
(2001) 01 P&H CK 0076

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 657 of 1999

Union of India

APPELLANT

Vs

Tarlok Singh

RESPONDENT

Date of Decision : 30-01-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Constitution of India, 1950 — Article 14, 16, 226
Railway Protection Force Rules, 1959 — Rule 44, 51

Citation : (2001) 01 P&H CK 0076

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : Mr. P.C. Rakra, for the Appellant; Mr. Naresh Parbhakar, for the Respondent

Judgement

M.L. Singhal, J.—Tarlok Singh was working as Naik in the Railway Protection Force, Ferozepur under the Commandant, Railway Protection Force, Ferozepur. He was removed from service vide order dated 5.7.1986 of Commandant, Railway Protection Force, Ferozepur. His appeal was dismissed by the Deputy Chief Security Commissioner, Railway Protection Force, Northern Railway, New Delhi vide order dated 3.J 1.1987 conveyed to him vide letter dated 13.11.1987 by the Divisional Security Commissioner, Railway Protection Force, Northern Railways, Ferozepur. He filed revision petition which was dismissed by the Inspector General-cum-Chief Security Commissioner, Railway Protection Force, New Delhi vide order dated 5.1.1989. He went in further revision which was dismissed by the Director General, Railway Protection Force, New Delhi vide order dated 1.1.1990. He challenged all these orders through a suit for declaration filed by him against Union of India saying that these orders are illegal, arbitrary, capricious, without jurisdiction and against the provisions of the Railway Protection Force Act and the rules and principles of natural justice, fair play, equity and as such are in-operative, null and void and that he continues to be in the service of the Railway Protection Force as if he was never removed with

all benefits, emoluments and other benefits admissible to him from time to time. It was alleged in the plaint that charge sheet which culminated into his removal from service was not in accordance with Rule 44 of the Railway Protection Force Rules, 1959. It was vague, indefinite and did not contain sufficient material as required under the law and the rules. Charge sheet was defective in nature and was not issued with an open mind as it pre-supposed his guilt without any formal proof. It was not drawn in accordance with the rules. It did not contain the entire list of witnesses and the description of documents by which the department had proposed to sustain the charges. He was put to grave prejudice in the preparation of the defence and cross-examination of the departmental witnesses. He was not given an opportunity to have the assistance of a co-worker as he was not conversant with the intricacies of the departmental rules and the procedure of enquiry. He is not that qualified as to defend himself in the enquiry by himself. Department should have provided him the assistance of a counsel or at any rate that of a co-worker. He applied for the assistance of a co-worker. His request was rejected when the department was provided with a presenting officer. He should have been provided with a co-worker to assist him. It is further alleged in the plaint that enquiry was without jurisdiction inasmuch as the Enquiry Officer was not delegated with the power to hold the enquiry nor was he himself a punishing authority. He could be removed from service only on the grounds mentioned in Rule 51 sub-clause 2(b). Charges levelled against him did not fall under this rule, as such, the punishment of removal from service was illegal, null and void. It was a case of no evidence, complaint on the basis of which enquiry was initiated was anonymous. It was not signed by anybody. No charge could be framed on such a complaint. Charge sheet was against Railway Board's circular and instructions particularly the Railway Board's letter No, EP DAG-A/85 CP/4 dated 12.12.1985. Inquiry Officer did not record his statement. No prosecution evidence was put to him. If the prosecution evidence had been put to him, he could have explained the circumstances appearing in evidence against him. Essential witnesses were not produced during the course of enquiry. He was not given an opportunity to cross-examine the prosecution evidence. Inquiry Officer did not conduct the enquiry in accordance with Rule 44 of the Railway Protection Force Rules, 1959. Proper opportunity was not granted to him as required under this Rule. He was not given opportunity to cross-examine the witnesses. None appeared before the Inquiry Officer in order to prove the complaint against him. Copy of the complaint on the basis of which plaintiff was charge sheeted was not supplied to him and as such, the enquiry proceedings are liable to be set aside. He was not given any personal hearing either by the punishing authority or by the Appellate Authority. ASI Lekh Raj, Constable Prahlad Sharma and SI M.S. Dogar were charge-sheeted on similar charges but only minor punishment was awarded to them.

2. Defendant-Union of India contested the suit of the plaintiff urging that the charge sheet was issued to the plaintiff in accordance with the Railway Protection Force Rules and Regulations. It was perfectly correct charge sheet issued in

accordance with the Railway Protection Force Rules and Regulations. He was offered the assistance of a co-worker. Inquiry Officer was appointed by the competent authority and the enquiry was not without any jurisdiction. Removal of the plaintiff's was ordered by the competent authority in accordance with the Railway Protection Force Rules and Regulations in force. Inquiry was conducted in accordance with the rules and regulations. All the necessary reasonable opportunity was afforded to the plaintiff to defend himself. He had taken all the relevant documents from the DAR case file as desired by him. He was given personal hearing by the disciplinary authority on 14.5.1986 as per his request.

3. On the pleading of the parties, following issue was framed by the trial Court :-

1. Whether the plaintiff is entitled to the declaration prayed for ?

2. Relief.

Vide order dated 23.1.1995, Sub Judge IInd Class, Ferozepur dismissed the plaintiffs suit in view of his findings that the order removing the plaintiff from service was quite legal.

4. Plaintiff went in appeal against the order of Sub Judge IInd Class, Ferozepur dated 23.1.1995. Vide order dated 15.10.1998, Additional District Judge, Ferozepur allowed the plaintiffs appeal and set aside the order removing him from service and declared that he is entitled to the entire back wages for the period during which he remained out of service. It was, however, directed that the Punishing Authority could take action against him afresh but in accordance with the rules and regulations, if it considered it necessary to take action against him.

5. Not satisfied with the order of Additional District Judge, Ferozepur, dated 15.10.1998, Union of India has knocked the door of this Court through this Regular Second Appeal.

6. I have heard the learned counsel for the Union of India and the learned counsel for the respondent and have gone through the record.

7. It was submitted by the learned counsel for the Union of India that the charge against Tarlok Singh respondent was that during his service, he amassed wealth disproportionate to his known sources of income and an enquiry was conducted against him and the following charges were framed :-

1. He purchased a plot on 4.12.1980 in the name of his wife for a consideration of Rs. 7,500/-.

2. He constructed a house on 29.9.1983 and sold the same in consideration of Rs. 70,000/-.

3. He purchased a plot on 9.11.1983 for a consideration of Rs. 22,000/-.

He did not obtain necessary permission from the competent authority which is required u/s 18 of the Railway Protection Force Act. After enquiry was conducted,

show cause notice was issued to him on 11.4.1986, He requested for the supply of all the relevant documents which were supplied to him. He received all the necessary documents on 30.9.1985. He submitted his reply to the notice on 23.4.1986 which was not found satisfactory and he was removed from service by the punishing authority, namely. Commandant, Railway Protection Force, Northern Railway, Ferozepur. He made a request for personal hearing which was granted to him. He was personally heard on 14.5.1986 by the Punishing Authority. He filed appeal against the order of the Punishing Authority which was dismissed through a speaking order. He filed revision. He was given personal hearing. He could not explain the source of income. His revision was dismissed. He submitted petition to the Director General, Railway Protection Force. On his request, he was personally heard on 15.11.1989 and his petition was rejected on 1.1.1990. It was submitted by the learned counsel for the Union of India that at every stage, he was given personal hearing and he was heard personally. Arguments advanced by him were considered at every stage and there was no failure of justice to him

8. An order of removal passed by the Commandant, Railway Protection Force, Northern Railway Ferozepur dated 5.7.1986 shows that he was served with a charge-sheet under Rule 44 of the Railway Protection Force Rules, on 30.7.1985. He acknowledged the charge-sheet on 6.8.1986 and requested for the supply of documents on 16.8.1985 which were, delivered to him on 30.9.1985. Since he did not give reply to the charge-sheet within the stipulated period, and even after the expiry of the stipulated period till 20.11.1985, regular enquiry was ordered against him and Shri Mehtab Singh was appointed as enquiry officer, After affording all reasonable facilities as provided under the rules, submitted the enquiry report and findings on 1.4.1986 holding the party charged guilty of the charges and allegations as levelled against him through the charge sheet. Punishing Authority agreed with the findings of the enquiry officer on 10.4.1986. Show Cause Notice was issued to him with the proposed penalty of removal from service. He gave reply to the show cause notice. He was given personal hearing. He appeared before the Commandant, Railway Protection Force, Ferozepur but did not produce any more evidence than that which he had already produced in the course of DAR enquiry in support of his case. Naik Tarlok Singh purchased a plot for Rs. 22,000/- and constructed a bouse by spending Rs, 50,000/-, The property/assets acquired by him in the name of his wife and then in his own name are considered disproportionate to his income, it can safely be concluded that Naik Tarlok Singh has claimed to have changed hands with large sums of money without any documents. The affidavits entered in February 1986 when the transaction was made in 1981 and 1983 as per his own version and documents are of doubtful evidentiary value. He could not explain satisfactorily the source of income from which large wealth/assets were amassed by him. The allegations and charges of serious misconduct, violation of conduct rules are well founded and established against the Naik beyond any reasonable doubt. The Director General, Railway Protection Force and Director General (Security) who heard his

petition against the order of the reviewing authority, namely Inspector General (Northern Railways) gave him personal hearing and he was heard by him on 15.11.1989. At the personal hearing, he drew his attention to certain documents. Photo copies of which were submitted by his relations to reports from the Post Office and regarding the purchase of National Saving Certificates. He went through the DAR proceedings file and found that the information produced before him had been produced substantially before the disciplinary authority and had been fully considered before they had taken their decision to punish as well as at the appellate and revisionary stages. He did not find any substantial miscarriage of justice which required his intervention.

9. It was submitted by the learned counsel for the Union of India that the Court is not a Court of appeal to go into the question of imposition of the punishment. It is for the disciplinary authority to consider, what would be the nature of punishment to be imposed on a government servant based upon the proved misconduct upon the Government servant to its proportionality also cannot be gone into by the Court. In support of the submission, he drew my attention to the State of Uttar Pradesh and others v. Nand Kishore Shukla and others 1996(2) RSJ 383 by the Hon"ble Supreme Court. It was submitted that in this case, the charge against the respondent was very grave inasmuch as he had acquired property, the acquisition of which was beyond the known sources of income and it was proved during the enquiry that he could not explain how he acquired property, the acquisition of which he could not justify by his known sources of income.

10. It was submitted by the learned counsel for the Union of India that learned Additional District Judge should not have himself gone into appreciation of evidence led in the enquiry. The appreciation of evidence was within the domain of the punishing authority etc. It was for them to appreciate evidence and conclude whether the evidence was or was not adequate enough to sustain the charge. Punishing Authority has clearly concluded that there is sufficient evidence on the file and grounds to suspect that Naik Tarlok Singh has illegally channelised the funds beyond his reach for a transaction in the name of his wife who had herself independent source of income. Charge against the delinquent was that while posted at Faridkot, he purchased land measuring 9-1/2 marlas for Rs. 7,500/- on 4.12.1980 in the name of his wife and constructed a house on this land. He later on sold that house to one Mul Singh for Rs, 70,000/-, He did not obtain any prior permission to purchase the plot and he did not seek any permission to construct house on it. He did not seek any permission to sell the house. There was another charge against him that he purchased a plot for Rs. 22,000/- in his name from one Smt. Gurcham Kaur on 9.11.1983 and constructed house on it and he did not seek permission of the competent authority regarding this deal. During the course of enquiry, he admitted that at the time of purchase of the plot in the name of his wife, he did not inform the department. He also admitted that he did not inform the department regarding purchase of plot and construction of the house and then . sale of the plot. He

thus admitted the substantive of the charge. How could he claim to be dealt with leniently when the charge against him was that of acquisition of property through dishonest means? In this case, he was given personal hearing by the punishing authority. Appellate Authority considered the arguments put forward by him in his appeal dated 28.7.1986. He went through the entire records of this DAR case proceedings of the DAR enquiry, findings of the DAR enquiry officer on the basis of which show cause notice was issued to him. He considered the reply given by him to the show cause notice as also the order of the punishing authority imposing upon him the penalty of removal from service. He was given an opportunity of personal hearing by the revisional authority but could not produce any document for explaining the source of income. He was given personal hearing and he was heard on 15.11.1989 by the Director General, Railway Protection Force and" Director General (Security) who dismissed the petition filed by him against the order of Inspector General-cum-Chief Security Commissioner, Railway Protection Force. In such cases, the only duty cast on the Court is to see that there should have been no failure of justice to the delinquent and there should have been fair trial to him.

11. In this case, there has been fair trial to him. If lenient view had been taken in regard to others, that does not mean that he too should have been dealt with likewise. For such dishonest conduct, how can it be ordered by the Court that he should not be removed from service and some other action short of removal from service be taken against him.

12. For the reasons given above, this appeal is allowed, judgment/decreed passed by the Additional District Judge is set aside and the judgment/decreed of the Sub Judge IIInd Class is restored. In consequences, the plaintiff's suit is dismissed.

13. Appeal allowed.