

Court No. - 11

Case :- WRIT - A No.7013 of 2021

Petitioner :- Dinesh Kumar Alias Dinesh Kumar Sharma

Respondent :- U.O.I.Thru.Secy.Ministry Of Railway And Ors.

Counsel for Petitioner :- Vinod Kumar Singh,Amit Kumar Singh,Vijay Vikram Singh

Counsel for Respondent :- Mrs.Suniti Sachan,Ajit Kumar Dwivedi,Brijesh Kumar Shukla

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Sri Upendra Nath Mishra, learned Senior Advocate, assisted by Sri Vijay Vikram Singh, learned counsel for the petitioner and Sri Ajit Kumar Dwivedi, learned counsel for the opposite parties.
2. By means of this petition, the petitioner has prayed following reliefs:-

“I. Issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 23.02.2021, 16.03.2020 and 25.02.2021 contained as Annexure No.1, 2 & 3 to the writ petition.

II. Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to reinstate the petitioner in service, as earlier he was discharging his duty on the post of Sub Inspector, 3rd Battalion, R.P.S.F.-C Company, Alambagh, Lucknow and pay him regular salary and allowances as and when the same fall due along with arrears.

III. Issue any other suitable writ, order or direction which this Hon'ble Court may deem just, fit and proper in the circumstances of the case.

IV. Award the cost of the petition.”

3. The order under challenge is the punishment order dated 16.03.2020 passed by opposite party no.5 i.e. Commanding Officer, 3rd Battalion, Railway Protection Special Force (R.P.S.F.), Alambagh, Lucknow by means of which the punishment of ‘withholding next increment for a period of two years with non cumulative effect (N.C.E.)’ has been awarded to the petitioner (Annexure No.2) and the appellate order dated 23.02.2021 passed by opposite party no.4 i.e.

Chief Security Commissioner (D.I.G.), Railway Protection Special Force (R.P.S.F.), Railway Board, Head Quarters, Daybasti, Delhi-35 by means of which the punishment awarded by the disciplinary authority has been enhanced awarding punishment of 'compulsory retirement with immediate effect' to the petitioner (Annexure No.1).

4. Brief facts of the case is that the petitioner was initially selected as Recruit Trainee on 03.11.1995 in the Railway Protection Special Force (hereinafter referred to as "RPSF" in short). Service record of the petitioner had been unblemished and the petitioner received all service benefits and promotions and in the year 2010, he was promoted as Assistant Sub Inspector in 4th Bn. RPSF in Jalpaiguri, West Bengal.

5. Railway Board, Ministry of Railways, Government of India issued guidelines on 02.02.2010 (Annexure No.5) for considering the posting of husband and wife at the same station. The relevant clause, which may be applicable in the present case is clause 3 (e), which reads as under:-

e. Where one of the spouses is a railway servant (all India service) and the other is working in a Central/State/Public Sector Undertaking/Autonomous Body/Private Sector.

The railway servant may apply to the controlling Authority for a posting at the place of posting of his/her spouse which may be considered favorably by the competent authority. If no post is available for posting of the railway servant at the place of posting of the spouse he/she may be posted to a place closer to the place of posting of the spouse. If this also is not possible application from the railway servant for posting of the spouse who is working in the Central/State/Public Sector Undertaking may be forwarded to the controlling authority of the spouse of his/her posting at or near the place of the railway servant."

6. Sri Mishra has submitted that in view of the aforesaid clause, if one of the spouses is railway servant (all India service) and other is working in the Central/State/Public Sector Undertaking/Autonomous Body/Private Sector, a representation may be preferred to the competent authority for the posting in areas closer to each other so

that both the employees could lead a better life. Sri Mishra has also submitted that in terms of the aforesaid guidelines, even if one of the spouses is serving in a Private Sector, representation by another spouse, who is railway servant, may be given to the competent authority for consideration.

7. Sri Mishra has submitted that wife of the present petitioner was serving as Shiksha Mitra since 19.03.2008. On 30.06.2014, U.P. Teachers Services Rules, 1981 was amended where Shiksha Mitras were absorbed as Assistant Teachers, so wife of the petitioner started working as Assistant Teacher. On 12.09.2015, the High Court in Writ Petition No.34833 of 2014, Anand Kumar Yadav Vs. Union of India and Others, quashed the aforesaid amendment of 2014. In Civil appeal No.9259 of 2017, State of U.P. Vs. Anand Kumar Yadav and Others, the Apex Court stayed the High Court order dated 12.09.2015. On 25.07.2017, the Apex Court dismissed the appeal upholding the order of the High Court providing liberty to the State Government to permit the Assistant Teachers to continue as Shiksha Mitra on terms and conditions of services prior to the absorption. Resultantly, the State Government absorbed all erstwhile Shiksha Mitras as contractual Teacher vide order dated 03.10.2017. As a result of dismissal of the appeal and quashing of the amended Rules, 2014, the State Government re-adjusted all such Assistant Teachers on the post of Shiksha Mitra without any break in service, even of a day and started making payment of honorarium from the public exchequer. Wife of the petitioner is still serving as Shiksha Mitra.

8. When the guidelines dated 02.02.2010 (supra) issued by the Railway Board, the petitioner was serving at Jalpaiguri, West Bengal whereas his wife was serving as Shiksha Mitra at District-Bulandshahr, the petitioner made a representation to the higher authority for considering his transfer by providing the benefit of the aforesaid guidelines dated 02.02.2010 seeking his accommodation at closest place to District- Bulandshahr on sympathetic consideration. When the aforesaid representation of the petitioner was not considered

in the light of the aforesaid guidelines dated 02.02.2010, the petitioner preferred a writ petition before the High Court at Delhi bearing Writ Petition No.3750 of 2013 seeking direction to the opposite parties to consider his grievance in terms of guidelines dated 02.02.2010. Delhi High Court vide order dated 09.09.2015 directed the concerning authority to consider the case of the petitioner in terms of the guidelines dated 02.02.2010. When the aforesaid direction was not followed by the competent authority, the petitioner filed a contempt petition before the Delhi High Court bearing Contempt Petition No.89 of 2017; Dinesh Kumar Sharma Vs. Shri A.K. Bhagart and Others. The contempt court issued notices. In pursuance of the contempt proceedings, the petitioner was transferred from New Jalpaiguri to 3rd Bn. RPSF, Lucknow. Thereafter, on 12.06.2018, the petitioner was transferred to 6th Bn. RPSF, Delhi, the place which is nearest to the place of present posting of the wife of the petitioner i.e. Anoopshahr, Bulandshahr.

9. Sri Mishra has submitted that the petitioner was transferred at Delhi on 12.06.2018 on his representation dated 17.03.2018 (Annexure No.8) wherein he has indicated that his wife is serving at Anoopshahr, Bulandshahr and he has been transferred to Lucknow, which is about 400 Kms. from Anoopshahr, therefore, he may be transferred at nearby place to Anoopshahr, Bulandshahr. In such representation, he has not stated that his wife is serving as Assistant Teacher and he has intimated his bonafide grievance that he is having minor children and old aged parents to whom he is to look after. In such representation, the petitioner enclosed one certificate relating to service dated 21.04.2017 (Annexure No.10) issued by the Block Education Officer, Anoopshahr, Bulandshahr wherein it has been indicated that the wife of the petitioner is working as Assistant Teacher in one Primary School. Sri Mishra tried to justify the aforesaid service certificate dated 21.04.2017 saying that at that point of time, wife of the petitioner was serving as Assistant Teacher, though she subsequently has been absorbed as Shiksha Mitra after

03.10.2017 pursuant to the Government Order of the State Government. However, at that point of time, she was serving as Shiksha Mitra getting honorarium from the public exchequer. He has also submitted that even if the wife of the petitioner had served in a Private Sector, any representation could have been preferred by the petitioner in terms of the guidelines dated 02.02.2010.

10. On 17.07.2019, the disciplinary authority directed for preliminary inquiry against the petitioner on the allegation that the petitioner did not furnish correct information to the Department seeking his transfer inasmuch as the wife of the petitioner was working as Shiksha Mitra on 17.03.2018 but he enclosed the old certificate dated 21.04.2017 showing that she is serving on the post of Assistant Teacher. The preliminary inquiry officer held the petitioner guilty to conceal the relevant fact, therefore, full fledged departmental inquiry was conducted against the petitioner. The inquiry officer concluded the inquiry holding that the petitioner is guilty of the charge concealing the relevant fact. The disciplinary authority i.e. opposite party no.5 awarded punishment of 'withholding next increment for a period of two years with non cumulative effect' vide order dated 16.03.2020. The petitioner preferred an appeal before the appellate authority i.e. opposite party no.4 to submit that he has not concealed any material information and his wife was also working in the State of U.P. getting salary from the public exchequer and the certificate so produced was genuine and bonafide. Therefore, the impugned punishment order dated 16.03.2020 may be set aside. The appellate authority, before deciding the appeal finally, issued a show cause notice dated 04.12.2020 to the petitioner for enhancing the punishment observing that the charges against the petitioner are so grave. The petitioner submitted his reply to the show cause notice on 15.12.2020 denying all the allegations so levelled against him.

11. Sri Mishra has submitted that mainly the charges against the petitioner were that he failed to carry out his duty of producing the valid documents in such manner which has brought discredit to the

Force; being supervisory officer of the Force, he committed discreditable conduct; he willfully violated the provisions of directives and transfer policy made for bonafide purpose on spouse ground transfer. However, the appellate authority framed one more charge against the petitioner that the petitioner committed forgery suppressing the factual information to mislead the administration and seek his personal benefit. Sri Mishra has submitted that the charge which was not levelled against the petitioner by the disciplinary authority may not be levelled against him by the appellate authority inasmuch as on that charge i.e. the charge of forgery, no departmental inquiry was conducted. Therefore, the charge of forgery may not sustain against the petitioner in the eyes of law. Besides, the petitioner has not committed any forgery misleading the administration to seek his personal benefits inasmuch as the undisputed fact is that the wife of the petitioner was earlier serving as Assistant Teacher in the State of U.P. and w.e.f. 03.10.2017, she has been serving as Shiksha Mitra at the same place getting honorarium from the public exchequer. For submitting any representation to get the benefit of guidelines dated 02.02.2010, even if one of the spouses is serving at any Private Sector, representation could have been preferred. This is not the case of the authorities that if the authorities were duly informed that the wife of the petitioner was serving as Shiksha Mitra in the State of U.P., the representation could have not been preferred. Sri Mishra has further submitted that this was absolutely upto the convenience and prerogative of the authority to follow the guidelines dated 02.02.2010 as far as it is possible. Therefore, Sri Mishra has stated that the petitioner has not misled the department so far as the guidelines dated 02.02.2010 are concerned. However, the appellate authority rejected the appeal of the petitioner, enhanced the punishment retiring him compulsorily with immediate effect.

12. *Per contra*, Sri Ajit Kumar Dwivedi, learned counsel for the opposite parties has stated that the petitioner should have categorically apprised the authority that his wife was serving as Shiksha Mitra

when representation dated 17.03.2018 was preferred. On the argument of Sri Mishra that the appellate authority may not travel beyond the charge sheet inasmuch as no charge of forgery was levelled against the petitioner in the charge sheet and no departmental inquiry was conducted on such charge, he has submitted that since the appellate authority had issued a show cause notice to the petitioner on 04.12.2020 apprising its intention to enhance the punishment, therefore, the enhanced punishment order of the appellate authority is justifiable. On the argument of Sri Mishra that even one of the spouses, if he/she is serving in Private Sector, the railway employee may prefer a representation seeking benefit of the guidelines dated 02.02.2010, he has submitted that undisputedly such representation could have been preferred but in the present case, the petitioner has not furnished the correct information to the department.

13. On being confronted the opposite parties as to whether in his representation dated 17.03.2018 the petitioner has stated that his wife is serving as Assistant Teacher, learned counsel for the opposite parties has stated that though he has not indicated that very fact in his representation but has enclosed the service certificate dated 21.04.2017, which is about one year old. On being further confronted Sri Dwivedi on the point that if the wife of the petitioner was serving on the post of Shiksha Mitra in the State of U.P. on 17.03.2018, whether the petitioner being a railway employee could have not preferred a representation seeking benefit of the guidelines dated 02.02.2010, Sri Dwivedi has fairly submitted that in that circumstances, the petitioner could have preferred a representation seeking benefit of the guidelines dated 02.02.2010.

14. Having heard learned counsel for the parties and having perused the material available on record, I am of the considered opinion that if any specific charge has not been levelled against the delinquent employee/ officer in the charge sheet, then on such charge no punishment order can be passed inasmuch as such punishment order may not sustain in the eyes of law. In the present case, the appellate

authority has enhanced the punishment retiring the petitioner compulsorily on the charge that the petitioner committed forgery suppressing the factual information to mislead the administration to seek his personal benefits was not one of the charges in the charge sheet and admittedly, no departmental inquiry was conducted against the petitioner, therefore, the appellate order enhancing the punishment may not be sustained in the eyes of law.

15. Notably, the guidelines issued by the Railway Board dated 02.02.2010 authorizes the employee of the railway department to prefer a representation seeking the posting nearby to the place of his/her spouse, who is serving either in the Central or State or Public Sector Undertaking or Autonomous Body or in a Private Sector, then in the present case, the representation so preferred by the petitioner seeking his transfer at any nearby place to the place where his wife is serving as Shiksha Mitra in the State of U.P. getting honorarium from the public exchequer may not be said to be a misconceived representation. In his representation, the petitioner has not stated that his wife is serving as Assistant Teacher, though he could have stated in his representation that she is working as Shiksha Mitra but only for that reason, he may not be awarded any punishment. Had this case been a case of a nature that his wife was not serving anywhere and enclosing old service certificate when she was working in State of U.P. any accommodation was being sought, the present petitioner would have been awarded punishment for providing wrong information to the department or to mislead the department to get personal favour but when the fact is undisputed that the wife of the petitioner was serving in the State of U.P. as Shiksha Mitra getting honorarium from the public exchequer, then the representation of the petitioner could have been considered in the light of the guidelines dated 02.02.2010. It appears that since the petitioner had preferred writ petition and contempt petition before the High Court at Delhi wherein the orders were passed and the petitioner was transferred to New Delhi on 12.06.2018, the authorities had taken whimsical view

punishing the petitioner but the charge so levelled against the petitioner was not sustainable in the eyes of law whereby it has been alleged that the petitioner has willfully violated the provisions of directives and transfer policy made for the bonafide purpose of spouse ground transfer. Admittedly, the petitioner preferred a representation to the department after coming into force the guidelines dated 02.02.2010 and at that point of time, wife of the petitioner was serving as Shiksha Mitra. Later on, she became Assistant Teacher and remained as Assistant Teacher till 03.10.2017 but pursuant to the Government order dated 03.10.2017, the State Government absorbed the services of the petitioner as Shiksha Mitra paying her honorarium from the public exchequer. Therefore, the charges so levelled against the petitioner are vague and the findings are retained on the basis of conjectures and presumptions, so the punishment orders are not tenable in the eyes of law.

16. In view of the above, the writ petition is **allowed**. Both the aforesaid punishment orders dated 23.02.2021 and 16.03.2020 contained as Annexures No.1 & 2 to the writ petition are hereby quashed.

17. The petitioner shall be reinstated in service with all consequential service benefits. The consequential order shall be passed by the competent authority within a period of six weeks from the date of receipt of certified copy of this order. It is further directed that the petitioner shall be entitled for continuity in service ignoring the aforesaid impugned orders.

18. No order as to costs.

[Rajesh Singh Chauhan,J.]

Order Date :- 11.11.2024
RBS/-