Chief Security Officer & Ors.

Vs

Singasan Rabi Das

Civil Appeal No. 6 of 1990

(M. H. Kania, J. S. Verma, V. Ramaswami - II JJ)

09.01.1991

JUDGMENT:-

1.The respondent singasan Rabi Das was removed from service with effect from May 13, 1976 by the secutity officer, chakradharpur. The respondent was posted at sini in the Distt. of singhbhum.by an order dated May 12,1976 it was held that respondent was guilty of gross misconduct. It was stated in the order that while on duty in Railway yard at Gamharia on April 28, 1976 outsiders entered into the Railway Yard and lifted railway material and concealed them under a tree and when the respondent came there he allowed the outsiders to carry the stolen material after taking rupee 1/- from each of the said outsiders. The said order recited that an enquiry into the above misconduct as provided in Rules 44,45 and 46 of the Railway Protection Force Rules, 1959 was considered not practicable "because of the facts that it is not considered feasible or desirable to procure the witnesses of the security/ other Railway Employees since this will expose them and make them ineffective for future. These witnesses if asked to appear at a confronted enquiry are likely to suffer personal humiliation and insults thereafter or even they and their family members may become targets of acts of violence.

2. On the above stated grounds, the respondent was dismissed from service without any enquiry into the charges and without an opportunity being given to him to show cause against the proposed punishment exercising the powers under Rule 47 of the above said Rules which enabled the appellant to dispense with the procedure prescribed if he were of opinion that such enquiry was not reasonably practicable. The respondent filed a writ petition in the High Court of judicature at Patna. The order was challenged before a Division Bench of that Court on the grounds that the order of removal from service was passed without any enquiry into the charges and without giving any opportunity to the respondent to show cause against the proposed punishment hence was bad in law and liable to be set aside following the decision in T. R. Chellappah v. Union of India, reported at 1976 (3) SCC 190: (AIR 1975 SC 2216) and that the reasons given in the order for dispensing with the enquiry were irrelevant.

3. The High Court held that the reasons given in the impugned order were sufficient and on those materials the disciplinary authority could have been satisfied that it was not reasonably practicable to follow the normal procedure. However, it was of the view that the respondent was entitled to a show cause notice against the proposed punishment and since an opportunity had not been given to him to show cause to the proposed punishment the order of removal was bad. In that view the High Court quashed the order of removal. However, it stated that it would be open to the disciplinary authority to pass a fresh order after giving an opportunity to the respondent herein to show cause against the proposed punishment.

4. It was contended by Dr. Anand Prakash, learned counsel for the appellant before us that in view of the decision of this court in Union of India v. Tulsi Ram Patel, reported at 1985 (3) SCC 123: (AIR 1985 SC 1416), no fresh notice was required to show cause against the proposed punishment before the order of removal was passed and hence the decision of the High Court is liable to be set aside.

5. In our view it is not necessary to go into the submissions made by Dr. Anand Prakash because we find that in this case the reason given for dispensing with the enquiry is totally irrelevant and totally insufficient in law. It is common ground that under Rules 44 to 46 of the said Rules normal procedure for removal is that before any order for removal from service can be passed the employee concerned must be given notice and an enquiry must be held on charges supplied to the employees concerned. In the present case the only reason given for dispensing with that enquiry was that it was considered not feasible or desirable to procure witnesses of the security/other Railway employees since this will expose these witnesses and make them ineffective in the future. It was stated further that if these witnesses were asked to appear at a confronted enquiry they were likely to suffer personal humiliation and insults and even their family members might become targets of acts of violence. In our view these reasons are totally insufficient in law. We fail to understand how if these witnesses appeared at a confronted enquiry, they are likely to suffer personal humiliation and insults. These are normal witnesses and they could not be said to be placed in any delicate or special position in which asking them to appear at a confronted enquiry would render them subject to any danger to which witnesses are not normally subjected and hence these grounds constitute no justification for dispensing with the enquiry. There is total absence of sufficient material or good grounds for dispensing with the enquiry. In this view it is not necessary for us to consider whether any fresh opportunity was required to be given before imposing an order of punishment. In the result the appeal fails and is dismissed. There will be no order as to costs.

Appeal dismissed.

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