

(1998) 02 AHC CK 0039
In the Allahabad High Court
Case No : C.M.W.P. No. 11165 of 1998

Satya Prakash Sharma

APPELLANT

Vs

Assistant Commandant, R.P.F., Central Railway, Agra Cantt.,
Agra and others

RESPONDENT

Date of Decision : 12-02-1998

Acts Referred:

Railway Protection Force Rules, 1987 — Rule 156

Citation : (1998) 2 AWC 1221 : (1998) 79 FLR 200 : (1998) 2 UPLBEC 1383

Hon'ble Judges : Aloke Chakrabarti, J

Bench : Single Bench

Advocate : N.K. Sharma, for the Appellant; P.N. Katri, for the Respondent

Judgement

Aloke Chakrabarti, J.—This writ petition was heard along with Civil Misc. Writ Petition Nos. 11166 of 1988 and 8163 of 1990.

2. Heard the learned counsel for the petitioner as also the learned standing counsel for the respondents.

3. The contention of the petitioner is that while working as constable in the Railway Protection Force relating to an incident dated 3.12.1986, a proceeding was initiated by a charge-sheet dated 26.10.1987 and ultimately the petitioner was removed from service by order dated 10.11.1987 (Annexure No. 15 to the writ petition) and the appeal filed by the petitioner was also rejected by order dated 15.3.1988. Challenging the aforesaid two orders the present writ petition was filed.

The respondents filed a counter-affidavit and the petitioner filed rejoinder-affidavit.

4. The petitioner referred to the materials available on record and in particular the charges levelled against the petitioner as appears from the statement of charges at Annexure-13 to the writ petition, enquiry report, statements of witnesses and final orders. It has been contended that the offence alleged

against the petitioner did not amount to any neglect of duty and as such, it did not amount to an offence on which major punishments could have been imposed by virtue of the provision of Rule 156 of the Railway Protection Force Rules as quoted in para No. 16 of the writ petition. The relevant provision of the said rules as contained in sub-rule (iv) shows that the disciplinary authority with a view to ensuring the maintenance of integrity in the force shall consider the award of punishment of dismissal or removal from a service to any member of the Force in case of neglect of duty likely to result in loss to the Railway or danger to the lives of persons using the railways.

5. The second contention of the petitioner is that in the incident alleged, apart from the petitioner several others were involved as stated in the statement of charges and out of the said persons, though the petitioner and two other persons have been removed from service but some other members of the force have been only punished with reduction of pay for three years with cumulative effect but they have been kept in service. According to the learned counsel for the petitioner, there being no material for different treatment in respect of the said other persons, discrimination has been caused by reason of the removal order in respect of the petitioner and two other persons. Specific allegations have been made in this respect in para No. 19 of the writ petition. Reference has also been made to the statement made in para No. 12 of the counter-affidavit filed by the respondents wherein it has been admitted that in respect of constable Raja Ram. constable R. S. Meena-and Naik Karan Singh no removal order was passed and only penalty imposed was of reduction in pay.

6. Learned counsel for the respondents though denied the contention of the petitioner in respect of the relief claimed but admitted the fact that three other persons also involved in the same incident had been dealt with by imposing lesser penalty as admitted in para No. 12 of the counter-affidavit. Learned counsel for the respondents strongly denied that the charges levelled against the petitioner did not amount to neglect of duty and for this purpose he relied on the statement of charges and supported the action of the respondents.

7. After considering the respective contentions of the parties I find that in respect of the contention of the petitioner the specific charge against the petitioner was misconduct as the petitioner remained present when cards were being played by outsiders and other R.P.F. staff in the guard room-cum-armoury although he should have reported the matter to his superior. Though the expression neglect of duty has not been used but the said charge is itself of neglect of duty. Therefore, the contention of the petitioner referring to Rule 156 for the purpose of showing that the charges levelled did not satisfy the requirement of said rule, cannot be accepted.

8. With regard to the other contention of the learned counsel for the petitioner that the punishment Imposed is not proportionate to the offence alleged particularly when other persons involved in the same incident have been dealt with by imposing a lesser penalty of reduction of pay Instead of removal from

service. The materials available on record show clearly that against all the said persons including the petitioner the main charge was of neglect of duty of not reporting the matter to the appropriate authority when outsiders and other R.P.F. staff were present playing cards in the guard room-cum-armoury and the same endangered the safety and security of arms and ammunition kept in the guard room-cum-armoury. Therefore, the offence being the same and in respect of same incident, the petitioner has been imposed a severe punishment of removal when others have been released imposing a lesser penalty of reduction of pay. On behalf of the respondents, no material has been shown for treating two different groups involved in identical circumstances in different manner.

9. In this connection, learned counsel for the petitioner referred to the law decided in the case of *Girja Shankar Singh v. General Manager II, Varanasi*. (1992) 2 UPLBEC 851 ; *Sardar Singh v. Union of India*. AIR 1992 SC 417 ; *Ranjit Thakur Vs. Union of India (UOI) and Others*, : *Bhagat Ram Vs. State of Himachal Pradesh and Others*, : *Iron and Metal Traders Pvt. Ltd., Bombay Vs. M.S. Haskiel and Another etc.*, and *Sengara Singh v. State of Punjab*. AIR 1984 SC 1499. Particular reference was made to the case of *Sengara Singh (supra)* and *Bhagat Ram (supra)* and it has been contended that the petitioner should not be dealt with in a discriminatory manner in the aforesaid circumstances.

10. Therefore, when the authorities themselves were satisfied in respect of other similarly circumstanced employees that the imposition of punishment of reduction of pay is sufficient and proportionate, there is no reason for allowing the Impugned order to stand in respect of the petitioner.

11. Therefore, the writ petition succeeds and is allowed. The impugned orders dated 10.11.1987 and 15.3.1988 at Annexures-15 and 17 to the writ petition are hereby quashed. The respondents are at liberty to pass any appropriate proportionate order of punishment in respect of the present petitioner.