

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

107

CWP-27253-2018 (O&M)
Date of Decision: 09.04.2024

Vipin Kumar

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Rajeev Anand, Advocate for the petitioner
Ms. Saigeeta Srivastava, Senior Panel Counsel,
for Union of India-respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of charge sheet dated 21.03.2018 (Annexure P-13) whereby he has been charged for major penalty. The petitioner is further seeking quashing of consequent proceedings arising out of the aforesaid charge sheet.
2. Mr. Rajeev Anand, Advocate pointed out statement of the custodian of railway property at Saraay Banjaara Station which was made during enquiry by committee members. In this enquiry, Sanjeev Kapoor has made a statement that he had done checking in the joint inventory register and none of the pieces of rail line was missing and he was satisfied that memo issued by him on 19.11.2017 was issued erroneously. This statement has been

made on 09.02.2018. The petitioner has been charge-sheeted only on the information of memo issued.

3. On 17.11.2023, the following order was passed:-

“From the perusal of record, it comes out that the petitioner has been indicted on the sole ground that he failed to act despite specific information of theft of railway lines. He was initially issued charge-sheet for minor penalty whereas proposal of minor penalty was converted into major penalty. The matter relates to 2017. From the record, it does not come out whether any FIR with respect to alleged theft at any point of time was registered or not.

Faced with this, learned counsel for the respondents seeks time to verify whether FIR with respect to alleged theft was ever registered or not.”

4. Ms. Saigeeta Srivastava, Advocate failed to point out or produce any material indicating that for the alleged theft, FIR was registered or any other proceeding with respect to alleged theft was initiated. It indicates that respondent is satisfied that there was no theft of government property. It is apt to notice here that in case of theft of government property, no authority can compromise the matter and police is duty bound to register FIR and thereafter investigate the alleged offence.

5. In the case in hand, neither FIR was registered nor is there any other document indicating that any officer, who was successor of petitioner, registered FIR and thereafter found that there was theft. In the absence of FIR or any other material disclosing that allegation of theft was investigated, it cannot be concluded that there was theft of government property. In this situation, it would be unfair to allege that petitioner has failed to register FIR with respect to alleged theft. If the petitioner failed to register FIR, the

successor or any other officer on the complaint of railway authorities must have registered the FIR and concluded the matter. In the absence of any FIR with respect to alleged theft, this Court does not find any substance in the contention of the respondents.

6. In response to query whether disciplinary authority can amend the charge sheet, Ms. Saigeeta Srivastava, Advocate submits that as per Rule 9 of The Railway Servants (Discipline & Appeal) Rules, 1968 (for short ‘**1968 Rules**’), the authority issuing charge sheet is competent to amend or modify it. On being confronted, she failed to point out specific sub-rule of the said rule.

7. From the perusal of Rule 3 of 1968 Rules, it comes out that these Rules are inapplicable to members of the Railway Protection Force. The petitioner is concededly a member of Railway Protection Force, thus, he is not governed by 1968 Rules.

8. In the wake of above discussions and findings, this Court is of the considered opinion that impugned charge sheet dated 21.03.2018 (Annexure P-13) deserves to be quashed and accordingly quashed.

9. Pending application(s), if any shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

09.04.2024
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No