
(1994) 09 BOM CK 0077

In the Bombay High Court

Case No : Writ Petition No. 1371 of 1988

Ravi Datt Sharma

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-09-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (1995) 70 FLR 263

Hon'ble Judges : S.M. Jhunjhunwala, J;M.L. Pendse, J

Bench : Division Bench

Judgement

M.L. Pendse, J.—The petitioner was appointed as Rakshak on January 28, 1962 to work in Railway Protection force, Armed Wing. The petitioner was posted at various stations and was promoted to the post of Naik on May 5, 1976. The petitioner was further promoted on August 8, 1979 to the post of Head Constable and was working in "K" Company, Bombay since July 31, 1987.

On February 22, 1988, a farewell party was arranged in honour of retiring Director General Shri S. P. Banerjee. The party was hosted by Dharmaveer Mehta, Chief Security Commissioner of the Western Railway. the said farewell party preceded by customary guard of honour to the retiring Director General. After the guard of honour was over, the Chief Security Commissioner had arranged for snacks and tea. To participate in the guard of honour, various personnel from various Division of the Railways were summoned and in all 224 members of Railway Protection Force participated in the parade. The Chief Security Commissioner felt that at the ceremonial farewell parade, the petitioner covertly instigated and abetted a group of members of the force to demonstrate and boycott from partaking tea and refreshment as a mark of protest against the promulgation of certain provisions of Railway Protection Force Rules, 1987. It appears that news item was published in Indian Express on February 24, 1988 about demonstration and boycott by the Railway Protection Force at the farewell party.

2. On March 17, 1988, the impugned order was passed by Shri V. D. Redkar, Appointing authority, Divisional Security Commissioner, Bombay Central, in exercise of powers conferred under Rule 161(ii) of Railway Protection Force rules, 1987 read with Article 311(3) of the Constitution of India dismissing the petitioner from the afternoon of March 19, 1988. The order of dismissal after setting out the demonstration and boycott at the parade and the distorted version appearing in the newspaper recites that the above acts tantamount to serious misconduct, indiscipline, insubordination and insolence to high dignitaries and superior officers of the Force and attract the provisions of rule 147(xiii), (xv) and (xxii) of Railway Protection Force Rules, 1987 and are also violative of the Code of Behaviour for members of the Force as ordained under Rule 146.4 of the Rules. The impugned order further recites that the petitioner has such a strong hold as to successfully abet and instigate a large group of disciplined members of the Force of boycott partaking of teas and indulge in an insolent behaviour in the presence of the Director General and other superior officers of the force and as such would make it difficult for any witness to depose against the petitioner or to co-operate with the proceedings. The order sounds an apprehension that in the prevailing atmosphere, no witness would be willing to depose. The order thereafter sets out that the Appointing authority is satisfied that it is not reasonably practicable to hold a regular enquiry in the manner provided under Railway Protection Force Rules, 1987. The order finally recites that the formalities of a regular enquiry are dispensed with in exercise of powers under rule 161(ii) of the Rules. The order of summary dismissal without holding an enquiry is under challenge in this petition filed under Article 226 of the Constitution of India.

3. Shri Singh, Learned counsel appearing on behalf of the petitioner submitted that the petitioner had unblemished service for over a period of 26 years and still had six more years of serve. Shri Singh complained that the Appointing Authority was clearly in error in invoking powers conferred under Rule 161(ii) of the Railway Protection Force Rules and dispensing with the regular enquiry. Shri Singh submitted that there is nothing on record to indicate that the Appointing Authority had any material to come to the conclusion that it is not reasonably practicable to hold a regular enquiry. Shri Pradhan, learned counsel appearing on behalf of the respondents, on the other hand, urged that the dispensation with the enquiry could not be faulted in the circumstances of the case. The learned counsel urged that Harblas Rai working as Deputy Chief security Commissioner, Railway Protection Force, Western Railway, has filed return sworn on July 3, 1990 and Ram Dularey Puran Mashhi Deen, Deputy chief Security Commissioner, Railway Protection Force, Western Railway, has filed return sworn on October 13, 1988 and the perusal of these two returns would indicate that the petitioner was guilty of charges and it was not reasonably practicable to hold an enquiry.

4. Rules 161 deals with special procedure in certain cases and sub-rule (ii), inter-alia, provides that notwithstanding anything contained in the Rules, where the authority competent to impose the punishment is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in

the manner provided in the Rules, then the Authority to impose the punishment may consider the circumstances of the case and make such orders thereon as it deems fit. The power conferred under Rule 161(ii) of the Rules is in consonance with proviso to Article 311(2)(b) of the Constitution of India. The Supreme Court examined the ambit of the power conferred under article 311(2) of the Constitution of India in several decisions and it would be suffice if reference is made to two decision of the Supreme Court. The first decision is reported in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, . The Supreme Court held that proviso to Article 311(2) is a Constitutional provision which excluded the applicability of Article 311(2) of the Constitution as an exception for stated grounds. The Supreme Court then observed :

"It must be remembered that the authority taking action under either of the clause (b) or (c) to proviso are enjoined to record reasons, though the reasons are not subject to judicial scrutiny, but to find the basis of the which or the ground on which or the circumstances under which they are satisfied to resort to the exercise of the power under either of the two relevant clauses to proviso to Art. 311(2) of the Constitution. Recording reasons itself is a safeguard for preventing to take arbitrary or unjust action."

The second decision is reported in Jaswant Singh Vs. State of Punjab and others, . Mr. Justice Ahmedi speaking for the Bench observed :

"It was incumbent on the respondents to disclose to the Court the material in existence at the date of the passing of the impugned order in support of the subjective satisfaction recorded by respondent No. 3 in the impugned order. Clause (b) of the second proviso to Article 311(2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. This is clear from the following observation at Union of India and Another Vs. Tulsiram Patel and Others, of Tulsi Ram"s case :

"A disciplinary authority is not expected to dispense with a disciplinary enquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department"s case against the government servant is weak and must fail."

The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is questioned in a Court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer."

5. In view of the settled law, Shri Singh submitted that it is incumbent upon the respondents to disclose the existence of the material which prompted the Disciplinary Authority to dispense with the regularly enquiry. The impugned order is passed by Shri V. D. Redkar who was working as Divisional Security

Commissioner, Bombay Central at the relevant time. The said Officer has not filed any return. Harblas Rai who has filed return sworn on July 3, 1990 claims that the misconduct committed by the petitioner was duly examined and a report was prepared. There is no reference whatsoever to any such report in the impugned order. We called upon Shri Pradhan to produce the material to establish that the Appointing Authority had passed an order in writing recording reasons for dispensing with the enquiry and Shri Pradhan, after taking instructions from the Officers present in Court, submitted that there is no such order. The mere perusal of Rule 161(ii) of the Railway Protection Force Rules makes it clear that the authority who comes to the conclusion that it is not reasonably practicable to hold an enquiry must record true reasons in writing. In absence of any reasons, it is impossible to sustain the impugned order. Shri Pradhan submitted that the Appointing Authority must have relied upon the report to which Harblas Rai makes a reference in the return. The submission is based on assumption and is without any foundation. It is not permissible to deprive the employee of a Constitutional guarantee by such unwarranted assumptions. In our judgment, the challenge to the impugned order requires to be upheld because the power to dispense with regular enquiry was exercised without any material whatsoever. In our judgment, the incident, even if proved is a trifling one and could not have led to the summary dismissal of the petitioner who had put in 26 years of service. The impugned order is, therefore required to be set aside.

6. Accordingly, petition succeeds and impugned order dated March 17, 1988, copy of which is annexed as Ex. A to the petition, is quashed and the respondents are directed to reinstate the petitioner in service forthwith with all monetary benefits as to pay, allowances, etc. available from the date of dismissal. Needless to say that it would be open for the respondents, if it is so advised, notwithstanding the lapse of time to proceed with the enquiry in respect of the alleged misconduct. In the circumstances of the case, there will be no order as to costs.