
(1997) 07 CAL CK 0013
In the Calcutta High Court
Case No : C.O. No. 5803 (W) of 1985

Umesh Prasad Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-07-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Railway Protection Force Rules, 1959 — Rule 44, 45, 46, 47

Citation : (1997) 2 CALLT 477

Hon'ble Judges : Gitesh Ranjan Bhattacharjee, J

Bench : Single Bench

Advocate : Achin Kr. Majumdar, for the Appellant; Chittaranjan Bag, for the Respondent

Final Decision : Dismissed

Judgement

Gitesh Ranjan Bhattacharjee, J.—In this writ petition the petitioner prays for setting aside the impugned order of dismissal from service dated 8.3.85. The petitioner while serving as a Rakshak in the Railway Protection Force and attached to the Padmapukur Railway Protection Force Post was dismissed from service by the impugned order of dismissal dated the 8th March, 1985 passed by the senior Security Officer, South-Eastern Railway as disciplinary authority. The said dismissal order is annexure-B to the writ petition. The dismissal order was passed in the background of conviction of the petitioner by court on a criminal charge under the Railway Property (Unlawful Possession) Act, 1966. It is recited in the dismissal order that whereas it is considered that the conduct of the petitioner which led to his conviction is such as to render his further retention in public service undesirable he is dismissed in exercise of the powers conferred by Rule 47(a) of the RPF Rules, 1959 with effect from 8.3.85. The prosecution case against the petitioner in the criminal case under the R.P. (U.P.) Act was that as Rakshak of the RPF Protection Force he was on duty on 4.8.74 from 4 p.m. to 12 mid-night and after the said duty period when he was coming out on 5.8.74 at about 00.20hrs. after finishing his duty it was noticed by a Sub-Inspector of the

Railway Protection Force that he was carrying a bag and on being challenged by the Sub-Inspector and others the petitioner opened the bag wherein 11 pcs. of Taj soap and 9 pcs. of Cinthol soap wrapped up in a piece of cloth was found. The soaps were reasonably suspected to have been stolen from the railway wagons which were on transit and a criminal case was accordingly started in the court and ultimately after trial he was found guilty by the court on 18.5.84 u/s 3(a) of the RP(UP) Act and he was sentenced to suffer simple imprisonment for three months. The petitioner then preferred an appeal in the higher court against the said order of conviction and sentence but the appeal was also ultimately dismissed. Earlier however the petitioner was also placed under suspension. Ultimately the disciplinary authority passed the dismissal order under Rule 47(a) of the RPF Rules, 1959 in the background of the conviction of the petitioner under the RP(UP) Act.

2. The petitioner has challenged the said order of dismissal mainly on the ground that the disciplinary authority made no inquiry in any disciplinary proceeding against the petitioner and even did not ask the petitioner to submit any representation about the punishment intended to be imposed upon him on the basis of his conviction under the RP(UP) Act. It is on the other hand the case of the respondents that the petitioner was dismissed from service in exercise of the power conferred on the disciplinary authority under the Rule 47(a) of the RPF Rules, 1959. Rule 47 of the RPF Rules, 1959 runs thus:-

"47. Special procedure in certain case.-Notwithstanding anything contained in Rules 44, 45 and 46, where a penalty is imposed on a member of the Force (a) on the ground of conduct which has led to this conviction on a criminal charge, or (b) where the disciplinary authority is satisfied for reasons to be recorded in writing, that it is not reasonably practicable to follow the procedure prescribed in the said rules, the Disciplinary Authority may consider the circumstances of the case and pass such orders thereon as it deems fit." Here printed in italics.

It may be mentioned here that Rules 44, 45 and 46 prescribe the procedure for imposing penalty/punishment in cases of different natures mentioned therein. Rule 47, in the specified circumstances, dispenses with the procedure of inquiry prescribed in the said Rules 44, 45 and 46. It is submitted on behalf of the respondents that since in the present case the dismissal order was passed under Rule 47(a) there is no question of holding any inquiry. On the other hand it is submitted on behalf of the petitioner that even Rule 47, while dispensing with the procedure prescribed in Rules 44, 45 and 46, yet requires the disciplinary authority to "consider the circumstances of the case" before imposing any penalty in exercise of the powers conferred by that Rule. It is also submitted on behalf of the petitioner that even if a detailed inquiry is dispensed with yet the disciplinary authority in complying with the mandate of Rule 47 to consider the circumstances in going to impose a penalty, is required to hear the delinquent employee about the penalty to be imposed on him by the disciplinary authority for his conviction by a court in a criminal case. It is the grievance of the

petitioner that the disciplinary authority before imposing the penalty of dismissal did not give the petitioner any opportunity of hearing or of submitting any representation in the matter and as such the order of dismissal itself is bad in law and is therefore liable to be quashed. As against this, it is submitted by the learned Advocate for the respondents that Rule 47 requires the disciplinary authority to consider the circumstances of the case, and the impugned order of dismissal itself in this case will show that the disciplinary authority in going to impose the penalty of dismissal considered the circumstances and therefore there is no scope of contending that the impugned order is bad in law.

3. The learned Advocate for the petitioner refers to two Division Bench decisions of the Allahabad High Court, being *Dost Mohammed v. Union of India* 1981 (3) SLR 274 and *Union of India v. Rajendra Prasad*, 1977(2) SLR 81 in support of his contention that the disciplinary authority is required to give the petitioner an opportunity of hearing or an opportunity of submitting representation regarding penalty to be imposed by the disciplinary authority in such cases where the provisions of Rule 47 are attracted. He also refers to the decision of the Supreme Court in *Divisional Personnel Officer v. T.R. Chellappan*. 1976 Supreme Court Cases (L & S) 398 where one of the matters for consideration of the Supreme Court was Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968 which contained provisions more or less similar to these contained in Rule 47 of the RPF Rules. In the said decision the Supreme Court held that in the relevant portion of Rule 14 of the Railway Servants (discipline and appeal) Rules. 1968 the word "consider" merely connotes that there should be active application of the mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employee on his conviction on a criminal charge and this matter can be objectively determined only if the delinquent employee is heard and is given a chance to satisfy the authority regarding the final orders that may be passed by the said authority. In other words, the term "consider" postulates consideration of all aspects, the pros and cons of the matter after hearing the aggrieved person and such an inquiry would be a summary inquiry to be held by the disciplinary authority after hearing the delinquent employee. The Supreme Court in the circumstances intervened in the cases under consideration as in none of the cases "the delinquent authority either considered the \\\n circumstances or heard the delinquent employees on the limited point as to the nature and extent of the penalty to be imposed if at all" (vide, para 22 of the said decision). In our present case of course the delinquent employee was neither given any opportunity of hearing nor any opportunity of submitting any representation which he should have been given by the disciplinary authority while exercising his power under Rule 47 in view of the requirement of law as warranted by judicial interpretation including the interpretation given by the Supreme Court in respect of analogous provisions of other Rules. There is no doubt that an order of penalty passed in exercise of Rule 47 entails civil consequences and therefore an opportunity of hearing or representation as an

attribute of the principle of natural justice is a requirement implicit in the said Rule. There is therefore no difficulty in holding that the impugned order as passed by the disciplinary authority in the present case is not supported by immaculate compliance of the requirement of law as no opportunity of hearing or representation was given to the petitioner. But even then the question that has to be considered now is whether the court in exercise of its writ Jurisdiction should intervene in this case.

4. As we find the disciplinary authority in this case considered the circumstances of the case as would appear from the impugned order itself. The impugned order has not been passed simply on the ground of the conviction of the petitioner by the court under RP(UP) Act. The impugned order itself shows that the disciplinary authority considered not only the conviction and the conduct of the delinquent employee which led to this conviction but also the impact of the same on the desirability of retaining the employee in service, and recorded that the conduct leading to his conviction was such as to render his further retention in the public service undesirable. The petitioner is a Rakshak in the Railway Protection Force. Several items of things pilfered from railway wagons were recovered from his possession immediately after he was coming out at the end of his duty hours. The petitioner was convicted and sentenced u/s 3(a) RP (UP) Act. As I have already noted the impugned order of the disciplinary authority itself shows that he considered the question of the desirability of retaining the petitioner further in public service in view of the conduct of the delinquent employee which led to his conviction and in consideration of the same the disciplinary authority was of the view that further retention of the petitioner in public service was undesirable and accordingly the petitioner was dismissed from service. The considerations which were made by the disciplinary authority cannot obviously be said to be irrelevant or irrational. The consideration, or for that matter, relevant and clue consideration, therefore, was there of course there is no doubt that the petitioner was not given any opportunity of hearing or representation. The petitioner of course could have preferred an appeal making out a case for any lesser penalty or no penalty, if there were any such case. He however did not do that. That however may not necessarily disentitle him to approach the writ court against the order of dismissal. However in the writ petition itself in the present case the petitioner has presented his case regarding penalty. In paragraph 14 of writ petition it is stated that the respondent No. 3 did not consider whether it was required in the facts and circumstances of the criminal case to dismiss the petitioner from service and whether any lesser punishment would have been sufficient and that the order of dismissal was passed mechanically due to conviction of the petitioner in the criminal case. In paragraph 13 of the affidavit-in-opposition which is affirmed by the Senior Security Officer, the respondent No. 3 it is denied in answer to paragraph 14 of the writ petition that the respondent No. 3 did not consider the facts and circumstance or that a lesser punishment would have been sufficient or that order of dismissal was mechanically passed. Then again what is projected in Ground No. III of the writ petition is that the

order of dismissal was passed for a trivial offence of taking some pieces of soap which were alleged to be railway properties and the order of dismissal for such conduct of trivial nature is illegal and without any proportion to the trivial nature of the offence. So the writ petitioner's case in respect of the penalty imposed is that the offence for which he was convicted by the court is of trivial nature and did not warrant an order of dismissal from service. As regards that contention of the petitioner in the writ petition it is stated in paragraph 17 of the affidavit-in-opposition affirmed by the respondent No. 3 that the offence committed by the petitioner was not trivial in nature and therefore the action taken by the respondent No. 3 under Rule 47(a) was commensurate with the offence committed by the petitioner who was a Rakshak of the Railway Protection Force and whose primary duty was to guard and protect the properties and as such the punishment inflicted upon the petitioner for his unlawfully obtaining the railway properties was neither illegal nor excessive and was quite in accordance with law. We thus find that although the petitioner was not given any opportunity of hearing or representation before the disciplinary authority regarding penalty before the impugned order of dismissal was passed, the petitioner has however projected his point of representation in the matter in this writ petition and his only point is that the offence was of a trivial nature which did not warrant the penalty of dismissal from service. The respondent No. 3 however even in the affidavit-in-opposition has reiterated that the offence is not of a trivial nature and that the penalty imposed on him is commensurate with the offence committed by a Rakshak whose primary duty is to guard and protect the railway properties. Such consideration cannot be said to be faulty. The duty of a Rakshak is to guard and protect railway property and instead of doing that if he unlawfully grabs such property and if on consideration of such facts and circumstances the disciplinary authority considers it undesirable to retain the petitioner further in service the court cannot say that there was anything wrong in such consideration as could warrant the intervention of the court. Since the point of grievance of the petitioner in respect of the penalty as projected in the writ petition has been precisely considered by the disciplinary authority in passing the impugned order of dismissal even without any representation from the employee concerned, I am of the opinion that there is no substantial reason why the court in exercise of its discretionary jurisdiction under Article 226 should intervene in this particular case. The writ jurisdiction is a discretionary Jurisdiction. Mere illegality or mere irregularity which does not touch the core of the matter in question and which does not have any substantial implication in the matter may not by itself be a proper ground for actuating the court to intervene in the matter in exercise of its writ jurisdiction. True it is that in the present case the petitioner was not heard before the penalty was imposed by the disciplinary authority and to that extent there was an infraction of the procedural requirement of law. But what is the effect of that infraction? The effect, in the facts and circumstances of the present case, is inconsequential. The point of representation for the petitioner before the disciplinary authority, had he been given a hearing, would have been, as revealed in the writ petition, that the offence was of a trivial nature and therefore

did not warrant the penalty of dismissal. But as we have seen, even without any formal representation or hearing, the disciplinary authority considered the conduct of the petitioner, obviously having regard to his service obligation and responsibility, and was of the view that his conduct that led to his conviction was such as would render his further retention in public service undesirable which is an obvious negation of the plea of triviality of the offending conduct of the petitioner. A hearing or representation, in a formal manner, would not have yielded a different result, and in fact as well as in effect the petitioner's point of representation which relates to the question of gravity of the offence received consideration of the disciplinary authority. Therefore it can not be said that the infraction of the procedural requirement of law to give hearing has in this case resulted in any failure or miscarriage of justice. Therefore when there has been no miscarriage of justice by reason of infraction of the procedural requirement in this case and when the petitioner's point of representation as projected now was covered by the consideration of the disciplinary authority, I do not think that it is a fit case where the writ court in exercise of its disciplinary Jurisdiction should interfere in this case. Rather any such interference may itself result in miscarriage of justice if the petitioner is allowed to be reinstated in service with full glory, and alternatively, such interference will be anfractuous if the respondents are asked to reconsider the matter. Notwithstanding procedural infraction, this court does not consider it to be a fit case for its intervention in exercise of its discretionary jurisdiction under Article 226. The writ petition is therefore dismissed. No cost is however ordered.