

S/L 40
15.05.2024
Court. No. 551
Suvayan/
SKB

WPA 27734 of 2022

Shiv Kumar
Vs.
Union of India & Ors.

Mr. Krishnadas Poddar

...for the petitioner.

Mr. Ajit Kumar Chaubey
Ms. Aindrila Chatterjee

...for the respondent no. 4.

1. The affidavit-in-opposition and the affidavit-in-reply as filed today be taken on record.
2. Heard Mr. Poddar, learned Advocate for the writ petitioner and Mr. Choubey, learned Advocate for the respondent No. 4 at length.
3. In this writ petition, the writ petitioner has challenged the order of his removal from service as passed on 23.05.2022 by the Senior Security Commissioner/Metro Railway/Kolkata on the basis of the enquiry proceeding report dated 01.03.2022 and the order of affirmation with such punishment dated 31.08.2022 as passed by appellate authority being DIG cum Chief Security Commissioner, R.P.F., Metro Railway, Kolkata. It is undisputed that at the material time the present writ petitioner was posted as constable in R.P.F. at Nalhati Post and as per imputation of charges as leveled against him and he was charged with the following two heads namely:

***“1. On 30.08.2021 Shiv Kumar,
Constable/Nil was details for ‘C’ Shift***

duty from 14:00 hrs to 22:00 hrs at beat No. SC/TP/TA. Sri Shiv Kumar was not found in his duty beat during the visit of Sri S. D. Das, SI of RPF Post/Nalhati. There was a phone call from local people at about 17:35 hrs that one RPF Personnel was creating nuisance near PRS of Nalhati Railway Station in abnormal condition. The constable concerned was not present there. Accordingly, he was marked beat absent vide diary entry No. 28 on 30.08.2021. At about 19:00 hrs Shiv Kumar was reached at RPF Post/Nalhati.

2. Further, he was detained by Local P.S. Nalhati in the night of 30.08.2021 at about 23:00 hrs for creating nuisance in the occasion of Janmastami festival near Ram mandir/Nalhati. Asraful Alam, ASI of Local Police arrested Constable Shiv Kumar under Section 42 Cr.P.C.. The medical examination was done at Nalhati BHPC and found that Shiv Kumar, CT/RPF in alcoholic intoxication. A case was lodged at PS/Nalhati U/S-290 IPC vide NCR No. 1553/21 dated 31.08.2021.”

4. According to the respondent/Union of India the aforesaid charges are violative of the provision of Rules 146.2(ii), 146.1 and 146.4 of RPF Rules, 1987 as well as Rule 22(1)(b) of the Railway Services Conduct Rule, 1966.

5. In course of his submission Mr. Poddar, learned Advocate for the writ petitioner at the very outset draws attention of this Court to page No. 20 of the writ petition being a copy of the report dated 02.09.2021. Attention of this Court is also drawn to page No. 36 that is the copy of the finding of the DAR enquiry dated 01.03.2022. It is submitted by Mr. Poddar that the finding of the said enquiry is perverse inasmuch as such enquiry is based on either no evidence or evidence which is extraneous to the materials on record.
6. It is thus submitted by Mr. Poddar, learned Advocate for the writ petitioner that the findings of the enquiry officer regarding proof of all the charges as well as proof of violation of the aforementioned rules are defective and, thus, the same is amenable to the writ jurisdiction of this Court. It is further submitted by Mr. Poddar that the disciplinary authority as well as the appellate authority in course of the disciplinary proceeding as well as in deciding the appeal mechanically echoed the version of the enquiry officer without applying their independent minds and, thus the finding of the disciplinary authority as well as the appellate authority may be quashed.
7. In course of his argument Mr. Poddar places his reliance upon the reported decision of *Kuldeep Singh vs. Commissioner of Police and others* reported in (1999) 2 SCC 10. It is argued by Mr. Poddar that though the scope of judicial review under Article 226

of the Constitution of India is very narrow but it is a fit case where this Court can interfere with the findings of the aforementioned authorities in view of the fact that the finding of the aforesaid authorities, that is the enquiry authority, disciplinary authority and appellate authority are based on no evidence and their findings of such a nature that no prudent man can reach in such finding and, thus according to Mr. Poddar the findings of the aforesaid authorities with regard to the alleged guilt of the present writ petitioner may be treated as perverse and the present writ petitioner may be reinstated to his service.

8. *Per contra*, Mr. Choubey, learned Advocate representing the Union of India and its officials submits before this Court that from the materials as placed before this Court by way of affidavit-in-opposition it would reveal that prior to arriving at the guilt of the present writ petitioner the enquiry officer had examined several witnesses after giving due opportunity to the writ petitioner/delinquent to cross-examine them and on the basis of the oral evidence of the prosecution witnesses and the documentary evidence the enquiry authority had come to a factual findings with regard to the guilt of the accused as well as the violation of the aforesaid rules and such finding being a factual finding may not be interfered with in view of the fact that both the disciplinary authority as well as the appellate authority after considering the self-same evidence

come to a common logical conclusion with regard to the guilt of the accused and the violation of the aforesaid rules at the instance of the present writ petition.

9. It is further submitted by Mr. Choubey that in the case in hand the present writ petitioner has miserably failed to show that the aforesaid three authorities were persuaded by any extraneous substances which are not on record and, thus, it is preposterous to suggest that the finding of the enquiry authority, disciplinary authority and appellate authority are baseless.
10. Before entering into the merit of the instant case this Court proposes to look to the reported decision of *High Court of Judicature at Bombay vs. Sashikant S. Patil and Another* reported in (2000) 1 SCC 416 where the Hon'ble Apex Court had dealt with the scope of interference by a writ court in a departmental enquiry and in doing so the Hon'ble Apex Court held thus:

“Interference with the decision of departmental authority can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous

to the evidence and merits of the case or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion or grounds very similar to the above. But we cannot overlook that the departmental authority is the sole judge of the facts, if the enquiry has properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.”

11. Coming to the factual aspects of the instant lis it appears to this Court that before the enquiry officer five witnesses have been examined on behalf of the prosecution to prove the charges against the delinquent and several documents have been exhibited. It appears to this Court that in the said enquiry proceeding opportunity was given to the delinquent to defend by engaging friend, if any which he declined. The delinquent also declined to adduce defence witness. Therefore, by no stretch of imagination it can be said that the present writ petitioner being the delinquent before the enquiry officer was not given adequate opportunity to defend the allegation as levelled against him and it also

cannot be said that in the said enquiry proceeding of principles of natural justice has been violated.

12. On conjoint perusal of the orders of the Disciplinary Authority and the Appellate Authority, it reveals that both the aforesaid two authorities have duly considered the pros and cons of the finding of the Enquiry Authority and both the aforesaid two authorities in their independent way came to a finding that sufficient materials have been placed both oral and documentary to prove the charges against the delinquent.

13. I have gone through the report as submitted by the disciplinary and the appellate authority and it does not transpire to me that the both the aforesaid two authorities have mechanically endorsed the view of the enquiry authority and, on the contrary, it appears to me that both the disciplinary authority and the appellate authority independently applied their minds and, thus, come to a logical conclusion.

14. Though Mr. Poddar in course of his argument was very vocal with regard to the availability of no evidence against the writ petitioner, this court considers that such submission is no way helpful to the writ petitioner in view of the fact in the report of the disciplinary authority as well as the appellate authority, the said two authorities have duly considered the finding of the enquiry authority in the perspective of the evidence as adduced by prosecution witnesses either orally or by production

of documents. In considered view of this court, at the time of hearing of the instant writ petition, it also could not be shown that a violation of statutory regulation prescribing the mode of conducting enquiry had occurred causing prejudice to the interest of the writ petitioner.

15. In considered view of this court, the reported decision of Kuldeep Singh (supra) as cited from the side of the writ petitioner is no way helpful to the writ petitioner and, on the contrary, the same is helpful for the respondents inasmuch as the Apex Court in the reported decision expressed the following view :

“6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support of findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or

made at the dictates of the superior authority.”

16. Mr. Poddar, learned advocate for the writ petitioner also submits before this court that the punishment as awarded to the writ petitioner is exceptionally harsh and disproportionate to the charges. It appears to this court that the present writ petitioner was a member of a disciplined force. The three authorities i.e. the enquiry authority, disciplinary authority and the appellate authority have come to a concurrent finding that the present writ petitioner was found absent during his duty hours without taking any leave from his superior. They have also come to a concurrent finding that being a member of the armed force, the present writ petitioner was found to be in intoxicated condition and was also found to be committing nuisance which definitely tarnish the image of the said disciplined force.
17. Materials have been placed that the present writ petitioner was found to be guilty in committing such nuisance and he was punished for payment of fine by the competent court of law.
18. In view of such, this court considers that the writ petitioner has also failed to make out a case that his punishment is totally disproportionate to the charges as leveled against him.
19. In view of the discussion made hereinabove, this court finds no merit in the instant writ petition and the same is dismissed.

20. There will be no order as to costs.

21. Urgent Photostat certified copy of this order, if applied for, be given to the parties after compliance of all necessary formalities.

(Partha Sarathi Sen, J.)