



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR**

**Writ Petition No.1220 of 2023**

**Peter Colleghan Alexander Garvin,** |  
Aged 62 years, Occupation – Ex-Inspector, RPF, |  
R/of Anant Apartment, Flat No.5/3, Plot No.68, |  
Khare Town, Dharampeth, Nagpur – 440010. | **... Petitioner**

**Versus**

- 1. Central Government / Revisionary Authority,** |  
Through the Minister of State for Railways, |  
Rail Bhawan, New Delhi – 110 001. |
- 2. Principal, Training Centre, Nasik,** |  
Central Railway, Samangao Road, |  
Nasik – 422 101. |
- 3. Divisional Security Commissioner,** |  
DRM Office, Central Railway, Solapur-413001. |
- 4. Principal Chief Security Commissioner,** |  
Central Railway, 3<sup>rd</sup> Floor, Parcel Office Building, |  
RPF Headquarter, Mumbai – 400 001. |
- 5. Director General, Railway Protection Force,** |  
Rail Mantralaya, Railway Board, Rail Bhawan, |  
New Delhi – 110 001. | **... Respondents**

Mr. B. Lahiri, Advocate for the Petitioner.

Mr. N.S. Deshpande, Deputy Solicitor General of India, for the Respondents.

**CORAM : A.S. CHANDURKAR & MRS. VRUSHALI V. JOSHI, JJ.**

Date on which arguments were heard : 29<sup>th</sup> September, 2023

Date on which judgment is pronounced : 12<sup>th</sup> December, 2023

*[ PRONOUNCEMENT THROUGH VIDEO CONFERENCE ]*

**JUDGMENT ( PER A.S. CHANDURKAR, J. ) :**

1. **Rule.** Rule made returnable forthwith and heard the learned counsel for the parties.

2. The challenge raised in this writ petition, filed under Article 226 of the Constitution of India, is to the orders passed in disciplinary proceedings against the petitioner that have resulted in his dismissal from service.

3. The petitioner, while serving as Inspector with the Railway Protection Force (*RPF*), was subjected to disciplinary proceedings in the form of a joint enquiry along with one Mr. Anil Sarve, Head Constable, on the charge that while the petitioner was functioning as Inspector, RPF, Wardha, he entered into a criminal conspiracy with Mr. Anil Sarve, Head Constable, and demanded bribe of Rs.5,000/- from the complainant Mr. Nitin Meshram on 29<sup>th</sup> September 2015. He was further charged that pursuant to such criminal conspiracy, he had accepted bribe of Rs.5,000/- from the complainant, which amount was recovered from him in the presence of independent witnesses. It was stated in the charge-sheet dated 28<sup>th</sup> March 2018 that this amounted to committing gross misconduct and failure to discharge duties with utmost integrity, honesty, devotion and diligence in contravention with the provisions of Rule 146(7) and

147(i)(ii) of the Railway Protection Force Rules, 1987. In the joint-enquiry held against the petitioner and Mr. Anil Sarve, various witnesses were examined. At the conclusion of the enquiry, the Enquiry Report was submitted on 19<sup>th</sup> June 2019 and the Enquiry Officer concluded that there was no evidence to hold that there was any demand of bribe of Rs.5,000/- from the petitioner. It was further stated that since there was no demand of such bribe, there was no acceptance of the same. This finding was recorded also with regard to the other delinquent Mr. Anil Sarve. On this premise, the Enquiry Officer concluded that the petitioner as well as Mr. Anil Sarve were not guilty of the charges levelled against them.

4. The Divisional Security Commissioner, RPF/Solapur considered the Enquiry Report and by his communication dated 26<sup>th</sup> June 2019 observed that he did not agree with the findings of the Enquiry Officer as the charges levelled were serious in nature, indicating indulgence in corrupt activities. By indicating the reason for such disagreement with the findings of the Enquiry Officer, it was proposed that disciplinary action would be considered against both the delinquents. An explanation was sought from the petitioner by the Divisional Security Commissioner in the light of the observations made by said Authority in its communication dated 24<sup>th</sup> June 2019. The petitioner refuted the contents of the said

communication by his explanation dated 6<sup>th</sup> July 2019. Thereafter, by order dated 23<sup>rd</sup> July 2019, the Principal Chief Security Commissioner, RPF, Mumbai passed an order holding that the petitioner had indulged in corrupt practices and had received Rs.5,000/- from the complainant for illegal vending. The punishment of dismissal from service was accordingly imposed on the petitioner. Being aggrieved, the petitioner filed an Appeal under Rule 212.1 of the Rules of 1987. By order dated 24<sup>th</sup> October 2019, the said Appeal came to be dismissed by the Director General/RPF (Appellate Authority), New Delhi. This order passed by the appellate Authority was challenged by the petitioner by filing Writ Petition No.732 of 2020. By the judgment dated 28<sup>th</sup> July 2021, the writ petition was disposed of by granting liberty to the petitioner to approach the revisional Authority since such statutory remedy was available. The petitioner invoked the said remedy and by order dated 12<sup>th</sup> January 2022, the Director/RPF, Railway Board, New Delhi dismissed the Revision Application. The petitioner again challenged the said order by preferring Writ Petition No.1182 of 2022. By the judgment dated 17<sup>th</sup> August 2022, the order passed by the revisional Authority was set aside on the ground that the revisional Authority had passed an unreasoned order. The Revision Application was directed to be decided afresh. Pursuant thereto, the revisional authority, by order dated 19<sup>th</sup> December 2022, considered the

petitioner's revision application and held that there was no reason to interfere with the order imposing punishment on the petitioner. Being aggrieved, the petitioner has challenged the aforesaid orders in the present writ petition.

5. We have heard the learned counsel for the parties and we have also gone through the written submissions filed on their behalf. We have thereafter given due consideration to the rival submissions. In our view, the order of penalty in the form of dismissal from service is liable to be set aside for the following reasons :-

- (a) At the conclusion of the enquiry, the Enquiry Officer submitted his report dated 19<sup>th</sup> June 2019 and concluded that the charges framed against both the delinquents, including the petitioner, had not been proved and that they were not guilty of the charges levelled against them. This conclusion was recorded in view of the fact that the complainant denied that there was no demand of bribe from the petitioner and hence there was no acceptance of the said amount. The Enquiry Report was then considered by the Divisional Security Commissioner, RPF/Solapur, who did not agree with the findings of the Enquiry Officer. His disagreement was sought to be indicated in his communication dated 24<sup>th</sup> June 2019 that was addressed to the Enquiry Officer. In this regard it would be necessary to consider the provisions of Rule 154 of

the Rules of 1987 that indicate the action to be taken on the Enquiry Report. Under Rule 154.5, the Disciplinary Authority, if it disagrees with the findings of the Enquiry Officer on any article of charge, it has to record its reasons for such disagreement and record its own findings on such charge if the evidence on record is sufficient. Rule 151.1 indicates who the Disciplinary Authority in respect of any enrolled member of the Force shall be. Such Authority is empowered to impose punishment or pass any disciplinary order as indicated in Schedule- III to the Rules of 1987. The relevant extract of Schedule III to the Rules of 1987, being material, is reproduced hereunder :-

| Sr. No. | Nature of Powers | Director General                  | Chief Security Commissioner       | Additional/ Dy. Chief Security Commissioner/ Principal, RPF Academy | Divisional Security Commissioner / Security Commissioner Commanding Officer/ Senior Security Commissioner | Deputy/Assistant Security Commissioner/ Assistant Commandant of RPSF / Adjutant |
|---------|------------------|-----------------------------------|-----------------------------------|---------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| 1       | Suspension       | All enrolled members of the Force | All enrolled members of the Force | All enrolled members of the Force                                   | All enrolled members of the Force                                                                         | All under officers and below                                                    |
| 2       | Dismissal        | – do –                            | – do –                            | All enrolled members of the Force below the rank of Inspector       | All enrolled members of the Force below the rank of Sub-Inspector                                         | No powers                                                                       |
| 3       | Removal          | – do –                            | – do –                            | – do –                                                              | – do –                                                                                                    | – do –                                                                          |
| 4       | ***              | ***                               | ***                               | ***                                                                 | ***                                                                                                       | ***                                                                             |

The petitioner was holding the post of “Inspector”. In accordance with Schedule-III, the Disciplinary Authority empowered to take action would be the Chief Security Commissioner. In the present case, the disagreement with the findings of the Enquiry Officer has been expressed by the Divisional Security Commissioner and not the Chief Security Commissioner. The Divisional Security Commissioner is empowered to act as Disciplinary Authority with regard to members of the Force below the rank of Sub-Inspector. Similarly, the Principal, RPF Academy / Additional/Deputy Chief Security Commissioner can act as Disciplinary Authority with regard to the members of the Force below the rank of Inspector. It is, thus, clear that though disagreement with the Enquiry Report is required to be expressed by the Disciplinary Authority, which, in the present case, is the Chief Security Commissioner, such disagreement has been expressed by the Divisional Security Commissioner. It is pertinent to note that the order of dismissal from service has been passed by the Principal Chief Security Commissioner, Mumbai, who is, in fact, the Disciplinary Authority. This aspect goes to the root of the matter and vitiates conduct of the proceedings inasmuch as the

disagreement has not been expressed by the petitioner's Disciplinary Authority. A similar issue has been considered by the Division Bench of the Gujarat High Court in *Satish Ramprasad Agnihotri Vs. Union of India* (Special Civil Application No.7466 of 2019, decided on 1<sup>st</sup> May 2020). Perusal of paragraphs 55 to 60 thereof are clear in that regard and the learned counsel for the petitioner is justified in relying upon the same. On this premise, we find that the petitioner's dismissal from service stands vitiated.

- (b) A common enquiry was held against the petitioner and Mr. Anil Sarve. At the conclusion of that enquiry, punishment of "dismissal from service" was imposed upon both the delinquents. Mr. Anil Sarve challenged the imposition of the penalty on him by filing Writ Petition No.3947 of 2022 (*Anil Raibhanji Sarve Vs. Principal, Training Centre, Nasik and Ors.*). The said Writ Petition was decided on 15<sup>th</sup> February 2023 by a Coordinate Bench. After considering the entire material on record as well as the Enquiry Report, this Court held that it was a case of "no evidence" against the said delinquent in view of the clear stand of the complainant that there was no

demand of any bribe nor any acceptance by the said petitioner. On that basis, the order of penalty came to be set aside and Mr. Anil Sarve was held entitled to all consequential benefits including reinstatement, continuity and back-wages. The RPF, Mumbai, through its Principal Chief Security Commissioner, has accepted the aforesaid decision and by an order dated 3<sup>rd</sup> March 2023 has reinstated Mr. Anil Sarve. We find that this Court having considered the entire Enquiry Report of the common enquiry and having found that it was a case of “no evidence” against one of the delinquents, there is no reason whatsoever to take a different view of the matter. The enquiry held against both the delinquents was a common enquiry and on the basis of the same evidence, the petitioner was removed from service. Pertinently, the charge levelled was of criminal conspiracy between the petitioner and Mr. Anil Sarve. It would thus be clear that the petitioner would be entitled to the benefit of adjudication in the case of co-delinquent especially when the evidence was common. The ratio of the decision in Criminal Appeal No.1012 of 2022 (*Javed Shaukat Ali Qureshi Vs. State of Gujarat*), decided by the Hon’ble Supreme Court on 13<sup>th</sup> September 2023, relied upon by

the learned counsel for the petitioner, is clearly attracted to the facts of the present case.

In these facts, therefore, the ratio of the decision in *Indian Oil Corporation and Ors. Vs. Ajit Kumar Singh and Anr., 2023 SCC OnLine SC 647*, decided on 17<sup>th</sup> May 2023, relied upon by the learned counsel for the respondent, is not attracted to the facts of the present case.

6. For the aforesaid reasons, the following order is passed :-
  - (i) The orders dated 23<sup>rd</sup> July 2019, dismissing the petitioner from service, as confirmed by the orders dated 24<sup>th</sup> October 2019 in appeal and 19<sup>th</sup> December 2022 in revision, are set aside.
  - (ii) It is declared that the petitioner is entitled to reinstatement on his former post with continuity in service and back-wages till his date of superannuation. The consequential benefits be paid to the petitioner within a period of eight weeks from today.
7. Rule is made absolute in the aforesaid terms. No order as to costs.

**(MRS. VRUSHALI V. JOSHI, J.)**

**(A.S. CHANDURKAR, J.)**