the charges. The petitioner had an excellent career and had responsibilities to look after his family. The counsel also pointed out to para 18 in

which the petitioner has made allegations of malafide against Sri Satish Das, the disciplinary authority who has misused air condition for his family on personal visit showing it to be or official work and had drawn allowances. The petitioner had deposed against him before the RPF, Special Intelligence Branch, CST Mumbai, and that Sri Satish Joshi was looking to an opportunity to punish the petitioner for giving evidence against him.

7. The enquiry officer Sri B.R. Singh Security Commissioner, Jhansi had exonerated the petitioner from both the charges. The then Divisional Security Commissioner/Jhansi disagreed with the enquiry report and vide his notice dated 14.3.2000, the petitioner was directed to file his reply. The petitioner submitted his reply on 30.3.2000 on which Sri Pranab Kumar DSC/Jhansi by his order dated 31.3.2000 agreed with the finding of the enquiry officer and dropped proceeding.

8. Rule 219 of the RPF rules 1992 provides for Revisionary powers. Rule 219.1 gives right to the delinquent officer to file a revision against the rejection of appeal to the next superior authority on the grounds of material irregularity which has resulted into injustice and miscarriage of justice or on the disclosure of fresh evidence which could not be produced or was not available at the time of passing the impugned order. Rule 219.2 provides that same procedure will be applicable for revision which is provided for consideration of appeal under Rule 217. Clause 219.3 provides that the superior authority hearing the appeal may at its discretion enhance the punishment, provided before enhancing the punishment an opportunity shall be given to the delinquent officer.

9. Rule 219.4 gives revisionary powers to any authority superior to the authority making the original order to be exercised on his own motion or otherwise; to call for the records of any enquiry and revise any order made under the Rules. He can confirm, modify or set aside the punishment or impose any punishment where no punishment has been provided, to remit the case or to pass such further order which he may deem fit, provided where it is proposed to enhance the punishment the aggrieved member has to be given opportunity to show cause either orally or in writing. Rule 219 of RPF Rules 1987 is quoted as below;

"219. Revision:

219.1. An enrolled member of the Force whose appeal has been rejected by a competent authority may prefer an application for revision to the next superior authority. The powers of revision may be exercised only when,-

(a) in consequence of some material irregularity, there has been injustice or miscarriage of justice; or

(b) fresh evidence is disclosed which could not be produced or was not available at the time of passing of the impugned order.

219.2. The procedure prescribed for consideration of appeals under Rule 217 shall, so far as may be, apply to application for revision.

219.3. The superior authority while passing orders on the application for revision may at its discretion enhance punishments:

Provided that before enhancing the punishment, the aggrieved member shall be given an opportunity to show cause why his punishment should not be enhanced:

Provided further that subject to the provisions of sub-rule (2) of Rule 212, an order enhancing the punishment shall be treated as an original order for the purpose of appeal, except when such an order has been passed by the Central Government in which case no further appeal shall lie. Where such order has been passed by the Chief Security Commissioner, appeal shall lie to the Director General and in the case of such order by the Director General the appeal shall lie to the Central Government.

219.4 Any authority, superior to the authority making the original order may, on its own motion, or otherwise, call for the records of any inquiry and revise any order made under these rules and may:-

- (a) confirm, modify or set aside the order; or
- (b) confirm, enhance, reduce or set aside the punishment imposed by the order, or impose any punishment where no punishment has been imposed; or
- (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or
- (d) pass such other orders as it may deem fit;

Provided that no action under this sub-rule shall be initiated after the expiry of one year from the date of the order aforesaid:

Provided further that no proceeding for revision shall be commenced until after-

- (i) the expiry of the period for making an appeal specified in sub-section (2) of Section 9; or
- (ii) the disposal of the appeal, where any such appeal has been preferred:

Provided further that in a case in which it is proposed to enhance punishment further, the aggrieved member shall be given an opportunity to show cause either orally or in writing as to why his punishment should not be enhanced."

10. In the present case the Divisional Security Commissioner who is the disciplinary authority had accepted the enquiry report and had exonerated the petitioner from both the charges. The Chief Security Commissioner exercising powers under Rule 219.4 had issued notice to the petitioner for imposing punishment to which the petitioner had submitted his reply. He did not find charge No. 2 to be established. In respect of charge No. 1, he disagreed with the finding which were accepted by Divisional Security Commissioner and found that the petitioner had not taken clear order from the competent authority for issuing

special duty pass from Agra to Allahabad. The court had issued summons against Sri Ashok Kumar on 20.10.1997 fixing on 24.2.98. The petitioner proceeded to Allahabad on 10.11.97 after obtaining special duty pass on 11.11.97. As a Senior Officer, he was aware that his services were not required for serving the summons. He had in the Rojnamcha of RPF Post dated 16.11.1997 clearly mentioned that he had proceeded to serve warrant and had obtained special duty pass on the ground that he was proceeding to execute the warrant whereas no such warrant was issued by the Court and only summons were issued. The petitioner had made a wrong statement with motive to secure the duty travel pass on false ground. On these facts Sri Satish Joshi, Chief Security Commissioner, R.P.F. drew presumption that the petitioner had some personal work at Allahabad and had taken recourse the false statement in procuring special duty pass in travelling upto Allahabad.

11. The revisionary powers under Rule 219 can be exercised only where in consequence to some material irregularity, injustice or miscarriage of justice has occasioned, or where fresh evidence is disclosed which could not be produced or was not available at the time of passing of the impugned order. The same powers under Rule 219.4 can be exercised by any authority superior to the authority making the order. The object and purpose of revisionary powers is to provide an opportunity to rectify any material irregularity which results into injustice and miscarriage of justice in departmental enquiry. These are not the appellate powers under Rule 212 and 217 of the RPF Rules of 1987. Where the procedure prescribed in the Rules were complied with and the findings are based on evidence on record, the scope of exercising revisional powers is limited, and is not to be used where the superior authority may on the same evidence arrive at a different conclusion. It is well settled that while in appeal the evidence can be re-assessed, in revision no interference can be made even if a different conclusion can be arrived at by the superior authority. The powers of revision under Rule 219 have been conferred for preventing any injustice and miscarriage of justice in consequence to some material irregularity and disclosure of fresh evidence which could not be produced or was not available at the time of passing of the impugned orders.

12. Coming to the facts of this case I find that the charge was not so serious and that there was no such failure or miscarriage of justice or immaterial irregularity on the record to justify the exercise of revisional powers by the Chief Security Commissioner. He took the same evidence into account and arrived at a different findings. There was no evidence on record to show that the petitioner had travelled to Allahabad for any personal work or that he had any motive and intention to procure the special duty pass. The finding that the petitioner had deliberately used the words "warrant" in place of summons for obtaining special duty pass for personal work is by way of drawing a different conclusion on the same evidence.

13. I do not find that there was any such miscarriage of justice in the

departmental enquiry to impel the superior authority to have exercised revisional powers under Rule 219.4 to re-assess evidence and punish the petitioner. Further, I find that the charge and the punishment was based on a presumptions, drawn by the superior authority. It was not such a misconduct which could have led to the punishment of compulsory retirement. I find that the Chief Security Commissioner had misused this powers to impose extreme punishment on the petitioner. He failed to appreciate that the revisional powers could not be used for such purpose. The appellate authority had not applied his mind to these issues and mechanically dismissed the appeal.

14. The writ petition is consequently allowed. The order dated 24.1.2001 passed by Inspector General-Cum-Chief Security commissioner RPF CST Mumbai and the order dated 26.6.2001 passed by Director General, R.P.F Railway Board, New Delhi are set aside. The petitioner shall be reinstated in service with all consequential services benefits and will also be entitled to the costs of the writ petition.