

Nasibullah Vs East Central Railway

Court: Patna High Court

Date of Decision: Dec. 1, 2020

Acts Referred: Prevention Of Corruption Act, 1988 " Section 7
Railway Protection Force Rules, 1987 " Rule 153, 154, 219, 219.4, 219(4)(d)

Hon'ble Judges: Chakradhari Sharan Singh, J

Bench: Single Bench

Advocate: Bindhyachal Singh, Ram Binod Singh, Kumar Priya Ranjan

Final Decision: Allowed

Judgement

1. While posted as Assistant Sub-Inspector of Police under Railway Protection Force at Danapur, the petitioner was arrested by a Central Bureau of

Investigation/ACB/Patna, allegedly while accepting bribe. A criminal case was registered as RC No.22(A)/2014-PAT on 05.11.2014 for the offence

punishable under Section 7 of the Prevention of Corruption Act, 1988. He was placed under suspension on 05.11.2014 and subsequently a

departmental proceeding was initiated against him with the framing of charge under Rule 153 of the Railway Protection Force Rules, 1987. The

Inquiry Officer submitted his report dated 15.01.2016 communicated to the disciplinary authority through letter dated 07.01.2016. The Inquiry Officer

concluded in his report, in the background of nature of allegation that till the criminal case was decided by a Court of law, it would not be legally

proper to record any conclusion in his capacity as Inquiry Officer. The disciplinary authority, acting on the said report of the Inquiry Officer issued

Divisional Order No. 131 of 2016 dated 05.05.2016 to the following effect:-

"Without any prejudice to the outcome of the CBI case, the above Major Penalty Charge Sheet issued to Sri Nasibullah, ASI/Danapur is hereby

kept in abeyance till finalization of the CBI case pending before the Hon'ble Court."

2. Nearly three and half years thereafter the Senior Division Security Commissioner, Railway Protection Force, East Central Railway, Danapur has

issued a letter dated 24.02.2020 to the petitioner enclosing a charge memo and the statement of imputation of misconduct and the petitioner has been

asked to appear before the Inquiry Officer. On comparison of the charge memo earlier issued to the petitioner on 01.04.2015 and the present one it

can be easily seen that both relate to the same occurrence of the petitioner's arrest by the CBI team on 05.11.2014.

3. The petitioner has challenged the said letter No. 963 dated 24.02.2020 issued by respondent No.4 mainly on two grounds, namely:-

(i) The disciplinary authority after having once accepted the opinion of the Inquiry Officer to the effect that it was not possible for him to record any

clear finding till disposal of the criminal case by a Court of law and thereby it was decided to keep the disciplinary proceeding itself in abeyance till

conclusion of the criminal trial, subsequent disciplinary authority did not have the jurisdiction to review his earlier order and allow the disciplinary

proceeding to proceed.

(ii) The subsequent charge memo, though relates to the same occurrence for which earlier the departmental proceeding was initiated, is not exactly

the same and it gives an impression that fresh proceeding has been initiated in respect of the same misconduct ignoring completely the earlier decision

of the disciplinary authority.

4. A counter affidavit has been filed on behalf of the Union of India. There does not appear to be any dispute in relation to the facts pleaded in the

writ application, relevant aspects of which have been taken note of hereinabove.

5. Mr. Bindhyachal Singh, learned counsel appearing on behalf of the petitioner has submitted that Rule 153 of the Railway Protection Force Rules,

1987 prescribes the procedure for imposing major punishments and Rule 154 thereof discloses the actions which can be taken on the inquiry report.

He has argued that issuance of the impugned communication dated 24.02.2020 by the disciplinary authority amounts to disagreeing by him with the

report of Inquiry Officer, which was earlier accepted by the disciplinary authority.

6. He has submitted that the disciplinary authority did not have the power to review its earlier decision and, in case the disciplinary authority intended

to disagree with the findings of the Inquiry Officer or any article of charge, he was required to record his finding in respect of such charge, if the

evidence on record was sufficient for the said purpose. He has submitted that as the disciplinary authority had decided to keep the memo of charge in

abeyance in the disciplinary proceeding till conclusion of the criminal trial, there was no basis for the respondent to reopen the same issue in the garb

of re-framing of the charges arising of the same set of allegation.

7. Mr. Kumar Priya Ranjan, learned Central Government Counsel has submitted with reference to the statement made in paragraph 20 of the counter

affidavit that it was in compliance of DG/RPF/New Delhi's order vide Railway Board's letter No. 2019/Sec(E)/DAR-3/1 dated 14.10.2019

and the Principal Chief Security Commissioner, RPF, East Central Railway, Hajipur's letter No.-E/p/CBI Trap/HQ/19/2403 dated 16.10.2019 that

the above major penalty charge sheet earlier framed was dropped, in the light of the order of the superior Officers. He has argued that there is no

legal bar to initiate departmental proceeding under the Rules during the pendency of criminal case in respect of same set of allegations. He has then

relied on Rule 219 of the Rules and has submitted that it is well within the jurisdiction of any authority superior to the authority making original order to

call for the records of any inquiry and revise any order made under the Rules either on its own motion or otherwise. He has submitted that it was in

exercise of power under Rule 219(4)(d) of the Rules that the superior officers had directed the disciplinary authority to frame proper and complete

charge which was not duly framed in the earlier charge-sheet for the ends of justice. He has argued that certain errors were noticed in the earlier set

of charge which have now been removed by issuing a proper charge-sheet through impugned communication dated 20.02.2020. He has further

submitted that the previous disciplinary authority had erroneously passed the order to keep the proceeding in abeyance which was found to be contrary

to the rules which stipulate that criminal proceeding and the departmental proceeding can run side by side.

8. In reply to the submission made on behalf of Mr. Kumar Priya Ranjan, Mr. Bindyachal Singh, learned counsel appearing on behalf of the petitioner

has argued that the provision under Rule 28.2 of the Railway Servant (Discipline and Appeal) Rules, 1966 enables the disciplinary authority to initiate

and allow the disciplinary proceeding to continue during the progress of a criminal case or trial in relation to the same set of charges against a Railway

servant governed by the Rules. He has submitted that it is true that there is no such legal bar but at the same time, he contends, it cannot be said that

the disciplinary authority is precluded from passing any order to keep a disciplinary proceeding in abeyance during the pendency of a criminal trial. He

has argued that once a conscious decision was taken by a disciplinary authority for keeping the disciplinary proceeding in abeyance during the

pendency of a criminal case, subsequent decision by superior authority after so many years in purported exercise of power under Rule 219 of the Rules

is not tenable.

9. The submission advanced on behalf of the petitioner with reference to Rule 154(4) of the Rules that the impugned order is unsustainable because it

amounts to recording disagreement by the disciplinary authority with the findings of the Inquiry Officer and, therefore, reasons ought to have been

recorded for such disagreement and the disciplinary authority ought to have recorded his own findings on such charge is not sustainable. This is not a

case of disagreement with the findings of the Inquiry Officer by the disciplinary authority because no finding has been recorded by the Inquiry Officer.

He has simply given his opinion, considering the nature of circumstances, which he emerged during the departmental enquiry that he should not record

any finding till the conclusion of the criminal case. This opinion of the Inquiry Officer was accepted by the disciplinary authority and accordingly by

Divisional Order dated 05.05.2016, the major penalty charge was ordered to keep in abeyance by the disciplinary authority till finalization of the

criminal case. It has emerged from the counter affidavit filed on behalf of the respondents and other materials on record that it was not the disciplinary

authority who subsequently decided to recall the order, whereby the disciplinary proceeding was kept in abeyance but the same was done by the

disciplinary authority under the orders of the superior officers in purported exercise of power under Rule 219 of the Rules. It is specific case of the

respondents that the superior authorities exercised their power under Rule 219.4 of the Rules, which empowers them to call for records of any inquiry

or for revise any order made under the said Rules. First proviso to Rule 219.4 is significant and reads as under:-

“Provided further that no action under this sub-rule shall be initiated after the expiry of one year from the date of the order aforesaid:”

10. In the present case the date of the order which is sought to be revised in purported exercise of power under Rule 219.4 is dated 05.05.2016. There

is no provision under the Rule which has been shown to the Court which enables the superior authority/revisional authority to exercise power under

Rule 219.4 of the Rules even after lapse of one year from the date of an order sought to be revised under the said rules.

11. In view of the above, in my opinion, the impugned order does not conform to the requirement of the mandatory statutory provisions under Rule

219.4 of the Rules. impugned order is, accordingly, not sustainable and, therefore, set aside.

11. This application is allowed.

12. There shall, however, be no order as to costs.