

Brahma Pandey @ B. Pandey Vs Union of India (UOI) and Others

Court: Calcutta High Court

Date of Decision: Sept. 21, 2006

Acts Referred: Railway Protection Force Rules, 1987 " Rule 151(1), 152(2), 153

Citation: (2007) 113 FLR 524

Hon'ble Judges: Arun Kumar Mitra, J

Bench: Single Bench

Advocate: Bharati Ghosh Dutta, for the Appellant;

Judgement

Arun Kumar Mitra, J.

The writ petition relates to challenge of charge-sheet, inquiry proceeding and a command order directing the

petitioner to join the inquiry. Facts in brief are inter alia as follows:

The petitioner is a Constable in the Railway Protection Force of C & TE/ Undal under Asansol Division, Eastern Railway. The petitioner was

charge sheeted and the charges are;

Gross misconduct and negligence of duty and it was clarified as:

When he was working at RPF/TM-Post/Chh/CRJ he was spared to avail one day rest, two days CR, one day CPL and four days CL w.e.f

19.8.1995 to 26.8.1995 and was supposed to resume his duty on 27.8.1995 but instead of joining his duty he overstayed w.e.f. 27.8.1995 to

11.3.1997 without any authority and proper intimation.

Further when working at C & TE/OP/UdI he was spared for 30 days LAP on 24.4.1998 and was supposed to join his duty on 24.5.1998 but he

overstayed till 31.7.1998.

2. Accordingly, the petitioner is a habitual absentee or habitual offender regarding overstay. On these charges the inquiry was started; inquiry

continued; the petitioner submitted his representation.

3. According to the petitioner, charge-sheet is vague and in the statement of allegations it is admitted by the authority that the administration

received the intimation from his son that his father was getting treatment at Ranchi and misconduct and negligence does not arise at that juncture.

4. The petitioner challenged this proceeding; inquiry finding as well as the charge-sheet and the command certificate directing the petitioner to join

there on the ground that the charge-sheet is biased.

5. In the charge-sheet without preliminary inquiry name of the Inquiry Officer has been mentioned, venue of the inquiry and date and time has also

been mentioned. The petitioner also challenged this inquiry finding on the ground that no reason has been assigned in the finding. The Inquiry

Officer acted in a partisan manner and failed to record any reason why the petitioner was found guilty of the charges levelled against him.

6. The petitioner also took a ground that the decision making process is bad in law and arbitrary in nature because the proceedings are judicial or

quasi-judicial in nature and therefore findings must be based on reason.

7. The respondent authorities filed affidavit-in-opposition denying all the allegations made in the writ petition. The respondent authorities in the

opposition took the plea that on 11.3.1997 the petitioner submitted the unsigned fit certificate and it was not acceptable in terms of the rules.

8. The respondents in their affidavit-in-opposition in paragraph 10 further stated that although a letter was received from his son on 11.12.1995 i.e.

after lapse of 107 days of his absence about his so called sickness but the intimation was not supported with any documentary proof or medical

certificate.

It has been stated in the opposition that as per Rule 152(2) of RPF Rules, 1987 the Assistant Security Commissioner is the competent authority to

issue charge-sheet under Rule 153 of RPF Rules.

9. The respondents categorically dealt with all the paragraphs of the writ petition and stated that the Assistant Security Commissioner, Asansol,

Eastern Railway under whose disciplinary control the petitioner was posted was empowered under Rule 151 Sub-rule (1) in Schedule (iii) of RPF

Rules, 1987 to issue charge-sheet against the petitioner. So the charge-sheet issued by him is strictly in terms of the rules.

10. The respondents in their opposition stated that it is the duty and responsibility of the petitioner to report to nearest Railway Doctor for his

treatment if he was so sick but he did not do that and his intimation was received after a lapse of 107 days.

11. In the opposition it has been stated that Inquiry Officer gave an opportunity to the petitioner and there is no illegality in the proceeding. In the

inquiry report the Inquiry Officer assigned due reasons and as such the inquiry is not vitiated for violation of principles of natural justice.

12. On this statement and counter statement this Court will have to come to a finding as to whether charge-sheet is biased or mala fide inquiry

proceeding and/or finding is bad in law or not and the command certificate directing the petitioner to join the inquiry is also bad in law or not.

Decision

13. In a disciplinary proceeding the disciplinary authority and the Inquiry Officer are to act in accordance with law. Writ Court has little scope

under judicial review to interfere. The Writ Court can neither act as an Appellate Court nor can it reappreciate the evidence adduced before the

Inquiry Officer. Let me discuss as to what should be the actual procedure in case of inquiry and charge-sheet.

14. Before issuing a charge-sheet the authorities are to conduct a preliminary inquiry and to come to a finding as to whether charge-sheet will be

issued on the delinquent employee or not. Without deciding that if the authorities issue charge-sheet it indicates closure in the mind or biasness. In a

judgment reported in V.K. Khanna v. State of Punjab AIR 2001 SC 343 the Hon"ble Apex Court has observed that if in the charge-sheet the

name of the Inquiry Officer is mentioned and the venue of the inquiry or the date of the inquiry has been fixed then it appears that the authority has

already decided in mind to hold the inquiry and that indicates bias. In the instant case on the charge-sheet the name of the Inquiry Officer is there;

the date and the place of inquiry has also been mentioned ; though here the charges are clear inasmuch as it is of unauthorised absence and that is

on record. Therefore, here, the question of preliminary inquiry would not arise but still then when the petitioner has submitted or produced medical

certificate and/or when those certificates were not under challenge and admittedly, the son of the petitioner informed the Office (though after a

lapse of about 107 days) in that event the absence would not be treated as gross misconduct.

15. That apart the Inquiry Officer in his inquiry report gave a finding but did not disclose reasons. It is settled position of law that when a quasi-

judicial authority passes an order it must be backed by reasons. In this case the inquiry finding is not based on reasons and as such the inquiry

finding does not get any leg to stand.

16. In the above view of the matter I set aside the inquiry proceeding as -well as the charge-sheet but I maintain the charges. This inquiry finding

and the charge-sheet is set aside but the authority is given liberty to proceed against the petitioner on the same charges. On the same charges also

means the respondents will not have to issue any fresh charge-sheet.

17. The respondent authorities will however, when continuing the proceeding follow that principles of natural justice and the RPF Rules strictly.

Fair opportunity is to be given to the petitioner and the proceeding so started will have to be concluded within six months from the date of

communication of this order.

18. The writ petition is therefore, disposed of with the above directions. There will be however, no order as to costs.