

(1990) 06 PAT CK 0005
In the Patna High Court
Case No : C.W.J.C. No. 244 of 1987

Manik Chand Das and Another APPELLANT
Vs
The Union of India and Another RESPONDENT

Date of Decision : 29-06-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1991) 39 BLJR 303 : (1992) 1 LLJ 593 : (1991) 1 PLJR 547

Hon'ble Judges : B.K. Roy, J

Bench : Single Bench

Advocate : Awadhesh Kumar Mishra, for the Appellant;

Final Decision : Allowed

Judgement

B.K. Roy, J.—The petitioners through this writ application pray for issuance of a Writ of Certiorari, quashing orders of their removal dated December 14, 1976, passed by the Security Officer, II, How-rah, now Respondent No. 4, as contained in Annexure- 4, and by way of ancillary relief further pray that the respondents be directed to reinstate them and to pay arrears of their salary.

2. The relevant facts are in a narrow compass.

The petitioners like Respondent No. 6 served the Railway Protection Force as Rakshaks for decades. They all were served with charge-sheets. Copies of the charge-sheets prepared by the Assistant Security Officer, Eastern Railway, Jamalpur served upon the petitioners are Annexures-1 and 2 to the writ application. It has been stated therein that they had grossly neglected in their duty and failed to prevent or detect the pilferage of wheat and Kabuli gram by 10/12 miscreants at 4.00 hours of May 22, 1975 from Wagon No. N.R. 77619 and G.R. No. 55099 at BHW Yard, The petitioners along with respondent No. 6 were suspended by the Assistant Security Officer, Eastern Railway on June 4, 1975. Departmental Proceedings were also started to probe the charges framed in which the Enquiring Officer (2), Eastern Railway found them not conniving with

the accused persons and taking several other relevant facts in account revoked the suspension orders of the petitioners and respondent No. 6 by an Order dated August 12, 1976, as contained in Annexure-3. The pay scale of the petitioners, however, was reduced from Rs. 216 to Rs. 200 for two years. The petitioners assert that they also joined their duty without any objection raised by any one. The petitioners, thereafter, were served with provisional review order along with show-cause notices (not attached with the writ petition) also and finally removal letter dated December 14, 1976 (Annexure 4) passed by the Security Officer II, Howrah who passed under Rule 60 of the Rules. The petitioners preferred appeals before the Chief Security Officer, Calcutta. The appeals were rejected by an order dated November 22, 1977, as contained in Annexure 5. Thereafter they made a joint representation before the Hon"ble Minister, Railways, as contained in Annexure 6. Respondent No. 6, who was similarly removed, however, filed Title Suit No. 1 of 1979 for declaration of the order dated December 14, 1976 (supra) as illegal, void and ultra vires. The said suit was dismissed by the trial Court, but allowed in Title Appeal No. 17 of 1984 vide judgment dated December 20, 1984 of the 5th Additional District Judge, Munger, as contained in Annexure 8. The appellate court, while decreeing the suit, considered the oral and documentary evidence as also the legal position. The petitioners being Harijans, out of poverty, could not file any case except their representation. Respondent No. 6 in view of the decree in his suit was allowed to continue as Rakshak. A communication was also made to the respondents by way of legal notice as contained in Annexure 7 of their fate vis-a-vis respondent No. 6.

3. The petitioners filed this writ application on January 16, 1987. The following order was passed on March 12, 1987 by a Bench of this Court:

"This writ application has been filed on behalf of two petitioners for quashing an order dated December 14, 1976 passed by the Security Officer while exercising the power of review.

By the aforesaid order the two petitioners along with one Prem Narayan Prasad, Rakshak, Railway Protection Force, were removed from the Railway Protection Force. It appears that a proceeding had been initiated against the two petitioners and aforesaid Prem Narayan Prasad for having failed to prevent the pilferage of wheat and Kabuli Gram from the wagons at Barharwa Railway Yard while on duty. In that proceeding, after enquiry, the Assistant Security Officer reduced the pay scales of the petitioners and the aforesaid Prem Narayan Prasad. The Security Officer exercising the power of review, substituted the order of reduction of the scale of pay by their removal.

Prem Narayan Prasad filed a suit for declaration that the aforesaid order passed by the Security Officer was illegal and without jurisdiction. Ultimately, the appellate court is said to have decreed that suit in Title Appeal No. 17 of 1984 on December 20, 1984. The 5th Additional District Judge, Munger, has declared the aforesaid order dated December 14, 1986 passed by the Security Officer as illegal and void. He has, however, upheld the original order passed by the

Assitant Security Officer reducing the scale of the pay of the three employees.

Now after ten years this writ application has been filed for quashing of the order dated December 14, 1976. (Annexure 4).

On behalf of the petitioners, it was pointed out that as the said order has been declared to be invalid and void by the Civil Court, so far Prem Narain Prasad is concerned the same should also be declared illegal and void so far as the petitioners are concerned.

Normally this Court would not have admitted this writ application filed after ten years from the date the cause of action accrued but as the same issue has been examined by the Civil Court and on behalf of the petitioners it has been stated that in case this writ application is allowed, they shall not claim arrears of salary prior to the date of the filing of the writ application, we consider it desirable to admit this writ application and to consider the grievance made on behalf of the petitioners.

This application will be heard. Issue notice to respondent Nos. 1, 3 and 5 who only appear to be necessary party. The names of the respondent Nos. 2, 4 and 6 be deleted. Steps for service of notice through registered post be taken within two weeks failing which the application against respondent Nos. 1, 3 and 5 shall stand dismissed without further reference to a Bench. After the notices are served on the respondents concerned, this application should be listed for hearing as early as possible before an appropriate Bench. The attention of the learned Judge hearing this application be drawn to this order.

4. No one appeared on behalf of the respondents despite service of notices upon them and the matter has been heard ex parte,

5. Mr. Awadesh Kumar Mishra, learned counsel for the petitioners, submits as follows:

The order of removal of the petitioners dated December 14, 1976 is violative of Articles 14 and 16 of the Constitution. It has been passed mechanically without there being any legal evidence. The authorities have erred in discriminating the case of the petitioners vis-a-vis respondent No. 6. He submits that from the finding recorded by the Civil Court (Annexure 8) it is clear that the order impugned is void. He further submits that the punishment orders were passed against the petitioners reducing their salary which having been accepted by them, there was no justification, in the peculiar facts and circumstances of the case, to impose further punishment by way of their removal. He places reliance on the decisions reported in *State of Assam v. Mohan Chandra Kalita and Ors.* (AIR) 1972 2535; *Ranjit Thakur Vs. Union of India (UOI) and Others*, ; *Nand Kishore Prasad Vs. State of Bihar and Others*, and *Rajbir Kaur and Another Vs. S. Chokesiri and Co.*, .

6. Annexure 4 shows that it has been passed under Rule 60 of the Railway Protection Force Rules, 1959 (hereinafter to be referred to as the Rules) which

runs as follows:

"60. Revision:-(1) Any authority superior to the authority making the order may, on its own motion, or otherwise, revise the order (whether original or appellate) passed by such lower authority:

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

(2) The revising authority may remit, vary or enhance the punishment imposed, or may order a fresh enquiry or the taking of further evidence in the case as it may consider necessary.

(3) The provisions of Rule 58 relating to appeals so far as may be applicable to such orders in revision."

7. In *Smt. Rajbir Kaur and Anr. v. Chokisiri and Co.*, (supra), it was held that "when the findings of fact recorded by the courts below are supportable on the evidence on record, the revisional court must indeed be reluctant to embark upon an independent re-assessment of the evidence and to supplant a conclusion of its own, so long as the evidence on record admittedly supported the one recorded by the courts below. In *Alamgir and Another Vs. The State of Bihar*, , it was held by the Apex Court when a sentence was enhanced by this Court in a criminal matter to the effect that it is unnecessary to emphasise that the question to sentence is normally in the discretion of the trial Judge as it was for him to take into account all relevant circumstances and decide what sentence would meet the ends of justice in a given case, but the revisional jurisdiction can be properly exercised by the High Court only if it is satisfied that the sentence imposed is unduly lenient or that the trial Judge had manifestly failed to consider the relevant facts. These principles, in my view, apply in adjudication of cases under Rule 60 also.

8. Annexure 4 shows that respondent No. 4 (Previously Security Officer) held that he does not find any substance to reconsider his provisional decision. He also observed that in view of the fact that the stolen properties were recovered by the G.R.P.S. Barharwa, which goes to show that the petitioners have connived with the criminals. It is clear that the Security Officer had refused to reconsider the submissions made by the petitioners in the reply while proposing to pass an enhanced sentence and without recording any finding that the Assistant Security Officer had passed the punishment unduly leniently or had manifestly failed to consider the relevant facts.

9. These apart, it further appears that merely because the culprits were found out by the G.R.P.S. of Barharwa Yard, he inferred from that alone that the petitioners have connived with the criminals, which is based on surmises and conjectures and not any legal materials.

10. The findings recorded by the Civil Court, contained in Annexure 8, are also binding upon the respondents which have not been shown to be set aside.

11. Taking into consideration the entire facts and circumstances, I am of the view that the order contained in Annexure 4 is vitiated on account of jurisdictional error and this is a fit case in which, in the interest of justice, I should exercise my discretion.

12. For the reasons aforementioned, the impugned orders as contained in Annexures 4 and 5 are set aside and this writ application is allowed. Since no one has appeared on behalf of the respondents, there shall be no order as to cost.

13. It is needless to point out that as a result of quashing of Annexures 4 and 5, the petitioners shall be deemed to be in service with all necessary consequential benefits flowing therefrom.

14. Let a writ of certiorari issue accordingly.