

Item. 5. 06.08.2019
sd
Ct 24.

W.P. No. 14422 (W) of 2019

Kishana Ram vs. Union of India & Ors.

Mr. Achin Kumar Majumder
..For the petitioner.

Mr. Partha Ghosh
..For the Railway.

The petitioner is a member of the Railway Protection Special Force (RPSF). A disciplinary proceeding was initiated against him. By an order dated 28th February 2019 a final order was passed wherein, the Commanding Officer, 4th Battalion/RPSF/NJP held that "I agree with the findings of the enquiry report and though the exact charges leveled on the party charged could not be conclusively established through the prosecution exhibits, what cannot be denied is that an objectionable comment on a heinous incident had been passed through a facebook account whose name, photos, address etc. closely resembled with that of the party charged and the information of which ought to have been provided to the department or local police through FIR. But the party charged did not do so."

The disciplinary authority held the petitioner guilty of suppressing facts/information, the implications of which could have been serious as RPSF is a law

enforcing agency. The punishment of stoppage of next annual increment for a period of 5 years with cumulative effect was imposed upon the petitioner.

The petitioner was informed that an appeal against the said order may be presented to the appellate authority provided the same is sent within a period of 30 days and the same does not contain any intemperate language and routed through the proper channel.

The petitioner was served with a copy of the order passed by the disciplinary authority on 11th March 2019.

The petitioner by a letter dated 9th April 2019 declared his intention to prefer an appeal before the appellate authority and made a request before the appellate authority for extension of time for filing the appeal as he was on continuous duty and engaged with the parliamentary election. It was stated that due to his deployment in parliamentary election duty, it will not be possible for him to submit the appeal within the statutory period of 30 days. No reply whatsoever was communicated to the petitioner with regard to his prayer for extension of time for preferring the appeal.

By a communication dated 13th June 2019,

the DIG-cum-CSC/RPSF, Railway Board issued a show cause notice against the petitioner wherein it was mentioned that during the departmental enquiry the charges leveled against him has been proved. It was mentioned that the said authority being superior to the authority making the original order called for the records of the case and have gone through the entire proceedings on record and observed that the punishment imposed by the disciplinary authority was not commensurate with the gravity of the charges proved against him. The DIG invoked the power conferred upon him under Rule 219.4 of the Railway Protection Force Rules, 1987 read with Schedule III and opined that the punishment imposed by the disciplinary authority is not enough and needs to be modified to make it commensurate with the gravity of the charges.

The petitioner has been directed to show cause to explain as to why higher punishment should not be imposed on him for passing the comment on social media platform which ratifies and praises the act of murder of a superior officer on duty by his subordinate. The petitioner was advised to submit his representation against the show cause notice within 30 days of receipt of the notice.

The petitioner by a communication dated 26th July 2019 requested the authority for extension of the time period within which he could reply to the said show cause.

The petitioner prays for setting aside the communication dated 13th June 2019 directing the petitioner to show cause as to why enhanced punishment shall not be imposed upon him. The petitioner has also made an oral prayer for extension of time for permitting him to prefer an appeal before the appellate authority.

It is the specific contention of the petitioner that the initial prayer for extension of time for filing the appeal which was made by him by a letter dated 9th April 2019 has not been replied by the authority. The authority ought to have either allowed or rejected the said prayer and then moved on to the next step of issuing the show cause notice for enhancement of the punishment. Without passing any order in respect of the prayer made by the petitioner for extension of time for preferring appeal, the authority should not have sent the show cause notice for imposing heavier punishment upon the petitioner.

The petitioner specifically submits that the enquiry officer as well as the disciplinary authority have arrived at a specific finding that the exact charges leveled against the petitioner could not be conclusively established. Accordingly, the disciplinary authority instead of holding the petitioner guilty of the charges mentioned in the charge sheet have held him guilty of charges alien to the charge sheet, that is, suppressing facts, information and its implication upon the law enforcing agency. As the petitioner is aggrieved by the imposition of the punishment by the disciplinary authority, the superior authority ought to have considered the appeal of the petitioner first. The prayer of the petitioner for filing the appeal has not yet been decided. Until and unless the authority extends the time to file the appeal, the petitioner cannot challenge the same.

The petitioner relies upon the provision of section 9(2) proviso of the Railway Protection Act 1957 which mentions that the prescribed authority may entertain the appeal after the expiry of the said period of 30 days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal on time.

The petitioner submits that the petitioner

approached the appellate authority within the specified period of 30 days praying for extension of time. Without passing any order in respect of the said application, the authority could not have issued the show cause notice for enhancement of punishment that has already been imposed and the petitioner being aggrieved against the same has expressed his desire to prefer an appeal.

He relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of Nand Kishore Prasad vs. State of Bihar & Ors. reported in 1978(2) SLR 46 wherein the Court held that the disciplinary proceeding before a domestic tribunal are of quasi judicial character. Therefore, minimum requirement of the rules of natural justice is to be complied. The Tribunal should arrive at its conclusion on the basis of some evidence that has evidentiary value. Suspicion cannot be allowed to take the place of proof even in domestic enquiries.

The petitioner submits that there is no proof in respect of the charges and accordingly, the enquiry officer as well as the disciplinary authority could not prove the charges that were leveled against him, and accordingly, the punishment had been imposed on the petitioner on charges not mentioned in the charge sheet.

The oral prayer made by the petitioner for extension of time for preferring appeal has been vociferously opposed by the learned advocate for the respondents. The writ petition challenging a show cause notice ought not to be entertained in view of the decision of the Hon'ble Supreme Court in the matter of Secretary, Ministry of Defence & Ors. vs. Prabhash Chandra Mirdha reported in (2012) 11 SCC 565.

The learned advocate for the respondents also relied upon provision of Rule 219.4 of the RPF Rules 1987. As appeal was not filed within the time specified in section 9(2) of the Railway Protection Force Act 1957 the superior authority took up the matter in terms of the said Rule and an opportunity has been given to the petitioner to show cause as to why his punishment should not be enhanced.

It has been submitted that the writ petition is premature and is liable to be dismissed. It has further been submitted that the petitioner ought to be relegated to the authority who issued the show cause notice and the authority will consider his prayer in accordance with the provisions of law.

Upon hearing submissions made on behalf of both the parties, it appears that the prayer of the

petitioner made on 9th April 2019 for extension of time for filing the appeal has not been disposed of by the respondents by passing any order though issuance of the show cause notice dated 13th June 2019 implies that the prayer of the petitioner praying for extension of time has been rejected.

Assuming that the prayer has been rejected, the same ought to be fortified by reasons and communicated to the petitioner as the prayer of the petitioner was made within the time limit within which the appeal could have been filed against the order of the disciplinary authority. That being so, it was incumbent upon the authority to take a decision whether the prayer of the petitioner to prefer appeal beyond the statutory period could have been allowed or not.

If the authority was the opinion that the prayer of the petitioner for extension of time could not be allowed the same ought to have been intimated to the petitioner with valid reasons, to allow the petitioner to take appropriate step against the same. The petitioner has already declared his intention to prefer an appeal against the order of the disciplinary authority.

It is settled law that the show cause notice does not affect any right of a delinquent employee and it

does not even give rise to any cause of action. But at the same time the statutory right of the employee to prefer appeal cannot be taken away by the employer. When the employee has already approached the Appellate Authority with a prayer for extension of time to prefer appeal and when there is a provision for extension of time on satisfactory grounds, then the respondent authorities ought to have considered the prayer of the petitioner for preferring appeal instead of issuing notice for enhancement of the punishment imposed upon him.

Accordingly, the DIG-cum-CSC/RPSF, Railway Board is directed to consider the prayer of the petitioner dated 9th April 2019, in accordance with law, whether in the instant case time can be extended for preferring appeal against the order of the disciplinary authority. The said authority shall pass a reasoned order within a period of four weeks from the date of communication of a copy of this order and communicate the same to the petitioner within a week thereafter.

Till such time the said respondent authority takes a decision with regard to the prayer of the petitioner for extension of time for preferring appeal, the impugned show cause notice dated 13th June 2019 shall not be given effect to by the respondents.

W.P. No. 14422 (W) of 2019 is disposed of.

Urgent photostat certified copy of this order be given to the parties, if applied for, after compliance of necessary formalities.

(Amrita Sinha, J.)

..