SUPREME COURT OF INDIA

Sahadeo Singh

Vs.

Union of India

C.A.No.4559 of 1996

(N. Santosh Hegde and B.P. Singh JJ.)

06.02.2003

JUDGMENT

N. Santosh Hegde, J.

1. The first and the third appellants and one Kirity Bhusan Pal while working as `Rakshaks' in the Railway Protection Force (RPF) were removed from the said service on the ground of serious misconduct and negligence of duty by the Assistant Security Officer, Eastern Railway, exercising the power conferred on him under Rule 47 of the *Railway Protection Force Rules, 1959* (the Rules). While passing the said order, the said officer came to the conclusion that he was satisfied that no independent evidence will be available in the departmental enquiry against these appellants in view of the prevailing fear amongst the witnesses and it was not reasonably practicable to hold any fair inquiry, hence, dispensing with the requirement of holding an inquiry, he passed the said order of removal.

2. Brief facts necessary for disposal of this appeal are that these appellants when they were on duty as Rakshaks (Guards) of 733 UP goods train colluded with other officials in the said train and certain other miscreants by assisting them in the theft of large quantities of rice bags from the said goods train thereby causing huge loss to the Railways. The authorities after holding preliminary enquiries and considering the material gathered in the 3 reports received from such preliminary enquiries passed the impugned order. The appellants after exhausting the departmental remedies filed a writ petition before the High Court of Calcutta alleging various irregularities in the procedure adopted by the disciplinary authority and also contending that dispensation of the enquiry on the grounds recorded by the disciplinary authority was wholly unsustainable and violative of their constitution right of being afforded an opportunity of a fair enquiry.

3. The learned Single Judge came to the conclusion that the disciplinary authority committed a serious error in dispensing with the enquiry on grounds which are not sufficient for the purpose of dispensation of enquiry, hence, the removal of the appellants was illegal, consequently, he allowed the said writ petition with a direction to reinstate the appellants with all consequential benefits.

4. The Railways being aggrieved by the said order of the learned Single Judge, preferred an appeal before the Appellate Bench of the said High Court. The said Bench did not agree with the findings of the learned Single Judge and came to the conclusion that the view of the disciplinary authority that on facts and circumstances of the case, it was not practicable to hold a fair inquiry, was justifiable on the material available on record, hence, it reversed the judgment of the learned Single Judge by allowing the appeal, consequently the original writ petition filed by the appellants came to be dismissed. It is against the said judgment of the Appellate Bench that this appeal is filed.

5. Mr. Ranjan Mukherjee, learned counsel appearing for the appellants, contended that the Division Bench has seriously erred in reversing the well-considered judgment of the learned Single Judge. He contended that the so-called report on which the disciplinary authority relied upon to dispense with the inquiry, was not based on any material whatsoever, hence, the said authority erred in relying upon the mere ipse dixit of the Officer who prepared those reports. It is his contention that on facts and circumstances of the case, the disciplinary authority could not have invoked Rule 47 of the Rules and the exercise of such power was for extraneous consideration. He also contended that the authorities have exercised the power under Rule 47 with the sole intention of avoiding an inquiry, therefore, such exercise of power, according to the learned counsel, would run counter to the ratio of the judgments of this Court in *Chief Security Officer & Ors. v. Singasan Rabi Das*[1], and *Jaswant Singh v. State of Punjab & Ors.*[2]. He also placed reliance on certain observations of this Court in the case of *Union of India etc. v. Tulsiram Patel*[3].

6. We have heard learned counsel for the parties and perused the records. Having done so, we find it difficult to accept the argument of the learned counsel for the appellants. Before the disciplinary authority decided to dispense with the inquiry exercising the power under Rule 47 of the Rules, three internal enquiries were conducted by the officials of the Railway Protection Force. A persual of these enquiry reports clearly shows the though there were witnesses who had seen the incident of theft of rice bags from the goods train in question to which the appellants and others were parties, none of them was willing to either give a statement in writing or give evidence apprehending danger to his life. The facts narrated in these internal reports clearly go to show that these appellants were in league with certain desparate miscreants, therefore, the locals who witnessed the theft were not willing to come forward to give any evidence, therefore, the disciplinary authority, in our opinion, rightly came to the conclusion that it would be impracticable for the Railways to hold an enquiry wherein witnesses could be examined to establish the misconduct of the appellants. From the preliminary reports, it is clear that these appellants were involved in the theft of the rice bags from 733 UP goods train on 25.2.1983 and in view of the apprehension expressed by the witnesses, the Railways was not in a position to hold a proper enquiry. In these circumstances, in our opinion, the authorities rightly invoked Rule 47 of the Rules.

7. Learned counsel for the appellants, as stated above, strongly relied upon the judgment of this Court in the case of Singasan Rabi Das (supra). A persual of this case shows that the observations of this Court in the case do not apply to the facts of the present case. In that

case, the Railways gave an excuse that it is not feasible or desirable to procure the witnesses because they were likely to suffer personal humiliation and may become the targets of acts of violence. This opinion expressed in the said case was held to be not justified as could be seen from the said judgment because of lack of material produced by the Railways, hence, this Court proceeded on the basis that on facts of that case, the Railways were only trying to protect the witnesses and in fact there was no reasonable apprehension that the witnesses will not appear before the Inquiry Officer. That is not the case in these appeals, as noticed by us hereinabove. The three preliminary enquiries, made on the spot, clearly established the fact that though people have witnessed the theft of rice bags in which incident these appellants are involved, they are not willing to come forward because they apprehend danger to their lives. The apprehension of danger to life in this appeal is not that of the Inquiry Officer but is that of the witnesses themselves. Therefore, we do not think the appellants can take advantage of the observations of this Court in the case of Singasan Rabi Das (supra).

8. The next case relied upon by the learned counsel for the appellants is a Jaswant Singh (supra) wherein this Court while considering dispensation of an enquiry in departmental proceedings against a Police Officer held that on the facts of that case the departmental enquiry was sought to be dispensed with solely on the ipse dixit of the authority concerned, therefore, this Court held that when such satisfaction of the concerned authority is questioned to be proved in a court of law, it is incumbent on those who support the order of dispensation to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer. On the basis of the said principles, on the facts of that case, this Court came to the conclusion that the respondent-State was not able to satisfy the Court as to the existence of material facts from which satisfaction as to the dispensation of enquiry could be arrived at.

9. In the present appeal before us, as discussed by us hereinabove, the Railways have produced materials based on which the satisfaction of the authority to dispense with the enquiry was made. Though this satisfaction was found to be erroneous by the learned Single Judge, the Division Bench rightly reversed that finding. In this appeal, we ourselves have perused the contents of the three internal reports and we are satisfied that on the facts of this appeal, the disciplinary authority had correctly based its satisfaction to dispense with the enquiry. The material found in the 3 internal reports, in our opinion, is sufficient to dispense with the enquiry. Therefore, we are in agreement with the judgment of the Division Bench of the High Court. Learned counsel for the appellants then relied upon certain Circulars of the Railway Board to show that there was an obligation on the disciplinary authority to have given a second show-cause notice before imposing the punishment of removal. We are unable to accept this argument also because we are not satisfied that this Circular in any manner imposed a statutory obligation on the Railways to issue such a show cause notice. At any rate, on facts of this case, we are satisfied that such a notice is not contemplated.

10. For the reasons stated above, this appeal fails and the same is dismissed. Appeal dismissed.

[1]AIR 1991 SC 1043 *[2]AIR 1991 SC 385* *[3]1985(3) SCC 398*