
(2009) 02 AHC CK 0136
In the Allahabad High Court
Case No : Writ Petition No. 5502 (SS) of 1999

Ram Bahadur Yadav

APPELLANT

Vs

Inspector General-cum-Chief Security Commissioner & Ors.

RESPONDENT

Date of Decision : 17-02-2009

Acts Referred:

Railway Protection Force Act, 1957 — Section 9
Railway Protection Force Rules, 1987 — Rule 161

Citation : (2009) 02 AHC CK 0136

Hon'ble Judges : Rajiv Sharma, J

Final Decision : Allowed

Judgement

1. Heard Mr. Ramesh Pandey, Counsel for the petitioner and Mr. Manik Sinha, learned counsel for the respondents.

2. Mr. Ramesh Pandey, counsel for the petitioner submits that the petitioner has been dismissed from service in violation of the provision of Rule 161 of the Railway Protection Force Rules, 1987 (hereinafter referred to as the "Rules 1987" for sake of brevity) insofar as it specifically provides that competent authority prior to passing the order of punishments, reasons for dismissing the employees from service should be recorded in writing. Rule 161 of Rules, 1987 is reproduced as under:

"161. Special procedure in certain cases :

Notwithstanding anything contained anywhere in these rules

(i) where any punishment is imposed on an enrolled member of the Force on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) where the authority competent to impose the punishment is satisfied for reasons la be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the mariner provided in these rules;

(iii) where the President is satisfied that in the interest of security of State and

the maintenance of integrity in the Force, it is not expedient to hold any inquiry in the manner provided in these rules;

the authority competent to impose the punishment may consider the circumstances of the case and make such orders thereon as it deems fit.

3. Learned counsel for the petitioner has argued that neither any opportunity of hearing was afforded to the petitioner nor any inquiry was conducted and further no show cause notice was given to the petitioner before inflicting impugned punishment. All these pleas were taken before the appellate authority as also before the revisional authority but these authorities also rejected the same without applying its independent mind and assigning reasons.

4. In support of the aforesaid submissions, learned counsel for the petitioner has relied upon the judgment of this Court rendered in the case of Virendra Kumar Premi v. State of U. P. and others (2008) 3 UPLBEC 2260) : (2008) 6 All LJ 213) Ram Ashish v. State of U. P. and others (2009(1) ESC 63 (All.)) and Mrigendra Singh v. State of U. P. and others (2008 (26) LCD 301).: (2008) 5 All LJ (DOC) 29 (All.)

5. On the other hand, learned counsel for the opposite parties has contended that the order of punishment against the petitioner was passed according to the provisions contained in Rule 161 (ii) of R.P.F. Rule, 1987. There is no provision of conducting inquiry under Rule 161 (ii). The Divisional Security Commissioner, Railway Protection Force, Northern Railway, Lucknow, after satisfying himself recorded reasons in writing that it was not reasonably practicable to hold an enquiry and on the basis of materials on record imposed punishment of dismissal from service looking into the gravity of the case. Therefore, the impugned order has been passed by the competent authority in consonance with the provisions of law.

6. Learned counsel for the petitioner submits that the punishing authority has not given any reasons as to what are those circumstances, which compelled him not to hold disciplinary proceeding. He has also informed that the petitioner has already attained the age of superannuation during the pendency of the writ petition.

7. A perusal of the impugned order passed by the Divisional Security Officer shows that the petitioner has indulged in an extremely undesirable activities of committing theft from VPU in TPT and his activities are considered prejudicial in the interest of railway administration and public at large.

8. As regard, the holding of inquiry, he has indicated that the circumstances of the case are such that it is not reasonably practicable to hold D & AR enquiry in the manner provided for the enroll member of the force under the RPF Rules No. 131, 148 and 153 of RPF Rules, 1987. The petitioner is only a Head Constable and was not holding such a powerful position that he could influence the witnesses or tamper the evidence. I am of the view that the Divisional Security

Commissioner has adopted an escape route by taking an easy way out from not holding an inquiry. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because a department case against the Government servant is weak and may fail. Mere recital of the words the circumstances are such that it is not reasonable practicable to hold inquiry" is not enough. The authorities are under an obligation to record cogent reasons for not doing so. It is said that the petitioner was involved in theft but no reason has been assigned or what prevented the authorities from lodging the First Information Report.

9. In the counter affidavit, it has been averred that although no FIR was lodged but the Senior Divisional Security Commissioner investigated the matter and found the petitioner as well as Jaivir Singh guilty.

10. The Supreme Court in the case of Union of India v. Tulsiram Patel reported in (1985) 3 SCC 398 : (AIR 1985 SC 1416) observed as under:

"The recording in writing of the reasons for dispensing with the inquiry must precede the order imposing the penalty. The reasons for dispensing with the inquiry need not, therefore, find a place in the final order though it would be better to do so in order to avoid the allegation that the reason was not, recorded in writing before passing the final order but was subsequently fabricated. The reason need not contain detailed particulars, but must not be vague or just repetition of the language of clause (b) of the second proviso. Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the inquiry. This would not, however, perse invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances."

11. It is relevant to mention here that subclause (2) of Article 3.11, which is the substantive provision, does not lay down any exception nor confers any discretion upon the empowered authority of not holding an inquiry into the charge of misconduct against a Government servant and to pass order without affording any opportunity. It is only in the second proviso that an exception is carved out but an exception cannot take place of rule and has to be applied only in the circumstances given therein and as may be permissible under the said Article. Similarly, under subrule (2) of Rule 161 of the Rules, 1987, it is an obligation on the authority concerned to record reasons for not holding the inquiry.

12. The impugned order of dismissal from service, as averred above, does not record any reason as to how it was not reasonably practicable to hold an inquiry but even then such a recital has been made in the impugned order. Further no document has been brought to the notice of the Court to establish that any reason making the holding of inquiry impracticable has been mentioned in the record. Thus, it can be safely concluded, that neither any such reasons have

been recorded elsewhere in the record nor they find mentioned in the impugned order.

13. In my opinion, the charge against the petitioner is such which can be verified, if a full fledged inquiry is held against him under Rules 1987. Consequently, the invocation of the provisions of Rule 161 (ii) by the authority was totally arbitrary. Therefore, the impugned order, dismissing the services of the petitioner, cannot be sustained and is hereby quashed. The appellate authority as well as the revisional authority has also not considered the aforesaid facts and has not applied its independent mind to the facts and circumstances of the case, therefore, the same are also liable to be quashed.

14. The writ petition is allowed. The impugned order of dismissal dated 22101998, appellate order dated 1221999 and revisional order dated 381999 are hereby set aside.

15. It is informed that the petitioner has already attained the age of superannuation, therefore, it is provided that the petitioner shall be entitled for postretiral benefits. As regard the payment of arrears of salary is concerned, interest of justice would suffice, if the petitioner is paid 50% of the total emoluments of backwages. Accordingly, it is directed that the petitioner shall be paid 50% of the total emoluments of the back wages within a period of four months.