

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Mr. Justice Ravi Krishan Kapur

W.P.A. NO.19950 of 2009

Shailendra Kumar

-vs-

Union of India & Ors.

For the Petitioner : Mr. Achin Kumar Majumder

For the Respondents : Mrs. Aparna Banerjee

Heard on : 20.01.2021

Judgment on : 29.01.2021

Ravi Krishan Kapur, J.

1. The grievance of the petitioner is directed against a disciplinary proceeding which was initiated by the respondent authorities. In particular, the petitioner assails a charge sheet dated 3 January 2008 issued by the Railway Protection Force. The petitioner also challenges an order of the Disciplinary Authority dated 17 December, 2008 and a consequential order of the Appellate Authority dated 18 September, 2009 respectively.
2. The brief facts of the case are that the petitioner was appointed as an Inspector of the Railway Protection Force, Eastern Railways and was posted as an Inspector at the Train Escort Coy at Asansol. The crux of

the allegations against the petitioner was that while serving as an Inspector Railway Protection Force, Crime Intelligence Bureau at Malda, he failed to collect information about stolen cables from Wagon No. SR BCXC-32999 which was detained at the Malda Yard, West Bengal, and it is alleged that at the relevant point of time the petitioner failed to inform the Divisional Security Commissioner, Railway Protection Force, Malda of an incident of theft.

3. In that background, pursuant to the Rules and Regulations an enquiry officer was appointed by the Disciplinary Authority and proceedings were initiated against the petitioner. Subsequently, a Joint Enquiry Committee comprising of prominent officers of the Railway Protection Force conducted an enquiry and submitted a report dated 8 August 2007 before the Chief Security Commissioner, Railway Protection Force, Malda and the Divisional Security Commissioner Railway Protection Force Malda Town wherein a case of short loading was made out.
4. The petitioner however alleges that the said report by the respondent authorities was never considered. Similarly, the petitioner highlights several documents which formed part of the exhibits of the enquiry procedure but were never considered although according to the petitioner those were his best defence to prove his innocence.
5. Thereafter, the petitioner received a second show cause notice dated 22 September 2008. The petitioner duly replied to the same by a detailed representation dated 9 October 2008.

6. The petitioner assails the order of the Disciplinary Authority dated 17 December, 2008 primarily on the ground that the same does not contain any reasons whatsoever. It is further submitted on behalf of the petitioner that the Disciplinary Authority whilst passing the order dated 17 December, 2008 did not consider the relevant evidence and displayed total non-application of mind. The petitioner also alleges bias and submits that the Disciplinary Authority had acted in a premeditated manner.
7. Thereafter, the petitioner preferred an appeal against the order dated 17 December, 2008 which was also rejected by the Appellate Authority on 18 September, 2009. The petitioner assails the order of the Appellate Authority and submits that the same has been passed in violation of Rule 217(3) of the Railway Protection Force Rules, 1987.
8. It is further submitted on behalf of the petitioner that the entire proceedings conducted by the Enquiry officer, the Disciplinary Authority and the Appellate authority were in violation of the principles of natural justice. It is also submitted on behalf of the petitioner that none of the written representations dated 5 September, 2008 and 18 September 2008 submitted by the petitioner were considered by the respondent authorities in the impugned orders. The petitioner also submits that the entire report of the Enquiry officer affirmed by the Disciplinary Authority and the Appellate Authority was based on assumptions and conjectures, without any cogent evidence against the petitioner.

9. The petitioner also relied on a supplementary affidavit filed by him alleging that the Divisional Security Commissioner, Railway Protection Force, Malda was also charge sheeted for the said incident for major penalty for failing to prevent theft and register a case as yard theft and affix responsibility. During the investigation, the Divisional Security Commissioner, Malda in his written submission had mentioned that it was not a case of theft at the Malda Yard but a case of short loading. The Director General, Railway Protection Force upon hearing the Divisional Security Commissioner in person came to the conclusion that there was no evidence for fixing responsibility as the place of occurrence was not conclusively established to be Malda Division. Thus, the charges levelled against the Divisional Security Commissioner, Eastern Railway were dropped as it was admitted in the Government Railway Police investigation that the crime scene could not be localised. Accordingly, it is argued on behalf of the petitioner that there has been discrimination and the impugned actions of the respondent are in violation of Article 14 of the Constitution.
10. I have considered the pleadings filed on behalf of the parties. I am of the view that there are no grounds whatsoever to justify any interference with any of the impugned orders. The petitioner was given ample opportunity and appropriate enquiries were conducted before issuance of the charge sheet. Moreover, a special report of the case enquiry was conducted by the Competent Authority which revealed that the petitioner had failed to collect intelligence about the theft of 3079 meter railway cables which was valued at approximately at Rs.

60,30,903/-. The petitioner was afforded full and adequate opportunity before passing of the impugned orders. The order of the Disciplinary Committee was based on evidence which had been lawfully collected and appreciated. The Appellate Authority in affirming the order of the Disciplinary Authority had gone into the merits of the case and had considered the submissions made by the petitioner.

11. I am also of the view that although the Disciplinary Authority in its order dated 17 December 2008 had alleged that the Enquiry Officer failed to communicate or justify his findings conclusively, the enquiry report records all the evidence necessary to justify its findings and the report takes note of all the charges levelled against the petitioner alongwith the depositions of the witnesses. It is clear from the report that the enquiry officer reached conclusive findings based on the evidence gathered and the depositions of the witnesses.

12. It is well settled that the concept of fair play in action is also the basis of the conducting an enquiry. It is evident from records that the petitioner was given a fair chance to put forward its defence before the Enquiry Officer as well as the Appellate Authorities. The Enquiry Officer thereafter recorded his findings to clearly substantiate his conclusions arrived at by him in respect of all the charges levelled against the petitioner.

13. I also find that the Disciplinary Authority affirmed the findings of the Enquiry Officer by its order dated 17 December 2008. I find no anomaly in the passing of the said order nor is the order perverse for any

reasons whatsoever. The order of the Disciplinary Authority is a reasoned order and therefore I find no reason whatsoever to interfere with the same. Moreover, the Appellate Authority also considered the enquiry report and the order of the Disciplinary Authority and reaffirmed the same.

14. Insofar as the contents of the supplementary affidavit are concerned, I am of the view that ordinarily, a Writ Court does not enter into a factual enquiry and then adjudicate upon the correctness or otherwise of the fact. Reappraisal of evidence is not permissible. This principle has been repeatedly reiterated in several decisions of the Hon'ble Supreme Court as well as the different High Courts [*See-Management Madurantakam Co-operative Sugar Mills vs. S. Viswanathan* (2005) 3 SCC 193 paragraph 12, *Dr. N. Balakrishnan vs. Nehru Memorial Museum and Library Society & Others* (2010 SCC OnLineDelhi 3717 paragraph 21), *Principal Secretary, Govt. of A.P & Anr Vs M. Adinarayana* (2004) 12 SCC 579]. I find no exceptional circumstances warranting interference with the impugned orders.

15. I also find that both the Disciplinary and the Appellate Authority in passing the impugned orders have complied with the provisions of Rule 153 of the Railway Protection Force Rules, 1987. The order of the Disciplinary Authority also specifies the period for which the petitioner's increment is to be withheld following section 157(3) of The Railway Protection Force Rules, 1987. It is well settled that judicial review lies if there exists an error of law apparent on the face of the records and it is only if the statutory body uses its powers in a manner

not provided in the statute or passes an order without application of mind may a Writ Court interfere. [Mathura Prasad Vs Union of India and Ors. (2007) 1 SCC 437]. However, there is no case made out for interfere at all.

16. I also do not find any ground to interfere with the punishment imposed against the petitioner. A punishment should be proportionate to the misconduct found in the case and the authority is to arrive at a conclusion of proportionate punishment upon its conscious application of mind. Since I find that the Appellate Authority has complied with all Rules and Procedures laid down under the Railway Protection Force Rules, 1987, I find no reason to interfere with the quantum of punishment awarded to the petitioner.
17. For the foregoing reasons, I find no reason to interfere with the impugned orders. WPA No 19950 of 2009 is dismissed. However, there shall be no orders as to costs.
18. A certified copy of this judgment, if applied for, be given to the parties upon compliance with all necessary formalities.

(Ravi Krishan Kapur, J.)