

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

WRIT PETITION NO.736 OF 2020

Anil Raibhanji Sarve,
aged 57 yrs, Ex-Head Constable,
RPF, Central Railway,
r/o Sai Nagar, No.2, Hudkeshwar
Road, Nagpur – 440034.

... Petitioner

- Versus -

1) Principal, Training Centre, Nasik,
Central Railway, Samangao Road,
Nasik – 422101.

2) Chief Security Commissioner,
Central Railway, 3rd Floor, Parcel
Office Building, RPF Headquarter,
Mumbai CSTM-400001.

3) Principal Chief Security Commissioner,
Central Railway, 3rd Floor, Parcel
Office Building, RPF Headquarter,
Mumbai CSTM – 400001.

... Respondents

Shri B. Lahiri, Advocate for petitioner.

Shri N.P. 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, who was a Constable of the Railway Protection Force, has been dismissed from service following disciplinary proceedings. The order of dismissal has been affirmed in appeal and subsequently confirmed by the revisional authority. All such orders are under challenge in this writ petition.
- 3) Having heard Shri Lahiri and Shri Lambat, we are of the considered opinion that this writ petition may be disposed of on a short point.
- 4) The Enquiry Officer, who was appointed to conduct enquiry into the charges against the petitioner, found him 'not guilty'. The Deputy Chief Security Commissioner-cum-Principal, RPF/ZTC/Nasik, being the disciplinary authority, did not agree with the findings of the Enquiry Officer. Such disagreement was noted in his order dated 26/6/2019. However, contrary to the law laid down by the Supreme Court in **Punjab National Bank and others vs. Kunj Behari Misra** {(1998) 7 SCC 84}, the Deputy Chief Security Commissioner did not record tentative reasons for disagreement. In the absence thereof, the opportunity granted to the

petitioner to make a representation amounted to completing a mere ritual. The petitioner could not have, by projecting his own imagination, know what was the reason for which the disciplinary authority did not agree with the Enquiry Officer and/or what weighed in the mind of the disciplinary authority, for such disagreement, which he was required to dispel. We do not consider that the procedure adopted by the disciplinary authority was in accordance with the law laid down in the case of **Kunj Behari Misra** (supra).

5) In terms of Rule 217 of the Railway Protection Force Rules, 1987, the appellate authority was required to consider whether the procedure prescribed in the Rules had been complied with and if not, whether such non-compliance resulted in violation of any constitutional provision or in miscarriage of justice. We have no hesitation to record that this particular aspect escaped the notice of the appellate authority as well as the revisional authority, rendering the proceedings vitiated.

6) We, accordingly, set aside the impugned revisional order, the appellate order as well as the order of dismissal from service. The petitioner shall be treated to be in service, from this day, for the limited purpose of completing the enquiry in accordance with law, meaning thereby that the disciplinary authority of the petitioner shall issue fresh note of disagreement recording tentative reasons, within a fortnight from date of receipt of a copy of this order. The petitioner shall have a

fortnight's time to respond to such note of disagreement. Upon consideration of the petitioner's response, the disciplinary authority shall pass a fresh order strictly in accordance with law. In the event the petitioner is ultimately reinstated in service by the disciplinary authority or any other higher authority, he shall be entitled to all the service benefits as if he had not been fastened with the order of dismissal, which has been set aside by this Court. All contentions are left open.

7) The writ petition stands disposed of. Rule is made absolute in the above terms. There shall be no order as to costs.

(A.S. CHANDURKAR, J.)

(CHIEF JUSTICE)

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