

(1995) 02 AHC CK 0017

In the Allahabad High Court

Case No : Special Appeal No. 178 (S/B) of 1994

Keshari Prasad

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-02-1995

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 232, 336, 452, 504
Railway Protection Force Rules, 1987 — Rule 134, 135

Citation : (1996) AWC 484 Supp

Hon'ble Judges : D.K. Seth, J;Brijesh Kumar, J

Bench : Division Bench

Judgement

Brijesh Kumar and D.K. Seth, JJ.—This special appeal has been preferred against the order passed by a learned Single Judge dated November 23, 1994 in Writ Petition No. 1292 S/S of 1994 dismissing the writ petition preferred by the Petitioner against the order of his suspension dated March 16, 1994.

2. A perusal of the order of suspension indicates that it has been passed under Rule 134 (c) due to pendency of investigation in a criminal case against the Petitioner. At present, it is at the trial stage as informed by the learned Counsel appearing for the opposite parties.

3. Learned Counsel for the Petitioner submits that looking to the language, as used in Rule 134 of the Railway Protection Force Rules, 1987 (hereinafter referred to as "the Rules"), it is clear that a discretion is vested in a superior officer, in the matter of placing a member of the Force under suspension. It is not necessary that a member must in all cases be placed under suspension, in a routine manner whenever a disciplinary proceeding is pending or contemplated against him or any investigation, inquiry or criminal trial is pending. According to the submission made, it is only in appropriate cases that suspension would normally be resorted to. We find force in the submission made on behalf of the Appellant in view of the provisions contained in Rule 135 of the rules. It provides that public interest shall be the guiding factor in deciding whether or not a

member of the Force should be placed under suspension. The first proviso to Rule 135 provides that before taking a decision, the authority may consider whether purpose would be served, if member is transferred from his post. Thus the use of the word "may" in Rule 134 and the guideline provided in Rule 135 in the matter of taking a decision before placing a member under suspension, makes it clear that the power is not to be exercised mechanically but a decision has to be taken in exercise of discretion according to the guidance as provided under Rule 135. In connection with the above, the learned Counsel for the Appellant further submits that the charge against the Petitioner is not such that there would be involvement of any question of moral turpitude. It is submitted that it was a quarrel between women folk of two neighbours resulting in the incident and two cross reports were lodged and the charge-sheet against the Petitioner is only u/s 147/452/336/323/504/506, I.P.C. It is submitted that such disputes cannot be said to be involving any question of moral turpitude. The submission is that suspension can be resorted to by any superior officer only in such criminal cases pending enquiry, investigation or trial which involved moral turpitude. Proviso 3 to Rule 135 of the Rules throws light on this aspect of the matter. We feel it would be better to quote the provision as contained in Rules 134 and 135 which read as follows:

134. Any superior officer or an enrolled member of the force may be placed under suspension:

- (a) where a disciplinary proceeding against him is contemplated or is pending; or
- (b) where a preliminary inquiry into allegation made has revealed a prima facie case justifying criminal or departmental proceedings which are likely to lead to his conviction or dismissal, removal or compulsory retirement from service; or
- (c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial; or
- (d) where his continuance in office will prejudice investigation, any inquiry or trial; or
- (e) where his continuance in office is likely to seriously subvert discipline in the office in which he is working; or
- (f) where his continuance in office appears to be against the wider public interest; or
- (g) where he is suspected to have engaged himself in activities prejudicial to the interest of the security of the State.

135. Public Interest shall be the guiding factor in deciding whether or not a member of the Force, including when he is on leave, should be placed under suspension:

Provided that before taking a decision on suspension, the competent authority may consider whether the purpose would be served if the member is transferred

from his post or sanctioned leave:

Provided further that charge on which a member has been placed under suspension shall be furnished to him within a period of thirty days from the date of suspension after which the incumbent shall be deemed to have been reinstated if no such charge is made available to him:

Provided/further that the above provision of thirty days shall not apply to cases where a member has been placed under suspension on grounds that he has engaged himself in activities prejudicial to the interest and security of the State or a criminal case involving moral turpitude is pending against him.

4. A reading of the above provisions contained in Rules 134 and 135 together leads to the conclusion that "involvement of moral turpitude" would be a relevant factor in deciding the question whether a member of the Force is to be placed under suspension pending investigation, inquiry or trial under clause (c) of Rule 134. As provided under Rule 135, a member of the Force who has been placed under suspension is required to be furnished charge on which suspension has been resorted to within a period of thirty days, failing which he will be deemed to have been reinstated. In the third proviso, it is "indicated that this provision of thirty days would not be applicable in a case where a member has been placed under suspension on the ground that a criminal case involving moral turpitude is pending against him. The necessary inference which follows from reading of clause (c) of Rule 134 with third proviso to Rule 135, is that in cases other than those in which question of moral turpitude is involved, charge has to be furnished to the delinquent officer on the basis of which he is placed under suspension within thirty days and in case it is not done. It would be taken that he has been reinstated. The cases which have been excluded from this "thirty days" provision are where the question of security of the State or a criminal case involving moral turpitude is pending against him. It makes it clear that so as to be liable to be suspended on the ground of pendency of investigation, inquiry or criminal trial as provided in clause (c) of Rule 134 of the Rules, the offence should be such where the question of moral turpitude is involved.

5. It is not the case of the Respondents who are represented through counsel that this aspect of the matter was considered by the authorities before taking a decision to place the Petitioner under suspension. On the other hand, it is to be found and also admitted by the other side that the suspension order has been passed on a printed proforma simply for the reason that investigation or trial is pending against the Petitioner.

6. We, therefore, feel it would be appropriate that the authority concerned considers this aspect of the matter as to whether the trial which is said to be pending against the Petitioner involves moral turpitude or not. It is not every incident or every criminal case which must involve moral turpitude. We don't feel that any useful purpose would be served by keeping this appeal pending unnecessarily in this Court and as agreed by the learned Counsel for the parties,

we dispose it of finally at this stage and direct the opposite parties to consider the question of continuing the Petitioner under suspension in the light of the observation made above within a period of six weeks from today, failing which the order of suspension shall stand revoked on expiry of six weeks. The special appeal stands finally disposed of in the manner indicated above.