

(2022) 11 CHH CK 0051
In the Chhattisgarh High Court
Case No : Writ Appeal No. 11 Of 2022

Union Of India

APPELLANT

Vs

Raasbihari Pandey

RESPONDENT

Date of Decision : 15-11-2022

Acts Referred:

Railway Protection Force Rules, 1987 — Section 146, 146.1, 146.2, 146.2(i), 146.4, 146.8, 147, 147(ix), 153
Chhattisgarh High Court??(Appeal to the Division Bench) Act, 2006 — Section 2(1)
Railway Protection Force Act, 1957 — Section 9, 15, 17, 21
Code Of Criminal Procedure, 1973 — Section 293, 293(4)

Citation : (2022) 11 CHH CK 0051

Hon'ble Judges : Arup Kumar Goswami, CJ;Sanjay Agrawal, J

Bench : Division Bench

Advocate : Ramakant Mishra, B.P.Sharma

Final Decision : Allowed

Judgement

Sanjay Agrawal, J

1. This appeal has been preferred by the Respondents – Union of India and others under Section 2 (1) of the Chhattisgarh High Court (Appeal to the Division Bench) Act, 2006, questioning the legality and propriety of the order dated 08.09.2021 passed by the learned Single Judge in W.P.(S) No.466 of 2012, whereby the writ petitioner has been directed to be reinstated in service while setting aside the order of his removal compulsorily from service without pensionary cut passed in a departmental enquiry. The parties shall be referred hereinafter as per their descriptions mentioned before the Court of learned Single Judge.

2. The facts, which are essential for adjudication of this appeal, are that on 30.07.2009, the writ petitioner was called by his superior officer to his office to enquire from him about the incident which took place at Railway Protection Force (RPF) Office, Raipur with Division Loco Shed Staff and at that particular time, he

was found to be in the stage of intoxication as he was not in a position to reply to the questions properly as put to him by his superior officer, i.e., Assistant Security Commissioner, Railway Protection Force, Raipur. The writ petitioner was, therefore, referred to the Railway Hospital, WRS Colony, Raipur for medical examination where it has been revealed on the basis of his blood sample report that he consumed alcohol. In view thereof, the writ petitioner was subjected to departmental enquiry by serving a charge-sheet upon him alleging therein that he was found intoxicated on 30.07.2009, on being called by the Assistant Security Commissioner in connection with the said incident, which occurred on 28.07.2009 as reflected from his blood sample report issued by the Assistant Chemical Analyzer, Regional Forensic Science Laboratory, State of Maharashtra, Nagpur. The act of the writ petitioner was in violation of the Rule 146.2(i), 146.4 and 147 (ix) of the Railway Protection Force Rules, 1987 (hereinafter referred to as the Rules of 1987) framed by the Central Government in exercise of the powers conferred by Section 21 of the Railway Protection Force Act, 1957 (hereinafter referred to as the Act of 1957), therefore, he was put in departmental enquiry. After conclusion of a departmental enquiry, he was found to be in the stage of intoxication, based upon the alleged medical examination report and in view thereof, he was directed to be removed from his service by the disciplinary authority vide order dated 31.03.2010 (Annexure P/5). Being aggrieved with the said order, an appeal was preferred by the writ petitioner before the appellate authority, who in turn, vide order dated 09.08.2010 (Annexure P/7), while allowing the same in part, has converted the order of removal from service to compulsory retirement without any pensionary cut, affirmed further by the revisional authority vide order dated 29.08.2011 (Annexure P/1) in a revision preferred by the writ petitioner.

3. Being aggrieved with the aforesaid order, a writ petition was filed by the writ petitioner before this Court and, the learned Single Judge, vide his order impugned, has observed at para – 13 as under :-

"13. A careful perusal of the charge-sheet served to the petitioner would show that no charge has ever been framed and served that the petitioner being a member of force in a state of intoxication while on duty or after having been alerted for duty, he was found intoxicated though the petitioner has been found guilty in violation of Rule 146.2(i), 146.4 and 147 (ix) of the Rules of 1987, as there is no allegation that without sufficient cause, he neglected to perform his duty or being a member of the force or he acted in a manner prejudicial to discipline or conducted himself in such a manner which is reasonably likely to bring discredit to the reputation of the force or he being a member of the force found in a state of intoxication while on duty or after having been alerted for any duty and rendered himself liable for punishment under Section 9 or Section 17 of the Act of 1957. Merely because he was found intoxicated, in absence of charge for violation of Rule 146.2(i), 146.4 and 147 (ix) of the Rules 1987, the petitioner cannot be inflicted with penalty of removal from service. Since the petitioner was subjected to departmental enquiry, he must have been subjected

to actual charges for which he has been punished. If no charge-sheet has been served for above-stated misconduct, it cannot be assumed on the basis of alleged intoxication that he has violated Rule 146.2(i), 146.4 and 147 (ix) of the Rules of 1987. Appropriate charges have to be framed and served to the delinquent in order to punish him in a departmental enquiry. Though the petitioner has not been served charge-sheet for violation of Rule Rule 146.2(i), 146.4 and 147 (ix) of the Rules of 1987, yet on the basis of alleged intoxication, he has been inflicted with major penalty for violation of Rule 146.2(i), 146.4 and 147 (ix) of the Rules of 1987. "

4. After recording the aforesaid observation, it was held further while placing reliance upon several decisions of the Supreme Court that since the actual charges were not served upon him, therefore, he cannot be punished as such in violation of those Rules. In consequence, the punishment inflicted upon him based upon the said departmental enquiry has been quashed while directing for his reinstatement in service. This is the order which has been impugned herein.

5. Learned counsel appearing for the appellants submits that the finding of the learned Single Judge holding that the charges so framed were vague and not specific and thereby reversing the finding arrived at in a departmental enquiry retiring the writ petitioner compulsorily from his service, is apparently contrary to the materials available on record. While referring to the charge-sheet framed on 12/14.10.2009, it is submitted that at the relevant point of time, the writ petitioner was found to be in intoxication stage as reflected from the report submitted by the Assistant Chemical Analyzer, Regional Forensic Science Laboratory, State of Maharashtra, Nagpur, therefore, the alleged act of him was apparently revealing the failure of his prompt and diligence duty, which is discreditable to the reputation of the Force. Further contention of him is that during the course of departmental enquiry, the writ petitioner, at no point of time, had raised the issue that the alleged charge-sheet so furnished is a vague one, therefore, the order impugned holding the alleged charge to be a vague one while reversing the punishment of the writ petitioner in a duly constituted departmental enquiry deserves to be set aside.

6. On the other hand, learned counsel appearing for the writ petitioner, while supporting the order impugned, submits that the copy of alleged medical examination report was neither supplied to the writ petitioner nor the report of the alleged enquiry after its conclusion was provided, therefore, the entire departmental enquiry vitiates owing to violation of the principles of natural justice. It is contended further while referring to the Rojnamchasanha that at the time when the writ petitioner was called by his superior officer to attend the duty, he was not on duty, therefore, it was not required for him to keep himself fit.

7. We have heard learned counsel appearing for the parties and perused the entire record carefully.

8. The questions, which arise for determination in this appeal, are;

i) whether under the facts and circumstances of the case, the learned Single Judge has committed an illegality in holding that the charge so framed against the writ petitioner is a vague one which materially affected his valuable right to defend his interest in a proper manner ?

ii) whether the alleged medical examination report as furnished by the Assistant Chemical Analyzer, Regional Forensic Science Laboratory, State of Maharashtra, Nagpur was not provided to the writ petitioner during the departmental enquiry and / or, whether after the conclusion of the enquiry, the report of it was not supplied to him which vitiates the entire departmental proceedings owing to violation of the principles of natural justice ?

9. In order to examine the aforesaid questions, it is necessary to examine the contents made in the alleged charge-sheet framed on 12/14.10.2009, which reads as under :-

10. At this juncture, it is also necessary to examine the rules 146.1, 146.2 (i) and 146.4 of the Rules of 1987 which provide as under :-

146 Code of behaviour for members of the Force:

"146.1 All members of the Force, irrespective of their ranks, shall submit themselves to the requirement of the following code of behaviour, both on and off duty. It shall be incumbent upon all the members of the Force to respect the code of behaviour and of an attitude of complete discipline and maintain to it. Any breach of these provisions on the part of any member of the Force shall constitute misconduct and shall be punishable under the Railway Servants (Discipline and Appeal) Rules, 1968 as applied to superior officers or, as the case may be, under section 9 or section 17.

146.2 Neglect of duty:

No member of the Force without good and sufficient cause shall----

(i) neglect or omit to attend to or fail to carry out with due promptitude and diligence anything which is his duty as a member of the Force to attend to or carry out: or

(ii) xxxx xxxx xxxx xxxx xxxx xxxx

(iii) xxxx xxxx xxxx xxxx xxxx xxxx

(iv) xxxx xxxx xxxx xxxx xxxx xxxx

146.3 xxxx xxxx xxxx xxxx xxxx xxxx

146.4 Discreditable conduct:

No member of the Force shall act in any manner prejudicial to discipline or conduct himself in such a manner which is reasonably likely to bring discredit to

the reputation of the Force.

146.5 xxxx xxxx xxxx xxxx xxxx

to

146.8 xxxx xxxx xxxx xxxx xxxx

11. Rule 146, thus, provides "code of behaviour" for members of the Force and it appears from a bare perusal of sub-rule (1) of it, i.e., Rule 146.1, that all members of the Force have to follow the norms provided therein in a strict manner as depicted from Rule 146.2 upto 146.8 and, any breach of it, would constitute the misconduct and shall also be liable to be punishable as required under Section 9 or Section 17 of the Act of 1957. This rule, thus, provides "code of behaviour", which is to be followed in a strict sense in order to maintain the credit of Force, while "Offences" relating to duties of enrolled members are defined in Rule 147, which is also relevant for consideration of the issue involved herein, reads as under :-

147. Offences relating to duties of enrolled members:

Commission of any of the following act or acts by an enrolled member of the Force----

(i) to (viii)

(ix)

(x) to (xxii)

xxxx xxxx xxxx xxxx xxxx

being in a state of intoxication while on duty or after having been alerted for any duty;

xxxx xxxx xxxx xxxx xxxx

shall render him liable for punishment under section 9 or section 17 or both.

12. What is, therefore, reflected from a bare perusal of the aforesaid provisions that the "code of behaviour" provided in Rule 146 is to be followed by the members of the Force in a strict sense, while commission of offences relating to their duties are provided in Rule 147 of the Rules of 1987 and, it appears from a bare perusal of it that in the event of commission of any of the acts as provided therein would then render him liable for punishment under Section 9 or Section 17 of the Act of 1957 or both.

13. Now, a bare perusal of the contents made in the alleged charge-sheet would show that it was issued only when the writ petitioner was not in a position to answer the questions in a proper manner, which were put to him by his superior officer owing to the stage of intoxication as reflected from the report submitted by the Assistant Chemical Analyzer, Regional Forensic Science Laboratory, State

of Maharashtra, Nagpur. It, therefore, appears that the alleged charge was framed against the writ petitioner because he was found to be in intoxication stage at the relevant time and, since the act of him, being a member of the disciplined Force, was not upto the mark and was, in fact, in detrimental to the reputation of the Force as provided under Rule 146.2(i) and 146 (4) of the Rules of 1987, therefore, these Rules have also been mentioned in the alleged charge. In view thereof, merely by referring to those Rules in the alleged charge would not by itself be sufficient to hold that it is a vague one or not understandable to him, else he would have certainly raised an objection regarding its vagueness during the course of his departmental enquiry. However, even in absence of such an allegation, the alleged charge has been held to be not an accurate one by the learned Single Judge while acquitting the writ petitioner from the said departmental enquiry. We are, therefore, of the opinion that the issuance of the alleged charge-sheet showing the intoxication stage of the writ petitioner while on duty based upon the report of Assistant Chemical Analyzer, Regional Forensic Science Laboratory, State of Maharashtra, Nagpur, is an accurate one and, the findings of the learned Single Judge to this effect are, thus, set aside.

14. Now, as regards the consideration of issue as to whether the writ petitioner was provided sufficient and reasonable opportunity of hearing in the said departmental enquiry or not, it is necessary to examine the proceedings conducted by the enquiry officer. According to the writ petitioner, neither the alleged medical examination report was supplied to him nor even after the completion of the departmental proceedings, the report of it was provided to him, therefore, proper opportunity of hearing was not provided to him owing to which he was deprived of defending his case in an effective manner. However, a bare perusal of the said departmental enquiry would show that on his (writ petitioner) demand, the medical report so furnished by the Assistant Chemical Analyzer, Regional Forensic Science Laboratory, State of Maharashtra, Nagpur was supplied to him on 20.11.2009 as reflected from the acknowledgment made by him to this effect. In view thereof, it cannot be said that the alleged medical report was not supplied to him. It, however, appears that despite the supply of medical examination report as such, he has not only deliberately stated contrary to it but has made a false plea in response to the alleged charge-sheet by saying that owing to consume a medicine because of his illness, the alleged smell like alcohol was coming from him. The act of him being a member of disciplined Force, therefore, cannot be appreciated. The allegation levelled by the writ petitioner that after the completion of the departmental enquiry, the copy of it was not supplied to him, appears to be incorrect version as the report of the enquiry officer was not only served upon him on 09.12.2009 but in reply to it, made on 11.01.2010, he has not alleged that it was not supplied. That apart, even at the time of preferring an appeal (Annexure P/6) on 12.04.2010 against the order of the disciplinary authority, no such allegation has ever been raised by him. It is, thus, evident that after providing due and reasonable opportunity of hearing, the alleged punishment has been awarded.

15. Now, it is to be seen at this juncture the contention raised by learned counsel appearing for the writ petitioner that no punishment as such ought to have been awarded in a disciplinary proceedings in absence of the examination of the author of the alleged medical examination report. The question, therefore, arises for determination in this regard is;

"whether the alleged punishment can be awarded based upon the medical examination report as submitted by the Assistant Chemical Analyzer, Regional Forensic Science Laboratory, State of Maharashtra, Nagpur, particularly, when the author/doctor of it was not examined during the course of his departmental enquiry?"

16. In order to determine the aforesaid issue, it is necessary to examine the provisions prescribed under Rule 153 of the Rules of 1987 providing the procedure for imposing major punishments, which reads as under :-

"153. Procedure for imposing major punishments:

153.1 to 153.12 xxxx xxxx xxxx xxxx xxxx

153.13 Documentary exhibits, if any, are to be numbered while being presented by the concerned witness and reference of the number shall be noted in the statement of the witness. Such documents may be admitted in evidence as exhibits without being formally proved unless the party charged does not admit the genuineness of such a document and wishes to cross-examine the witness who is purported to have signed it. Copies of the exhibits may be given to the party charged on demand except in the case of voluminous documents, where the party charged may be allowed to inspect the same in the presence of Inquiry Officer and take notes."

153.14 to 153.20 xxxx xxxx xxxx xxxx xxxx

17. A bare perusal of the aforesaid provision would show that the strict rule of evidence at the time of departmental proceedings is not required to be followed and the documentary evidence, if any, produced may be admissible in evidence, if the genuineness of it is not disputed by the delinquent employee and/or is not showing his willingness to cross-examine the author of it.

18. While keeping the aforesaid procedure in mind, let us examine the procedure conducted during the course of the departmental proceedings in order to consider the admissibility of the alleged documentary evidence, like the medical examination report as submitted by the Assistant Chemical Analyzer, Regional Forensic Science Laboratory, State of Maharashtra, Nagpur, based upon which the writ petitioner was found to be in intoxication stage before the senior officer at that particular time.

19. As observed herein above, a copy of the blood examination report/certificate was supplied to the writ petitioner on 20.11.2009 during the course of enquiry, however, nowhere he doubted the genuineness or the correctness of the said

report and that was the reason why it appears that he did not ask for the examination of its author/doctor. In view thereof, the alleged report purported to have been issued under the hand of a Government Scientific Expert to whom, the blood sample of the writ petitioner was submitted may be used as evidence in view of the provisions prescribed under Section 293 of the Code of Criminal Procedure, 1973. The said provision is relevant for the purpose which reads as under :-

"293. Reports of certain Government scientific experts.-

(1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts, namely:-

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) the Chief Controller of Explosives;

(c) the Director of the Finger Print Bureau;

(d) the Director, Haffkine Institute, Bombay ;

(e) the Director [Deputy Director or Assistant Director] of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) the Serologist to the Government

(g) any other Government scientific expert specified by notification by the Central Government for this purpose."

20. A bare reading of sub-sections (1) & (2) of the aforesaid provision would show that it is not obligatory that an expert who furnishes his opinion on the scientific issue of the chemical examination of the substance, should be of necessity made to depose in proceedings before the departmental enquiry, particularly, when its authenticity has not been doubted during the enquiry by a delinquent employee.

21. At this stage, it is to be seen the principles laid down by the Supreme Court

in the matter of State of H.P. vs. Mast Ram reported in (2004) 8 SCC 660, wherein, while dealing with the similar issue as occurred herein, it was observed at paragraph 6, which reads as under :-

"6. Secondly, the ground on which the High Court has thrown out the prosecution story is the report of ballistic expert. The report of the ballistic expert (Ext. P-X) was signed by one Junior Scientific Officer. According to the High Court, a Junior Scientific Officer (Ballistic) is not the officer enumerated under sub-section (4) of Section 293 of the Code of Criminal Procedure and, therefore, in the absence of his examination such report cannot be read in evidence.

This reason of the High Court, in our view, is also fallacious. Firstly, the Forensic Science Laboratory Report (Ext. P-X) has been submitted under the signatures of a Junior Scientific Officer (Ballistic) of the Central Forensic Science Laboratory, Chandigarh. There is no dispute that the report was submitted under the hand of a Government scientific expert. Section 293(1) of the Code of Criminal Procedure enjoins that any document purporting to be a report under the hand of a Government scientific expert under the section, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under the Code, may be used as evidence in any inquiry, trial or other proceeding under the Code. The High Court has completely overlooked the provision of sub-section (1) of Section 293 and arrived at a fallacious conclusion that a Junior Scientific Officer is not an officer enumerated under sub-section (4) of Section 293. What sub-section (4) of Section 293 envisages is that the court is to accept the documents issued by any of six officers enumerated therein as valid evidence without examining the author of the documents."

22. Similarly, in the matter of State of A.P. vs. Gangula Satya Murthy reported in (1997) 1 SCC 272, it has been observed by the Supreme Court at paragraph 14 as under :-

"14. The report of the chemical examiner is available in the records. Section 293 of the Code would enable the court to use the said document in evidence."

23. Applying the aforesaid principles to the case in hand, it is thus evident that the medical examination report as submitted by the Assistant Chemical Analyzer, Regional Forensic Science Laboratory, State of Maharashtra, Nagpur can be used as evidence without any formal proof.

24. In so far as the further contention of the learned counsel appearing for the writ petitioner that since he was not on duty, therefore, it cannot be expected from him to keep himself fit is, however, noted to be rejected in view of the provision prescribed under Section 15 of the Act of 1957. As, according to the said provision, the officers and members of the Force are always to be considered on duty. According to the said Rojnamchasanha (Annexure P/9), it appears that on 30.07.2009 at about 11.00 am, he was directed to appear on duty from 16:00 hours to 24:00 hours, yet, as observed herein above, he was

found to be in intoxication stage, therefore, contention of the writ petitioner in this regard is also liable to and is hereby rejected.

25. In view of the aforesaid background, the writ petitioner was rightly found to be guilty in connection with the alleged charge framed on 12/14.10.2009, and, therefore, the order of punishment retiring him compulsorily from service without pensionary cut passed in the departmental enquiry is hereby affirmed.

26. Consequently, the appeal is allowed and the order impugned dated 08.09.2021 passed by the learned Single Judge in W.P.(S) No.466 of 2012 is hereby quashed.

No order as to costs.