

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 16409 of 2018

**Samir Kumar Behera
Versus
Union of India & Ors.**

For the petitioner	:	Mr. Achin Kumar Majumder
For the respondents	:	Mr. S.C. Prasad
Heard on	:	31.01.2024
Judgment on	:	21st February, 2024

Raja Basu Chowdhury, J:

1. The instant writ petition has been filed, *inter alia*, challenging the order of removal from service dated 15th March, 2018 issued in exercise of powers under Rule 161 of the Railway Protection Force Rules, 1987 (hereinafter referred to as the “said Rules”) including the order dated 21st June, 2018 issued by the Appellate Authority.
2. The petitioner was a Head Constable of the Railway Protection Force of South Eastern Railway and at the material point of time posted at RPF Post Jharsuguda under Chakradharpur Division.
3. It is the petitioner’s case that an unfortunate incident had taken place on 25th February, 2018 when an Assistant Commandant of

Railway Protection Special Force, M.C. Tyagi was shot dead by a Constable of his own company while he was deployed on election duty at Meghalaya.

4. Notwithstanding the petitioner having a clean and unblemished record, on the basis of a purported allegation that he was engaged in spreading misinformation as regards the unfortunate incident over Facebook and Whatsapp group, allegedly justifying and supporting the said personnel who was accused, an order of removal from service was passed against the petitioner by invoking the powers under Rule 161(ii) of the said Rules.
5. Challenging the aforesaid order of removal from service without holding any enquiry under Rule 153 of the said Rules, a statutory appeal was filed before the Appellate Authority. The Appellate Authority, however, by an order dated 21st June, 2018 was, *inter alia*, pleased to dismiss the same.
6. Being aggrieved the instant writ petition has been filed.
7. Mr. Majumder, learned advocate representing the petitioner, submits that the order of removal from service dated 15th March, 2018 has been passed in purported exercise of powers under Rule 161(ii) of the said Rules. Unfortunately, the said order does not identify the satisfaction required to be recorded in the order to hold that the enquiry contemplated under the Rules is not reasonably practicable. It is submitted that the Senior Divisional Security Commissioner had mechanically quoted the provisions of Rule

161(ii) of the said Rules in the order dated 15th March, 2018 to make out the case of subjective satisfaction. The order does not reflect that the decision to dispense with the enquiry under Rule 153 of the said Rules has been taken objectively. It is submitted that ordinarily, the procedure available for dispensing an enquiry under Rule 153 of the said Rules ought to be invoked only, in extraordinary circumstances that too by recording the satisfaction for invoking such provision in a given fact and by recording reasons why the ordinary procedure to hold the enquiry cannot be exercised. The reasoning, that to limit the spreading of speculative and misleading information through comments on Facebook and Whatsapp group and the alleged justifying and supporting of certain acts of a constable, the enquiry as contemplated in Rule 153 of the said Rules has been dispensed with, does not and cannot justify the objective satisfaction as provided for in Rule 161(ii) of the said Rules.

8. By drawing attention of this Court to the order dated 15th March, 2018, it is submitted that the only reason provided for dispensation of an enquiry under Rule 153 of the said Rules, that the conduct of the delinquent would lead to hooliganism and the other unruly elements in the Force would take the opportunity and time to organise undesirable activities, which would result in aggravation of the situation, cannot constitute satisfaction for not holding a regular enquiry.

9. It is submitted that not only this Hon'ble Court but the Hon'ble Supreme Court has time and again deprecated the practice of invoking the powers of Rule 161(ii) of the said Rules without there being any justifiability for initiating such proceeding by invoking the powers thereunder. The power to dispense with an enquiry must be exercised with due care, caution and circumspection and the powers cannot be exercised solely at the mere *ipse dixit* of the Disciplinary Authority. It is not open to the Disciplinary Authority to dispense with an enquiry lightly or abruptly or with an ulterior motive, so as to avoid the same. In support of his aforesaid contention, reliance is placed on the following judgments:

- i. ***State of West Bengal v. Debabrata Singha***,
reported in **2019(5) CHN (Cal) 396**;
- ii. ***Jaswant Singh v. State of Punjab & Ors.***,
reported in **(1991) 1 SCC 362**;
- iii. ***Chief Security Officer & Ors. v. Singasan Rabi Das***,
reported in **AIR 1991 SC 1043**;
- iv. ***Risal Singh v. State of Haryana & Ors.***,
reported in **(2014) 13 SCC 244**;
- v. ***Pintu Kumar v. Union of India & Ors.***,
in **Civil Appeal Nos. 4738-4739 of 2021**;
- vi. ***Sri Gopinath Rout v. Union of India & Ors.***,
in **WPA No. 9593 of 2020**; and,
- vii. ***Tarsem Singh v. State of Punjab & Ors.***,
reported in **(2006) 13 SCC 581**.

10. Mr. Prasad, learned advocate representing the respondents, on the other hand, has categorically submitted that one Mr. M.C. Tyagi, Assistant Commandant (AC), 6th Battalion, Railway Protection Special Force (RPSF), Dayabasti, Delhi, who was deployed at Meghalaya on election duty was shot dead by a Constable, namely, Arjun Deshwal of 6th Battalion without any provocation and the firing was made by the Constable from a service (AK-47) rifle. The incident took place on 25th February, 2018. After the killing of the Assistant Commandant, a post was shared in the Facebook and Whatsapp group namely “RPF Mutual Transfer” in public domain by Yogendra Singh Koyar which stated “ASC M.C. Tyagi at Maghalaya, Ko goli mard gayi by Constable C.T. Arjun Deshwal, 6th Battalion. A coy/RPSF by AK-47, 13 rounds were fired, one other constable Yogendra also injured”.

11. In response to the above, several comments were made by the members of the group which included “Yeh harami ko maar ke achha kiya” & “jawan ki jai ho” by a member named Samir Kumar Behera of Railway Protection Force, Chakradharpur. The said comment was made on 26th February, 2018, at 12.33 hrs. & 12.34 hrs. According to the respondents, there was credible information that unscrupulous personnel among the rank and file of the Force engaged in spreading unfounded and misleading information through their comments on Facebook and Whatsapp group so as to justify and support the despicable acts of the constable. The

petitioner was found to be disproportionately vocal in expressing inappropriate comments, justifying the said unwarranted incident which took place on 25th February, 2018 thereby, indulging in spreading hatred amongst the rank and file of the Armed Forces, by making comments through his Facebook account on the very next day i.e. 26th February, 2018.

12. It is in this state of facts that the decision to initiate proceedings under Rule 161(ii) of the said Rules was taken on receipt of relevant documents from the Railway Board, the information given in the Facebook profile of the petitioner was verified from his character and Service Records. Upon verification, the profile of the petitioner matched with the profile given in the Facebook though, with certain variations. The Disciplinary Authority was of the view that a grave situation had arisen due to spreading of misleading information through comments on Facebook and Whatsapp groups and if departmental action was delayed, the delinquent employee's conduct would lead to hooliganism and other unruly elements in the Force would take the opportunity and time to organise further undesirable activities and the same would aggravate the situation, including discontentment among members of the Force. Considering such exigency, it was felt by the Disciplinary Authority that it is not reasonably practicable to hold a departmental enquiry in the matter as provided in the said Rules and as such it was decided that the matter be dealt with in terms of Rule 161(ii) of the said Rules for

taking a stringent departmental action against the employee like the petitioner. It is submitted that there is no irregularity in taking such a decision. No case for interference has been made out. The judgments relied on by the petitioner are distinguishable on facts. The instant writ petition ought to be dismissed with cost.

13. Heard the learned advocates appearing for the respective parties and considered the materials on record.

14. From the materials on record and the arguments advanced by the parties, it would transpire that an unfortunate incident took place on 25th February, 2018 when one of the Assistant Commandant of the RPSF, Dayabasti, Delhi, deployed at Maghalaya, on election duty was shot dead by a constable of his own company from his service rifle. The factum of death appears to have been shared in the Facebook group "RPF Mutual Transfer" by one Yogendra Singh Koyar. In response to the said post made in social media comments were allegedly made by the members of the group which included the following:

- i) *"Yeh harami ko maar ke achha kiya"*
- ii) *"jawan ki jai ho"*

15. Such comments are alleged to have been made by the Samir Kumar Behera of the Railway Protection Force, Chakradharpur on 26th February, 2018 at 12.33 hrs & 12.34 hrs. Based on the above, the Disciplinary Authority of the petitioner had proceeded to hold departmental action by invoking the provisions of Rule 161(ii) of the said Rules, by dispensing with the ordinary procedure for holding an enquiry. The order dated 15th March, 2018 records that considering the gravity of the situation and exigency, the Disciplinary Authority

feels that it is not reasonably practicable to hold the departmental enquiry in the manner provided in the RPF Rules and as such in terms of Rule 161(ii) of the said Rules, stringent departmental action has become mandatory immediately against the potentially dangerous employee Samir Kumar Behera. To morefully appreciate the above, the relevant portion of the order passed by the Divisional Security Commissioner where he purportedly records the grounds for dispensing with the enquiry is extracted hereinbelow:

“As the situation is so grave that if the department action is delayed, the delinquent employee’s conduct will lead to hooligan and other unruly elements in the Force taking opportunity and time to organize further undesirable activities which may result the aggravation of the situation which is already explosive and may lead to further provocation, incitement, disaffection and discontentment among the Force Personnel and could be dangerous for the Public order and tranquility also. Considering such exigency, I, as the Disciplinary Authority, feel that it is not reasonably practicable to hold a departmental enquiry in the manner provided in RPF Rules, 1987. Therefore, in the instant matter in terms of provisions contained in Rule 161(ii) of RPF Rules, 1987 a stringent department action has become mandatory immediately against the potentially dangerous employee i.e. Sri Samir Kumar Behera, Head Constable/9503 working at RPF Post/JSG whose action is very detrimental to the discipline and foundation of the Armed Force as well as caution and deter the other employees indulging in such unscrupulous activity. On judicious appreciation of the entire matter, I hold Sri Samir Kumar Behera, Head Constable/9503 working at RPF Post/Jharsuguda guilty of

the charge of disproportionately vocal in expressing inappropriate comments justifying the unwarranted incident took place on 25.02.18 and indulging in spreading hatred, incitement, disaffection, provocation and discontentment amongst the rank and file of the Force by making post through his facebook account at 12.33 hrs & 12.34 hrs of 26.02.18 which is clear violation of Rule 146.4 and 147(xiii) of RPF Rules, 1987. Considering the gravity and exigency of the matter dispensing with the normal disciplinary proceedings and in exercise of powers conferred vide schedule III of RPF Rules, 1987 read with Rule 161(ii) of RPF Rules, 1987 and Section 18 of RPF Act, 1957 with Police (Incitement and Disaffection) Act, 1922, I award him punishment of "Removal from Service" with immediate effect."

16. The statutory appeal preferred by the petitioner was also dismissed, *inter alia*, by upholding the exercise of authority of the Disciplinary Authority, to dispense with the enquiry. The relevant portion of the order, which upheld the exercise of authority to dispense regular enquiry by invoking powers under Rule 161(ii) of the said Rules is extracted hereinbelow:

"The Disciplinary Authority i.e. Sr. DSC/RPF/CKP has elaborately narrated the circumstances under which he thought that it was not practicable to hold an enquiry under the relevant provisions of RPF Rules, 1987. Brutal killing of an Assistant Commandant, a Gazetted officer of the force by a constable while on election duty in Meghalaya and sharing this news on Facebook in public domain is an act of spreading disaffection among the Force. Furthermore, the Appellant used highly unparliamentary language duly

applauding the act of the constable by commenting as “Yeh harami ko goli mar ke achha kiya and jawan ki joy ho.” Such remark by a member of disciplined armed force of the union is nothing but trying to create discord among the rank and file of the force. If such act is not nipped in the bud by taking stern and exemplary action it will certainly create a grave threat to public security and can lead to mutiny like situation. Hence action taken by the Disciplinary authority under Rule 161 of RPF Rules, 1987 is quite proper.”

17. In this context, it would be relevant to consider that the power to dispense with an enquiry flows from the provisions of Article 311(2)(b) of the Constitution of India. To morefully appreciate the above, the same is extracted hereinbelow:

“311. (1) *No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.*

(2) *No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges ***.*

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply—

- (a) *where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or*
- (b) *where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or*
- (c) *where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.”*

18. As such from the aforesaid, it would be apparent that although, holding due enquiry is the rule, however, in exceptional circumstances, as provided for, the ordinary procedure for holding an enquiry may be dispensed with. The provision engrafted in Rule 161(ii) is in consonance with Article 311(2)(b) proviso of the Constitution of India.

19. In this context, it would be relevant to note that the Hon'ble Supreme Court in the case of ***Union of India & Anr. v. Tulsiram Pa Tel***, reported in **(1985) 3 SCC 398**, had observed that a Disciplinary Authority is not expected to dispense with a disciplinary enquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an enquiry or because the department's case against the Government servant is weak and must fail. The Hon'ble Supreme Court in the case of ***Jaswant Singh*** (*supra*) while quoting the aforesaid observation made by the Hon'ble Supreme Court in the case of ***Tulsiram Pa Tel*** (*supra*) has further

added that the decision to dispense with departmental enquiry cannot, therefore, be rested solely on the *ipse dixit* of the concerned authority. When the satisfaction of the concerned authority is questioned in a Court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer. In the case of **Risal Singh** (*supra*), the Hon'ble Supreme Court has noted that the Competent Authority must provide clear reasons for dispensing with an enquiry, not ascribing of the reasons dispensing with an enquiry which otherwise is a must, invalidate such an action. The observation made by the Hon'ble Supreme Court in paragraphs 6 and 7 are extracted hereinbelow:

“6. We have already reproduced the order passed by the competent authority. On a bare perusal of the same, it is clear as day that it is bereft of reason. Non-ascribing of reason while passing an order dispensing with enquiry, which otherwise is a must, definitely invalidates such an action. In this context, reference to the authority in Union of India v. Tulsiram Patel [(1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985 Supp (2) SCR 131] is apposite. In the said case the Constitution Bench, while dealing with the exercise of power under Article 311(2)(b), has ruled thus : (SCC p. 503, para 130)

“130. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that ‘it is not reasonably practicable to hold’ the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are ‘not reasonably practicable’ and not

'impracticable'. According to the Oxford English Dictionary 'practicable' means 'Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible'. Webster's Third New International Dictionary defines the word 'practicable' inter alia as meaning 'possible to practice or perform : capable of being put into practice, done or accomplished : feasible'. Further, the words used are not 'not practicable' but 'not reasonably practicable'. Webster's Third New International Dictionary defines the word 'reasonably' as 'in a reasonable manner : to a fairly sufficient extent'. Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation."

7. In Jaswant Singh v. State of Punjab [(1991) 1 SCC 362 : 1991 SCC (L&S) 282 : (1991) 15 ATC 729] the Court, while dealing with the exercise of power as conferred by way of exception under Article 311(2)(b) of the Constitution, opined as follows : (SCC p. 369, para 5)

"5. ... Clause (b) of the second proviso to Article 311(2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. This is clear from the following observation at SCR p. 270 of Tulsiram case [(1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985 Supp (2) SCR 131] : (SCC p. 504, para 130)

'130. ... A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an

inquiry or because the department's case against the government servant is weak and must fail.'

The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the authority concerned. When the satisfaction of the authority concerned is questioned in a court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the officer concerned."

After so stating, the two-Judge Bench quashed the order of dismissal and directed the appellant to be reinstated in service forthwith with the monetary benefits. Be it noted, it was also observed therein that it would be open to the employer, if so advised, notwithstanding the lapse of time, to proceed with the disciplinary proceedings."

20. A Coordinate Bench of this Court in the case of **Sri Gopinath Rout** (*supra*) has taken a similar view. Having regard to the aforesaid, it is necessary to test out whether the order passed by the Disciplinary Authority passed the test of not only the subjective satisfaction of the competent authority but whether the decision to dispense with the enquiry had been made on objective basis. In this context, it may be noted that in the order dated 15th March, 2018, the reasons provided by the Disciplinary Authority to dispense with the enquiry is that if departmental action is delayed, the conduct would lead to hooliganism and unruly elements in the Force would take the opportunity and time to organise further undesirable activities which would result in the aggravation of the situation, which is already explosive and may lead to further provocation,

incitement, dissatisfaction and discontentment among the Force personnel, which would also become dangerous to the Public order and tranquility. Therefore, the Disciplinary Authority was contemplating an immediate disciplinary action. Although, it has been recorded that considering the exigency the Disciplinary Authority felt that it was not reasonably practicable to hold the departmental enquiry, no reasons for not holding such departmental enquiry had been provided. Initiating the departmental action without delay cannot, in my view, form a ground for dispensing departmental enquiry in the ordinary manner. Merely recording a one liner satisfaction without there being any reasons for such satisfaction does not authorize the invoking of special powers under Rule 161 of the said Rules. Nothing has been identified in the order to show that the satisfaction to dispense with the enquiry is based on objective criteria. No materials have also been disclosed by the respondents to demonstrate that holding a regular enquiry would have had the effect of aggravation of the situation, or the same may lead to further provocation, incitement, dissatisfaction and discontentment among the Force personnel, which would also become dangerous to the Public order and tranquility.

21. The Hon'ble Division Bench of this Court in the case of ***State of West Bengal v. Debabrata Singha*** (*supra*), while considering the scope of the Disciplinary Authority to dispense with formal enquiry has also observed that in absence of subjective satisfaction being

arrived at and reasons being recorded the order to dispense with the enquiry cannot be sustained. Similarly in the present case, not only the order passed by the Disciplinary Authority does not record adequate reasons for dispensing with the ordinary enquiry provided for in the Rules, the respondents have also failed to demonstrate that the satisfaction to dispense with the enquiry was based on objective criteria. Since, the order dated 15th March, 2018 does not pass the test of subjective satisfaction based on objective criteria, to dispense with the enquiry and further since, from the aforesaid order it would be apparent that the identity of the profile in the Facebook posts and the identity of the petitioner had a mismatch, it was all the more obligatory for the respondents to at least issue a show cause on the petitioner.

22. In the aforesaid back drop the order dated 15th March, 2018 passed by the Disciplinary Authority by placing reliance on electronic media, without even affording the petitioner an opportunity to explain whether the comments at all originated from the social media account of the petitioner, in my view cannot be sustained. The same is therefore, accordingly set aside and quashed. As a sequel thereto and for reasons discussed hereinabove, since, the Appellate Authority had only mechanically upheld the order passed by the Disciplinary Authority, the order passed by the Appellate Authority dated 21st June, 2018 is also set aside. The respondents are directed to reinstate the petitioner in service forthwith. It shall, however, be open to the respondents,

despite the delay, to initiate regular disciplinary proceeding against the petitioner as provided in Rule 153 of the said Rules, provided the same is initiated within a period of eight weeks from the date of communication of this order. The period of absence of the petitioner would be treated as a period spent on extraordinary leave and would not constitute break in service. The petitioner would be entitled to all consequential benefits, subject to final outcome of the disciplinary proceeding, if initiated in the manner provided herein.

23. With the above observations/directions, the writ petition is allowed.
24. There shall be no order as to costs.
25. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Raja Basu Chowdhury, J.)