

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

WPA 8262 of 2020

Kali Charan Bijli
vs.
Union of India & Ors.

Mr. Apurba Kumar Dutta ... for the petitioner.

Mr. Saikat Basu ... for the respondents/U.O.I.

Heard on: December 24, 2024.

Judgment on: December 24, 2024.

Ananya Bandyopadhyay, J:-

1. The petitioner had been dismissed from service vide an Office order being No. SC/RPF/CON/2018 dated 24.09.2018 issued by the respondent no. 5 being, Senior Security Commissioner, Railway Protection Force, Eastern Railway, Chittaranjan Locomotive Works, Chittaranjan. A consequential order was passed on 25.09.2018. Further an order being SC 30/2/3/Appeal (KCB) dated 03.09.2019 was passed by the respondent No. 4. The petitioner further prayed to be reinstated in the post of Constable along with the grant of consequential benefits, back wages and payable interest. The petitioner had

been dismissed from service without being given an opportunity to participate in the disciplinary proceedings. The aforesaid proceedings had been conducted by the respondent authorities in accordance to Rule 161 (ii) of the RPF Rules, 1987. A preliminary enquiry was conducted initially to which the petitioner ventilated his innocence. However, the same was not considered.

2. The initial order of punishment concerning dismissal from service dated 24.09.2018 and the consequential office order dated 25.09.2018 were challenged before the appellate authority for non-compliance of the aforesaid Rules and Discipline and Appellate Rules. Moreover, the same was effected without framing of a charge-sheet, instituting a detailed enquiry report and granting the petitioner an opportunity of hearing. An order dated 03.09.2019 passed by the respondent no. 4 was cryptic affirming the earlier order of punishment of dismissal.
3. The office order dated 14.09.2020 issued by the respondent no. 5 intimating the rejection of the appeal as aforesaid was challenged before the competent authority by a revision petition dated 04.10.2019 for setting aside the impugned order of dismissal as well as for the reinstatement of the petitioner in the service, vide order dated 24.01.2019 and office order dated

31.12.2019 passed by the respondent no. 3. The petitioner was reinstated in service. However, on 16.07.2020, a charge-sheet memorandum was issued by the respondent no. 4 against the petitioner for “*gross misconduct, neglect of duty, disobedience of order, Discreditable conduct and misbehavior conduct towards another member of force and insubordination*”.

4. The petitioner vide communication dated 26.07.2020 refuted all the charges as depicted in the charge-sheet memorandum. Subsequently, the DAR enquiry was held with the participation of the petitioner. The respondent no. 7, a party to the misconduct appeared in the enquiry on 18.09.2020, claiming the petitioner to be innocent of all the charges. The departmental proceeding initiated by the charge-sheet memorandum dated 16.07.2020 and the order of dismissal dated 21.09.2020 annexing the order dated 21.09.2020 passed by the respondent no. 2 as well as the order dated 24.09.2018 was issued.
5. The learned advocate representing the petitioner submitted that vide order dated 21.09.2020 after exhausting all other processes of appeal and revision the respondent No.2 had dismissed the petitioner from service along with two other constables namely, Pankaj Kumar and Ankur Bharti. It was further submitted that vide order dated 07.05.2024 in WPA

15705 of 2021, the co-ordinate Bench of this Court had allowed the writ petition granting retiral benefits to the wife of the original petitioner i.e., Pankaj Kumar who expired during the pendency of the writ petition, considering that the order of dismissal issued by the respondent no. 2 dated 21.09.2020 was passed erroneously without jurisdiction and the same was set aside.

6. The respondents/Union of India had filed an appeal against the aforesaid order dated 07.05.2024 in FMA 889 of 2024 where the order dated 07.05.2024 passed by the co-ordinate Bench was upheld.
7. The learned advocate representing the petitioner further submitted since the petitioner was similarly circumstanced with other two constables, namely, Pankaj Kumar and Ankur Bharti, he was entitled to the same relief as granted by the co-ordinate Bench of this Court further affirmed by a Division Bench of this Court.
8. The order dated 21st September, 2020 is replicated as follows:

On 19.09.2018 an incident took place at RPF/SF/Post between Shri Susmit Mondal HC/ER-9301135 and other three Constables namely Shri Ankur Bharti Constable/ER-0940262, Shri K.C. Bijli, Constale/ER-0915401 and Shri Pankaj Kumar Constable/ER-0925112, all of RPF/CLL/CRJ. The above named three constables indulged in heated exchange of words with their senior official HC Shri Susmit Mondal regarding grant of rest in favour of Constale/ER-0940262 Ankur Bharti RPF/Steel Foundry (SF) Post/CLW/CRJ on the ground of his wife's sickness.

2. As all the three constables had misbehaved with Roster In-Charge Shri Susmit Mondal, Head Constable of RPF/SF-Post/CLW/CRJ, the post in-charge, submitted a report on the said incident to Security Commissioner/CLW/CRJ on 20.09.2018.

2.1 Based on the report, Security Commissioner/CLW/CRJ directed Shri V.K. Singh, Inspector (Computer Cell), RPF, CLW to conduct a fact-finding inquiry.

3. Shri V.K. Singh called the said three constables by sending letters to their places of posting, railway residence and also intimated them over telephone as well. However, on date of inquiry only Shri Kali Charan Bijli, CT turned up for giving his statement.

The result of the fact-finding inquiry dated 24.09.2019, brought out certain notable points, as under:

- (i) During the course of inquiry, it came into the light without any uncertainty that CT Pankaj Kumar, CT Ankur Bharti and CT K.C. Bijli had used unparliamentary language and had acted in an unruly manner with HC/Susmit Mondal, without showing any respect to seniority, which is unbecoming of Force personnel.
- (ii) The CCTV footage is a vital evidence in this inquiry which proved that all the three staff had violated the discipline of the Force and brought enough discredit and disrepute to the Force.
- (iii) It was also established without doubt that CT Pankaj Kumar, CT Ankur Bharti and CT K.C. Bijli had indulged in grave misconduct towards another member of the Force and acted in oppressive and abusive manner with him, who was not only on duty but also senior to all three of them.
- (iv) All the above-mentioned three staff disobeyed lawful order of the senior member of the Force. HC Susmit Mondal had advised CT Pankaj Kumar, CT Ankur Bharti not to raise hue and cry in the SF-Post but they simply ignored the request.
- (v) It was also established CT Pankaj Kumar asked HC Susmit Mondal in a commanding voice to nanage the duty of CT Ankur Bharti as he along with CT Ankur Bharti Had already left for distant place.
- (vi) HC Susmit Mondal informed CT Pankaj Kumar that CT Ankur Bharti had already been sanctioned rest. Hence, there should not have been grievance on the part of the CT Ankur Bharti. Even them, he along with CT Pankaj Kumar and CT K.C. Bijli came to SF Post and created a completely unnecessary and unjustifiable situation

which tantamount to indiscipline and restoring to improper behavior, which is unbecoming of member of Force.

- (vii) *It is also established CT K.C. Bijli had made a false statement regarding his unconsciousness during the hot altercation at SF-Post.*

3.1 *Accordingly, the fact-finding inquiry included that CT Pankaj Kumar, CT Ankur Bharti and CT K.C. Bijli used unparliamentary language, indulged in an unruly behaviour with their senior, violated the discipline of the Force and brought discredit and disrepute to the Force, disobeyed lawful order of the senior member of the Force, thereby acting in a manner, which is unbecoming of member of Force.*

4. *Based on fact-finding enquiry, the Disciplinary Authority i.e., Security Commissioner/CLW/CRJ, exercising his powers conferred by President of India through rule 161 (ii) of RPF Rules, 1987, imposed the punishment of **'Dismissal from Service'** with immediate effect upon Shri Kali Charan Bijli vide order No.SC/RPF/CON/2018 dated 24.09.2018, which was appropriate under the circumstances and in the interest of administration as well as for maintaining discipline, image and decorum of the Force.*

5. *Aggrieved with the above punishment, Shri Kali Charan Bijli had preferred an appeal dated 17.10.2018 to Appellate Authority (i.e. DIG-cum-CSC/RPF/EF). However, PCSC/ER had endorsed the appeal to DIG-cum-CSC/Metro Railway and thus CSC/Metro Railway acted as Appellate Authority. After due consideration of material on record, and not finding any new valid evidences in the appeal, the Appellate Authority rejected the appeal vide order dated 03.09.2019.*

6. *However, the Revisionary Authority i.e., PCSC/CLW on consideration of his revision petition dated 04.10.2019, modified the penalty and re-instated Shri Kali Charan Bijli vide order No.SC/E/RPF/D&AR (Rev Appeal)/2019 dated 31.12.2019.*

7. *As the then PCSC/CLW susperannuated on the same date i.e. on 31.12.2019, the action seems to be irregular, hence, DG/RPF being the Superior Authority, on its own motion, called a detailed report and case file pertaining to the matter, from PCSC/CLW.*

8. *I have gone through the entire record as furnished by PCSC/ CLW and observed that Shri Kali Charan Bijli had preferred his revision petition dated 04.10.2019 to PCSC/ER. However, PCSC/ER vide letter dated 26.11.2019 had returned the revision petition to CLW/CRJ as by the, an officer as PCSC/CLW was already posted.*

On 25.12.2019, PCSC/CLW sought parawise remarks of the Appellate Authority i.e., DIG-cum-CSC/Metro Railway on the said revision petition. However, merely based on remarks of Chief OS (P) that the Appellate Authority was on study leave at that time, PCSC/CLW passed the remarks on 27.12.2019 as “his case may be decided by issuing departmental enquiry i.e. under rule 153 of RPF Rules, 1987”.

It is seen that before passing the above remarks no justification or speaking order was given by the then PCSC/CLR. Further, as per record the office of DIG-cum-CSC/Metro Railway (Appellate Authority) was never approached nor any visible effort was made to contact the then Appellate Authority (on study leave) for his comments. Also, in the absence of parawise comments from Appellate Authority i.e., DIG-cum-CSC/Metro Railway, parawise comments as submitted by Security Commissioner could have been given due consideration before a reasoned decision by PCSC/CLW as a Revisionary Authority, which too was not referred to, as per record.

It is also seen that the act of indiscipline on the part of Shri Kali Charan Bijli attacks the very foundation of the Force i.e. discipline, command and order of hierarchy. Laws, rules and regulations establish the Command and Order of Hierarchy and any diversion in any rules and regulations, will lead to indiscipline. Hence, the penalty awarded by the Disciplinary Authority is proportionate and reasonable. The IO of fact-finding inquiry also clearly established the indiscipline act, which was rightly acted upon by the Disciplinary Authority and Appellate Authority.

As the order of Revisionary Authority was passed on 31.12.2019, i.e. on the day of his superannuation, hence, the order is reviewed. Further, there is no plausible reason to reverse the order of Disciplinary Authority dated 24.09.2018. Hence, the order passed on 31.12.2019 by the Revisionary Authority is reversed and order of Disciplinary Authority dated 24.09.2018 is reinstated. Shri Kali Charan Bijli, CT/CLW/CRJ may be informed accordingly.”

9. Eventually, from the essence and expressing of the order as aforesaid there had been procedural lapses on the part of the respondents in not conducting a full-fledged enquiry and granting an opportunity to the petitioner to participate in the same, and without appreciation of oral as well as documentary evidence being recorded, the order of dismissal

was passed unilaterally contravening the Discipline and Appellate Rules specifically, Rule 161(II).

10. The arbitrary action on the part of the respondent authority cannot impede the petitioner to his prejudice. The order dated 21.09.2020 passed by the respondent no. 2 is struck down.
11. The writ petitioner is reinstated in the service in the post of constable granting him benefits and back wages to which he is entitled as per the Grade Pay allotted to him under the Rules of Service prevailing on the date of his dismissal from service and further continuance of the same till date of his reinstatement.
12. The petitioner may be reinstated in the post in which he was serving on the date of his dismissal within a period of six months.
13. The judgment and order dated 07.05.2024 along with FMA 889 of 2024 be part of the judgment and order.
- 14.** Accordingly, the writ petition is disposed of.

c.m. AR.Ct.

(Ananya Bandyopadhyay, J.)