

04.12.2023.
Court No.13
Item No. 140
ap

W.P.A. No. 9593 of 2020

**Sri Gopinath Rout
Versus
Union of India & Ors.**

Mr. Achin Kumar Majumder,
Ms. Ananya Adhikary.

...For the petitioner.

1. Despite direction passed by a Co-ordinate Bench of this Court on 16th December, 2020, the respondents have not used any affidavit-in-opposition. They are not even represented today.

2. Challenge in the instant writ petition has been made to summary proceedings under Section 161(ii) of the R.P.F. Rules, 1987 resulting in order dated 26th May, 2020 passed by the Chief Security Commissioner RPF, whereby the writ petitioner was dismissed from service.

3. The said order, was carried in appeal, before the Appellate Authority being the Principal Chief Security Commissioner, R.P.F., South Eastern Railway, Garden Reach, Kolkata – 700 043. The Appellate Authority vide order dated 15th June, 2020 confirmed the order of the first authority, namely, Chief Security Commissioner, R.P.F.

4. The brief facts of the case are that the writ petitioner on 15th April, 2020 went to the house of the complainant one Smt. Bidhata Mahanandiya and

picked up her husband Ajit Mahanandiya. He was taken to Rajgangpur allegedly in connection with theft of certain materials from the concerned Railway premises. Two days' thereafter the complainant received information through an Agent of the R.P.F., Rajgangpur that if she paid Rs.50,000/-, her husband would be released without registering any case.

5. The complainant is stated to have arranged Rs.25,000/- and paid the same to the R.P.F. Personnel of Rajgangpur and her husband was released. The GRPs, Rourkela registered a case on the basis of the complaint of Mrs. Mahanandiya, being FIR No.49 of 2020 dated 23rd May, 2020 under Sections 342, 384, 389 of the Indian Penal Code and Sections 3(1)X of the Scheduled Castes and Scheduled Tribes Act against the R.P.F. Personnel.

6. An enquiry was caused by the PC, R.P.F. Outpost, Rourkela with the writ petitioner, who was an Sub-Inspector. The petitioner is stated to have admitted on 15th April, 2020 that he along with his staff had detained the said Ajit Mahanandiya for theft of construction materials.

7. It is further stated to have been admitted that after oral interrogation, R.P.F. released the accused. The petitioner is charged with not entering any information in this regard to the R.P.F. Outpost at Rourkela. There was no diary entry made.

8. The disciplinary authority being the Chief Security Commissioner, R.P.F. launched proceedings under Section 161(ii) of R.P.F. Rules, 1987 and found the petitioner guilty of violation of Rule 146.4, 146.7(iii), 146.8(a), 147(i) and 147 (xx) of the said Rules. On the issue of dispensation of formal disciplinary enquiry for invoking Rule 161(ii) of the R.P.F. Rules, 1987 the following is stated:

“Based on the above mentioned facts and circumstances and considering the gravity and exigency of the matter, I conclude that it is not reasonably practicable to hold an inquiry under the relevant provisions of RPF Rules, 1987. It is prudent to take immediate and stern action against Sri G.N. Rout, Sub-Inspector/OP/Rajgangpur under Rules 161(ii) of RPF Rules, 1987.”

9. The appellant was dismissed from service. The appellate authority in turn vide its order dated 15th June, 2020 on the question of dispensation of formal enquiry and invocation of Rule 161(ii) has stated as follows:

“It is evident from the records that the action of the disciplinary authority is legal and in accordance with Rule 161(ii) of RPF Rules, 1987. The action against the appellant has been taken by the disciplinary authority on the basis of the appellant’s discreditable conduct, corrupt and improper practice, abuse of the authority, violation of any duty and detaining, searching or arresting any person vexatiously and without reasonable suspicion or cause. He confessed in the appeal petition dated 15.06.2020 that the incident date was on 15.04.2020 and an FIR has been lodged in this case, but, the appellant neither informed about the incident to his superior nor made any diary entry. He improperly used his position for his personnel gain and violated his very basic duties and responsibilities. In order to resolve the trust & faith among the staff & public, the immediate departmental action was very much necessary. The situation was alarming and there was no

scope/time on the part of the disciplinary authority to ask for defense representation. Giving time for submission for defense representation would create a possibility to worsen the situation is very badly & which was also against the public interest. Hence, the contentions of the appellant are not tenable.”

10. Admittedly, the petitioner was holding a permanent post under the R.P.F., which is a statutory force under the Railways and Central Government.

11. The charges against him are in essence kidnapping of somebody under the garb of an investigation and extortion. The petitioner was also charged with acceptance of illegal gratification of Rs.25,000/- and releasing the accused. The petitioner did not make even a G.D. Entry with the R.P.F. Outpost at Rourkela.

12. What has been registered as an FIR is the complaint of the alleged accused. It is not known as to whether any recorded confession was given by the petitioner to the respondents. It is equally unknown if the complainant or her husband were not available for deposing evidence in a formal enquiry.

13. The reasoning given by the first and appellate authority for invoking Section 161(ii) and dispensing with a formal enquiry, to say the least are pathetically insufficient if not no reasons at all. The dispensation of enquiry under Section 161(ii) of the R.P.F. Rules, 1987, is resorted to only in extreme and very special circumstances. No such circumstances are either

available from the records or discussed by the first and appellate authority in their orders.

14. The first and appellate authority appear to have made up their minds to impose penalty on the petitioner, by one way or the other. In the process the entire concept and principles of natural justice has been comprised if not flagrantly violated and/or given a go bye. Appropriate reasons have not been recorded to explain why it was not possible to hold a formal departmental enquiry.

15. It is now well settled that any order of any administrative authority must be informed with sufficient, proper and comprehensive reasons. After all the petitioner's life and liberty of basic source of sustenance was at stake. There is no evidence on record to indicate as to whether any evidence at all was available to prove any charge against the petitioner.

16. It is equally baffling to note that formal departmental enquiry albeit under the RPF Rules, 1987 has been dispensed with in such casual, light, flimsy and lackadaisical manner.

17. This Court has constrained to refer a decision of the Hon'ble Supreme Court of India in the case of ***Tarsem Singh – Vs. – State of Punjab & Ors.*** reported in ***(2006) 13 Supreme Court Cases 581*** particularly paragraphs 10, 11 and 12 thereof.

18. In another unreported decision dated **11th August, 2021** in **Civil Appeal Nos. 4738-4739 of 2021 (Pintu Kumar – Vs. – Union of India & Ors.)**, the Hon'ble Supreme Court of India upheld an order of this Bench where insufficiency of reasons for dispensing with a formal enquiry was found by this Court.

19. The proceeding under Section 161 (ii) of the RPF Rules, 1987 has been set aside for absence of appropriate reasons. The relevant paragraphs of the decision of the Hon'ble Supreme Court of India are set out hereinbelow:

“The reasons that are recorded in the dismissal order for dispensing with the enquiry are that there is a likelihood of a number of witnesses to be examined, which will prolong the enquiry. The said enquiry which would take a long period of time would harm the basic tenets and ethos of the society. The said reasons cannot be said to be sufficient for the purpose of dispensing with an enquiry. Departmental enquiry which is a safeguard to the rights of a delinquent officer can be done away only in extraordinary situations where a departmental authority finds it reasonably impracticable to hold such an enquiry. We are of the considered view that a number of witnesses having to be examined cannot be a ground for holding that it is not reasonably practicable to hold an inquiry.

The Learned Single Judge of the High Court was right in setting aside the order of dismissal on the ground that the reasons recorded by the Competent Authority for dispensing with the inquiry are not valid.

The Division Bench of the High Court committed an error in interfering with the judgment of the learned Single Judge by holding that the inquiry was correctly dispensed with. Apart from approving the findings recorded in the dismissal order, the High Court also held that the appellant was not available for a period of three years when he was in custody for which reason the inquiry could not be held. We are informed by the learned counsel for the appellant that the appellant was in

jail only for a period of 9-18 months. In any event, that is not the reason that was given by the Competent Authority to dispense with the inquiry."

20. For the reasons stated above, the impugned order of the first authority dated 26th May, 2020 and the appellate authority dated 15th June, 2020 are quashed and set aside.

21. The writ petitioner shall remain in suspension and be paid 50% of all wages and emoluments that he would be entitled to with effect from 26th May, 2020 till completion of enquiry. The respondents shall be at liberty to institute a formal enquiry against the petitioner in accordance with the RPF Rules, 1987 and take appropriate steps thereunder in accordance with law.

22. It is expected that the proceedings are initiated and completed within a period of four months from the date of communication of a copy of this order.

23. With the aforesaid observations, the instant writ petition is allowed and disposed of.

24. There will be no order as to costs.

25. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)