

(2001) 02 KAR CK 0001
In the Karnataka High Court
Case No : Writ Petition No. 10987 of 1999

Sri. N.P. Narasimha

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-02-2001

Acts Referred:

Constitution of India, 1950 — Article 311
Railway Protection Force Act, 1957 — Section 4, 6

Citation : (2001) 2 KCCR 1236

Hon'ble Judges : Mohamed Anwar, J

Bench : Single Bench

Advocate : N.R. Naik and Associates, for the Appellant; Ashok Haranahalli, for the Respondent

Judgement

Mohamed Anwar, J.—Heard both sides.

2. This writ petition is filed praying to quash:

(i) the order passed in No. B/SXP 227/MJR-1/94, dated 2.8.1994 vide Annexure "C" of Respondent No. 1;

(ii) the order of Respondent No. 2 dated 20.1.1995 passed rejecting the Petitioner's appeal against the order at Annexure "C", and

(iii) the order dated 2.4.1998 in No. 97/SEC(E)/DAR-2/5 of Respondent No. 3 passed rejecting the Petitioner's Revision, which was communicated to him through Respondents letter dated 24.8.1998 at Annexure "G".

3. The Petitioner having been appointed as a Constable in the year 1982, had been serving as such in the Railway Protection Force. In January, 1994 the Domestic Enquiry in No. B/SXP 227/MJR-1/94 was initiated against him by the Assistant Security Commissioner, Railway Protection Force, Southern Railway, Bangalore City on certain charges of mis-conduct. The required Article of Charges with statement of allegations, list of documents and the list of witnesses

proposed to be examined at the enquiry in respect of all those charges, were all served on the Petitioner together with the Official Memorandum dated 17.1.1994 of the said Assistant Security Commissioner (A.S.C. in short). By the said Memorandum dated 17.1.1994, one R. Rama Swamy, Inspector Protection Force was nominated and appointed as Inquiry Officer (I.O. for short) to conduct the enquiry against Petitioner into the charges alleged against him. Accordingly, an enquiry was conducted by the said I.O. and his Enquiry Report dated 27.5.1994, vide Annexure "B", holding the charges of mis-conduct proved against Petitioner, was submitted to the concerned Division Security Commissioner, R.P.F. (D.S.C. in short) who was the Disciplinary Authority (D.A. in short). That Enquiry Report at Annexure "B" was accepted by the latter and the final order vide Annexure "C" dated 2.8.1994 came to be passed by him imposing the major penalty of removal from the service against Petitioner. That removal order at Annexure "C" was challenged by the Petitioner in appeal before Respondent No. 2-the Appellate Authority. The same was confirmed by his order at Annexure "E" dated 20th January, 1995 and the appeal was dismissed. That decision was communicated to Petitioner under the official covering letter dated 8.3.1995. Petitioner's Revision against the said orders of Respondent Nos. 1 and 2 filed before Respondent No. 3 also did not meet with success as that Revision was also rejected. Ultimately, he has now approached this Court with his Writ Petition praying for the afore-quoted relief.

4. The legality and correctness of the impugned order of the Respondent-authorities is attacked by the Petitioner mainly on two grounds. Firstly, that the preliminary enquiry report of the Inspector of Railway Protection Force submitted to the superior authority in connection with the alleged Petitioner's mis-conduct, before initiation of the Disciplinary Proceeding against him, was not furnished to him during enquiry, so as to enable him to effectively defend the said charges. Secondly, that the action for Disciplinary Enquiry initiated against Petitioner was not initiated by the competent authority and, therefore, the enquiry proceeding against him is vitiated.

5. Adverting to the first ground of attack against the impugned orders, I find the same devoid of any legal substance. The aforesaid Article of Charges, statement of allegations and the Memorandum dated 17.1.1994 were placed in the hands of the Court by both sides for my perusal. Admittedly the said Article of Charges, the statement of allegations, the list of documents and the list of witnesses proposed to be examined at the enquiry were also furnished to the Delinquent-Petitioner to meet the charges against him. It is seen from the said list of documents that as many 17 prosecution documents were mentioned therein. All these documents pertain to the record of the discharge of Petitioner's official duty at the material time in the Train bound from Bangalore to Delhi, and they are all undisputed documents. Besides, out of the 10 prosecution witnesses stated in the list of witnesses, 9 were examined by the Inquiring Officer during enquiry who have all supported the prosecution case against Petitioner. They are all independent official witnesses. Thus it clearly transpires that there was

substantial positive material in the shape of both documentary and oral evidence brought on record in support of the charges against Petitioner. The said preliminary report of the Inspector of Protection Force was prepared and submitted to D.A. merely for the purpose of enabling him to formulate his opinion if it is a fit case to initiate the formal Disciplinary Enquiry against Petitioner. Non-supply of that report is not shown to have resulted in any prejudice, whatsoever, to the Petitioner; nor that preliminary report may be stated as a material document in relation to the charges levelled against him. In that view of the matter its non-supply is without any legal consequence and the objection raised in this regard for the Petitioner is untenable.

6. This matter was heard on 8.2.2001 and was partly dictated in open Court covering the first ground of objection raised by the learned Counsel for Petitioner-delinquent that for want of supply of the copy of the preliminary enquiry report to him, the impugned order of his removal was vitiated. This contention has been negated for the reasons already stated in the said portion of the order. The second ground of objection that the Assistant Security Commissioner ("A.S.C." for short), who initiated the disciplinary enquiry against Petitioner was not the Disciplinary Authority and he was not competent to order disciplinary action against Petitioner, was taken up for consideration in the light of relevant provisions of the Act of 1957. Initially, when the learned Counsel for Respondents was not in a position to enlighten the Court as to the competence of A.S.C. to order disciplinary enquiry against Petitioner, the submission made by Mr. Naik, learned Counsel for Petitioner about incompetence of A.S.C. was tentatively found carrying some legal force. But, however, the Court entertained its doubt about the validity of this submission. Therefore, it was felt necessary to scrutinize and examine the validity of this objection in the light of relevant provisions of the Act and the Rules thereunder. Then, the matter was adjourned to a future date giving sufficient time to the learned Counsel for Respondents to go through the relevant provisions of the Act and the Rules and meet the point in her argument by throwing sufficient light thereon. After taking one or two adjournments, the Respondents' Counsel Smt. S. Ratnamala requested that Mr. Ashok Haranahalli, learned Standing Counsel for Railways, may be permitted to argue on her behalf. Her request was accepted. Then, Mr. Ashok Haranahalli addressed the Court on her behalf and took through various relevant provisions and contended that in view of Rule 152.2 of the Rules of 1987, the A.S.C., who was the competent Disciplinary Authority in respect of Petitioner-delinquent for imposing any minor penalty, was as well competent to initiate disciplinary action against him notwithstanding that he was incompetent to award any major penalty of dismissal, removal and discharge from service on the basis of the enquiry report of the Enquiry Officer.

7. Mr. Naik, learned Counsel for Petitioner, argued per contra proposing to place reliance upon the decision of Supreme Court in Baldev Singh v. The Secretary to Government, Punjab Rehabilitation Department 1969 SLR 689.

8. As already indicated, it was the A.S.C. (Assistant Security Commissioner), (R.P.F.), Southern Railway, Bangalore City, who admittedly ordered the disciplinary enquiry against Petitioner and that it was he who framed the Article of charges, Statement of allegations, List of witnesses and List of documents, against Petitioner and also passed the Official Order No. B/SXP.227/MJR-1/94, dated 17.1.1994 appointing the I.O. named R. Ramaswamy, Inspector, Protection Force, to hold enquiry into the said charges. It is also an admitted fact that all these papers, viz., Articles of charges, Statement of allegations, Lists of witnesses and documents and the Official Order appointing the I.O. were all got served on the Petitioner by the said A.S.C. pursuant thereto, a formal enquiry was held by the I.O. against him. Now, the material point which calls for determination is whether this A.S.C. was authorised and competent to initiate the disciplinary action against Petitioner.

9. We find the structural hierarchy of the officers, non-officers and enrolled members of the Railway Protection Force provided in Sections 4 and 6 of the Act of 1957. It could be seen from the hierarchy of officers and superior officers envisaged in Sub-section (1) of Section 4 that the cadre of "Assistant Commandants of the Force" is placed at the bottom of this hierarchy. Then, Rule 4 of the Rules of 1987 states that the "superior officers" and "enrolled members of the Force" holding corresponding office specified in column 2 of Schedule I shall also be known by the designation as specified in column 3 of that Schedule. At Sl. No. 20 of Schedule I, we find that the holder of the office of Assistant Commandant is also designated as the "Assistant Security Commissioner" (A.S.C.). Therefore, there remains no doubt that the A.S.C. in the instant case, is a superior officer within the meaning of Section 4 of the Act. Further, it is not in dispute that so far as the Petitioner is concerned, who was working as a Constable of the Railway Protection Force, he was an enrolled member of the Force stipulated in Section 6 of the Act. Section 9 thereof deals with dismissal, removal, etc., of enrolled members of the Force. Sub-section (1) of Section 9 is the relevant portion which reads:

9. Dismissal, removal, etc., of members of the Force.

(1) Subject to the provisions of Article 311 of the Constitution and to such rules as the Central Government may make under this Act, any superior officer may

(i) dismiss, suspend or reduce in rank any enrolled member of the Force whom he shall think remiss or negligent in the discharge of his duty, or unfit for the same; or

(ii) award anyone or more of the following punishments to any enrolled member of the Force who discharges his duty in a careless or negligent manner or who, by any act of his own, renders himself unfit for the discharge thereof, namely

(a) fine to any amount not exceeding seven day's pay or reduction in pay scale;

(b) confinement to quarters for a period not exceeding fourteen days, with or

without punishment, drill extra guard, fatigue or other duty;

(c) removal from any office of distinction or deprivation of any special emolument.

Sub-section (2) of Section 9 provides for the remedy of appeal to any member of the Force aggrieved by an order made under Sub-section (1) of Section 9.

10. Evidently, the power conferred by Section 9(1) on any superior officer to impose the penalties stipulated in Sub-clauses (i) and (ii) thereof is made subject to the provisions of Article 311 of the Constitution and to such Rules as the Central Government may make under the Act. Therefore, we have to necessarily turn to the relevant provisions in the Rules of 1987 framed under the Act to find out the legal position of the A.S.C. in regard to his competence to initiate the disciplinary action against Petitioner. Chapter XII of the Rules governs the subject of "Disciplinary Action and Penal Punishments". Rule 148 sets out the categories of "Major Punishments, Minor Punishments and Petty Punishments". The penalty of removal is shown at Clause (b) of Rule 148.2 in the category of major punishments, while the penalty of reduction to a lower scale in the existing scale of pay; withholding of next increment; withholding of promotion for a specified period; removal from any office of distinction and deprivation of any special emoluments and censure, are shown as minor punishments by Rule 148.3. Rule 151 relates to "Disciplinary Authority". Another relevant Rule in this behalf is Rule 152 which envisages the Authority to institute proceedings and the relevant portion thereof is Rule 152.2 which reads:

A disciplinary authority competent under these rules to impose any of the minor punishments may institute disciplinary proceedings for the imposition of any of the major punishments notwithstanding that such disciplinary authority is not competent, under these rules, to impose any of the latter punishments.

The relevant provision in Rule 151.1 states:

151. Disciplinary Authority.-(1) 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 authority specified in this behalf in Schedule III in whose administrative control the member is serving and shall include any authority superior to such authority.

11. Admittedly, Petitioner as a member of the Force at the material point of time was serving at Bangalore under the administrative control of the said A.S.C.

12. Now, advertent to Schedule III stipulated in Rule 151, we will find in Column No. 7 thereof that Assistant Security Commissioner (A.S.C.) is the last grade of superior authority who is also the Disciplinary Authority in respect of enrolled members of the Force working under him, who is empowered to keep any member thereof under suspension, and is also competent to impose the aforesaid minor penalties on any such delinquent enrolled member of the Force as also against any delinquent officer working under and below him (A.S.C.); but he is not empowered and competent to impose any of the aforesaid major

penalties viz., dismissal, removal and compulsory retirement. This Schedule III further discloses that the Divisional Security Commissioner (D.S.C.), who is above the A.S.C., indicated in Column No. 3 of the Schedule, is the Disciplinary Authority who is competent to punish any guilty delinquent enrolled member of the Force with either any of the minor penalties or the major penalties on any guilty enrolled member of the Force below the rank of Inspector and of Sub-Inspector. One clear legal position which emerges from Schedule III is that both the concerned A.S.C. and the D.S.C. are the Disciplinary Authorities in relation to the Petitioner, who was an enrolled member of the Force working as a Constable, with this difference that while A.S.C. was empowered and competent to impose only minor penalties on him, whereas the D.S.C. was competent to punish him with any of the minor or major penalties. Thus the A.S.C. was also a Disciplinary Authority over the Petitioner. Therefore, by virtue of Rule 152.2, he was sufficiently empowered and competent to institute disciplinary proceeding against Petitioner for imposition of any of the major punishments although himself was not competent to impose any of the major penalties on him. It, therefore, necessarily follows that the disciplinary action ordered and initiated by him against Petitioner was valid in law.

13. The decision of Supreme Court in Baldev Singh, *supra*, which was sought to be relied upon by Mr. Naik, learned Counsel for Petitioner for the proposition that any punishment or penalty imposed on a delinquent servant by the punishing authority on the basis of the enquiry report of the Enquiry Officer who was not appointed by it is inapplicable to the case on hand. Because, in that case of Baldev Singh, what has been ruled is that if the Enquiry Officer to conduct enquiry against a delinquent officer was appointed by an authority other than the disciplinary or appointing authority, then his enquiry report against delinquent gets vitiated and any order of penalty passed on the basis thereof by the Disciplinary Authority against the delinquent servant would be null and void. In the case on hand, as has been noticed above, the I.O. was appointed by the A.S.C., who was the competent Disciplinary Authority to initiate disciplinary action and enquiry against Petitioner-delinquent. Hence, the objection raised by the learned Counsel for Petitioner that A.S.C. was not the competent Disciplinary Authority to order disciplinary action against him is without any legal force and is liable to be rejected.

14. Apart from the above said two grounds of objection levelled against the validity of the impugned order of punishment made against Petitioner, another ground which was urged by his learned Counsel was that the evidence collected during enquiry by the I.O. in proof of the said charges is highly discrepant and unworthy of credit and belief. It has been noticed that at the enquiry, as many as nine witnesses out of the said list of witnesses have been examined by the I.O. They are all official and independent witnesses. None of them is shown to have had any axe to grind against Petitioner. Most of these witnesses were eye-witnesses to the incident. They have given their positive evidence implicating the Petitioner for the said charges. Their oral evidence is amply corroborated by

documentary evidence mentioned in the list of documents. Regard being had to these general features of the evidence collected during enquiry in support of the charges against Petitioner, I find that this Court cannot probe into the quality and sufficiency thereof. It is not permissible for the Court to reassess or re-evaluate the evidence available on record of the domestic enquiry proceeding against the delinquent member of the Force in support of the charges levelled against him. As a rule, such evidence will remain beyond the pale of judicial scrutiny.

15. Another submission that was made by Mr. N.R. Naik was that the quantum of punishment of dismissal from service inflicted on the Petitioner for his proved guilt is rather a harsh punishment and the same needs to be reduced to any lesser penalty. I have gone through the charges levelled against Petitioner. Considering the gravity of the charges, I do not find that the punishment meted out to Petitioner is shockingly disproportionate to the gravity of the charges.

16. Hence, viewed from any angle, the petition is bound to fail and it fails.