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Suman/AKG
Ct. 01

**IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Appellate Side**

MAT 87 of 2024

**Union of India and Ors.
Vs.
Krishna Ram, Constable/04SF1523248
“D” Coy**

Mr. Sudipto Kumar Mazumdar, Ld. DSGI
Mr. Ajoy Kumar Singhanian
..for the appellants

Mr. Bikramaditya Ghosh
Ms. Angana Rakshit
Mr. Ved Rai
Mr. Mayank Bhandari
Mr. Vivek Saha
..for the respondent

The entire sequence of events culminating in the imposition of the penalty of removal from service upon the writ petitioner/respondent by the Railway Protection Special Force (in short, RPSF), appears to be an instance of procedural and substantive error.

It is necessary to set out the factual narrative beginning with the charge framed against the respondent. The charge framed against the respondent is as follows:

“ARTICLE OF CHARGE

Shri Krishna Ram CT/04SF1523248
of “D” Coy 4BN/RPSF/NJP is charged for serious breach of discipline, violation of lawful orders and discreditable conduct

prejudicial to the discipline of the Force in that:-

Shri Kishna Ram CT/04SF1523248 of "D" Coy 4BN/RPSF/NJP *Illegal and undesirable comments in social Media i.e. in Facebook. "Bahut Accha Kiya Bhai Na" pertaining of passing of objectionable and illegal comments on the Facebook/social media in connection with the post killing period of Shri M.C. Tyagi AC/6BN/RPSF/DBSI. Report reveals that CT/Yogendra Singh Koyar, RPF/WCR did initial post on Facebook/Tiger conversation upload & video clip at 06:21 hrs on the day of assassinate in and like most of derogatory comments against deceased A.C.*

Therefore contravened Rule 146.4 & 146.6 (i) of RPF Rules-1987 and committed the offence of Rule-147.1 (ii) of RPF Rules-1987."

It is also necessary to reproduce the statement of imputation of misconduct against the respondent.

"STATEMENT OF ALLEGATION:-

On 25.2.2018 an unnatural and unexpected incident occurred at 'C' Coy 6BN/DBSI, while deployed in election duty at Meghalaya in which Shri M C Tyagi AC/6BN/RPSF/DBSI was shot dead by CT/Arjun Deshwal of 'C' Coy of 6BN/RPSF/DBSI by using his service weapon. After the death of Shri M.C. Tyagi, AC/6BN/RPSF/DBSI, CT/Yogendra Singh Koyar, RPF/WCR did initial post in Face book/Tiger conversation

"ASC/M.C.Tyagai at Meghalaya Ko Goli Mar Di Gayi and died by Constable-Arjuna Deshwal, 6BN A-Coy, RPSF by AK 47" 13 Round fired, one other Constable-Jogendra also injured".

In this conversation CT/Kishna Ram of D-coy 4BN/RPSF/NJP has been passed his comments.

"BAHUT ACCHA KIYA BHAI NE"

In this regard Sri Kalyan Deori IPF/HQr has been nominated vide this office letter No. 4BN/Conf/M.C Tyagi/Matter/2018-1303 dated 12/4/2018 for enquiry in to the facts findings and submitted the reports vide L/No. 4BN/HQ/13/2018-700 dated 14/4/2018. CT-04SF1523248, Krishna Ram of 'D' Coy 4BN/RPSF/NJP has been identified by his photograph display has been involved by posting illegal and undesirable comments in Facebook just after assassination of A.C/ M.C. Tyagi 6BN/RPSF/DBSI, CT/Yogendra Singh Koya, CT/RPF/WCR, who initiated this post on 26.02.2018. However, he has not accepted the allegation.

The aforesaid act is clear violation of RPF rules 1987, and is a discreditable conduct affecting the image and reputation of the Force, He has sympathized with a fellow constable Arjun Deshwal of 'C' Coy 6th Battalion who has committed cold blooded murder of his superior officer Late Mr. M.C.Tyagi AC/ C coy 6th BN on 25.02.2018 against whom a case has been registered by PS Mawkyrwat case No. 5(2) 18 U/S302/326 IPC.

Such posting illegal and undesirable comments in Face book/Social Media, supporting & sympathizing the act of CT/Arjun Deshwal "who had murdered his superior officer brutally in a cold blooded manner" amounts to creation of dissatisfaction in the force, there by attempting to break the integrity of a highly disciplined Force. As well as tarnishing the image of the Force.

Such act on the part of Shri Kishna Ram CT/04SF1523248, of 'D' Coy 4BN/RPSF/NJP, tantamount to serious breach of

discipline, moral turpitude & act of tarnishing the image of the Force.

Hence charged.”

Accordingly, an enquiry was conducted. The said enquiry report dated December 29, 2018 did not record any specific finding establishing the guilt of the respondent. In view of such inconclusive findings, the disciplinary authority directed a further enquiry in terms of Rule 154.4 of the Railway Protection Force Rules, which is reproduced below:

“154. Action on the Inquiry Report:

.....

154.4. The disciplinary authority shall, if it disagrees with the findings of the Inquiry Officer on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.”

The second enquiry was directed for obtaining a specific finding as to whether, before the enquiry officer, the guilt of the respondent had been conclusively established.

The second enquiry report, dated February 9, 2019, makes for an interesting reading. Even in this report, the enquiry officer did not arrive at a categorical finding regarding the respondent’s guilt regarding the alleged Facebook posting.

The enquiry officer observed that throughout the investigation, the only available document relied upon was a screenshot of an alleged Facebook post.

It was further noted that during the course of the investigation, the respondent consistently denied ownership of the Facebook account in question and did not admit to having made the alleged comment.

It was held that either the respondent had made the comment on his Facebook account or his account had been hacked. The enquiry officer observed that once the respondent became aware—during the preliminary enquiry—that the Facebook comment was allegedly made from an account resembling his name, photograph, and address, he neither lodged a First Information Report (FIR) with the police nor deemed it necessary to inform the Department about the potential misuse of his identity. Being a member of a disciplined force, the respondent acted in breach of departmental discipline and norms.

In view of the above, the enquiry officer concluded that the respondent was guilty of misleading the department, which is conduct unbecoming of a member of the Force, and that he

violated the discipline and rules governing the Force.

Based on the findings recorded in the enquiry report dated February 9, 2019, the Disciplinary Authority proceeded to impose the penalty of stoppage of the next annual increment for a period of five years with cumulative effect.

Significantly, this punishment was not imposed on the basis of the alleged Facebook comment per se, but rather on the ground of suppressing facts/information.

The relevant portion of the order passed by the Disciplinary Authority dated February 28, 2019, is reproduced below:

“.....

Hence, I agree with the findings of the enquiry report and though the exact charges levelled on the party charged could not be conclusively established through the prosecution exhibits, what cannot be denied is that an objectionable comment on a heinous incident had been passed through a facebook account whose name, photos, address etc closely resembled with that of the party charged and the information of which ought to have been provided to the department or local police through FIR. But the party charged did not do so.

So, I hold him guilty of suppressing facts/information, the implications of which could have been serious as RPSF is a law enforcing agency. Hence, I impose punishment of "Stoppage of Next Annual Increment for a period of 05 years with cumulative effect".

....”

Consequently, the respondent preferred a departmental appeal against the order of the disciplinary authority.

The Appellate Authority appeared dissatisfied with the quantum of punishment initially imposed upon the respondent. It was of the view that a more severe penalty was warranted and, accordingly, issued a show-cause notice dated June 30, 2019, seeking to enhance the punishment.

Subsequently, by an order dated June 23, 2021, the Appellate Authority, quite notably, enhanced the penalty of “stoppage of annual increment for five years with cumulative effect” to that of removal from service with immediate effect.

While considering the respondent’s appeal against the order dated June 23, 2021, the second Appellate Authority—being the Principal Chief Security Commissioner, Railway Protection Special Force—merely reiterated the reasoning of the first Appellate Authority without recording any independent finding as to the guilt of the respondent. The order appears to be almost a reproduction of the first appellate authority and

reflects a mechanical affirmation rather than a reasoned adjudication.

The aforementioned decisions were challenged by the respondent before the learned Single Judge of this Court. Upon consideration of the matter, the learned Single Judge was pleased to allow the writ petition by passing the following order:

“....

23. The respondents are directed to reinstate the petitioner in service within a period of six weeks from date. The period of absence of the petitioner from the date of removal from service till the date of reinstatement shall be treated as extraordinary leave without pay. The petitioner shall, however, be entitled to all notional benefit and continuity in service.

....”

Mr. Sudipto Kumar Mazumdar, learned Deputy Solicitor General appearing on behalf of the Union of India, submits that the learned Single Judge was not justified in setting aside the impugned order of punishment imposed upon the respondent and directing his reinstatement in service. Mr. Mazumdar contends that it is well-settled in law that, in cases where disciplinary proceedings are found to have been conducted in violation of prescribed procedure, the Writ Court ought to direct a de novo enquiry from the stage of

infraction, rather than outrightly quashing the entire proceeding.

He further submits that the learned Judge failed to appreciate that a preliminary enquiry was, in fact, conducted prior to the issuance of the charge sheet. According to Mr. Mazumdar, the learned Judge erred in observing that there was a *de novo* enquiry. He argues that the Disciplinary Authority had merely directed the enquiry officer to arrive at a definite conclusion regarding the guilt or innocence of the respondent based on the material available before him, which does not amount to a fresh or second enquiry. Therefore, the learned Judge was not justified in interfering with the disciplinary proceedings on the grounds of the absence of a preliminary enquiry or that the punishment was imposed based on the second enquiry report.

Per contra, Mr. Bikramaditya Ghosh, learned counsel appearing for the respondent, submits that the present case is one where the respondent has been held guilty despite the absence of any proven misconduct. He contends that the Disciplinary Authority proceeded to punish the respondent on the basis of a charge that was

never framed at any material point of time during the disciplinary proceedings.

In support of his submissions, Mr. Ghosh places reliance on Rule 153.19 of the Railway Protection Force Rules, 1987, which, according to him, mandates that in the absence of conclusive evidence establishing guilt, the enquiry officer must return a finding of "not guilty."

Mr. Ghosh further submits that the punishment imposed upon the respondent is grossly disproportionate to the nature of the allegations, and, therefore, warrants interference by this Court in the exercise of its jurisdiction under Article 226 of the Constitution of India.

Upon consideration of the record, it must be noted at the outset that neither the enquiry officer nor the Disciplinary Authority returned any definitive finding of guilt against the respondent with regard to the charge framed. The only material placed on record to support the charge was a screenshot purportedly reflecting a Facebook post. It is an admitted position that, at the time of enquiry, the Facebook account in question was not active. The respondent had disclosed his mobile number during the proceedings; however, there is no evidence on

record to indicate that the alleged Facebook account was ever linked to, or operated through, the said number.

It is also significant to note that the alleged Facebook comment was posted in a group titled 'Tiger Conversation Group'. Yet, no effort was made by the enquiry officer to examine any member of the said group. Nor was any attempt made to determine whether the Facebook account was created or accessed using the respondent's mobile number or device.

Before the enquiry officer, the respondent categorically denied all allegations levelled against him. As already noted, even in the second enquiry report, the enquiry officer failed to return a conclusive finding establishing that the Facebook post in question was authored or posted by the respondent. The report merely records that the respondent did not lodge an F.I.R. or inform the Department upon discovering the alleged impersonation or misuse of his identity.

We find no justification in the enquiry officer's conclusion that the respondent was guilty of misleading the Department or suppressing merely because he failed to lodge an F.I.R. or provide intimation the department. No provision, circular,

or binding rule of the Railway Protection Force has been shown to us under which a member is mandatorily required to report such incidents.

We also find substantial force in the submission advanced by Mr. Ghosh that the enquiry officer, in the facts and circumstances of the present case, ought to have returned a finding that the respondent was “not guilty”, in terms of Rule 153.19 of the Railway Protection Force Rules, 1987. The said Rule is reproduced below:

“153. Procedure for imposing major punishments:

.....

153.19. At the conclusion of the inquiry, the Inquiry Officer shall prepare a report of the inquiry recording his findings on each of the charges with reasons therefor. The findings must be of “guilty” or “not guilty” and no room shall be allowed for “benefit of doubt” or personal surmises. A charge shall be deemed to have been proved if after considering the evidence before him, the Inquiry Officer believes the ingredients constituting the charge to exist or considers their existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they exist.”

We are of the considered view that no prudent person could have arrived at a definitive conclusion regarding the guilt of the respondent solely on the basis of a blurred screenshot of the alleged Facebook post.

Accordingly, we are of the opinion that the charge framed against the respondent has not been proved. However, as already noted, the Disciplinary Authority imposed punishment upon the respondent not for the alleged Facebook post, but on the ground that he failed to report the alleged hacking of his account to his superior authority and did not lodge a First Information Report before the police. Therefore, he was “guilty of suppressing facts/information.”

We are constrained to observe that such action is entirely untenable.

Even assuming, for the sake of argument, that the said allegation relating to Facebook posting had some factual foundation, it is evident that during the course of the enquiry, the enquiry officer recorded findings relating to guilty of suppressing facts/information—one that did not form part of the original charge framed against the respondent. In such a situation, it was the bounden duty of the RPSF to frame a fresh charge based on such findings and to initiate a separate disciplinary proceeding in accordance with the applicable rules.

What is particularly concerning in the present case is that while the Disciplinary Authority

punished the respondent for suppression of facts/information, the Appellate Authority proceeded to enhance the punishment based on an entirely different charge—namely, the alleged Facebook posting.

A plain reading of the order passed by the Appellate Authority reveals that it proceeded on the erroneous assumption that the charge pertaining to the alleged Facebook posting had been proved before the Disciplinary Authority. On that basis, it justified the imposition of a more severe penalty. However, the record clearly indicated that the Disciplinary Authority had categorically held that there was no conclusive evidence to establish that the respondent had made the alleged Facebook post. The punishment was, in fact, imposed by the Disciplinary Authority solely on the ground of guilty of suppressing facts/information in view of the respondent's failure to lodge an FIR and to inform the Department upon becoming aware of the alleged impersonation.

Accordingly, we are of the view that order of the first appellate authority as well as the second appellate authority cannot be sustained.

Accordingly, **MAT 87 of 2024** stands dismissed and the interim order passed in the appeal stands vacated.

(Partha Sarathi Chatterjee, J.) (Kausik Chanda, J.)

Later

After the order was dictated in the open Court, Mr. Sudipto Kumar Mazumdar, learned Deputy Solicitor General, prayed for stay of operation of this order. Upon consideration, the prayer is found to be without merit and is accordingly rejected.

(Partha Sarathi Chatterjee, J.) (Kausik Chanda, J.)