

(2019) 09 CAL CK 0341
In the Calcutta High Court

Case No : Tender Of Mand Appl (MAT) 349 Of 2019, Civil Application (CAN) No. 2689 Of 2019

Union Of India & Ors

APPELLANT

Vs

Pintu Kumar

RESPONDENT

Date of Decision : 26-09-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 377

Railway Protection Force (Amendment) Act, 1985 — Section 9

Railway Protection Force Rules, 1987 — Rule 146(i), 146.4, 161(ii), Rule 161(iii)

Citation : (2019) 09 CAL CK 0341

Hon'ble Judges : Tirthankar Ghosh, J; Biswanath Somadder, J

Bench : Division Bench

Advocate : Ashok Kumar Chakraborty, Partha Ghosh, Sabita Roy, Moloy Bose, Achin Kumar Majumdar

Final Decision : Dismissed

Judgement

Tirthankar Ghosh, J

This appeal has been preferred against the order dated 12.12.2018 passed in WP 25140(W) of 2016 wherein the learned Single Judge was pleased to allow the writ petition by setting aside the order dated 21st September, 2012, and the orders of the appellate authority dated 1st March, 2016 and reviewing authority dated 22nd July, 2016.

The brief facts of the case are that, the respondent/ writ petitioner was employed as a constable with the Railway Protection Special Force. On September 4, 2012 the respondent was posted at New Delhi Railway Station. An FIR was registered against him on September 5, 2012 for commission of offences punishable under sections 376 and 506 read with section 34 of the Indian Penal Code. The incident as alleged occurred on September 4, 2012 when the respondent was on duty at New Delhi Railway Station. In course of investigation, the respondent/writ petitioner was arrested after the registration of the FIR and pursuant to

submission of charge-sheet and framing of charges, custodial trial commenced against him before the learned Additional Sessions Judge, Special Fast Track Court - 2 (Central), Tis Hazari Courts, Delhi. During the pendency of criminal trial the Commandant Officer, No.8BN / RPSF / Chittaranjan by an order dated September 21, 2012 by exercising his powers under Rule 161 (ii) and

(iii) of the Railway Protection Force Rules, 1987 (hereinafter referred to as "RPF Rules") dismissed the respondent/ writ petitioner from service. The respondent/ writ petitioner thereafter approached the Appellate Authority, who by an order dated 1st March, 2016 was pleased to dismiss the appeal. Being aggrieved, the respondent / writ petitioner also approached the Reviewing Authority and the Authority by an order dated 22nd July, 2016 was pleased to dismiss the application.

Mr. Chakraborty, learned Senior Counsel appearing for the appellants drew the attention of the Court to the order dated 21st September, 2012 passed by the Commanding Officer and submitted that after a fact finding enquiry and its recommendation, the authority had to take a decision. In fact, he has drawn the attention of the Court to the nine witnesses who were examined by the enquiry officer and also the statement of the accused which was recorded after taking due permission from the Court, as at the relevant point of time the accused was in custody. Mr. Chakraborty submitted that the respondent / writ petitioner being a member of a disciplined force had to face the consequences. According to the settled principles, the invocation of Rules 161 (ii) and (iii) of the RPF Rules were substantiated by reasons and the learned Single Judge ignored the same while arriving at his conclusion. He further submits that number of reasons have been cited for not conducting the disciplinary proceedings.

He added, that the fact finding enquiry pursuant to the arrest of the writ petitioner incorporated the examination of nine witnesses and collection of series of documents and on conclusion it was found that there were grounds for taking action under Rule 161 (ii) and (iii) of the RPF Rules, 1987, such provision is a special procedure within the statute and the disciplinary authority had exercised such power. There were reasons for not conducting a formal departmental enquiry as the same was not possible in view of the writ petitioner suffering custodial trial for about three years and the materials collected in course of the enquiry reflected that the writ petitioner was thickly connected with the offence (of rape) while in discharge of his official duty, which is a serious misconduct within the scope and ambit of Rule 161 (ii) and (iii) of the RPF Rules. He also added that from the materials so collected, it revealed that the writ petitioner arranged Room no.201 illegally, kept the bags of the victim lady in the cloak room, spoke with the victim several times over phone on 04.09.2012 while on duty, and the written information of the complainant (treated as FIR) and medical report established the offence palpably which is sufficient to tarnish the image of the disciplined force. So far as the order of the learned Single Judge is concerned, he submitted that on one hand it has been held that reasons are

required for invoking Rule 161 (ii) and (iii) of the RPF Rules, and on the other hand the learned Court directed for holding a departmental enquiry, which is self-contradictory and suffers from illegality. The learned Senior Counsel in order to substantiate his case relied upon the following judgments:-

Workmen of Hindustan Steel Ltd. and another Vs. Hindustan Steel Ltd. and others reported in AIR 1985 SC 251; Senior Supdt. of Post Offices, Pathananthitta and others Vs. A. Gopalan reported in AIR 1999 SC 1514; Southern Railway Officers Assn. and another Vs. Union of India and others; Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and another reported in (1999) 3 SCC 679; Shashi Bhusan Prasad Vs. Inspector General Central Industrial Security Force reported in 2019 SCC OnLine SC 952.

Mr. Bose, learned Senior Counsel appearing for the respondent/writ petitioner supported the order of the learned Single Judge and challenged the manner in which the writ petitioner has been dismissed from service. He submitted that if the preliminary enquiry has been conducted, there is no reason for conducting the disciplinary proceeding, furthermore no enquiry report was handed over to the writ petitioner. The reasons assigned for invoking the special procedure under Rule 161(ii) and (iii) of the RPF Rules, 1987 are presumptuous. The dispensation of disciplinary proceedings, by not conducting the regular proceeding, has seriously prejudiced the writ petitioner and he has been dismissed without following the basic principles of natural justice. There was gross illegality in the manner in which the writ petitioner was dismissed from his service and the learned Single Judge rightly interfered with the impugned order passed by the disciplinary authority and set aside the same. As such, there is no scope for this Court to interfere with the order passed by the learned Single Judge. In support of the contention advanced by him the learned Counsel for the respondent / writ petitioner, relied upon the following judgments:-

Tarsem Singh Vs. State of Punjab and Ors. reported in (2006) 13 SCC 581; Jaswant Singh Vs. State of Punjab & Ors. reported in (1991) 1 SCC 362.

So far as the precedents relied upon by the learned Senior Counsel appearing for the appellants are concerned, the applicability of the same in the background of the facts of the present case may be assessed. In the case of Workmen of Hindustan Steel Ltd. and another Vs. Hindustan Steel Ltd. and others reported in AIR 1985 SC 251, the learned Counsel relied upon a part of paragraph 4 which reads as follows :

"One can appreciate that in a given situation, an enquiry into misconduct may be counterproductive. Constitution itself contemplates such a situation when it enumerates situations in which a punishment of dismissal, removal or reduction in rank can be imposed without holding a disciplinary enquiry."

However, in the said case, the Hon'ble Apex Court was not satisfied with the application of the said standing order and directed the respondents Hindustan Steel Ltd. and others to recall and cancel the standing order.

In the case of Senior Supdt. of Post Offices, Pathananthitta and others Vs. A. Gopalan reported in AIR 1999 SC 1514, the Hon'ble Apex Court in paragraph 6 was pleased to hold as follows :

"6. We have heard Shri V. C. Mahajan, the learned senior counsel appearing for the appellants and Shri KMK Nair, the learned counsel appearing for the respondent. Shri Nair has submitted that since the respondent has been acquitted of by the criminal Court on the charge of withdrawal of Rs.8,000/- the Tribunal was right in holding that the finding regarding the first charge could not be sustained. Shri Nair has placed reliance on the decision of this Court in Nelson Motis v. Union of India (1992) 5 JT (SC) 511 : (1992 AIR SCW 2304). The said decision does not lend support to the said submission of Shri Nair. In that case the Court has rejected the contention that disciplinary proceedings could not be continued in the face of the acquittal in the criminal case and has held that the nature and scope of the criminal case are very different from those of a departmental disciplinary proceedings and an order of acquittal, therefore, cannot conclude the departmental proceedings. This is so because in a criminal case the charge has to be proved by the standard of proof beyond reasonable doubt while in departmental proceedings the standard of proof for proving the charge is preponderance of probabilities. The Tribunal was, therefore, in error in holding that in view of the acquittal of the respondent by the criminal Court on the charge relating to withdrawal of Rs.8,000/- the finding on the first charge in the departmental proceedings cannot be upheld and must be set aside."

The ratio in this case extends support to the contention of the Appellant that acquittal in a criminal trial cannot automatically be a ground for setting aside the finding / conclusion arrived at a departmental proceeding.

In Southern Railway Officers Assn. and another Vs. Union of India and others relied upon by the learned Counsel for the appellants, circumstances demonstrating invoking of the special jurisdiction of the disciplinary authorities were substantiated and the learned Counsel by relying upon the same tried to emphasize that the circumstances of the instant case were such that, no option was available with the authorities to proceed with a regular enquiry, and it was only after adopting abundant precaution, that the special procedures under Rule 161 (ii) and (iii) of the RPF Rules, 1987 were invoked, as the writ petitioner / respondent was a member of a disciplined force.

On behalf of the appellants, learned Counsel distinguished the judgment of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and another reported in (1999) 3 SCC 679 in the manner in which the learned Single Judge has relied upon the same and came to the conclusion that, "The Proceedings both criminal as well as departmental can be continued parallely. However, the issue as to whether the departmental proceeding can continue during the pendency of the criminal proceeding is not germane to the facts of the instant case. It is, however, curious to note that the order impugned was passed even before the writ-petitioner was acquitted in the criminal proceedings albeit on a benefit of doubt."

Finally, the learned Counsel relied upon a recent judgment of the Hon'ble Apex Court rendered in the case of Shashi Bhusan Prasad Vs. Inspector

General Central Industrial Security Force reported in 2019 SCC OnLine SC 952 wherein under similar circumstances the Hon'ble Apex Court was pleased to affirm the order of dismissal of service passed by the departmental authorities in the following manner:-

"19. We are in full agreement with the exposition of law laid down by this Court and it is fairly well settled that two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on an offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. Even the rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused beyond reasonable doubt, he cannot be convicted by a Court of law whereas in the departmental enquiry, penalty can be imposed on the delinquent on a finding recorded on the basis of "preponderance of probability". Acquittal by the Court of competent jurisdiction in a judicial proceeding does not ipso facto absolve the delinquent from the liability under the disciplinary jurisdiction of the authority. This what has been considered by the High Court in the impugned judgment in detail and needs no interference by this Court".

The case of Tarsem Singh (supra) relied upon by the learned Senior Counsel of the respondent / writ petitioner is clearly distinguishable from the fact situation of the present case. In paragraph 10 of the said judgment it has been categorically observed that:

"The learned counsel appearing on behalf of the appellant has taken us through certain documents for the purpose of showing that ultimately the police on investigation did not find any case against the appellant in respect of the purported FIR lodged against him under Section 377 IPC."

In this case, the FIR so registered culminated in a charge-sheet and full fledged trial had taken place. During the pendency of the criminal trial, the fact finding enquiry was conducted and the disciplinary authority after recording reasons proceeded to arrive at their finding.

In Jaswant Singh's case (supra) relied upon by the learned Senior Counsel of the respondent / writ petitioner it is reflected in Paragraph 5 that the two reasons cited for not holding the departmental enquiry were as follows:

"These are (i) the appellant has thrown threats that he with the help of other police employees will not allow holding of any departmental enquiry against him

and (ii) he and his associates will not hesitate to cause physical injury to the witnesses as well as the enquiry officer."

In the later part of said paragraph 5 it has been held:

"This allegation is based on his alleged activities at Jullundur on April 3, 1981 reported by SHO/GRP, Jullundur. That report is not forthcoming. It is no one's contention that the said SHO was threatened. Respondent 3's counter also does not reveal if he had verified the correctness of the information."

The factual situation in the aforesaid decision so cited is clearly distinguishable as the respondent / writ petitioner availed the provisions of appeal and review.

We have considered the submissions relied upon by both the parties and the relevant part of the order of the learned Single Judge which has aggrieved the appellants are in respect of the following observations :-

"The reasons recorded in the impugned order for dispensing with the enquiry, to say the least, are baffling. The Commanding Officer has referred to Newspaper Reports, "agony and humiliation suffered by the alleged victim of rape" and "tarnishing of the image of the force". It was also held that holding the enquiry would "harm the basic tenets and ethos of the society where we put honour of woman at high esteem".

Further observation of the learned Single Judge, which according to the learned Counsel for the appellants seriously prejudiced them are as follows:-

"It is, however, curious to note that the order impugned was passed even before the writ- petitioner was acquitted in the criminal proceedings albeit on a benefit of doubt."

Relevant portion of the order dated 21.09.2012, for invoking the provisions of Rule 161(ii) and (iii) are set out as follows: -

"On perusal it is found that the FIR full of the agony mentioned which shows what humiliation the lady must have gone because of this constable and have tarnished the image of the Force and at this juncture, I found it not practicable to hold enquiry as per prescribed procedure in relevant rules of RPF Rules, 1987.

Secondly, I don't think conducting a DAR proceeding is practicable because inclusion of many witness will drag the enquiry. This dragging of enquiry will harm the basic tenets and ethos of our society where we put honour of woman at high esteem. Departmental proceedings are based on preponderance of probability and technicalities of criminal law should not be evoked. I find sufficient material on record/enquiry report that proves involvement of Constable Pintu Kumar in the rape of victim (name omitted).

Thirdly, the duties of RPSF personnel deployed for Station bandobust duty are responsible for the security of the passengers and their belongings, instead of providing security to passengers resorted to rape of a lady which is not only an

act unbecoming of a uniformed personnel of the RPSF but also a criminal act. This conduct of Const Pintu Kumar is very reprehensible and it has brought down the reputation of RPSF particularly apart from bringing bad name to the Railway department. A security personnel is expected to inspire confidence and the sense of security amongst the public/passengers. However, in this case Const/08SF1036269 Pintu Kumar himself becomes a threat to the department/Railway Passengers which is objectionable &condemnable it is a case where holding an enquiry will demoralize the aggrieved and encourage the wrongdoer. To maintain the integrity in the Force, it is not expedient to hold any enquiry.

Reasonable opportunity was provided to the Constable and his statement was recorded wherein he has admitted that he had arranged to keep the bags of the victim in cloak room, he had talked with the victim over mobile phone for 5/6 times on 04.09.2012 and he had managed the room No.201 in New Delhi Rly Station illegally.

In light of the above and careful perusal of available records, I arrive at the conclusion that Constable Pintu Kumar, Const/08SF1036269 had indeed involved himself in rape of victim (name omitted) against the ethos of his duty and against the purpose for which he was appointed. His act has tarnished the image of the Force. Therefore, I found him contravening RPF Rules, 146 (i) and 146.4

Therefore, by exercising power under Rules 161(ii) &(iii) of RPF Rules, 1987, Constable/08SF1036269 Pintu Kumar S/o Upender Yadav is hereby 'dismissed from service' with immediate effect."

The writ petitioner's appeal by an order dated 01.03.2016 was dismissed as the same was barred by limitation, wherein the appellate authority held:

"He acknowledged the punishment order on 27.09.2012. He ought to have submitted the appeal within statutory period of 30 days in terms of Section 9 of RPF Act, 1985, that is his appeal should have been submitted by 27.10.2012.

Shri Pintu Kumar, EX-CT preferred an unsigned appeal dated 26.05.2015 to the DIG/RPSF which was returned to him mentioning therein the reasons.

Now, Shri Pintu Kumar, EX-CT again preferred an appeal dated 14.06.2015 to the DIG/RPSF, against punishment of Dismissal from Service, mentioning therein that conditions laid down in Rule 161(ii) & (iii) are not applicable upon him and since he has been acquitted from Court, requested to be reinstated.

It is observed that Shri Pintu Kumar, has preferred the instant appeal after the lapse of considerable period i.e. more than three years. Appeal dated 14.06.2015 submitted by Shri Pintu Kumar, EX-CT, being time barred in terms of Section 9 of RPF Act, 1985, cannot be considered."

The writ petitioner further preferred a revision in respect of the order passed by the appellate authority which was disposed of by an order dated 11.07.2016. The relevant part of the said order is set out as follows:

"In the instant revision petition the revisionist did not bring any new facts or grounds for not submitting any appeal within the prescribed limit or any valid grounds for failing to do so. On going through the DAR case file and revision petition it is apparently clear that the revisionist was under no restriction to submit an appeal against his dismissal order passed by the competent authority. On the other hand it is well established that the statements of the revisionist was recorded during his being in judicial custody on the direction of the court and the relevant orders of his dismissal etc. were properly served on him with due acknowledgement. As such he had sufficient time and facilities to submit his appeal within stipulated time.

I have also carefully gone through the Judgment dated 01.05.2015 of Additional Sessions Judge FTC-2 (Central) Tis Hazari Court Delhi, submitted by the revisionist acquitting the accused persons including the revisionist. The Judgment which is covered in 59 pages is purely on technical grounds and that too giving benefit of doubts as the inquiry officer had let off another accused (third) in the case though the complainant and complained of sexual harassment with her by 03 persons including the revisionist. Further to this the victim had clearly identified the revisionist in the court also for commissions of the offence. Not only this vide para 48 of the above judgment the DNA of accused revisionist was found tallying with the DNA found on the under wear of the victim, her vaginal swabs, one of the bed-sheets, pillow cover and one handkerchief recovered from scene of crime in Room No.201 of New Delhi Railway station. Further to this revisionist could not submit any grounds for the alleged demand of Rs.5 Lacs from his by the victim as the cause of filing FIR against him. As such, on the face of so strong the evidence against him it is highly unbecoming of him as a member of an Armed Force of Union.

Moreover, the appeal has also been filed by the State in Hon'ble High Court, Delhi vide Criminal L.P. No.755/2015 S/V-HawanPratap Singh @ Pappi and others in the Hon'ble High Court of Delhi against the order dated 01.05.2015 of Hon'ble Additional Session Judge, Tis Hazari Court, Delhi.

Considering all the aspects of the case I do not find any reasonable grounds at this stage to interfere with the orders of dismissal of revisionist passed by the Disciplinary Authority and orders of the Appellate Authority rejecting the Appeal of the revisionist. The revision petition as such is hereby rejected."

We have taken into consideration the orders passed by the Commanding Officer, No.8BN / RPSF / Chittaranjan dated 21st September, 2012, by the DIG / RPSF, Railway Board dated 1st March, 2016 and by the IG / RPSF, Railway Board dated 11th July, 2016. In the order dated 21st September, 2012, it has been observed that the contents of the FIR reflected humiliation of a lady at the hands of the writ petitioner / respondent which was sufficient to tarnish the image of the force and so it was not possible for the authorities to hold enquiry as per regular procedure in accordance with the relevant rules of the RPF Rules, 1987. Additionally, it was held that the duties of RPSF personnel deployed at a station

are responsible for the security of the passengers and their belongings, instead of providing securities to passengers, the writ petitioner / respondent exposed himself to certain act / conduct which is not only unbecoming of a uniformed personnel of the RPSF but also a criminal act, the security personnel who is expected to inspire confidence and a sense of security amongst the public

/ passengers has become a threat to the department / railway passengers which is objectionable and condemnable and, as such, there was no necessity in carrying out a regular enquiry. The materials collected during the enquiry reflected that the writ petitioner / respondent had kept the bags of the victim in cloak room, spoke with the victim over mobile phone for 5 / 6 times on 04.09.2012 and had managed room no.201 in New Delhi Railway Station illegally.

The aforesaid grounds are significant and create a meaningful circumstance for the department to invoke the provisions of Rule 161 (ii) and (iii) of the RPF Rules, 1987, particularly, the ground so assigned which emphasise the aspect of security, the confidence reposed upon a disciplined force and the manner in which the writ petitioner has violated the same.

The writ petitioner also approached the Appellate Authority and the Appellate Authority was pleased to dismiss the same as no substantial grounds were shown for condoning the delay according to the Rules.

The writ petitioner being aggrieved, by way of revision against the order of appeal approached the IG / RPSF who was pleased to observe that the judgment of the learned Additional Sessions Judge was based on technical grounds and it revealed from the records that DNA of the accused / writ petitioner tallied with the DNA found on the underwear of the victim, her vaginal swabs, and one bed-sheet, pillow cover and one handkerchief which were recovered from the scene of crime in Room No.201 of New Delhi Railway Station.

The respondent / writ petitioner has exhausted the provisions as contained under the RPF Rules and the learned Single Judge ignored the subsequent orders passed by the DIG and IG of RPSF, Railway Board and only concentrated on the order dated 21st September, 2012 passed by the Commanding Officer, No.8BN / RPSF / Chittaranjan. As the order dated 21st September, 2012 was passed much before the Criminal Court arrived at its conclusion and the writ petitioner did not challenge the application of the special procedures provided under the Rule 161 (ii) and (iii) of the RPF Rules, 1987 before the Appellate Authority or the authority exercising powers of revision, it was not appropriate at such a belated stage to set aside the order passed by the disciplinary authority. We, therefore, hold that the reasons so assigned by the Commanding Officer in the order dated 21st September, 2012, being passed on scrutiny and assessment of nine witnesses and twelve documents were sufficient for arriving at a conclusion for invoking the special procedures and the learned Single Judge ignored the same and arrived at his finding.

The ratio of the Hon'ble Supreme Court passed in Shashi Bhusan Prasad's case

(supra) is squarely applicable to the facts of the present case of the appellants and, as such, the order dated 12.12.2018 passed by the learned Single Judge in WP 25140(W) of 2016 is hereby set aside.

The appeal is allowed accordingly.

Consequently the writ petition is dismissed.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on a priority basis.