
(2019) 01 CAL CK 0066

In the Calcutta High Court

Case No : Writ Petition (W.p) No. 18003 (W) Of 2012

Sri Gobinda Ghosh

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 22-01-2019

Acts Referred:

Railway Protection Force Rules, 1987 — Rule 25, 148, 148(2) , 148.3(b), 149, 151, 152, 153, 212(2), 213.3, 217, 217.3, 219

Citation : (2019) 01 CAL CK 0066

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Achin Kr. Majumder, Arindam Chattopadhyay

Final Decision : Dismissed

Judgement

Debangsu Basak, J

The petitioner has challenged the charge sheet dated February 10, 2010, the report of the enquiry officer dated November 7, 2011, the order of punishment dated December 14, 2010, the order of the appellate authority dated January 20, 2011 and the order of the revisional authority dated September 29, 2011 in the present writ petition.

Learned Advocate appearing for the petitioner has submitted that, the impugned charge sheet was issued by a person, who had no jurisdiction to do so. The impugned charge sheet was issued by a person who was neither the appointing nor the disciplinary authority. The impugned charge sheet was not vetted and approved by the disciplinary authority. Therefore the impugned charge sheet is without jurisdiction. The entire departmental proceedings stands vitiated. In support of such contention, he has relied upon All India Report 2014 Supreme Court page 88 (Union of India & Ors. v. B.V. Gopinath).

Learned Advocate appearing for the petitioner has referred to the report of the enquiry officer. He has submitted that, the findings returned by the enquiry

officer are perverse. He has referred to the findings of the enquiry officer and has submitted that, the enquiry officer had no material before it to come to a finding that, the petitioner was responsible for being negligent on duty. He has referred to the order of punishment dated December 14, 2010 and has submitted that, the order of punishment renders a finding that, the petitioner was caught red handed with the coal in the beat area. He has submitted that, such a finding cannot be based upon the report of the enquiry officer. According to him, the order of punishment suffers from the vice of non-application of mind. The order of punishment is non-speaking. It was based on extraneous considerations. The order of punishment was based upon materials which are beyond the evidence. The petitioner was never caught red handed with the coal in the beat area. Therefore the premise upon which the order of punishment is based, is wrong. In support of his contentions, he has relied upon 1985 Supreme Court Cases (L & S) page 815 (Anil Kumar v. Presiding Officer & Ors.).

Referring to the order of the appellate authority, learned Advocate for the petitioner has submitted that, such order is non-speaking. It does not deal with the grounds of appeal. He has referred to Rule 217.3 of the Railway Protection Force Rules, 1987 and submitted that, the appellate authority failed to discharge duties required of it under such provisions. He has also referred to the order of the revisional authority and submitted that, such order is non-speaking. The revisional authority had failed to discharge its jurisdiction.

Referring to the provisions of the Railway Protection Force Service Rules, 1987, particularly to Rule 151 thereof, learned Advocate appearing for the petitioner has submitted that, Rule 151 and 152 read together does not permit the Assistant Security Commissioner to issue the charge sheet, initiate disciplinary proceedings and to pass an order of punishment. He has referred to Schedule II of the Rules of 1987 and has submitted that, the entire disciplinary proceeding is vitiated by lack of jurisdiction. The petitioner having retired in the meantime, the disciplinary proceedings should be quashed and consequential reliefs be granted to the petitioner.

Learned Advocate appearing for the respondents has opposed the grant of relief to the petitioner.

The petitioner was a constable of Railway Protection Force of Eastern Railway. He was posted at Railway Protection Force Post, Burdwan. A charge sheet was issued to the petitioner where it was alleged that the petitioner failed to prevent and detect theft of Steam Coal Boulders. The charge sheet was issued by the Assistant Security Commissioner, Railway Protection Force, Burdwan. It is the contention of the petitioner that, Assistant Security Commissioner has no jurisdiction to issue the charge sheet. In support of such contention, learned Advocate for the petitioner has relied upon Schedule II of the Railway Protection Force Rules, 1987.

Schedule II of the Railway Protection Force Rules, 1987 describes the

administrative powers of superior officers. Rule 25 of the Rules of 1987 lays down the general powers and responsibilities of superior officers. Rule 25 stipulates that, the superior officers of the force shall exercise such administrative and disciplinary powers over the members of the force placed under their command as are specified in Schedule II to IV and such other powers as are conferred on railway servants of equivalent rank by any rules relating to such servants and discharge such responsibilities as specified in the Rules of 1987 or as may be specified in any direction issued by the Central Government or the Director General.

Chapter XII of the Rules of 1987 deals with disciplinary and penal punishments. Rule 151 specifies the disciplinary authority. Rule 151 of the Rules of 1987 stipulates that, the disciplinary authority in respect of any enrolled member of the force for the purpose of imposing any particular punishment or the passing of any disciplinary order shall be the authorities specified in this behalf in Schedule III in whose administrative control the member is serving and shall include any authority superior to such authority. Schedule III Serial No. 5 deals with withholding of increments with or without corresponding postponement of subsequent increment. Schedule III allows an Assistant Security Commissioner of the Railway Protection Force to exercise such power. In the present case, the petitioner suffered a penalty of withholding of increment. The charge sheet was issued by the Assistant Security Commissioner. In terms of Rule 153 read with Schedule III Serial No. 7, the contention that, charge sheet and the punishment imposed were without jurisdiction is without any basis.

The enquiry report is detailed. It notes that, five prosecution witnesses were examined. It also considers the evidence given by the witnesses of the petitioner. The evidence given by each of the witnesses have been set out and discussed in details in the enquiry report. The documentary evidence of both the prosecution and the defence were also discussed in the enquiry report. The enquiry report is of the view that, the charge brought against the petitioner was established. The enquiry report was considered by the Assistant Security Commissioner and the petitioner was found guilty of the charges. A punishment of stoppage of next annual increment for a period of three years with cumulative effect in terms of Rule 148.3 (b) of the Rules of 1987 was imposed by the order dated December 14, 2010. As noted above, the Assistant Security Commissioner is within his jurisdiction to award such quantum of punishment in terms of the Rules of 1987. While awarding such punishment, the Assistant Security Commissioner considered the enquiry report and came to the finding that one accused was caught red handed with coal in the beat area. The Assistant Security Commissioner by his order of punishment dated December 14, 2010 agreed with the findings of the enquiry officer. He has entitled to do so. There is no perversity in the impugned order dated December 14, 2010. The petitioner preferred an appeal from the punishment awarded. The appellate authority is required to deal with such appeal in terms of Rule 213.3 of the Rules of 1987. Rule 217.3 of the Rules of 1987 is as follows:-

"217. Consideration of appeals.-

1.....

2.....

3. In the case of an appeal against an order imposing any of the punishments specified in Rule 148 or 149 or enhancing any penalty imposed under the said rules the appellate authority shall consider:-

(a) whether the procedure prescribed in these rules has been complied with, and if not, whether such non-compliance has resulted in violation of any constitutional provisions or in miscarriage of justice;

(b) whether the findings are warranted and based on evidence on record; and

(c) whether the punishment or the enhanced punishment imposed is adequate or inadequate or severe and pass speaking orders for-

(i) setting aside, confirming, reducing or enhancing the punishment, or

(ii) remitting the case to the authority which imposed or enhanced the punishment or to any other authority with such directions as it may deem fit in the circumstances of the case:

Provided that -

(i) no order imposing an enhanced punishment shall be passed unless the appellant is given an opportunity of making any representation which he may wish to make against such enhanced punishment; and

(ii) if the enhanced punishment, which the appellate authority proposes to impose, is one of the punishments specified in clause (a) to (d) of Rule 148(2) and an inquiry under Rule 153 has not already been held in the case, the appellate authority shall, subject to the provisions of Rule 153 itself hold such inquiry or direct that such inquiry be held and thereafter on a consideration of the proceedings of such inquiry pass such orders as it may deem fit."

Rule 217.3 of the Rules of 1987 requires the appellate authority to consider whether there were procedural lapses or miscarriage of justice in the disciplinary proceedings, whether the findings returned by the enquiry officer and the disciplinary authority are warranted and based on evidence on record and whether the quantum of punishment imposed was adequate.

In the facts of the present case, the appellate authority by its order dated January 20, 2011 found no fresh point or matter of evidence being brought on record by the petitioner to prove his innocence. Therefore the appellate authority did not find any material to disagree with the findings returned by the enquiry officer and the quantum of punishment awarded by the disciplinary authority. In this case, the appellate authority dealt with all aspects of the matter as was required under Rule 217.3 of the Rules of 1987.

The petitioner preferred a revision against the order of the appellate authority. The revisional application was disposed of by the order dated September 29, 2011 by holding that the petitioner did not bring about any fresh evidence nor pointed out any material irregularity resulting in miscarriage of justice requiring the revisional authority to interfere. Revision is to be dealt with under Rule 219 of the Rules of 1987. Rule 219 of the Rules of 1987 is as follows:-

"219. Revision :

1. An enrolled member of the Force whose appeal has been rejected by a competent authority may prefer an application for revision to the next superior authority. The powers of revision may be exercised only when,-

(a) in consequence of some material irregularity, there has been injustice of miscarriage of justice; or

(b) fresh evidence is disclosed which could not be produced or was not available at the time of passing of the impugned order.

2. The procedure prescribed for consideration of appeals under rule 217 shall, so far as may be, apply to application for revision.

3. The superior authority while passing orders on the application for revision may at its discretion enhance punishments:

Provided that before enhancing the punishment, the aggrieved member shall be given an opportunity to show cause why his punishment should not be enhanced:

Provided further that subject to the provisions of sub-rule (2) of rule 212, an order enhancing the punishment shall be treated as an original order for the purpose of appeal, except when such an order has been passed by the Central Government in which case no further appeal shall lie. Where such order has been passed by the Chief Security Commissioner, appeal shall lie to the Director General and in the case of such order by the Director General, the appeal shall lie to the Central Government.

4. Any authority superior to the authority making the original order may, on its own motion, or otherwise, call for the records of any inquiry and revise any order made under these rules and may:-

(a) confirm, modify or set aside the order; or

(b) confirm, enhance, reduce or set aside the punishment imposed by the order, or impose any punishment where no punishment has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit: Provided that no action under this sub-rule shall be initiated after the expiry of one year from the date of the order

aforesaid:

Provided further that no proceeding for revision shall be commenced until after-

(i) the expiry of the period for making an appeal specified in subsection (2) of section 9 ; or

(ii) the disposal of the appeal, where any such appeal has been preferred :

Provided further that in a case in which it is proposed to enhance punishment further, the aggrieved member shall be given an opportunity to show cause either orally or in writing as to why his punishment should not be enhanced."

Rule 219 of the Rules of 1987 requires a revisional authority to consider whether there was any material irregularity in the proceedings resulting in injustice or miscarriage of justice or that there exist any fresh evidence which could not be produced by the parties at the time of passing of the impugned order. In the present case, the revisional authority did not find any of the conditions required to be satisfied under Rule 219 of the Rules of 1987 for it to exercise jurisdiction.

B.V. Gopinath (supra) has held that, where an approval is required to be taken prior to the initiation of the disciplinary proceedings and where such approval does not exist, the disciplinary proceeding is void ab initio. In the facts of the present case, the disciplinary authority issued the charge sheet and therefore, there was no requirement of the disciplinary authority requiring any further approval for issuance of the charge sheet. The ratio laid down in B.V. Gopinath (supra) therefore is not attracted to the facts of the present case.

Anil Kumar (supra) has held that, an enquiry report must contain reasons. In the event, the enquiry report is without any reasons, the same is to be construed as one to be vitiated by non-application of mind. In the facts of the present case, the enquiry report is detailed. It considers the evidence given by the prosecution and the defence witnesses. It considers the documentary evidences produced by the parties. It records its finding with reasons. As a Writ Court, after the petitioner having exhausted the forai of appeal and the revision, I am not to convert myself as the second appellate authority, reappraise the evidence and substitute my findings with those returned by the adjudicating authorities. The impugned orders cannot be said to be without jurisdiction or to be vitiated by breach of principles of natural justice or perverse.

In such circumstances I find no merit in the present writ petition.

W.P. No. 18003 (W) of 2012 is dismissed. No order as to costs.

Urgent certified website copies of this judgment and order, if applied for, be made available to the parties upon compliance of the requisite formalities.