

(2009) 04 AHC CK 0124
In the Allahabad High Court
Case No : Special Appeal No.230 of 2009

Union of India Through The Inspector General-Cum-Chief
Security Commissioner, Railway Protection Force, Northern
Railway and Otehrs

APPELLANT

Vs

Ram Bahadur Yadav

RESPONDENT

Date of Decision : 07-04-2009

Acts Referred:

Railway Protection Force Rules, 1987 — Rule 161

Citation : (2009) 04 AHC CK 0124

Hon'ble Judges : C.K.Prasad, CJ and Pradeep Kant, J

Final Decision : Dismissed

Judgement

1. Though there is some delay in filing the appeal, we condone the delay and proceed to hear this special appeal on merit.
2. The appellant Union of India challenges the order passed by the learned Single Judge dated 17.2.2009 by which the writ petition preferred by the respondent challenging the order of his dismissal from service has been allowed and the orders passed by the appellate authority as well as the revisional authority have also been quashed and the respondent has been awarded 50% of the back wages.
3. Sri B.K. Shukla, learned counsel for the appellant has vehemently urged that under Rule 161 of the Railway Protection Force Rules 1987 (hereafter referred to as "the Rules") special procedures have been prescribed, in cases where the authority competent can impose a punishment even without holding a formal disciplinary enquiry and that the present is a case where it was not reasonably practicable to hold an enquiry in the manner prescribed and, therefore, the view taken by the learned Single Judge is manifestly erroneous.
4. In short, the facts of the case are that the respondent who was working as a Head Constable in the Railway Protection Force was charged of collusion in the incident involving theft of more than one crore of rupees of NonJudicial Stamp

Papers, in which he was said to be actively involved. The authority competent apparently being satisfied that this is a fit case where it was not reasonably practicable to hold an inquiry though issued certain notices to the respondent but without holding any departmental inquiry, passed the impugned order of dismissal from service on 22.10.1998. The incident is said to have occurred in the night of 17/18th of September 1998. The appeal and revision preferred before the departmental authorities remained unsuccessful.

5. The respondent being aggrieved by the orders aforesaid, preferred the present writ petition mainly assailing the said orders on the ground that the authority competent could not have dispensed with the inquiry and that none of the ingredients as provided in Rule 161 were found to be present, nor any such reason was recorded in the impugned order and, therefore, the same was bad in law.

6. The learned Single Judge being satisfied of the plea of the respondent, set aside the order of dismissal dated 22.10.1998 and also the appellate order dated 12.2.1999 and revisional order dated 3.8.1999.

Rule 161 reads as under:

161. Special Procedure in certain cases: Notwithstanding anything contained anywhere in these rules

(i) where any punishment is imposed on an enrolled member of the Force on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) where the authority competent to impose the punishment is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules;

(iii) where the President is satisfied that in the interest of security of State and the maintenance of integrity in the Force, it is not expedient to hold any inquiry in the manner provided in these rules;

the authority competent to impose the punishment may consider the circumstances of the case and make such orders thereon as it deems fit.

7. Needless to mention that the procedure prescribed under the aforesaid rules is special procedure in certain cases, given therein, which makes an exception to the general Rule of holding a disciplinary enquiry against an employee before passing an order of dismissal from service.

8. A bare perusal of the aforesaid rule makes it abundantly clear that under subrule (ii), the authority competent to impose the punishment has been conferred with the power to impose the punishment as per his discretion without holding any regular disciplinary inquiry, if he is satisfied for the reasons to be recorded in writing that it was not reasonably practicable to hold an inquiry in the manner provided in the rules.

9. The requirement of recording reasons in writing before proceeding to pass an order under the aforesaid rules is a check on the arbitrary exercise of jurisdiction by the authority concerned. The rule obligates the authority competent to record reasons in writing and such requirement having been prescribed under the rule, it necessarily follows that not only the reasons have to be recorded, but such reasons must be valid and not mere assumptions or presumptions. The reasons thus should be germane and relevant enough to satisfy the authority competent, that it was not reasonably practicable to hold an inquiry.

10. The respondent in this case was posted and working as a Head Constable. The allegation against him was that he was in collusion with certain persons suspected to be involved in theft and therefore, unless the authority competent had recorded the reasons as per the requirement of the aforesaid rules, he would not get jurisdiction to impose any punishment including dismissal from service. The learned Single Judge has found that no reasons were recorded for adopting the said procedure.

11. Learned counsel for the appellant, however, submitted that the reasons were on the record but the learned Single Judge did not summon the record though it was obligatory upon him to summon the record as the order impugned did not specify the reasons, but for that matter the said order cannot be said to be bad in law as it has been held by the Apex Court in the case of *Union of India v. Tulsiram Patel*, reported in (1985) 3 SCC 398, that recording of reasons in the order itself is not mandatory but if a challenge is made, the reasons can be seen from the record, which is to be summoned by the Court. He further submitted that in the counter affidavit, reasons were mentioned, namely, the threats extended by the persons suspected to be involved in the case, to the witnesses which included respondent also, and therefore it was not reasonably practicable to hold an enquiry.

12. Assuming the plea of the appellant that the reasons could have been shown to the Court from the record, and there may not be any requirement to record the reasons in the order itself, still the burden would be upon the appellant to satisfy the Court that there were reasons recorded in writing and that those reasons were relevant and germane to the issue being in conformity with the intention of the rule.

13. The alleged reason that the witnesses were threatened by the persons suspected to be involved in the case, obviously is not and cannot be the reason for not holding departmental enquiry against a Head Constable of the Railway Protection Force unless, of course, there was something more cogent and some overt act of the respondent which would have made the holding of the enquiry impracticable. Merely because allegedly some threats were extended by the persons who were suspected to be involved in the case including the respondent, that would not constitute a valid reason, for not holding the enquiry.

14. Besides, the incident took place in the night of 17/18th of September 1998

and the order of dismissal was passed on 22nd of October 1998. Admittedly, no regular charge sheet was framed nor was issued nor any effort was made to serve it upon the respondent nor any steps were taken for initiating the departmental enquiry. The enquiry was, thus, never initiated by the authority competent, and therefore, it cannot be said that because of the alleged threats extended by the suspects, the witnesses were not coming forward or that they refused to come and depose in the enquiry.

15. The aforesaid reason also does not appear to be relevant or a correct reason, when we look into the counter affidavit filed by the appellant in the writ petition.

16. In paragraph 3 of the counter affidavit, which was filed by the Union of India, it was stated that ???Opposite party No.3, namely, the authority competent after satisfying himself and recorded reasons in writing that it was not reasonably practicable to hold an enquiry and on the basis of materials on record imposed punishment of dismissal from service looking into the gravity of the case and in paragraph 7 it has been stated.? ????.Under the circumstances of the case confidential enquiry was held in which statements of concerned persons were recorded and after due consideration of the said enquiry, order of punishment was passed in accordance with law.?

17. The aforesaid statements of fact, made on oath by an officer of the rank of Senior Divisional Security Commissioner, Railway Protection Force, establish that the witnesses were available and in fact, if the averments are to be believed, a confidential inquiry was held in which statements of concerned persons were recorded. If that be so, it cannot be said that because of the alleged threats extended by the suspected persons including the respondent, the witnesses were not to come forward to give their statements or to appear as witnesses.

18. The plea of the learned counsel for the appellant that the reasons have been recorded in the impugned order is also not tenable in view of the fact that no such reasons have been recorded, as is evident by the recital made in the order of dismissal from service which reads as under:

?Where as the undersigned is fully satisfied that circumstance of the case are such that it is not reasonably practicable to hold D & AR enquiry in the manner provided for the enrolled member of the force under the RPF Rules No.132, 148 and 153 of the R.P.F. Rules 1987.?

19. The aforesaid phraseology used in the order is exact reproduction of the provision of rule but it does not give actually any reason for which it was not reasonably practicable to hold an inquiry. Merely reiterating the rule in the order, the mandate of the rule of recording reasons in writing does not stand fulfilled.

20. We are, therefore, of the considered opinion that the present was not a case where no disciplinary inquiry could have been held and for that matter there was any reason much less any valid and cogent reason to dispense with the inquiry and to pass an order of dismissal from service under the special procedure

provided under Rule 161.

21. The order impugned did not record any reason in writing even worth the name, so as to take a different view as against the view expressed by the learned Single Judge.

22. In regard to the plea that the respondent since had not worked and was involved in a case of theft, the learned Single Judge ought not to have directed for payment of 50% of back wages, suffice it will be to mention that the services of the respondent were dispensed with by adopting a procedure which could not have been applied in this case, and therefore, he remained out of employment for a long time and in the meantime, he crossed the age of superannuation. In the circumstances, if the learned Single Judge as per his own discretion, has curtailed his monetary benefit to the extent of 50%, nothing more is required to be done.

23. We, for the reasons stated above, find no merit in the submissions made by the learned counsel for the appellant. The appeal being devoid of force is, hereby, dismissed.