



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

WRIT PETITION NO. 2348 OF 2023

Mukesh Kumar,
UIN No. SCR0900162, Aged 43 years,
Occupation – Inspector with Railway
Police Force, Police Station, Akola,
Permanent resident of H.No.122,
Arvind Nagar, CBI Colony, Jagatpura,
Jaipur,
Presently residing at RB IV, Goods Shed,
Railway Colony, Akola.

.... PETITIONER

VERSUS

- 1) Union of India,
through the Director General,
Railway Police Force, New Delhi.
- 2) Inspector General cum Principal
Chief Security Commissioner
(IG & PCSC), Railway Protection
Force, South Central Railways,
Security Department, Rail Nilayam,
Secunderabad.
- 3) Senior Divisional Security Commissioner,
Railway Protection Force, Nanded -
431605.

.... RESPONDENTS

Mr. S.V. Bhutada, Counsel for the petitioner,
Mr. V.A. Bramhe, Counsel for the respondents.

CORAM : A.S. CHANDURKAR
& ABHAY J. MANTRI, JJ.
DATED : 09th NOVEMBER, 2023

ORAL JUDGMENT : (PER : ABHAY J. MANTRI, J.)

Heard. **Rule.** Rule made returnable forthwith.

2. The petitioner being aggrieved by the order of dismissal from service dated 14-3-2023 passed by respondent No.2 has preferred this petition.

3. The petitioner joined the services on 24-4-2009 as Sub-Inspector. He was employed on the post of Inspector with the Railway Protection Force. However, on 10-3-2023 First Information Report (for short "FIR") was registered against the petitioner at CBI, ACB, Nagpur alleging that he has demanded an amount of Rs.3,00,000/- (Rupees Three Lac) from Shri Muzammil Ahmad in respect of releasing his father from the case registered against him in RPF Police Station, Akola and, therefore, FIR was registered against him under Section 120-B of the Indian Penal Code and read with Section 7 of the Prevention of Corruption Act. In pursuance of the said report, he was arrested on 11-3-2023 and remanded to police custody till 14-3-2023. On arrest, he was

suspended and departmental enquiry was initiated against him and by order dated 14-3-2023 he was dismissed from the service.

4. It is contended by the petitioner that no charge-sheet has been served on him, nor opportunity was given to him prior to passing the dismissal order and, therefore, the passing of the said order is illegal and violative of the principles of natural justice, hence the same is not sustainable in the eyes of law. The petitioner has also averred that in the year 2018-19 he was awarded for commendable services and has also secured multiple achievements.

Being aggrieved by the order of dismissal from service dated 14-3-2023, the petitioner has preferred this petition.

5. By filing the affidavit-in-reply, the respondents oppose the petition on the preliminary ground that the petition is not tenable as alternate remedy of appeal is provided under Rules 212 to 214 of the Railway Protection Force Rules, 1987 (for short the “Rules of 1987”) and, therefore, on that ground alone the petition is liable to be dismissed.

6. Alternatively it is averred that the petitioner was caught red handed while demanding and accepting the bribe of Rs.1,00,000/- (Rupees One Lac) from the complainant Muzammil Ahmad in presence of the witnesses. Accordingly, he was arrested and was in police custody till 14-3-2023 and, therefore, he was suspended and thereafter dismissed from the service. It is also averred that it is not appropriate to keep the petitioner in Railway Protection Department from the point of view of National Security. It is also averred that the petitioner was found fully guilty of discreditable conduct, indiscipline and wilful concealment of facts in the official record from the documentary evidence and hence passing of the impugned order is just, legal and proper and no interference is required in it. The said order is in consonance with the provisions of the Rules. Lastly, it is averred that there was a need to send a strong message to not to allow such tendencies to flourish in future and, therefore, the action under Rule 161 of the Rules of 1987 was taken which is well within the law and hence it is prayed that the order passed is correct and legal and no interference is required and has prayed for dismissal of the petition.

7. Mr. V.A. Bramhe, learned Counsel for the respondents has raised the preliminary objection that alternate remedy of appeal is provided under Rules 212 to 214 of the Rules of 1987 and, therefore, the petition cannot be entertained in writ jurisdiction and same is liable to be dismissed. Per contra, Mr. S.V. Bhutada, learned Counsel for the petitioner vehemently argued that if the principle of natural justice is violated, in that case, Court can exercise its writ jurisdiction. In support of his submission, he has relied on the following authorities.

- (1) State of Tripura v. Manoranjan Chakraborty and others, (2001) 10 SCC 740;
- (2) Schin Kumar v. Union of India through the Ministry of Railways and others, 2023 SCC OnLine Bom 507;
- (3) Harbanslal Sahnia and another v. Indian Oil Corpn. Ltd. and others, (2003) 2 SCC 107.

8. Perused the judgment in the case of *State of Tripura* (supra). The Hon'ble Apex Court has observed that if gross injustice is done and it can be shown that for good reason the court should interfere, then notwithstanding the alternative remedy which may be available by way of appeal under Section 20 or revision under Section 21, a writ court can in an appropriate case exercise its

jurisdiction to do substantive justice. In the case of *Sachin Kumar* (supra) as well as in the case of *Harbanslal Sahnia* (supra), the Hon'ble Apex Court has held that in an appropriate case, inspite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies, (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is a failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In view of the ratio laid down by the Hon'ble Apex Court, it would be appropriate to consider the facts of the case at hand.

9. On perusal of the record, it clearly appears that after arrest of the petitioner on 10-3-2023, he was suspended and without serving the charge-sheet on him and giving any opportunity on 14-3-2023 he was dismissed from the service. The said fact itself shows that the respondent has not given the opportunity to the petitioner to put up his defence and thereby invalidated the principles of natural justice. In the enquiry report and the impugned order, it is observed that the petitioner was in custody till 14-3-2023 and, therefore, he was not accessible to RPF under

Rule 153 of the Rules of 1987 and major penalty was imposed without giving opportunity of defend the allegations made against him. Therefore, in the facts of the case, it is practically not possible in any way to hold departmental enquiry under Rule 153 of the Rules of 1987 against the suspended petitioner. The procedures adopted by the respondents during enquiry could not be verified since both the case files and general diary for the concerning period have been seized by the CBI Officer on 10-3-2023, thus terminating the scope of further enquiry. Hence, it is not reasonably practicable to hold an enquiry under DAR proceedings prescribed in Rules of 1987 and the case may only be dealt under special procedures given under Rule 161 of the Rules of 1987 and he was terminated. The said observation itself shows that without following the principles of natural justice the petitioner was held guilty under the enquiry and dismissed from the service. Thus, in our opinion, the dictum laid down in the aforesaid judgments is squarely applicable and thus we are of the opinion that though alternate remedy by way of appeal is available, this Court can exercise its jurisdiction to the ends of justice.

10. Moreover, it appears from the record that in the year 2018 and 2019 the petitioner was awarded by the respondents and issued certificate of merits to him. Besides the petitioner in paragraph No.11 has categorically made the averment that dismissing him without conducting any enquiry is passed by respondent Nos. 2 and 3 with the concurrence and approval of respondent No.1. Therefore, though an appeal against the impugned order lies before respondent No.1, it is not an efficacious or an effective remedy in law at all. The said averments were neither denied nor disputed by the respondents in reply. Likewise we do not find any substance in the observation made by respondent No.1 in the order that the act of the petitioner is directly related to the national security and therefore they have dismissed him.

11. Having considered the aforesaid discussion, it seems that the impugned order of dismissal of the petitioner from service was passed hastily without giving any opportunity to him. There is no material on record to indicate that subjective satisfaction was recorded based on objective criteria. The ratio of the decision in *Sachin Kumar* (supra) is clearly applicable to the facts of the

present case. The said act of the respondents seems to be arbitrary, passing blatantly violation of principles of natural justice and violative of Article 14 of the Constitution of India and, therefore, interference is required in the impugned order.

12. For the aforesaid reason, we allow the petition by setting aside the impugned order dated 14-3-2023. The respondents are directed to reinstate the petitioner with continuity of service. The intervening period from 14-3-2023 till reinstatement shall be treated as period spent under deemed suspension and the petitioner would be entitled for payment of subsistence allowance as per the rules. The respondents are at liberty to hold an enquiry against the petitioner for the incidents leading to passing of the order dated 14-3-2023. It is made clear that depending on the outcome of such departmental enquiry, the respondents shall take further decision in accordance with law.

13. Rule made absolute in the aforesaid terms with no order as to costs.

(ABHAY J. MANTRI, J.)

(A.S. CHANDURKAR, J.)