
(1987) 03 AHC CK 0068
In the Allahabad High Court
Case No : Writ Petition No. 1980 of 1979

Rakshak Indra Narain Tripathi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-03-1987

Acts Referred:

Citation : (1987) 03 AHC CK 0068

Hon'ble Judges : U.C.Srivastava, J and Rajeshwar Singh, J

Final Decision : Allowed

Judgement

U. C. Srivastava, J.—The petitioner who was employed as Rakshak in the Railway Protection Force, Northern Railway at Lucknow has challenged the order of removal dated 25.10.1975 passed by the Security Officer, Northern Railway and the appellate order dated 20.1.1976 and the order dated 22.6.1979 passed by opposite party No. 2 dismissing the appeal and revision of the petitioner respectively.

2. It appears that some theft took place in a railway wagon on 4.3.1974 in the yard on Shahganj Railway Station. The civil police Shahganj registered a case of theft on 4.3.1974 at 8.30 P. M. . Showing that seven Thans cloth had been stolen which was recovered in the market of Shahganj. Later on final report was submitted by the police and the case was consigned to record. Later on a chargesheet was served upon the petitioner on 14.6.1974 by the Assistant Security Officer and the charge sheet contained only one charge which is quoted below :

?For serious misconduct in that he failed to Prevent and detect theft of one bale from wagon no. 351582 on 4.3.1974 while on duty from 16 hrs. to 24 hrs. at Shahganj. ?

3. The petitioner moved an application for supply of relevant documents which was received by Head Rakshak, but documents were not supplied. The petitioner gave his reply denying the charge levelled against him and stated that he was

not on duty and he had handed over charge to another person.

An Enquiry Officer was appointed who enquired into the matter. Certain witnesses were examined by the Enquiry Office. on behalf of the railway administration and the petitioner was also examined. It appears that the petitioner made request that Shamiullah, Parcel Clerk, who had sent NIKOLO wire be examined and he may be allowed to crossexamine him, but it was not done. The said Samiullah was a Parcel Clerk which fact was confirmed by the Enquiry Officer. The Enquiry Officer submitted his report against the petitioner, copy of which was given to the petitioner by which the petitioner was directed to submit his reply to the show cause notice on 10.10.1975. This notice was given by the Security Officer and not by the Assistant Security Officer who was the disciplinary authority. The petitioner submitted his reply to the show cause notice on 23.10.1975 yet without taking into consideration his reply the removal order was passed on 25.10,1975 i. e. on the 15th day of service of show cause notice. The petitioner filed an appeal against his removal order which was dismissed.

4. From the appellate order it appears that the petitioner did raise his grievance before the appellate authority that the material witness prayed for by him was not examined and the material documents were not exhibited. After the dismissal of appeal, he filed a writ petition which was dismissed on the ground of availability of alternative remedy. Thereafter he filed a revision which was also dismissed and then again he approached this Court by means of the instant writ petition.

5. We have heard learned counsel for the parties. There is no dispute between the parties that so far as Rakshaks are concerned, they are members of the defence force in view of the amendment made in Railway Protection Force, Act, 1985 and that is why it appears that the parties did not advance arguments on this point.

6. On behalf of the petitioner it was contended that the Security Officer had no jurisdiction to pass the removal order.

7. On behalf of the opposite parties it was contended that there was no Assistant Security Officer at that time and as such the Security Officer could issue the show cause notice and impose penalty. The penalty could have been imposed only by the appointing authority and not by any other officer. As such the explanation given by the opposite parties does not appear to be satisfactory and as such it can be said that the petitioner was removed by an officer who was not competent to do so. Anyhow this writ petition deserves to be allowed on other grounds.

8. The petitioner's grievance is that reply was submitted by him on 23.10.1975 and he has filed a duplicate copy of the same from which it appears that an endorsement was made on it showing that it was received on 23.10.1975. The learned counsel for the railway administration took time to produce record copy which indicates that on the place of date certain overwriting has been made and

that too with red ink in order to show that it was received on 27.10.1975. It is very regrettable that such things are done in the office of the railway administration. There appears to be no reason for not accepting the contention of the learned counsel for the petitioner that reply was submitted by him on 23.10.1975 and as such the authorities concerned were obliged to consider the same but the same has not been done. As such the order is vitiated. Even otherwise if there was no reply, the authorities concerned were in great hurry to pass the order on the very next day. More so the order is a nonspeaking order and no reference to the defence of the petitioner has been made. The officer concerned presumed that the petitioner has admitted his guilt. Even an ex parte order requires some consideration to find out the guilt of the person concerned. Even that was not done. The appellate authority also committed the same mistake. It appears that the procedure prescribed was not followed. When the petitioner prayed for cross examination of Shamiullah the Enquiry Officer could have summoned him for the next date but that was not done. As such there, appears to be nothing on record to show that any reason was assigned by the Enquiry Officer for not examining the said witness Shamiullah. Of course the Enquiry Officer is to take only material evidence but for rejecting the prayer of a particular party, he had to assign reasons for the same. No reasons were assigned. Thus there are various infirmities in the removal order. Consequently, the order of removal suffers from illegality and it cannot be sustained.

9. In the circumstances, the writ petition is allowed with cost. The order of removal dated 25.10.1975 contained in Annexure 11, the appellate order dated 20.1.1976 contained in Annexure 13 and the order dated 22.6.1979 contained in Annexure 16 are hereby quashed.