

(1995) 07 CAL CK 0021
In the Calcutta High Court
Case No : C.O. No. 12240 (W) of 1995

Rajendra Prasad Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-07-1995

Acts Referred:

Railway Protection Force Rules, 1987 — Rule 135

Citation : (1996) 1 LLJ 1003

Hon'ble Judges : Satyabrata Sinha, J

Bench : Single Bench

Advocate : Achin Kumar Majumdar and Arjun Kumar Samanta, for the Appellant; Ramesh Ghosh and R. Banerjee, for the Respondent

Judgement

Satyabrata Sinha, J.

The judgment of the Court was as follows:

The Petitioner in this application has, inter alia, prayed for the following reliefs:-

" A) A writ of or in the nature of Mandamus

ii) Commanding the respondents and each of them to recall, rescind, withdraw or to cancel the purported order of suspension dated January 16, 1995, the penultimate portion of the order of suspension dated January 17, 1995, the purported charge-sheet dated February 3, 1995 and the purported order of the Appellate Authority dated May 30, 1995 as contained in Annexure "A", "B", "C" and "E" herein:

ii) Commanding the Respondent No,2 herein to appoint any other Divisional Security Commissioner, R.P.F. South Eastern Railway as a Disciplinary Authority of the Petitioner in this instant case and to direct the Respondent No. 4 herein not to act as a Disciplinary authority of the petitioner.

iv) Declaration of Rule 143.2 of R.P.F. Rules 1987 ultra vires

So far as the last relief is concerned, the learned counsel for the Petitioner has not pressed the same.

2. The learned counsel for the petitioner has raised three contentions in support of the application. It is firstly contended that the order of suspension passed against the petitioner was violative of rule 135 of the Railway Protection Force Rules in as much as in passing an order of suspension as against the petitioner no public interest was involved. It was next contended that the respondent No. 3 while considering an appeal preferred by the petitioner against an order of suspension has considered irrelevant, fact that the petitioner was also guilty for mis appropriation although no such charge has been levelled against the petitioner. It was next contended that the petitioner has not been supplied copies of very relevant documents. The learned counsel also contended that in any event as the disciplinary authority had made the preliminary enquiry and all the witnesses had attended his Chamber before making deposition and further in view of the fact that the petitioner; himself had asked the Enquiry Officer to examine him as witness, the disciplinary authority is biased against him and in that view of the matter, the petitioner does not expect any justice at his hands. According to the learned counsel, although the petitioner may not be able to prove the actual bias, but the real likelihood of the bias is therein. In support of the aforesaid contention, the learned counsel has relied in the case of (1) Subramanian v. State of Kerala and Ors. reported in 1973(1) SLR 521; (2) Dr. K.C. Azad v. State of Himachal Pradesh reported in 1991(3) SLR 326 Dr. Anil Kumar Saha v. State of West Bengal and Ors. reported in 1985 (2) ChN 291 and (4) Ranjit Thakur Vs. Union of India (UOI) and Others,

3. The learned counsel appearing on behalf of the respondents, on the other hand, submitted that the enquiry proceeding would be completed within the period of four weeks. There cannot be any doubt that while suspending an employee in terms of Rule 135 of the Rules, the public interest ought to have been the guiding factor. However, keeping in view the charges levelled as against the petitioner, it cannot be said that the respondent concerned has either acted illegally Or without jurisdiction. It is true as has been submitted by the learned counsel, that the appellate authority misconstrued the charges levelled against the petitioner, but it cannot be said that he has committed any illegality. In any event, in view of the fact that as the enquiry proceedings would be completed at an early date, in my opinion, it is not a fit case where the order of suspension should be directed to be revoked at this stage.

4. In Subramanian v. State of Kerala & Ors. (supra), a learned Single Judge of the Kerala High Court has only stated that the order of suspension should not be lightly passed. There cannot be any doubt that application of mind by the disciplinary authority on the relevant materials is a condition precedent for passing an order of suspension. However, in this case, the order of suspension was passed in contemplation of a disciplinary proceeding. The petitioner did not question the said order of suspension on the ground aforementioned. He instead

preferred an appeal and the appellate authority, as noticed hereinbefore, rejected the said appeal. In *Anil Kumar Saha v. State of West Bengal and Ors.* (supra) the fact of the matter was entirely different. In that case the Bench arrived at a clear-cut finding that the actions on the part of the respondents were not at all bona fide and /or taking in good faith. In *Dr. K.C. Azad v. State of Himachal Pradesh* (supra), the Administrative Tribunal itself has held that the Government enjoys wide powers with regard to placing a government servant under suspension in cases where the conduct of a public servant is being enquired into for disciplinary action departmentally or a criminal case against him is under investigation, enquiry or trial. In the instant case the question of non-application of mind on the part of disciplinary authority does not arise. Prior to initiation of the departmental proceeding admittedly a preliminary enquiry was held. In the said preliminary enquiry, the petitioner was prima facie found to have committed the misconduct alleged against him and in that view of the matter, the disciplinary authority directed initiation of disciplinary proceeding against him. As the petitioner himself stated that the disciplinary authority had passed the impugned order after taking into consideration the preliminary enquiry made by himself, there cannot be any doubt whatsoever that before passing an order of suspension he had applied his mind. In any event, as the Enquiry Officer has been appointed and the enquiry proceeding has been proceeded to a large extent, the question of directing revocation of the order of suspension passed against the petitioner at this stage does not arise. So far as the other grievances of the petitioner are concerned, in my opinion, the petitioner can raise all the questions when a copy of the enquiry report is supplied to him and he makes a representation in relation thereto. The concerned disciplinary authority at that point of time, may not only consider all the materials on record, but also consider the contentions which may be raised by the petitioner that there has been a flagrant violation of principles of natural justice in so far as the petitioner had been deprived of getting a fair trial before the enquiry officer. However, the petitioner may not be compelled to attend office daily, but he should not leave the Head Quarter without prior permission and he should make himself available for participating in the enquiry proceeding as and when called upon to do so.

5. However, so far as the allegation of the petitioner of bias is concerned, I find some justification therein. The disciplinary authority himself enquired into the matter. The Petitioner wanted that he should be examined as witness. The petitioner has made an allegation that before deposing in the departmental proceedings, the witnesses were asked to visit the said authority. The aforementioned allegations may or may not be correct, but keeping in view the fact that it is not disputed at the bar that Chief Security Commissioner can appoint any other Divisional Security Commissioner as a disciplinary authority, I am of the view that interest of justice will be subserved if the Chief Security Commissioner appoints any other Divisional Security Commissioner as the disciplinary authority. It is recorded that this order is being passed at the instance of the learned counsel for the petitioner and thus in future, he would not

be entitled to question the jurisdiction of such authority.

6. This application is, therefore, disposed of with the aforementioned directions and observations and with a further direction that the enquiry proceeding as against the petitioner may be concluded at an early date and preferably within a period of four weeks from the date of communication of this order.

Liberty is given to the learned counsel for the parties to communicate this order to the concerned respondents.