

Court No. - 10

Case :- WRIT - A No. - 63239 of 2006

Petitioner :- Pramod Kumar

Respondent :- Union Of India Minsitry Of Railway New Delhi
And Others

Counsel for Petitioner :- Manoj Kumar

Rajvanshi,M.K.Raghuvansi,Vinay Kumar Mishra,Vishesh
Rajvanshi

Counsel for Respondent :- Govind Saran,Chandra Prakash
Yadav,S.C.,Sharad Ranjan Nigam,Subhash Upadhyay,Vivek Singh

Hon'ble Kshitij Shailendra,J.

1. Heard Sri Vishesh Rajvanshi, learned counsel for the petitioner and Sri Chandra Prakash Yadav, learned counsel for all the respondents.

2. The petitioner was appointed as a "Constable" in Railway Protection Force. In relation to certain incidents occurred on 22.9.1998 and 14.10.1998, the petitioner was charge-sheeted. The main allegations against the petitioner were that he entered into a fight with one Raju, Tea Vendor, at the railway platform and also entered into the house of one Paras Nath Yadav, tried to molest his daughter-in-law, again came back into the barrack in a drunken state and urinated on the bed of one constable Baijnath Yadav.

3. The petitioner was subjected to departmental proceedings after suspension and, ultimately, a punishment order was passed on 29.4.1999 awarding minor penalty to him in terms of reduction on minimum pay-scale for a period of two years. Thereafter, the Divisional Security Commissioner, in exercise of powers under Railway Protection Force Rules, 1987 (hereinafter referred to as

'the Rules 1987), particularly Rules, 156 and 217, *suo-moto*, re-opened the proceedings on the ground that the punishment was lesser in comparison to the charges established during course of inquiry proceedings and, ultimately, first order impugned dated 29.10.1999, dismissing the petitioner from service was passed. Being aggrieved, the petitioner preferred statutory appeal and revision against the said order of punishment, however, both the proceedings were dismissed upholding the order.

4. Sri Vishesh Rajvanshi, learned counsel for the petitioner, has vehemently argued that though serious charges were framed during course of the inquiry proceedings, the inquiry was bad in law, inasmuch as, the statement of one Rajesh Kumar was not recorded and even in the statement of Ms. Durga Devi, the allegation of molestation did not stand proved. He further submits that in view of Rule 146.4 of the Rules, 1987 even if the petitioner was found with a 'dis-credible conduct', only minor punishment under Rule 148.3 of the Rules, 1987 could be awarded, which was awarded to the petitioner and was accepted by him. The arguments are mainly on the quantum of punishment and major penalty of dismissal from service has been termed as dis-proportionate to the guilt. It has also been argued that no reason has been assigned in the order impugned as to why the earlier punishment order was not acceptable. He further argued that the order of the Appellate and Revisional Authority are simply *replica* of the initial order of punishment and they have neither considered the grounds taken in the memo of appeal nor in the revision nor have they applied their independent mind on the merits of the proceedings and contentions.

5. Per contra, Sri Chandra Prakash Yadav, learned counsel for all the respondents, has argued that detailed inquiry proceedings were

held against the petitioner and once the petitioner accepted the punishment which was based upon proof of charges during the inquiry proceedings and did not prefer any appeal, the charges would stand proved against him, and since the Authorities are competent to re-open the proceedings, even after punishment order and can enhance the penalty in terms of Rule 219.4 of the Rules, 1987, no fault can be pointed out in the order impugned. He further submits that dis-satisfaction to the punishment awarded has been recorded in the order impugned and the discretionary power of the Divisional Security Commissioner have been rightly exercised in the facts and circumstances of the case.

6. Having heard counsel for the parties and after perusing the record, this Court finds that there is no serious dispute regarding the competence of superior Authority in enhancing the punishment. For ready reference Rule 219.4 of the Railway Protection Force Rules, 1987 is quoted *hererinbelow* :

"219.4 - Any authority superior to the authority making the original order may, on its own motion, or otherwise, call for the records of any inquiry and revise any order made under these rules and may:-

(a) confirm, modify or set aside the order; or

(b) confirm, enhance, reduce or set aside the punishment imposed by the order, or impose any punishment where no punishment has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit:

Provided that no action under this sub-rule shall be initiated after the expiry of one year from the date of the order aforesaid:

Provided further that no proceeding for revision shall be commenced until after-

(i) the expiry of the period for making an appeal specified in sub-section (2) of section 9 ; or

(ii) the disposal of the appeal, where any such appeal has been preferred :

Provided further that in a case in which it is proposed to enhance punishment further, the aggrieved member shall be given an opportunity to show cause either orally or in writing as to why his punishment should not be enhanced."

7. Insofar as, the punishment is concerned, Chapter XII describes major, minor and petty punishments. The submission of Sri Vishesh Rajvanshi that in the event of 'dis-credible conduct', only minor punishment can be awarded, does not stand made out from the Rules. Regarding the other submission that Sri Rajesh Kumar was not examined in during course of inquiry proceedings of that statement of Ms. Durga Devi did not establish actual molestation, I have perused the detailed inquiry report annexed to the affidavit filed by the respondents and I find that thorough and extensive departmental inquiry was conducted by the Authorities, statements of various persons disclosed in the inquiry report were recorded, the event of entering into the house of one Paras Nath Yadav, causing trouble to Ms. Durga Devi, drunken state of the petitioner, his entering into fight on railway platform, urination on the bed of Baijnath Yadav, creating all nuisance on the residential quarters of the RPF staff, were sufficiently proved during the course of inquiry proceedings. If statement of one person was not recorded, the same cannot nullify the inquiry proceedings on this ground alone as it is not a criminal trial and principles of disciplinary proceedings and holding criminal trial being different, the railway authorities are fully competent to examine the conduct of a member of disciplined force and once the power to enhance punishment flows from statutory rules and, admittedly, the only requirement to issue notice to the petitioner before enhancing the penalty has been satisfied by the authorities. This Court, therefore, finds that dis-satisfaction recorded by the Divisional Security Commissioner from the punishment awarded is reasonable exercise of powers.

8. Considering the seriousness of charges, their sufficient proof during course of detailed and extensive departmental proceedings, non filing of appeal by the petitioner, in the opinion of the Court, the Authorities are empowered under the law to examine the conduct of a member of disciplined force and their statutory powers to enhance the penalty under the order impugned does not suffer from any illegality.

9. The writ petition is, accordingly, **dismissed**.

Order Date :- 2.11.2023

CS/-