
(2010) 08 AHC CK 0086
In the Allahabad High Court
Case No : C.M.W.P. No. 30613 of 2008

Ravindra Prasad

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-08-2010

Acts Referred:

Railway Protection Force Act, 1957 — Section 9

Railway Protection Force Rules, 1987 — Rule 161, 44, 45, 46

Citation : (2010) 6 AWC 5711

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amreshwar Pratap Sahi, J.—Heard learned Counsel for the Petitioner and the learned Counsel for the Respondent Railways.

2. A counter-affidavit has been filed on behalf of the Respondent.

3. The submission advanced by Sri Khare is that the order impugned proceeds on an erroneous assumption and upon wrong application of Rule 161 of the Railway Protection Force Rules, 1987. The Petitioner has been dismissed from service on the charge that he was allegedly harassing railway passengers and realizing money from them while on escort duty. The Petitioner has been dismissed without holding any enquiry which is the admitted position. The reason for not holding the enquiry as indicated in the impugned order is that there is every likelihood of the Petitioner influencing the witnesses including the passengers who might be produced as witnesses during the course of the enquiry and even otherwise the Petitioner being a member of the disciplinary force such conduct of the Petitioner was reprehensible and therefore the only option was to dismiss him by applying the Rule 161 read with Section 9 of the Railway Protection Force Act, 1987.

4. Sri Ashok Khare learned senior counsel submitted that the aforesaid reason

assigned in the impugned order is untenable inasmuch as the order itself indicates that there was a checking team comprising of officials of the department to verify the aforesaid allegations on the spot and thereafter the impugned order has been passed. He submits that the said officers apart from passengers are very much available and there is no occasion for the Respondents to presume that the Petitioner will intimidate the said witnesses or tamper with them during the course of the enquiry. He has relied on the decision of the Apex Court in the case of Chief Security Officer and Others Vs. Singasan Rabi Das,

5. Learned Counsel for the Railways contends that the charges are so serious and even otherwise the conclusion drawn for recording the satisfaction is so evident that there is no occasion to interfere with the order impugned. It is submitted that it is quite possible that the passengers who had been harassed may not depose before the enquiry proceedings and therefore in view of the conduct of the Petitioner the punishment imposed is justified.

6. Having heard learned Counsel for the parties. In my opinion, the reason for dispensing with the enquiry is in clear teeth of the law pronounced by the Apex Court in the case of Chief Security Officer (supra) in Para 5 thereof quoted below:

In our view it is not necessary to go into the submission made by Dr. Anand Prakash because we find that in this case the reason given for dispensing with the enquiry is totally irrelevant and totally insufficient in law. It is common ground that under Rules 44 to 46 of the said Rules the normal procedure for removal of an employee is that before any order for removal from service can be passed the employee concerned must be given notice and an enquiry must be held on charges supplied to the employees concerned. In the present case, the only reason given for dispensing with that enquiry was that it was considered not feasible or desirable to procure witness of the security/other railway employees since this will expose these witnesses and make them ineffective in the future. It was stated further that if these witnesses were asked to appear at a confronted enquiry they were likely to suffer personal humiliation and insults and even their family members might become targets of acts of violence. In our view these reasons are totally insufficient in law. We fail to understand how if these witnesses appeared at a confronted enquiry, they are likely to suffer personal humiliation and insults. These are normal witnesses and they could not be said to be placed in any delicate or special position in which asking them to appear at a confronted enquiry would render them subject to any danger to which witnesses are not normally subjected and hence these grounds constitute no justification for dispensing with the enquiry. There is total absence of sufficient material or good grounds for dispensing with the enquiry. In this view it is not necessary for us to consider whether any fresh opportunity was required to be given before imposing an order of punishment. In the result, the appeal fails and is dismissed. There will be no order as to costs.

7. The rules applicable to the present controversy namely Rule 161 is quoted below:

161. Special Procedure in certain cases.--Notwithstanding anything contained anywhere in these rules--

(i) Where 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 to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner 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 thereof as it deems fit.

8. A perusal of the Sub-rule (ii) leaves no room for doubt that a satisfaction which has to be recorded by the competent authority is to be supported by reasons to be recorded in writing that it is not reasonably practicable to hold an enquiry.

9. In the instant case, the reason given in support of such satisfaction does not satisfy the test of law as indicated hereinabove.

10. The checking team constitutes of officials and there is no plausible explanation as to why they could not be produced to testify the incident during enquiry. The satisfaction therefore as recorded is no satisfaction in the eyes of law and does not hold water nor does it appeal to reason. In such a situation and in view of the similar interpretation of law given with regard to similar set of rules under the U. P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 as pronounced in the case of Ram Babu Singh v. State of U. P. and Anr. 2009 (5) ADJ 581 and Ravindra Raghav Vs. State of U.P. and Superintendent of Police, the order impugned is unsustainable. Accordingly the impugned order dated 10th April. 2007 is quashed.

11. In view of the above the consequential orders of appeal and reversion dated 8th October, 2007 and 28th April, 2008 are also quashed.

12. It shall be open to the authority to proceed to hold an enquiry against the Petitioner in accordance with the rules applicable.

The writ petition is allowed.