

\$~10

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6769/2016**

JAY PRAKASH SHARMA Petitioner

Through: Ms. Saahila Lamba, Advocate.

versus

UNION OF INDIA & ORS Respondents

Through: Mr. Rajan Sabharwal, Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

% **17.12.2018**

SANJEEV NARULA, J.:

1. This writ Petition under Article 226 of the Constitution of India has been filed seeking a writ of Certiorari for quashing the orders dated 16th January, 2014, 16th January, 2015 and 18th December, 2015 passed by the Respondents imposing on the Petitioner the penalty of reduction of pay by three stages below in the present scale of pay for three years with cumulative effect.

2. Briefly stated, the relevant facts are that the Petitioner who is working as Constable with Railway Protection Force (hereinafter referred to as 'RPF'), was issued a charge sheet on 10th May 2013 under Rule 153 of Railway Protection Force Rules, 1987 (RPF Rules) for major penalty.

3. In a nutshell, the case against the Petitioner under the aforementioned charge-sheet is that (a) the Petitioner did not inform the Respondents about the FIR No. 145/2013 registered under section 420/467/468/471/506 read with section 120B IPC in contravention of Rule 146.4 of RPF Rules (b) Petitioner has unauthorizedly over stayed period of leave for the period from 8th March 2013 till 27th April 2013, thereby violating Rule 146.2(i) and 146.2 (ii) of RPF rules.

4. Petitioner denied the charges and pursuant thereto, a departmental inquiry was initiated against him. In the inquiry proceedings, Respondents examined three witnesses namely, Shri SS Gangwar, Anil Kumar and Sudhir Kumar who deposed against the Petitioner and proved the charges. In rebuttal, Petitioner made a request for examination of seven witnesses that included persons who were working at the *Dak Department* of the Respondents. This according to the Petitioner was necessary to establish the fact that he had informed the Respondents about his treatment for the period from 7th March 2013 to 27th April 2013. His request was partly allowed and he was permitted to examine only one witness namely Constable Gose Mohd. Petitioner relied on the testimony of the sole defence witness, in his written statement and submitted to the Inquiry Officer that intimation about his illness was submitted by way of registered post on 15th March 2013, without any delay. Refuting the charges levelled against him, Petitioner also urged that he had also telephonically informed Shri SS Gangwar about the registration of the criminal case against him, followed by a written communication sent by way of registered post on 14th May 2013.

5. After taking all the evidence into consideration, the Inquiry Officer in his

report dated 18th December 2013 found the Petitioner to be guilty of both the charges levelled against him. With respect to the first charge it was held by the Enquiry Officer that:- (i) mere giving of telephonic call by petitioner to S.S. Gangwar does not establish that petitioner had informed him about the registration of criminal case against him; (ii) S.S. Gangwar has denied petitioner having informed him about the registration of case against him; (iii) nothing would change on establishment of sending of registered post dated 14.05.2013 by petitioner and non-examination of postman in said regard, for the reason that examination of postman would not reveal contents of returned post sent by petitioner and registered post dated 14.05.2013 informing the department about registration of case by the petitioner has no value inasmuch as charge sheet was issued to the petitioner on 10.05.2013 itself; (iv) there was no occasion for petitioner to have sent registered post, regarding registration of case against him in view of his claim that he had given telephonic information about registration of case to S.S. Gangwar on 07.03.2013 itself; (v) petitioner sent registered post dated 14.05.2013 only after being aware of issuance of charge sheet dated 10.05.2013; (vi) petitioner ought to have given information about registration of criminal case against him anytime between 20.02.2013 and 07.03.2013 and (vii) there is no truth in the claim made by petitioner about giving telephonic information regarding registration of case against him to S.S. Gangwar on 07.03.2013 inasmuch as petitioner claimed to have been sick on 07.03.2013 and thus could have given information about case/illness to S.S. Gangwar in such a state.

6. Regarding the second charge, the Enquiry Officer held that the petitioner

ought to have given timely information about his illness to department and delayed intimation exhibited carelessness towards his duty.

7. Thereafter, Petitioner had made representation to the Disciplinary Authority alleging that the Inquiry Officer was prejudiced against him and that the inquiry was conducted in a biased manner. He sought the change of the Inquiry Officer and requested for fresh inquiry proceedings. However, his request was not acceded to by the Disciplinary Authority and vide order dated 16th January 2014, the Disciplinary Authority accepted the report of the Inquiry Officer and imposed the penalty of reducing the salary of the Petitioner by three stages with cumulative effect for a period of three years. The order of the Disciplinary Authority was assailed before the Appellate and Revisional Authorities. Petitioner's case did not find favour with both the Authorities and challenge was rejected.

8. The Court has heard the learned counsel for the parties. Ms. Saahila Lamba learned counsel appearing on behalf of the Petitioner has argued that there is no Rule requiring the Force personnel to give information regarding registration of a criminal case against him and that the Respondents have wrongly invoked Rule 247 of RPF Rules to hold the Petitioner guilty of the first charge. According to her, the criminal case registered against the Petitioner relates to distribution of his ancestral properties and that he has been falsely implicated by his brother's wife. With respect to the second charge, learned counsel for the Petitioner argued that the Disciplinary Authority as well as the Appellate and Revisional Authorities have erred having failed to take note of the fact that the Petitioner had timely informed

the department about his illness vide registered post dated 15th March 2013. Shri SS Gangwar, Inspector RPF, Hapur returned the said post and therefore, the Respondent Authorities could not hold the Petitioner to be careless towards his duty for not sending the intimation about his illness promptly.

9. The FIR was registered against the Petitioner on 20th February 2013. Non bailable warrants were also issued against him. The Petitioner was therefore required at once to inform the Respondents about the aforesaid criminal case. The Respondents have relied upon Rule 247 to justify the charge which reads as under:

“247. Complaints:

Every member of the Force against whom any criminal prosecution or a civil suit is instituted shall at once inform the Chief Security Commissioner, or as the case may be, his controlling officer.”

10. Though it has not been argued, but in the grounds of challenge, Petitioner has raised the contention that the expression “Criminal Prosecution” appearing in Rule 247 of RPF Rules means that requirement for the railway personnel to inform the department arises only in the event a charge-sheet is filed before the criminal court. Reliance is also placed on CCS (Pension) Rules 1970 in this regard. Petitioner has not raised this ground at any stage hereto before and the factual foundation for this plea is also not before us and therefore we need not engage ourselves to give a finding on the expression “Criminal Prosecution” used in Rule 247 of the RPF Rules. There is an obvious delay on the part of the petitioner in giving

an intimation regarding the registration of the FIR and therefore there appears to be no infirmity in the findings of the Disciplinary Authority on the first charge. Petitioner's argument that the Disciplinary Authority has conceded that there is no Rule requiring the Petitioner to give intimation of the FIR is without merit, inasmuch as it is to be noted that the Appellate Authority in its order has clarified this issue by referring to Rule 247 of RPF Rules 1987. As long as the charge is maintainable as per the rules, mere omission on the part of the Disciplinary Authority in mentioning the correct Rule, would not invalidate its findings.

11. With respect to the finding of the Disciplinary Authority on the second charge, it is Petitioner's case that he had informed the department about his illness vide registered post dated 15th March 2013. Rule 272 of RPF Rules requires the Petitioner to give information about his sickness in case he is not in a position to join after the expiry of his leave. The learned counsel for the Petitioner has drawn our attention to the testimony of Shri SS Gangwar who during his cross examination has admitted that he had returned one registered post dated 15th March 2013. According to the Petitioner, the aforesaid registered post contained the intimation regarding his illness and the certificate issued by Senior DMO. Petitioner also wanted to lead evidence to prove the dispatch of the registered post by summoning the post man who had delivered the said post at RPF, Mandal Office, Muradabad. Petitioner also wanted to produce Senior DMO, North Central Railway Aligarh as his witness in order to prove that he was undergoing treatment under the aforesaid doctor for the period from 7th March 2013 to 27th April 2013. However, the Inquiry Officer refused to allow the Petitioner to have

the aforesaid defense witnesses examined. The Inquiry Officer disallowed the Senior DMO as a witness on the ground that his statement is unnecessary in view of the fact that transfer certificate No. 238005 itself establishes that Petitioner was undergoing treatment with Senior DMO, Aligarh. Concededly, the aforesaid certificate was received by the Respondents. According to the Petitioner, this was dispatched on 15th March 2013 but was returned by the Respondent. The certificate of sickness of the Petitioner having been accepted, the only question that arises for consideration is whether there has been any delay on the part of the Petitioner to send intimation about his sickness. The evidence of Shri SS Gangwar does indicate that there is a return of registered Dak. Petitioner was not permitted to lead evidence to establish the dispatch of registered post and therefore benefit of doubt has to be given to him that the said intimation about his illness was indeed dispatched on 15th March 2013. If we take 15th March 2013 as the date of the intimation, there is still a delay on the part of the Petitioner, but only about a week. It has also to be borne in mind that since Petitioner was undergoing treatment for the period from 7th March 2013 to 27th April 2013, there could have been justifiable reasons for his inability to send the intimation within time. In view of the above, although we would not like to interfere with the findings of the Inquiry Officer and the Respondent authorities, we feel that the interest of justice would be met by modifying the penalty only to the extent that it imposes the punishment "with cumulative effect". The penalty of reduction of pay by three stages below the present scale of pay is thus, upheld to be imposed but "without cumulative effect".

12. The writ petition is disposed of in the above terms.

SANJEEV NARULA, J

S.MURALIDHAR, J

DECEMBER 17, 2018

nk