

(1998) 05 GAU CK 0018
In the Gauhati High Court
Case No : Civil Rule No. 3759 of 1991

Nripen Chandra Sarma

APPELLANT

Vs

Union of India and Ors.

RESPONDENT

Date of Decision : 08-05-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1998) 2 GLJ 278 : (1998) 2 GLT 123

Hon'ble Judges : A.K.Patnaik, J

Bench : Single Bench

Advocate : M.Rahman, M.K.Choudhary, B.Kalita, B.K.Sharma, Advocates
appearing for Parties

Judgement

1. In this application under Article 226 of the Constitution, the petitioner has prayed for quashing the order dated 27.3.91 of the Divisional Security Commissioner, Railway Protection Force, NF Railway, dismissing the petitioner from services as well as the order dated 10.6.91 passed by the Inspector GeneralcumChief Security Commissioner, Railway Protection Force, NF Railway, Maligaon, rejecting the appeal of the petitioner against the said order of dismissal, and for a direction on the respondents to reinstate the petitioner in service with full pay and allowances and the other service benefits.

2. The facts briefly are that the petitioner was a Constable in the Railway Protection Force working under the North East Frontier Railway (for short NF Railway). While he was working as a Constable at the Diesel Shed at Siliguri, he along with other persons, was placed under suspension pending drawl of disciplinary proceedings by the Divisional Security Commissioner, NF Railway, Katihar by order dated 11.4.89. By memorandum dated 10.7.89, the said Divisional Security Commissioner, NF Railway, then initiated disciplinary proceedings against the petitioner. As per Article of Charges annexed to the said memorandum, charges against the petitioner were that while he was functioning as a Constable in NF Railway on 21.11.88 at Beat Nos 1 and 2 from 14.00 hrs. to

22.00 hrs at Diesel Shed at Siliguri, he failed to prevent or detect theft of one core after cooler element from his beat at the said Diesel Shed, rather he connived in commission of theft of the said core after cooler element and shared the sale proceeds of the said material belonging to the Railways with the said two persons, Constable Sarat Chandra Jha and Constable HP Biswakarma, giving them Rs.130/ each and retained the rest to himself. The further charge against the petitioner was that in order to hush up the case he along with hrs associates gave illegal gratification to the tune of Rs.5,100/to Sri P. Mishra, the then IPF/ Diesel Shed, Siliguri, through an outsider when Sri P. Mishra was inquiring into the case and had come to know of the involvement of the petitioner in the said theft of Railway material. The said memorandum dated 10.7.89 states that the petitioner had failed to maintain absolute integrity and devotion to duty in utter violation of Rule 3 (i), 3 (ii) and 3 (iii) of the Railway Service Conduct Rules and was guilty of unbecoming of a member of the Armed Force of Union of India. By the said memorandum dated 10.7.89, the petitioner was asked to submit his written statement of defence and accordingly the petitioner submitted his written statement of defence dated 3.10.89 to the Divisional Security Commissioner, NF Railway, Katihar denying the charges. Thereafter, one Sri SK Chatterjee, the then Asstt Security Commissioner, Railway Protection Force, NF Railway at Katihar was appointed as Enquiry Officer to enquire into the said charges. At the enquiry against the petitioner and his associates Constable Sarat Chandra Jha and Constable HP Biswakarma, the Enquiry Officer examined 13 witnesses produced on behalf of the Department While the petitioner and Sri SC Jha participated in the said enquiry, Sri HP Biswakarma remained absent at the said enquiry on most of the dates. The Enquiry Officer then submitted his enquiry report to the disciplinary authority who after perusing the relevant records, documents and evidence of the prosecution and defence held that the charges against the petitioner had been proved and imposed penalty of dismissal from service by the impugned order dated 27 3.91. The petitioner preferred an appeal before the Chief Security Commissioner, Railway Protection Force, NF Railway, Maligaon. But by a speaking order dated 10.6.91 the said appellate authority rejected the appeal of the petitioner. Aggrieved, the petitioner has moved this Court for appropriate relief.

3. At the hearing, Mr. B. Kalita, learned counsel for the petitioner, submitted that on the face of the enquiry report the charges against the petitioner had not been established. He further contended that the findings recorded in the enquiry report against the petitioner are perverse. He stated that Sri MA Mallick had held a preliminary enquiry during which he had recorded evidence of various witnesses and at the enquiry conducted in the disciplinary proceedings by Sri SK Chatterjee, Enquiry Officer, he deposed as to what the witnesses had stated before him at the preliminary enquiry. According to Mr. Kalita, the evidence of PW 1 adduced in the enquiry in the disciplinary proceedings cannot be taken into account for establishing the charges against the petitioner. In support of his submission, Mr. Kalita cited the decision of the Supreme Court in the case of

State of Andhra Pradesh vs. Sri Rama Rao, AIR 1963 SC 1723, in which the Supreme Court has, inter alia, held that the High Court may under Article 226 of the Constitution interfere with the findings in the departmental enquiry where the conclusion in the said enquiry on the face of record is so wholly arbitrary and capricious that no reasonable person ever have arrived at that conclusion. He also relied on the decision of the Apex Court in the case of Bhagat Ram vs. State of Himachal Pradesh, AIR 1983 SC 455, in support of his submission that where the finding of the disciplinary authority is utterly perverse, the High Court can always interfere with the same under Article 226 of the Constitution.

4. Countering the aforesaid submissions, Mr. BK Sharma, learned Standing Counsel for the Railways, argued that the record produced by him before the Court would show that the findings of the Enquiry Officer as well as the disciplinary authority and the appellate authority are based on the evidence that was adduced at the enquiry in the disciplinary proceedings and the contention of the petitioner that the said findings against the petitioner are perverse is not correct. He cited the ruling of the Supreme Court in. the case of Govt. of Tamil Nadu vs. A. Rajapandian, AIR 1995 SC 561, for the proposition that the High Court cannot sit as a Court of appeal against a decision based on the findings of the enquiring authority in the disciplinary proceedings and where there were some relevant materials which the disciplinary authority has accepted and which support the conclusion reached by the disciplinary authority, it is not the function of the High Court to review the same and reach a different finding than that of the disciplinary authority.

5. On a reading of the enquiry report submitted by the Enquiry Officer, Sri SK Chatterjee, I find that his conclusion that the petitioner was guilty of the charges was based not only on the evidence of Sri MA Mallick, PW 1, but also the evidence of two other witnesses namely Sri AK Dasgupta, PW 2 and Sri PB Das, PW 6. PW 1 in his evidence has, inter alia, stated that he was directed by the Divisional Security Commissioner, Katihar to make an inquiry about the missing of one core after cooler element and he enquired into the case and during the course of enquiry he checked the record of AFO/DShed and found that one core after cooler element being Loco Diesel No. 6029 was removed by special evening shift staff on 21.11.88 and kept on the shed floor to turbo section in the duty beat of the petitioner. But on 22.11.88 at about 7.00 hrs when Shri SP Sinha, Senior Chargeman took charge of AC Cooler element from RPF staff he noticed that one turbo charger supper excess lying on the floor without its AC element. The said PW 1 has further stated that the petitioner was incharge of Beat Nos 1 and 2. PW 1 has further stated in his evidence that on 8.4.89, IPF/P. Mishra disclosed before him and Sri PB Das (PW 6) that the core after cooler element was removed from the Diesel Shed with the active connivance of the petitioner through a criminal named Narshing and was sold in the market for Rs. 1,4007 Thus, PW 1 has stated before the Enquiry Officer whatever he has himself come to know from the enquiry conducted by him and whatever he has himself heard from Sri P. Mishra, IFF, and his statements cannot be brushed aside as not

relevant material. In any case, his statements are corroborated by PW 2 and PW 6. PW 2, Sri AK Dasgupta has stated before the Enquiry Officer in the disciplinary proceedings that he had recorded the statements of the members of RPF at the preliminary enquiry and while the petitioner denied having any knowledge about the theft of the core after cooler from his duty beat on 21.11.88, Sri HP Biswakarma in his statement has stated that on 24.11.88 he was given Rs.130/ by the petitioner but when asked about the same the petitioner did not disclose anything on that day but on 2.12.88 he was informed by the petitioner that Rs. 130/ was given out of money received by the petitioner for disposing of one core after cooler by the petitioner during his duty hours on 21.11.88. PW 6, Sri PB Das in his evidence before the Enquiry Officer, has, inter alia, stated that Sri P. Mishra, IFF who had been asked by the Divisional Security Commissioner, Katihar to enquire into the missing of one AC element, had disclosed before him as well as Sri MA Mallick on 8.4.89, the names of the petitioner Sri SC Jha and Sri HP Biswakarma for their connivance with the theft of core after cooler with the help of one outsider Narshinga and that the cooler was removed from the Diesel Shed and sold in the market. The said PW 6 has further stated in his evidence that Sri Mishra also stated that the cooler had been sold in the market at Rs.1,400/ and that he too had received a sum of Rs.5,1007 from one Thakur, Labour Contractor of Siliguri through the petitioner.

6. From the discussion of the evidence that was adduced before the Enquiry Officer, it was therefore clear that there was some relevant material in support of the conclusion reached by the Enquiry Officer as well as the disciplinary authority and the appellate authority that the petitioner was guilty of the charges against him. In the case of *Union of India vs. Sardar Bahadur*, (1972) 2 SCR 218, quoted in the case of *Govt. of Tamilnadu vs. A. Rajapandian* (supra), it has been held that disciplinary proceeding is not a criminal trial and the standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt. In the case of *State of Andhra Pradesh vs. Sri Rama Rao* (supra), cited by Mr. B. Kalita, learned counsel for the petitioner, it has been held that the disciplinary authorities are, if the enquiry was otherwise properly held, the sole judges of facts and if there was some legal evidence on which findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding under Article 226 of the Constitution. In the instant case, as discussed above there was evidence of PWs 1,2 and 6 to support the conclusion of the Enquiry Officer, disciplinary authority as well as the appellate authority that the petitioner was guilty of the charges, and it is not the function of this Court to make an enquiry as to how far the said evidence was reliable or adequate. The first contention of Mr. Kalita that the finding in the enquiry report and the orders of the disciplinary authority as well as the appellate authority that the petitioner was guilty of the charges was perverse, is without any merit.

7. It was next contended by Mr. Kalita that Sri P. Mishra/IPF whom the petitioner had alleged to have bribed has not been examined in inquiry in the disciplinary

proceedings although the petitioner made a prayer for his examination. In the enquiry report, the Enquiry Officer has stated that IPF/P. Mishra was not examined since he was not of the parties charged in the case and he could not be called in the enquiry as defence witness and hence it was denied. Thus the reason given by the Enquiry Officer for not allowing the examination of IPF/P. Mishra as a defence witness is that he was himself one of the delinquent employees involved in the case. This being the reason, it is difficult to hold that the Enquiry Officer acted arbitrarily and contrary to law in not allowing the examination of IPF/P. Mishra. Assuming that such nonexamination of the said Sri P. Mishra as defence witness on behalf of the petitioner vitiated the finding with regard to bribe of Rs.5,100/ having been paid by the petitioner to the said Mishra to hush up the case, the other findings against the petitioner that he had failed to prevent or detect theft of one core after cooler element and had in fact connived in commission of theft of the said AC element and shared the sale proceeds of the said AC element and had thereby failed to maintain absolute integrity and devotion to duty in utter violation of the Railway Service Conduct Rules would not in any way be effected by the said nonexamination of Sri P. Mishra as a witness. The aforesaid ground taken by Mr. B. Kalita, learned counsel for the petitioner therefore is not sufficient to warrant interference with the penalty imposed on the petitioner for misconduct and other charges against him.

8. Mr. Kalita finally argued that in the enquiry report, the Enquiry Officer has found not only the petitioner but also his other two colleagues Sri SC Jha and Sri HP Biswakarma as guilty of the misconduct and yet while the petitioner has been dismissed from service by the impugned orders, his said two colleagues have been let off leniently with lesser punishment of stoppage of three increments by the authorities. He submitted that such action on the part of the authorities amounts to discrimination against the petitioner and the impugned orders are liable to be interfered with by this Court on this ground alone. Mr. BK Sharma, learned Standing Counsel for the Railways, on the other hand, relied on a decision of the Supreme Court in the case of *Indian Oil Corporation Ltd vs. Ashok Kumar Arora*, (1997) 3 SCC 72, wherein the Supreme Court rejected a similar contention raised by a delinquent employee. In the said case while the respondent in that case was dismissed from service by the disciplinary authority, minor penalty was imposed on the other employees who were similarly involved in procuring forged medical certificates and bills.

9. On a perusal of the said judgment in the case of *Indian Oil Corporation Ltd vs. Ashok Kumar Arora* (supra), it appears that the Supreme Court found from the enquiry report that the respondent in that case was instrumental in obtaining forged medical bills not only for himself but also for other employees and was the main actor behind cheating the Corporation and because of this finding held that the disciplinary authority rightly considered the award of penalty to the respondent differently than the other employees who although got the benefit of reimbursement of the forged bills accepted their guilt before the Enquiry Officer. Having so held, the Supreme Court further observed that the High Court had

committed serious jurisdictional error while interfering with the quantum of punishment and that there was neither any discrimination resorted to by the disciplinary authority nor the punishment awarded to the respondent was disproportionate to his misconduct.

10. In the instant case, the materials collected in the enquiry in the disciplinary proceedings disclosed that it was the petitioner who was mainly responsible for the theft of AC Cooler element from Diesel Shed during his duty hours on 21.11.88 and that he had in fact received an amount of Rs.1,400/ from the sale of the said AC Cooler element and distributed only Rs.1 30/ each to Sri SC Jha and Sri HP Biswakarma, his colleagues, on 24.11.88. The facts as available on record therefore indicated that the petitioner was the main actor in the removal of the Railway property from the Diesel Shed and was also the main beneficiary while Sri SC Jha and Sri HP Biswakarma were guilty for having shared a small portion of the sale proceeds of the said AC cooler element. There was therefore no discrimination on the part of the authorities if they imposed the punishment of dismissal on the petitioner and only the punishment of stoppage of three increments on his said two other colleagues. Both the disciplinary and appellate authorities have in the impugned orders stated that the petitioner was a member of the Railway Protection Force and his duty was to guard Railway property, but instead he participated in the theft of Railway property. This reason given by the authorities for imposing the penalty of dismissal on the petitioner cannot be said to be arbitrary or unconscionable calling for any interference by this Court under Article 226 of the Constitution of India,1950.

11. I do not, therefore, find any merit in this writ petition and I dismiss the same. However, considering the entire facts and circumstances of the case, the parties shall bear their own costs.