

(2015) 02 DEL CK 0340
In the Delhi High Court
Case No : Writ Petition (C) 5935/2013

Radhey Shyam

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 02 DEL CK 0340

Hon'ble Judges : Pratibha Rani, J.;Pradeep Nandrajog, J.

Bench : Division Bench

Advocate : Saahila Lamba, for the Appellant; Rashmi Malhotra and Priyanka Bharihoke, Advocates for the Respondent

Judgement

Pradeep Nandrajog, J.—Relevant facts necessary to be noted for adjudication of the present petition are that in the year 1994 the petitioner was appointed as a Constable in Railway Protection Force (hereinafter referred to as the ("RPF")) and posted at New Delhi Railway Station in the year 2011.

2. On July 07, 2011, the Disciplinary Authority issued an order placing the petitioner under suspension with effect from July 03, 2011. Significantly, the suspension order dated July 07, 2011 merely records that the petitioner has been placed under suspension and nowhere records that "petitioner should present himself daily for attendance to any authority nominated by the disciplinary authority?".

3. On September 22, 2011, the department issued a charge sheet to the petitioner and thus initiated the disciplinary inquiry under Rule 153 of RPF Rules, 1987. Three charges were framed against the petitioner, which read as under:-

"1) During suspension, on 3.7.2011, he was spared from Insp./M.S.A. (R) Company Dayabasti for arrival, but without any information, unauthorizedly became absent during suspension.

2) From 4.7.2011 FN to 24.8.2011 AN, he remained absent for 52 days during

suspension.

3) On 17.8.2011, he remained under judicial custody." (Translated Version)

4. The (three) charges framed against the petitioner can be summarized as follows: - (i) after being suspended on July 03, 2011, the petitioner unauthorizedly absented himself for a period of 52 days from July 04, 2011 to August 24, 2011 and (ii) petitioner remained in judicial custody on August 17, 2011.

5. In the month of October 2011, the petitioner wrote a letter to the Disciplinary Authority stating therein that it has been held by a Division Bench of Andhra Pradesh High Court in the decision reported as 1982 Lab IC 1140 Zonal Manager, FCI and Ors vs. Khaled Ahmed Siddiqui that the direction to the employee to attend office and mark attendance daily during period of suspension is illegal. Such being the legal position, the charge(s) relating to unauthorized absence of petitioner during period of suspension cannot be sustained and thus the charge sheet issued to him be cancelled. But in spite thereof an Inquiry Officer was appointed to record the evidence and submit a report.

6. At the inquiry, the department examined three witnesses viz. ASI Rajbir Singh PW-1, Inspector Pratyush Tiwari PW-2 and Inspector M.C. Tyagi PW-3.

7. Briefly noted, ASI Rajbir Singh PW-1, stated that the petitioner was absent for a period of 52 days from July 03, 2011 to August 24, 2011. Inspector Pratyush Tiwari PW-2, stated that the petitioner was placed under suspension with effect from July 03, 2011. Inspector M.C. Tyagi PW-3, stated that he had prepared a report regarding the absence of petitioner for a period of 52 days from July 03, 2011 to August 24, 2011.

8. In defence, the petitioner reiterated that he was not required to attend office or mark his attendance during the period of suspension. Additionally, he stated that he was unable to mark his attendance during the period of suspension due to illness of his wife and prosecution of false case regarding receipt of stolen property registered against him. With respect to charge relating to his being in judicial custody on August 17, 2011 the petitioner stated that the case in respect whereof he remained in judicial custody is false and he was granted bail in said (false) case by the Sessions Court at Dehradun.

9. On the issue of requirement of attending office and marking of attendance by suspended employee, the petitioner annexed copies of notings of senior officials of RPF on said issue and order dated July 02, 2011 passed by Director General, RPF with his written statement of defence.

10. Being relevant, we note the notings of senior officials of RPF annexed by the petitioner along with his written statement of defence:-

"The matter regarding regular making of attendance by the RPSF staff (under suspension) at the headquarters as provided in Rule 143.2 of RPF Rules 1987

and also the issue as to whether such employee may be taken up departmentally for unauthorized absence during suspension is under consideration in consultation with the concerned policy directorate of Railway Board.

It has been opined that there is no bar in taking up such employee departmentally for unauthorized absence, however, the contention that he should under his attendance regularly in token of his being present at headquarters has been held illegal by Andhra Pradesh High Court in a judgment in case of Zonal Manager, FCI and others Vs. Khaled Ahmed Siddique. A copy of Board's letter No.E (DandA) 83RG6-17 dated 31-5-83 is enclosed in this regard.

In view of the above, Sec. (E) may kindly examine the feasibility of amending the relevant rule or otherwise. DIG/Admn.

Attending office and marking attendance by an employee under suspension is not in conformity with the intention of suspension. An employee/officer suspended pending a case may have chances of tamper with evidence and influencing witnesses if he is allowed regular approach to the office. The provision in the RPF Rules, perhaps, need a change. However for leaving the station of posting the employee has to seek permission.

Normal (DandA) Rules for Central Govt. Staff do not permit the facility/restriction provided in RPF Rules. The RPF Rules position may not also sustain legal scrutiny. An amendment to the Rules is, therefore, suggested.

D.G. may like to see.

Attendance during the period of suspension cannot be enforced. (Translated Version)

11. The order dated July 02, 2011 passed by the Director General, RPF annexed by the petitioner along with his written statement reads as under:-

"Shri Kamaldeep Singh Sidhu, SI/RPSF has submitted a revision petition against the punishment of "Reduction in rank from Inspector to Sub-Inspector to the lowest stage in the scale of pay Rs.5500-175-9000 for a period of five years" imposed upon him and therejection of his appeal by the appellate authority i.e. CSC/RPSF.

The principal charges are on the premise that a member of the force under suspension is required to mark his attendance at his headquarters which the party charged failed to do so and secondly his failure to inform the administration about his arrest on 17-01-2005 by Manaknagar Police Station, Lucknow. It is observed that as per direction of the Hon'ble Supreme Court and advised by the CVC the requirement to mark attendance by government employees during suspension has been dispensed with. It is also on record that the office incharge of Manaknagar Police Station informed 3rd Battalion/RPSF/Lucknow on 18-01-2005 itself regarding the arrest of the party charged.

Hence the charges leveled are flawed and cannot be upheld against the party

charged. The charge sheet and the punishment imposed earlier are quashed. However, I give the liberty to the Disciplinary Authority to initiate fresh proceedings in case any charges are prima facie made out against Shri K.S. Sidhu for violation of the Rules and misconduct.

The petitioner may be informed accordingly.

Sd/- (M.K. Sinha) Director General, RPF Railway Board"

(Emphasis Supplied)

12. Vide his report dated January 17, 2012, the Inquiry Officer opined that the charges leveled against the petitioner stand proved. (Significantly, in coming to the conclusion that the petitioner is guilty of charge(s) relating to his unauthorized absence during suspension, the Inquiry Officer placed reliance upon Rule 143.2 of RPF Rules, 1987.)

13. Vide order dated April 23, 2012 the Disciplinary Authority accepted the findings of the Inquiry Officer and imposed the penalty of compulsory retirement upon the petitioner.

14. Vide orders dated August 16, 2012/June 10, 2013, the Appellate/Revisional Authorities rejected the appeal/revision submitted by the petitioner assailing the legality of the penalty order dated April 23, 2012 passed by the Disciplinary Authority.

15. Aggrieved by the aforesaid, the petitioner has filed the present petition under Article 226 of Constitution of India.

16. The main thrust of submission advanced by the counsel for petitioner is that charge(s) framed against the petitioner are flawed. It is argued that it has been held by a Division Bench of Andhra Pradesh High Court in the decision reported as 1982 Lab IC 1140 Zonal Manager, FCI and Ors vs. Khaled Ahmed Siddiqui that the direction to the employee to attend office and mark attendance daily during period of suspension is illegal. In view of said legal position, the senior officers of RPF have suggested that the requirement in the RPF Rules, 1987 requiring the suspended employee to mark his attendance during suspension "needs change" and that "attendance during the period of suspension cannot be enforced" as reflected from the notings annexed by the petitioner along with his written statement of defence. It is argued that on an earlier occasion Director General, RPF had quashed charge sheet and punishment awarded to an employee for not having marked his attendance at headquarters during period of suspension on the ground that "the requirement to mark attendance by government employees during suspension has been dispensed with?.

17. Per contra, counsel appearing for the department argues that the departmental authorities have rightly held the petitioner guilty for not attending office and marking his attendance during period of suspension in view of Rule 143.2 of RPF Rules, 1987. Rule 143.2 of RPF Rules, 1987 relied by the counsel

appearing for the department reads as under:-

"Every member of the Force shall during the period of his suspension stay at his headquarters or at such place which may be specified by the disciplinary authority and shall present himself daily for attendance to the authority nominated by the disciplinary authority.

Provided that the disciplinary authority may, for special reasons, grant permission in writing to the member to leave the station for a specified period and on revocation of such suspension the period of such absence shall be regularized as kind of leave due in case the period of suspension is treated as period spent on duty."

18. The reliance placed by the counsel appearing for the department on Rule 143.2 of RPF Rules, 1987 is wholly misplaced.

19. Rule 143.2 prescribes that "every member of the Force shall during the period of his suspensionshall present himself daily for attendance to the authority nominated by the disciplinary authority". In the instant case, no evidence whatsoever has emerged during the disciplinary inquiry that the department (disciplinary authority of the petitioner) had called upon the petitioner to present himself daily for attendance to the authority nominated by the disciplinary authority. We have already noted that the suspension order dated July 07, 2011 also does not call upon the petitioner to present himself daily for attendance to the authority nominated by the disciplinary authority. In the absence of any evidence to show that the petitioner was called upon to present himself daily for attendance to the authority nominated by the disciplinary authority, recourse to Rule 143.2 of RPF Rules, 1987 cannot be taken by the department to hold the petitioner guilty for not marking his attendance during the period of his suspension.

20. Further, in view of stand(s) taken by the Director General, RPF in the order dated July 02, 2011 to the effect that "the requirement to mark attendance by government employees during suspension has been dispensed with" and other senior officers of RPF in the notings noted by us herein above to the effect that the requirement in the RPF Rules, 1987 requiring the suspended employee to mark his attendance during suspension "needs change" and that "attendance during the period of suspension cannot be enforced", we find merit in the submission advanced by the counsel appearing for the petitioner that the charge(s) relating to absence of petitioner during period of suspension are flawed, more particularly in the light of dictum of law laid down by Division Bench of Andhra Pradesh in Siddiqui's case (supra) that the direction to the employee to attend office and mark attendance daily during period of suspension is illegal.

21. As regard charge relating to the petitioner being in judicial custody on August 17, 2011, suffice it to state that until and unless the finding of guilt of petitioner is arrived by the criminal court dealing with the case in respect whereof the petitioner was lodged in judicial custody on August 17, 2011, no misconduct

whatsoever can be attributed to the fact that the petitioner was lodged in judicial custody on August 17, 2011. We are informed that the case in respect whereof the petitioner was lodged in judicial custody is still in its nascent stages, in that charges are yet to be framed in said case. Thus, the third charge framed against the petitioner is also flawed.

22. The upshot of the above discussion is that the (three) charges framed against the petitioner are flawed and hereby quashed. As a necessary corollary thereof, the order dated April 23, 2012 passed by the Disciplinary Authority holding the petitioner guilty of (three) charges framed against him and imposing penalty of compulsory retirement upon him and orders dated August 16, 2012 and June 10, 2013 passed by Appellate/Revisional authorities dismissing the appeal/revision of petitioner stand quashed. Needless to state, the penalty of compulsory retirement imposed upon the petitioner stands quashed.

23. The petitioner shall be reinstated in service with full back wages and other benefits and if he has received any pension on being compulsorily retired from service, the same shall be adjusted while paying the arrears.

24. No costs.