

GAHC010095552022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3496/2022

ASHOK KUMAR
S/O- DHOOP SINGH, R/O. VILL. AND P.O.- SANGA, DIST.- BHIWANI
(HARIYANA), PIN- 127309.

VERSUS

THE UNION OF INDIA AND 3 ORS
REPRESENTED BY THE PRINCIPAL CHIEF SECURITY COMMISSIONER,
RPF, N.F. RAILWAY, MALIGAON, GUWAHATI- 781011.

2:THE SENIOR DIVISIONAL SECURITY COMMISSIONER
RPF
N.F. RAILWAY
LUMDING.

3:THE DIVISIONAL SECURITY COMMISSIONER
N.F. RAILWAY
LUMDING.

4:THE INSPECTOR
RPF
N.F. RAILWAY
LUMDING- 782447

Advocate for the Petitioner : MR. J LASKAR

Advocate for the Respondent : ASSTT.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 21-09-2023

Heard Swati B. Baruah, learned counsel for the petitioner. Also heard Mr. B Chakravarty, learned CGC appearing for the respondents.

2. The petitioner has put to challenge the impugned order dated 11.09.2020 issued by the respondent No. 2, dismissing the petitioner from the Railway Protection Force in terms of Rule 161 (ii) of the Railway Protection Force Rules, 1987 (hereinafter referred to as the "RPF Rules, 1987"). The challenge made to the impugned order is on the ground that while Rule 161(ii) enables the competent authority to impose a punishment without holding a formal enquiry, the competent authority has to record reasons in writing as to why it was not reasonably practicable to hold a formal enquiry as per Rule 153 of the RPF Rules, 1987. However, no reasons are recorded in the impugned order.

3. The learned counsel for the petitioner submits that the petitioner has been dismissed from service on the allegation of having molested a 12 year old girl along with two other persons. However, no Show Cause notice or Memorandum of Charge was issued to the petitioner, prior to the impugned order of dismissal. Though a preliminary enquiry had been initiated against the petitioner by the respondents, the copy of the preliminary report was never furnished to the petitioner and as stated earlier, no formal enquiry was conducted. The petitioner's counsel thus submits that the impugned order having been passed without following the condition precedent provided in Rule 161(ii) of the RPF Rules, 1987, the said impugned order has to be set aside.

4. Mr. B Chakravarty, learned CGC submits that there is no infirmity with the impugned order dated 11.09.2020. Accordingly, the same should not be interfered with.

5. I have heard the learned counsels for the parties.

6. The preliminary report dated 09.09.2020, made by the respondent authority, shows that an allegation had been made against the petitioner and two other persons relating to the molestation of a minor girl. The operative portion of the preliminary report dated 09.09.2020 states as follows- "From the facts adduced during enquiry, it is reasonably believed that the petitioner has engaged himself in an act which is totally contrary to law and unbecoming of a Force. Further, a police case has been registered against him for his alleged involvement in the case of rape of a minor girl and he instead of facing the legal indictment has absconded, which not only proves his serious misconduct".

7. The impugned order of dismissal was issued on 11.09.2020. The petitioner was arrested by the Police in connection with the alleged molestation of the minor girl on 12.09.2020 in connection with Langting P.S. Case No. 15/2020 dated 08.09.2020.

8. Rule 153.1 and 161 of the RPF Rules, 1987 states as follows:-

“153 Procedure for imposing major punishments :

153.1 Without prejudice to the provisions of the Public Servants Inquires Act, 1850, no order of dismissal, removal, compulsory retirement or reduction in rank shall be passed on any enrolled member of the Force (save as mentioned in rule 161) without holding an inquiry, as far as may be in the manner provided hereinafter, in which he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded a reasonable opportunity of defending himself.”

“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."

9. As can be seen from a reading of Rule 161(ii) of the RPF Rules, 1987, punishment can be imposed on a member of the Railway Protection Force by the competent authority, without having a formal enquiry as provided under Rule 153, provided reasons are recorded in writing by the competent authority, stating that he/she is satisfied that it was not reasonably practical to hold an enquiry in the manner provided in the RPF Rules, 1987, i.e., Rule 153. A bare perusal of the impugned order clearly shows that the satisfaction of the competent authority, as to why it was not reasonably practical to hold an enquiry, has not been recorded therein. The impugned order has only imposed the penalty of dismissal of service upon the petitioner, by giving reasons why the respondent No. 2 believed the petitioner was involved in the alleged molestation of the minor girl. Thus, the impugned order only reflects the reasons for coming to a finding that the petitioner was guilty of the offence, without giving reasons as to why it was impracticable to hold an enquiry, which was a condition precedent for invoking Rule 161(ii) of the RPF Rules, 1987.

10. In view of the above reasons, the impugned order dated 11.09.2020

being issued in violation of the conditions required to be fulfilled, prior to passing an order under Rule 161(ii) of the RPF Rules, 1987, the same is not sustainable in law and is accordingly set aside.

11. The above being said, it has been stated at the bar that charge-sheet has been filed in the criminal case arising out of Langting P.S. Case No. 15/2020 and trial is going on before the learned Special Judge (POCSO), Karbi Anglong, where evidence of the prosecution witnesses is being recorded.

12. In view of the fact that the impugned order dated 11.09.2020 has been set aside, the respondents would have to reinstate the petitioner into service immediately. However, in view of the criminal case that is pending before the learned Special Judge (POCSO), Karbi Anglong, the respondents are given the liberty to consider whether the petitioner is to be suspended during the pendency of the criminal case. The above being said, the employer shall be at liberty to initiate a formal departmental enquiry against the petitioner in terms of the RPF Rules, 1987, if deemed necessary by the respondents.

13. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant