

IN THE HIGH COURT OF JUDICATURE AT BOMBAYNAGPUR BENCH : NAGPURWRIT PETITION NO.732 OF 2020

Peter Colleghan Alexander Garvin,
aged 59 years, Ex-Inspector, RPF,
r/o Anant Apartment, Flat No.5/3,
Plot No.68, Khare Town, Dharampeth,
Nagpur – 440010.

... Petitioner

- Versus -

- 1) Principal, Training Centre, Nasik,
Central Railway, Samangao Road,
Nasik-422101.
- 2) Divisional Security Commissioner,
DRM Office, Central Railway,
Solapur-413001.
- 3) Principal Chief Security Commissioner,
Central Railway, 3rd Floor, Parcel
Office Building, RPF Headquarter,
Mumbai CSTM-400001.
- 4) Director General, Railway Protection
Force, Rail Mantralaya, Railway
Board, Rail Bhawan, New Delhi-110001.

... Respondents

Shri B. Lahiri, Advocate for petitioner.

Shri N. Lambat, Advocate for respondents.

CORAM : DIPANKAR DATTA, C.J. AND
A.S. CHANDURKAR, J.

DATED : JULY 28, 2021

ORAL JUDGMENT (PER DIPANKAR DATTA, C.J.) :

1) Rule, returnable forthwith. Heard finally, by consent of Shri Lahiri, learned advocate for the petitioner and Shri Lambat, learned advocate for the respondents.

2) The petitioner, while serving the Railway Protection Force as an Inspector, has been dismissed from service following disciplinary proceedings. The order of dismissal dated 23/7/2019 has been passed by the Principal Chief Security Commissioner, Railway Protection Force, Central Railway. Such order was carried in an appeal by the petitioner. The appeal has since been dismissed by an order dated 24/10/2019 of the appellate Authority, i.e., the Director General, Railway Protection Force. The appellate order as well as the order of dismissal which has merged in such appellate order, is the subject matter of challenge in this writ petition.

3) Shri Lahiri has raised several points to attack the appellate order as well as the order of dismissal passed by the Disciplinary Authority.

4) It is contended that the disciplinary proceedings against the petitioner were not instituted in accordance with Rule 152 of the

Railway Protection Force Rules, 1987 (for short, “the Rules”). Charge-sheet dated 26/3/2018 was issued by the Principal, Railway Protection Force Academy, who is neither the Appointing Authority of the petitioner nor the Disciplinary Authority. Since the Principal, Railway Protection Force Academy lacked jurisdiction to institute proceedings against the petitioner, all proceedings following drawal of charges stand vitiated, with the consequence that the final order of dismissal also stands vitiated.

5) Next, it is contended that the Enquiry Officer, appointed to conduct enquiry into the charges against the petitioner, submitted a report of enquiry, dated 19/6/2019, holding that the petitioner was ‘not guilty’ of the charges levelled against him. The Divisional Security Commissioner, Railway Protection Force, Solapur by an order dated 26/6/2019 forwarded a copy of the report of the Enquiry Officer to the petitioner. In such order, the Divisional Security Commissioner recorded that he did not agree with the findings of the Enquiry Officer and that the reasons for such disagreement with the findings of the Enquiry Officer have been put on record; thus, appropriate disciplinary action is being contemplated and, in this regard, if the petitioner wishes to make any representation, the same would be considered. Our attention

has been drawn by Shri Lahiri to a letter dated 24/6/2019 of the Divisional Security Commissioner, Railway Protection Force, Solapur addressed to the Enquiry Officer. Such letter records the reasons why the Divisional Security Commissioner could not be *ad idem* with the findings returned by the Enquiry Officer. According to the Divisional Security Commissioner, the conclusion recorded by the Enquiry Officer in exonerating the petitioner was not valid. Accordingly, the Enquiry Officer was called upon to submit explanation by addressing the points raised therein why the disciplinary proceedings against the petitioner shall not be taken to its logical conclusion. Shri Lahiri has invited our attention to the reply of the petitioner dated 6/7/2019 wherein it is contended that the findings of the Enquiry Officer should be accepted. Following consideration of the reply so submitted by the petitioner, the final order of dismissal was passed by the Principal Chief Security Commissioner on 23/7/2019, as noted above. According to Shri Lahiri, the procedure followed by the Divisional Security Commissioner is wholly contrary to the provisions of the Rules as well as the dictum of the Supreme Court in its decision in **Punjab National Bank and others vs. Kunj Behari Misra** {(1988) 7 SC 84)}. It is vehemently contended that the Divisional Security Commissioner not being the petitioner's Disciplinary Authority in

terms of provisions of Rule 151 of the Rules read with Schedule III thereof, he could not have recorded the note of disagreement; even assuming that he had the authority to record the note of disagreement, he was required to record tentative reasons for such disagreement and not his final conclusion. The very opportunity sought to be extended to the petitioner stood defeated by reason of concluded finding of guilt against the petitioner even at the stage of extending opportunity to him to represent against the note of agreement. It is contended by Shri Lahiri that the note of disagreement, if any, recording tentative reasons for disagreement should have been forwarded to the petitioner and his response elicited in that regard. The procedure followed by the Divisional Security Commissioner in seeking a reply from the Enquiry Officer and forwarding such letter to the petitioner to elicit his response could not have been a proper substitute for the procedure to be followed, in terms of the statement of law in Kunj Behari Misra (supra).

6) Finally, Shri Lahiri has referred to a Bench decision of the Gujarat High Court in Satish vs. Union of India (R/Special Civil Application No.7466/2019 decided on 1/5/2020) to contend that in similar circumstances, the Bench presided over by the Hon'ble Chief

Justice had declared the proceedings to have been vitiated beyond repair and accordingly, had not only set aside the final order of punishment imposed upon the petitioner therein, but also imposed costs of Rupees Five lakhs against the respondents. Not only that, such decision when challenged before the Supreme Court by way of special leave petition, the same was dismissed by the Bench presided over by the Hon'ble Chief Justice of India on the ground that the judgment and order under challenge did not merit any interference. According to Shri Lahiri, since the facts are similar, we ought to follow the same course of action and set aside the disciplinary proceedings together with the final order of dismissal as well as the appellate order and reinstate the petitioner in service.

7) Shri Lambat, however, has drawn our attention to Rule 219 of the Rules. According to him, Rule 219 provides a remedy of revision to the petitioner, which he did not avail of prior to presenting this writ petition. Shri Lambat has also drawn our attention to the appeal petition of the petitioner to contend that none of the points raised by Shri Lahiri in course of hearing before us were raised in such petition. It is, accordingly, his submission that the appellate authority did not have the occasion to deal with the points now being raised by Shri Lahiri. He also submits that if the petitioner approaches the

revisional authority with a proper application raising all such points, which have been raised before us, the revisional authority will proceed to consider such points on merits and decide the same in accordance with law.

8) Having heard learned advocates for the parties, we are of the considered opinion that a very fair stand has been taken by Shri Lambat. Indeed, none of the points raised by Shri Lahiri, which we have recorded above, find place in the appeal petition of the petitioner. In the absence of such points being raised in the appeal petition, the appellate authority did not have the occasion to consider the same. Once Rule 219 of the Rules provides that a revision would lie, if in consequence of some material irregularity there has been injustice or miscarriage of justice, there is no reason why the petitioner ought not to approach the revisional authority, as submitted by Shri Lambat.

9) We, therefore, dispose of this writ petition granting liberty to the petitioner to approach the revisional authority within a fortnight from today. If the petitioner applies for revision before the appropriate revisional authority within the aforesaid time, such revisional application shall be considered on merits and limitation

would not stand in the way of such consideration. Since Rule 219 itself provides the time limit within which a revision ought to be disposed of, we hope and trust that the revisional authority shall proceed to dispose of the revision, if filed by the petitioner, within three months from the date of receipt thereof. We make it clear that the petitioner shall be entitled to raise points other than those which have been recorded above, if available to him in law, in such revision and the revisional authority shall be obliged to consider such points too.

10) Rule is made absolute in the aforesaid terms. No order as to costs.

(A.S. CHANDURKAR, J.)

(CHIEF JUSTICE)

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