

(1984) 03 AHC CK 0027
In the Allahabad High Court
Case No : Writ Petition No. 428 of 1983

Param Jeet Singh

APPELLANT

Vs

Union of India Through The General Manager, Northern
Railway, Baroda House, New Delhi and others

RESPONDENT

Date of Decision : 16-03-1984

Acts Referred:

Railway Servants (Discipline and Appeal) Rules 1968 — Rule 14, 9

Citation : (1984) 03 AHC CK 0027

Hon'ble Judges : U.C.Srivastava, J

Final Decision : Allowed

Judgement

U.C. Srivastava, J.—The order dated 2941982 by which the petitioner was dismissed from service by the appointing authority as well as the order dismissing his appeal are the subject matter of challenge in this writ petition.

2. The petitioner was working as Sign Writer in the Northern Railway (Carriage and Wagon Shops) under the Deputy Chief Mechanical Engineer. A complaint was lodged against him by Bakshish Singh, Mistry, Paint Shops (Carriage and Wagon Shops) on 23.4.1982 at 1000 P.M., stating therein that at about 6.30 P.M. the petitioner, who had been transferred to another Section, with a suspicion in his mind that the complainant was responsible for the same, abused him, on protest collected his associates and thereafter gave severe beating to him, causing injuries. The said complainant was also medically examined and a medical report was submitted. It is on this report, purporting to exercise power under Section 14 (ii) of the Railway Servants (Discipline and Appeal) Rules, 1968, the Deputy Chief Mechanical Engineer held that the retention of the petitioner in service was not desirable and that he was satisfied that it was not reasonably practicable to hold an enquiry in the manner provided in Railway Servants (Discipline and Appeal) Rules, 1968. I As such he was dismissed from service and the appeal filed by the petitioner was also dismissed by the Chief Workshops Engineer, Northern Railway. No orders, it seems, were passed on the review

application. f Whereafter he filed the instant writ petition.

3. The learned counsel for the Railways was required to produce the relevant record in order to see as to whether any reason for holding that it was not reasonably practicable to hold an enquiry, was assigned or not. From the record it appears that one Mahange Singh and Rajendra Singh, both of whom stated on 24/4/1982 before the authority concerned of having seen the incident, stated that they would not like to appear as a witness in view of the fact that the petitioner was a notorious person & the appearance as a witness by them against him would endanger their lives. It is to be noticed that none of these two persons were mentioned in the FIR which was lodged by the said Bakshish Singh, in which the name of the eyewitnesses was given as Badli & Madan. It is, thus, evident in this case that no chargesheet was issued to the petitioner and efforts to serve the same were not made before taking a decision that it was a case in which penalty of dismissal was called for, no explanation or opportunity of hearing was given to the petitioner. Rules 9 to 14 of the Railway servants (Discipline and Appeal) Rules, 1968 deal with the enquiry against a railway employee. From the rules it is abundantly clear that the enquiry commences after the stage of filing of the written statement by the person concerned is completed, prior to which a chargesheet is issued to him. Rule 14, which is a special procedure in certain cases, reads as follows:

?Notwithstanding anything contained in Rules 9 to 13:

(i) Where any penalty is imposed on a railway servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) Where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii) Where the president is satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules;

The disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit;

Provided that the commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule.?

4. Rule 14 is, thus, a rare incident to the general rules regarding the mode and manner in which an enquiry is to be held. Rule 14 (ii) which is relevant is that where the disciplinary authority is satisfied for reasons to be recorded by it, in writing, that it is not reasonably practicable to hold an enquiry in the manner provided in these rules (sic.). Thus, Rule 14(ii) confers a power on the disciplinary authority not to hold an enquiry in the manner provided in the rules if for the reasons to be recorded in writing he was satisfied that the same was not reasonably practicable. A perusal of the Rule itself indicates that serving of the chargesheet and calling for the explanation of the person concerned has not

been dispensed with in this rule.

5. In writ petition No. 1552 of 1978 Sheo Raj Bahadur v. Union of India and others, this matter came up before a Division Bench of this court of which I was also a member and in view of the difference of opinion the matter was referred to a third judge and it was held in the said case that the reasons to be recorded if not contained in the order, the order will not be bad if reasons are contained in the file. It was also held that before inflicting any penalty on the employee, an opportunity of hearing is to be given to him.

6. A Full Bench of this court in Maksudan Pathak v. The Security Officer, Eastern Railway, Mughalsarai and another, 1981 (2) SLR page 451 held that not only the reasons have to be recorded in writing, an authority has to be further satisfied that it is not reasonably practicable to hold the enquiry and the order dispensing with the enquiry is ? justiciable. It is no more the subjective satisfaction of the authority, but the discretion of the authority has to be exercised on objective facts on record. It was further held that the words ?reasonably practicable? would apply in a case where the authority cannot, in a reasonable manner, f put into practice the clause in relation to an enquiry, namely, because of certain facts and circumstances peculiar to each case, the authority cannot, in a reasonable manner, hold an enquiry. In the said case I reasons were of collusion with local RPF staffer inability to collect evidence against the delinquent due to his influence at the Station, were not held to be not a relevant consideration but an arbitrary decision. In the instant case it has been seen that no charge sheet was issued to the petitioner who was dismissed within six days of the complaint. There is nothing on record nor there is an averment to the effect that he was not available or he was suspended or he refused to accept the chargesheet & submit his reply. The enquiry has been dispensed with on the statement in writing given by two persons, none of whom were named in the FIR as eye witnesses. If these two persons did see the occurrence but were not inclined to appear as a witness, merely because they have stated a particular reason that itself is not a relevant reason to hold that in the w case of the petitioner whose antecedents were still not stated to be bad or who was not/dubbed or termed or was said to be a bully or a notorious person, cannot be said to be a relevant consideration and the decision not to hold the enquiry was obviously an arbitrary decision and, may be, for this reason things were done in a hurried manner, so much so that everything was completed within six days without ascertaining the truth or correctness of the allegations so made, which complaint was rather in the nature of private dispute though said to have some relation with official duty. Even no opportunity was given to the petitioner as to why for the acts said to have been committed by him he should not be visited with the extreme penalty of dismissal, which is the requirement of the Rule 14. The case cited by the learned counsel for Railway Administration, Shri C.A. Bashir, Baidyanath Singh v. General Manager, South Eastern Railway & others (Calcutta), 1983(1) SLR page 1, in which it was held that dispensing with an enquiry, when threats were held out to witnesses, and witnesses were not willing to give evidence due to fear, was proper. The Full

Bench decision of the Allahabad High court in Maksudan Pathak (supra) was considered and was distinguished on facts. The facts of the Calcutta case are quite different. In the said case it was a case of theft; complicity of the petitioner was contained in the report and the eyewitnesses were not prepared to give evidence, openly, either in court or before any other person or authority, for fear of their lives as they had been threatened by the Rakshaks as well as gang of the coolies involved in the crime. This was based on the material so connected. It was also said in the report that the witnesses were afraid of humiliation and harassment. This report was the result of the two enquiries and the reports, the statements given by the witnesses and gist of information collected from the sources and the modus operandi of pilferage, were given and the complicity of the petitioner was rather fully established. It was found that the authority objectively considered the matter before recording a satisfaction. The next case relied upon by the learned counsel for the Railway Administration is M.F. Ansari and others v. Union of India and others, 1983(2) SLR page 280 in which a Single judge of Karnataka High court, after conjointly reading the Article 311 (2) (b) of the Constitution of India with Railway Servants (Discipline & Appeal) Rule 1958, held that if the petitioner is dismissed without notice, after enquiry is dispensed with on the ground that it was not practicable to hold that, there is no obligation on the part of the disciplinary authority to issue notice calling upon the petitioner to make representation against the proposed penalty. In the said case it was held that dispensing with the enquiry was open to judicial review if (no) ft reasons have been recorded or if reasons recorded have no nexus to the dispensing with the enquiry or the decision is arbitrary, capricious & mala fide. So far as the second part is concerned, obviously it does not support the learned counsel. As far as the first part is concerned, a Division Bench of this court in Sheo Raj Bahadur's case (supra), referred to above, has already answered this question against the Railway Administration. As such, it is not possible to accept the decision of the Karnataka High Court. Thus, in the instant case the order of dismissal was not only violative of the principles of natural justice but it was in violation of Rule 14 (ii) of the Railway Servants (Discipline and Appeal) Rule 1958 and the decision to dispense with the enquiry was arbitrary and too remote. Merely because two persons who were not named in the FIR, made such a statement without there being anything prior to it or subsequent to it or any material to substantiate what they said, it could not be said that the reason so assigned was irrelevant. In these circumstances the writ petition deserves to be allowed.

7. The writ petition is allowed. The order dated 20/1/1982 dismissing the petitioner from service, a copy of which has been annexed as Annexure no. 1, and the order passed by the Appellate Authority, a copy of which has been annexed as Annexure no. 5 to the writ petition, are quashed. It is, however, being made clear that it will be open to the authority concerned to hold enquiry, if they so like, in accordance with rules.

(Petition allowed)