
(2003) 04 RAJ CK 0017
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5158 of 1996

Ram Sahai

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-04-2003

Acts Referred:

Railway Protection Force Act, 1957 — Section 9(1)
Railway Protection Force Rules, 1959 — Rule 44, 47

Citation : (2003) 4 RLW 2333 : (2003) 3 WLC 20

Hon'ble Judges : Asok Parihar, J

Bench : Single Bench

Advocate : A.K. Bhandari, for the Appellant; M. Rafiq, for the Respondent

Final Decision : Allowed

Judgement

PARIHAR, J.—Heard learned counsel for the parties.

(2). The petitioner was initially appointed as Rakshak in the Railway Protection Force vide order dated 12.10.1970. A chargesheet u/s 9(1)(i) of the RPF Act, 1957 read with Rule 44 of the RPF Rules, 1959 was served on the petitioner, vide memorandum dated 26.8.1982. The petitioner was required to submit his reply within 14 days of the receipt of the charge sheet. Before any reply could be filed by the petitioner within the stipulated time, a show cause notice was issued to the petitioner u/s 47(b) of the Rules of 1957 vide memorandum dated 6.9.1982. In the said show cause notice it was observed that since the independent and reliable source are not inclined to get themselves exposed; as a result of which no independent evidence will be forthcoming; it was not reasonably practicable to follow the procedure prescribed under the above rules. Accordingly, conducting a departmental enquiry as envisaged under Rule 44 was dispensed with and show cause notice was issued to the petitioner as to why he should not be removed from service. Strangely enough, after issuing show cause notice, for the reasons best known to the disciplinary authority, an Enquiry Officer was also appointed vide order dated 26.10.1982. The Enquiry Officer also proceeded with

the enquiry on certain dates wherein even an application submitted by the petitioner for getting assistance of a defence nominee was rejected.

(3). Be that as it may, ultimately, the services of the petitioner were terminated vide order dated 17th March, 1983 on the basis of show cause notice issued to the petitioner on 6.9.1982. Both the show cause notices as also the termination order are under challenge in the present writ petition.

(4). While relying on the judgment of the Division Bench of this Court in the case *Bhagirat Mal v. Union of India and Ors.* (1), Mr. Bhandari learned counsel for the petitioner submitted that there were no justifiable or sufficient grounds for dispensing with the enquiry in the present case. It is further submitted that on the charges of theft, which were not mentioned in the charge sheet, the petitioner had already been acquitted by a competent court. Thus the termination merely on the basis of absence from duty for some time cannot be justified. (5). Mr. Rafiq learned counsel for the respondent on the other hand, submitted that looking to the conduct of the petitioner, the disciplinary authority, using its discretion dispensed with the enquiry and the services of the petitioner have rightly been terminated looking to the allegations made against him.

(6). The only charge against the petitioner is that he was absent from duty without prior permission on 13.8.1982 at about 4.15 P.M. The charge of theft has not been levelled against the petitioner in the memorandum of charges issued on 26th August, 1982 on the basis of which the services of the petitioner has been terminated. There is nothing on record to show as to how and under what circumstances the disciplinary authority issued show cause notice dated 6.9.1982 just after 10 days of issuing of charge sheet without even waiting for the reply of the petitioner who had been given at least 14 days time to file the same. Even no material had been placed on record to show as to how the disciplinary authority came to the conclusion that it is not possible to hold a regular departmental enquiry against the petitioner in the present case. If the show cause notice had been issued on 6.9.1982 by dispensing with the departmental enquiry, it is not known as to how an Enquiry Officer was appointed on 26.10.1982.

(7). This Court in *Bhagirat Mal's* case (*supra*) while referring to the same rules i.e. Railway Protection Force Rules, 1959 has laid down 3 principles under which the departmental enquiry can be dispensed with and the same are reproduced here as under :-

1. Dispensation of enquiry is no more the subjective satisfaction of the authority but the discretion of the authority has to be exercised on objective facts on record.

2. The practicability referred to under Rule 47 must be with reference to the following of the procedure laid down under Rule 44. The term "reasonable and practicable" has, whatsoever, nothing to do with the prospective success of enquiry.

Practicability is not to be confused with expectancy or the chances of success of the enquiry contemplated against the delinquent member of the Force.

3. When the decision of the employer to dispense with the enquiry is questioned, the employer must be in a position to satisfy the Court that holding an enquiry will be either counter productive or may cause irreparable and irretrievable damages."

(8). No such circumstances exist in the present case so as to dispense with the departmental enquiry against the petitioner. Though the charge of theft has not been levelled against the petitioner in the memorandum of charges and in that case also, the petitioner has already been acquitted by the competent court. Looking from all angles, the action taken by the department in the present case cannot be sustained in the eye of law. The petitioner had been serving in the department since 1970. No material, whatsoever, adverse to the petitioner has been referred either in the impugned orders or even in the reply filed on behalf of the department.

(9). Accordingly, the writ petition is allowed. The show cause notice dated 6.9.1982 as also the termination order dated 17.3.1983 are quashed and set-aside. The petitioner is held entitled for all consequential benefits. Since the incident is of the year 1982, it will also not be proper to give liberty to the respondents to hold fresh enquiry. The respondents are further directed to pay a cost of Rs. 5,000/- to the petitioner.