

16.08.2022
ML-314
sb

WPA 6976 of 2020

Sri Manoj Yadav
-vs-
Union of India & Ors.

Mr. Achin Kumar Majumdar ...for the Petitioner

Mr. Pulakesh Bajpayee ...for the Respondents

The subject matter of challenge in this writ petition is order of punishment dated 13th April, 2020 which was communicated vide letter dated 13th April, 2020 of the Divisional Security Commissioner/RPF, S.E. Railway/Kharagpur whereby the petitioner was dismissed from his service. A challenge has also been thrown to the order of the Appellate Authority dated 10th July, 2020 by which the Appellate Authority dismissed the appeal preferred by the petitioner and confirmed the order of punishment dated 13th April, 2020.

On perusing the said order of punishment, it appears that the fulcrum of the issue is whether the disciplinary authority has recorded his satisfaction in writing whether it would reasonably practicable to hold regular enquiry proceeding against the petitioner in accordance with the relevant provisions of the Railway Protection Force Rules, 1987 (hereinafter referred to as the “said Rules of 1987”) or not.

Mr. Majumdar, learned advocate represents the petitioner, has heavily relied upon Rule 161 of the said Rules of 1987 and for better understanding of the case made out by the petitioner, said Rule 161 is quote below:-

“161. Special Procedure in certain cases:
notwithstanding anything contained anywhere in these rules-

- (i) *where any punishment is imposed on an enrolled member of the Force on the ground of conduct which has led to his conviction on a criminal charge; or*
- (ii) *where the authority competent to impose the punishment is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an enquiry in the manner provided in these rules;*
- (iii) *where the President is satisfied that in the interest of security of State and the maintenance of integrity in the Force, it is not expedient to hold any inquiry in the manner provided in these rules;”*

According to the petitioner, in terms of Rule 161(ii) if the disciplinary authority may proceed to impose punishment against the member of the force dispensing with the regular procedure of holding enquiry; in terms of the aforesaid Rule 161 the concerned authority is required to record in writing the reasons which would demonstrate that it would not be practicable to hold an enquiry prior to imposition of such punishment.

Here in the present case as it has been argued on behalf of the petitioner that the order of punishment dated 13th April, 2020 only goes to show the extent of alleged misconduct committed by the petitioner on 11th April, 2020 by allegedly

misbehaving, man-handling and hurling filthy words against his colleague namely, G.K. Harizan. It also appears from the said order of punishment that the disciplinary authority straightway obtained comments from other members of the force who were present and came to the finding that the petitioner was guilty of alleged misconduct and on applying Rule 161(ii) of the said Rules of 1987 dismissed the petitioner from service.

According to the petitioner, such dismissal order can not qualify the test of law in view of the following decisions:-

- i) one unreported judgment dated 8th May, 2014 passed by a co-ordinate Bench of this court on a writ petition being W.P. 13175(W) of 2014 (Kanwaldeep Singh Sidhu Vs. Union of India & Ors.);
- ii) AIR 1991 SC 1043 (Chief Security Officer & Ors. Vs. Singasan Rabi Das), Paragraph 5;
- iii) (1992) 1 CHN page 458 (Raj Kishore Tewari Vs. Union of India & Ors.), Paragraph 7;
- iv) (2006) 13 SCC 581 (Tarsem Singh vs. State of Punjab and Others), paragraph 11.

Mr. Bajpayee, learned advocate appears on behalf of the Railway Protection Force being the principal respondents and has defended the decision of the disciplinary authority dated 13th April, 2020 based on the affidavit-in-opposition used on behalf of the RPF authorities. It has been submitted on behalf of the respondent authority that there was no necessity to hold regular enquiry by initiating disciplinary proceeding since the disciplinary authority came to the finding against the petitioner based on the depositions made by his colleagues who were present at the time when the incident took place on 11th April, 2020. It has further been submitted that railway protection force being the disciplined force, for maintaining discipline considering the nature of misconduct committed by the petitioner, initiation of regular departmental proceeding would be an idle formality. There were adequate materials based on which steps were taken by the disciplinary authority on the occurrence of the incident on 11th April, 2020 and accordingly, the disciplinary authority came to a finding against the petitioner and passed an order of punishment to the extent of dismissal from service vide order dated 13th April, 2020. In addition thereto, it has also been submitted that the departmental appeal of the petitioner was dismissed vide order dated 10th July, 2020 against which the

appropriate course which was left open was to file revisional application before the Revising Authority in accordance with law. Lastly this court has been apprised that the petitioner was placed under suspension vide order dated 12th April, 2020 by the appropriate authority. Therefore, according to the respondent authority, there is no requirement of interfering with the steps taken by them which culminated into order the punishment dated 13th April, 2020.

This Court has heard the learned advocates representing the parties and perused the materials on record including the pleadings exchanged between the parties. Since technical point has been taken on behalf of the respondent authority of availability of provisions relating to preferring revisional application against the order of Appellate Authority, this Court finds the same at this stage is not a relevant consideration in view of the fact that at the time of admission of the writ petition at the motion stage, the same point was not taken by the respondent authority and today, the court is considering the issue on merit on exchange of affidavits. Therefore, at this stage, the issue should not be remanded to the Revisional Authority and accordingly, such point taken on behalf of the respondent authority is negated.

On consideration of Rule 161 (ii), it appears that there is a requirement of recording reasons in writing if it is found by the disciplinary authority on the materials available before him that initiation of regular disciplinary proceeding ought to be dispensed with.

However, in the present case on perusal of the impugned order dated 13th April, 2020 it appears that the disciplinary authority without complying with the requirement as provided in the said Rule 161 (ii) straightway on consideration of the alleged misconduct based on the depositions made by the colleagues of the petitioner who were present at the place where the incident took place and the report of the Post Commander came to the finding that the petitioner is guilty of misconduct and imposed major punishment of dismissal from service.

It is true that it is within the domain of the disciplinary authority to dispense with the requirement of initiation of regular disciplinary proceeding provided the prescription of law as contemplated under Rule 161 (ii) is properly complied with. On mere reading of the impugned order of dismissal it appears that the order of disciplinary authority is emotional outburst not a pragmatic decision as it has been rightly pointed out by the learned advocate representing the petitioner. Before

imposing punishment on application of Rule 161(ii) the disciplinary authority is required to disclose the reasons for dispensation of the regular disciplinary procedure which includes issuance of charge-sheet, initiation of enquiry proceeding on appointment of enquiry officer and forwarding a finding of the enquiry officer if such finding appears to be adverse to the delinquent. In this regard, it is apt to quote the relevant part of the unreported decision of the coordinate Bench dated 8th May, 2014 passed in **Kanwaldeep Singh Sidhu (supra)**.

“There are several ingredients of the provision. It is first to be recognised that summary procedure is an exception to the general rule of protracted disciplinary proceedings initiated by a charge-sheet and an inquiry. It is evident that summary procedure can be conducted only by the authority competent to impose the punishment on the delinquent and that, prior to taking up the merits of the allegations of misconduct, such authority is not only required to be satisfied that it would not be reasonably practicable to hold an inquiry into the allegations in the manner provided by the rules, but also record the reasons therefor in writing. The punishment that may be imposed by the authority is after consideration of the circumstances of the case.

The rule, therefore, implies a two-stage procedure. First, the competent authority has to be satisfied that the regular procedure may be dispensed with and a summary procedure conducted upon recording reasons as to why it would not be reasonably practicable to hold an inquiry in the manner prescribed in the rules. It is only upon the completion of this stage that the consideration of the allegations or charges against the perceived delinquent may be taken up. If the initial condition is not met, the authority to adjudicate upon the allegations or charges of perceived misconduct is absent.”

As per the principle enunciated by the coordinate Bench in the said judgment dated 8th May, 2014 it appears that it is incumbent upon the disciplinary authority to be satisfied that regular procedure may be dispensed with and a summary

procedure needs to be conducted upon recording reasons as to why it would not be reasonably practicable to hold an enquiry in the manner prescribed in the Rules and it is only upon the completion of this stage the consideration of allegations and charges against the perceived delinquent may be made. While adjudicating the issue involved in **Kanwaldeep Singh Sidhu (Supra)**, co-ordinate Bench was considering the identical provisions under Rule 161 (ii) of the said Rules of 1987 and this Court has been apprised of by the learned advocate representing the petitioner that said judgment of the co-ordinate Bench dated 8th May, 2014 has attained finality since the same was not appealed against.

It is also well settled by virtue of the judgment delivered in **Raj Kishore Tewari (supra)** that enquiry being the general rule and the dispensation thereof being an exception, the authority concerned resorting to any such exceptional or extraordinary course must justify the same by producing materials in accordance with law. In the present case, from the order of dismissal dated 13th April, 2020, it does not appear that there was any finding or observation by the disciplinary authority based on materials which led the said authority to take decision to dispense with the regular enquiry proceeding. This court does not

find any material which has been placed or disclosed either in the order of dismissal or before me to show that subjective satisfaction arrived at by the disciplinary authorities was based on objective criteria as it has been held necessary in the judgment of **Tarsem Singh (supra)**.

In view of the aforesaid discussion, the impugned order of the disciplinary authority dated 13th April, 2020 and the order of the Appellate Authority dated 10th July, 2020 are set aside. Accordingly the order of suspension dated 12th April, 2020 passed against the petitioner stands revived. The said order of suspension shall remain in force for a period of 12 weeks from this date. The concerned authority of RPF shall be at liberty to initiate the proceeding against the petitioner in accordance with law either in terms of Rule 161 (ii) or in terms of Rule 153 of the said Rules of 1987; if during the aforesaid period the concerned authority of RPF initiates proceedings against the petitioner, the suspension order which has been issued against the petitioner shall continue and the RPF authority is required to conclude such proceeding within a period of 6 months thereafter.

The concerned authority of RPF is also directed to release subsistence allowance in favour of the

petitioner during the period of suspension regularly in accordance with law, if it is not paid.

With the aforesaid directions, the writ petition stands disposed of. There shall be no order as to costs.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Saugata Bhattacharyya, J.)