

(1996) 08 CAL CK 0012

Calcutta High Court

Case No: Civil Order No. 5019 (W) of 1990

Raj Narain Singh

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: Aug. 7, 1996

Acts Referred:

- Constitution of India, 1950 - Article 226, 311(2)
- Railway Protection Force Rules, 1959 - Rule 44, 46, 47

Citation: (1998) 1 ILR (Cal) 507

Hon'ble Judges: Tarun Chatterjee, J

Bench: Single Bench

Advocate: Kamal Bhattacharyya, for the Appellant; Kaji Mohammad Ali, for the Respondent

Judgement

Tarun Chatterjee, J.

This writ application has been moved against the order of dismissal passed by the appellate authority dated June 14, 1988, which is Annexure "I" to the writ application. It confirmed the decision of the disciplinary authority dismissing the writ petition from service.

2. At the material point of time, the writ Petitioner was posted at Up Post at Mughalsarai although his permanent posting was at Gaya which was his Headquarters. The writ Petitioner was booked for escort duty in EC-196 Dn. Train. When the train reached Saiyadraja (hereinafter referred to as SYJ.) at about 4.15 hours (early in the morning), where it stopped for about 35 minutes, the writ Petitioner and another Rakshak Sri Sarjoo Prasad were assigned and they performed a patrol duty at both sides of the train on January 14, 1976.

3. According to the writ Petitioner, the said night was very cold and dark and the train was a long one with 70 wagons. The very "mode of duty of patrolling, the train was to move upto the engine and then back to the guard's brake van and repeat.

According to the Petitioner, in course of such patrolling, while the Petitioner was moving from the rear side to the engine of the train, the Petitioner along with the other Rakshak, Sri Sarjoo Prasad found that some miscreants were active and were removing bags from wagon No. 16 from the engine. The writ Petitioner along with the said Rakshak, Sarjoo Prasad suddenly rushed to the spot and ultimately with the help of other Rakshaks, recovered the three bags which were found containing sugar out of which one was intact and the other two bags were found open. Ultimately, the said three bags were brought back to the station and against a proper receipt, the writ Petitioner and Sri Sarjoo Prasad handed over the same to the Head Rakshak there on the same date, i.e. on January 14, 1976. Sometime in the month of February, 1976, the Petitioner was served with an order being Regional Order No. dated February 13, 1976 issued by the Security Officer, Railway Protection Force, Mughalsarai purporting to remove the Petitioner from service for the alleged ground of misconduct and negligence of duty while on escort duty in Train No. EC-196 Dn. which arrived SYJ, on January 14, 1976.

4. The Security Officer, in the order of dismissal found that the writ Petitioner was guilty of misconduct and negligence of duty. It was also found that it was not reasonably practicable to follow the procedure in terms of Rule 44 or 46 of the Railway Protection Force Rules, 1959 and therefore in exercise of power conferred on him under Rule 47 of the said Rules read with Article 311(2) of the Constitution, the writ Petitioner was removed from service.

5. An appeal was taken by the writ Petitioner before the appellate authority against the aforesaid order of removal, which was also dismissed by the Chief Security Officer, Railway Protection Force, Eastern Railway, Calcutta by his order dated December 3, 1977. Being dissatisfied with the aforesaid order of the appellate authority and the order of dismissal a writ application was moved under Article 226 of the Constitution in this Court, which gave rise as C.R. No. 6720 (W) of 1977.

6. The aforesaid Rule was taken up for hearing by Dipak Kumar Sen, J. (as His Lordship then was) on August 9, 1979 and after hearing the learned Advocates appearing for the parties, Dipak Kumar Sen J. made the Rule absolute and thereby quashed both the orders of dismissal and directed the Respondents concerned not to give any effect or further effect to the said orders of dismissal. However, Dipak Kumar Sen J. (as His Lordship then was) granted liberty to the Respondents concerned to initiate further and appropriate proceedings against the Petitioner as well as against the said Sri Sarjoo Prasad, the other Rakshak. In terms of the aforesaid liberty given by this Court in the aforesaid Rule in the month of August, 1981, the writ Petitioner was again served with a formal memorandum of charge issued by the Assistant Security Officer, Railway Protection Force, Mughalsarai, where the Petitioner was charged with alleged misconduct and negligence of duty and was asked to submit his explanation in respect of the said charge within such time as mentioned therein. The Petitioner, however, submitted an explanation

denying the charges of alleged negligence of duty and suppression of facts. Towards the end of March, 1983, the writ Petitioner was served with a statement of charges in which the Petitioner was charged with alleged negligence in discharge of duty and suppression of facts. The charges as made in the said statement run as thus:

1. While on escort duty in train No. SC 196 Dn. on 14.1.1976 which stopped at SYJ on Dn. Loop from 4/15 to 4/55 hrs. on 14.1.1976. Wagon No. NK 11673 ex Sirapur to Kashipur was victimized and theft of 3 bags sugar was committed which you failed to prevent.

2. The facts leading to the theft and recovery of sugar bags were suppressed by you with ulterior motive which you could have easily conveyed to the MGS up post through East Cabin SYJ.

7. On the basis of the aforesaid charges, a proceeding was started by starting a departmental enquiry. During the course of the enquiry, the writ Petitioner was defended by Kamaleshwari Pandey, S.I. Three witnesses were examined on the side of the complaints while the writ Petitioner had examined one witness. On conclusion of the enquiry, the Enquiry Officer arrived at a decision that the incident had been reported to the RPF/Post/MGS/Up and therefore the Petitioner was not guilty of the charge of suppression of fact in respect of the aforesaid incident. The ground on which the order of removal was passed by the aforesaid authority was that for the failure on the part of the Petitioner to prevent the theft could not be denied as the writ Petitioner and the other Rakshak, Sri Sarjoo Prasad were on escorting duty and were responsible to keep the train free from any criminal interference, which they had failed. It was also, however, found by the Enquiry Officer that due to follow up action taken by the Petitioner and the said Rakshak, Sarjoo Prasad, the entire goods, which were theft were recovered. Therefore, it is now an admitted position that although the theft was taken place but due to follow up action taken by the Petitioner and the other Rakshak Sri Sarjoo Prasad, the goods were recovered without damages. On being satisfied with the finding and/or enquiry report of the Enquiry Officer in respect of the departmental proceedings, the Security Officer, Railway Protection Force, Mughalsarai, proposed to inflict an order of removal of the writ Petitioner and asked the Petitioner to show cause within seven days from the date of service of the notice regarding the proposed punishment to be inflicted on the writ Petitioner as to why such punishment could not be imposed upon him. The writ Petitioner submitted a reply to the said show cause notice. In the said reply to the show cause notice, the writ Petitioner categorically denied that no misconduct and negligence of duty was done by him. He also stated in the reply that since the goods were recovered on the basis of the follow up action by him and Sri Sarjoo Prasad, the other Rakshak, the major penalty of removal of service cannot be made against him. However, the Security Officer, Railway Protection Force, Mughalsarai, in concurrence with the finding of the Enquiry Officer passed the removal order, which

is Annexure "F" to the writ application against the Petitioner with effect from April 25, 1985.

8. Being aggrieved by the said order of dismissal, which is Annexure "F" to the writ application passed by the Security Officer, an appeal was taken before the appellate authority, namely, the Chief Security Officer, Railway Protection Force, Eastern Railway, Calcutta. In the memorandum of appeal, it was alleged by the writ Petitioner that the appellate authority, in the facts and circumstances of this case, shall exonerate the Petitioner from the charges levelled against him and allow the Petitioner to join the service forthwith. By the order dated June 12, 1988, the appellate authority, however, confirmed the order of removal passed by the Security Officer, which is Annexure "F" to the writ application and the order of the appellate authority is Annexure "I" to the writ application. After receiving the order of the appellate authority on July 5, 1988, the Petitioner sent a representation to the Inspector General of the Railway Protection Force, New Delhi, inter alia, challenging the orders of the appellate authority and the disciplinary authority and prayed for interference of the Inspector General of Railway Protection Force, New Delhi to exonerate the Petitioner from the aforesaid charge and/or punishment imposed on him. However, it is not found that any order dismissing the representation of the writ Petitioner was passed by the Inspector General of Railway Protection Force, New- Delhi. The writ Petitioner, therefore, challenged the orders of removal passed against him by both the authorities, which are Annexures "F" and "I" to the writ application.

9. After hearing Mr. Bhattacharyya, the learned Advocate appearing for the writ Petitioner and Mr. Ali, the learned Advocate appearing for the authorities, I am of the view that the writ application, in the facts and circumstances of this case, must succeed.

10. It is an admitted position that both the authorities concurrently found that the writ Petitioner cannot be held responsible in respect of the second charge, which held the writ Petitioner guilty for not informing the fact of the alleged incident to the authorities. In fact, it was found by both the authorities that such fact was brought to the notice of the authorities by the Petitioner. Therefore, the writ Petitioner could not be held to be responsible for suppression of facts as alleged in the chargesheet, which was served on the Petitioner. From both the orders passed by the authorities, it is now an admitted position that the order of removal was inflicted on the Petitioner only on the charge of failure on the part of the Petitioner and the other Rakshak, Sri Sarjoo Prasad, to prevent the occurrence of theft, for which they were posted as Rakshaks on duty.

11. In my view, both the authorities went wrong in inflicting the punishment of removal of the Petitioner on the ground of negligence of duty for which theft had occurred without considering the follow up action taken by the writ Petitioner and the said Sarjoo Prasad by which the goods which were removed from the wagon,

were recovered ultimately and deposited with the authorities.

12. In my view, such being the admitted fact and after considering the fact that the train in question was a long one having 71 wagons and the occurrence of theft took place in the 16th wagon from the engine, it may be safely presumed that the writ Petitioner and Sri Sarjoo Prasad who were two in number could not be held to be responsible for such theft in the background of the admitted fact that the writ Petitioner and Sri Sarjoo Prasad, as soon as they found that there was an occurrence of theft in the wagon No. 16, rushed to the spot and recovered the goods which was stolen from the said wagon without any damage. For the reasons aforesaid I am therefore of the view that in the background of the aforesaid fact and in view of my discussions made hereinabove the service of the writ Petitioner could not be terminated on the ground his service was terminated.

13. Accordingly, I am unable to agree with the findings of the Authority in respect of the aforesaid charge levelled against the writ Petitioner.

14. Accordingly, the orders of dismissal passed by the authorities against the writ Petitioner are set aside and the writ Petitioner must be reinstated in his service immediately.

15. Apart from that, Mr. Bhattacharjee, the learned Advocate appearing for the writ Petitioner produced a copy of the judgment of the Allahabad High Court in the case of Sarju Prasad v. Senior Commandant, Railway Protection Force, Eastern Railway, Calcutta and Anr. by which a single Judge of that Court had set aside the orders of dismissal passed against the said Sarju Prasad, who was doing escort duty with the writ Petitioner on the date of occurrence.

16. Taking into consideration of this fact also, I am of the view that there was no question of allowing the orders of dismissal passed by the authorities to continue against the writ Petitioner.

Mr. Ali, the learned Advocate appearing for the Respondents authorities draws my attention to the fact that since the said Sarjoo Prasad, the other Rakshak moved the writ application before the Allahabad High Court, this Court cannot have any jurisdiction to entertain this writ petition.

17. I am afraid that at this stage, I am enable to agree with Mr. Ali, the learned Advocate appearing for the Respondent authorities for the following reasons.

18. Firstly, this writ application was moved in the year 1990 and affidavit-in-opposition to the writ application was filed long back. From a perusal of the averments made in the said affidavit-in-opposition, it appears to me that the Respondents never raised the question of jurisdiction as to the maintainability of the writ application in this Court. On the other hand, in para. 20 of the affidavit-in-opposition, it has been stated that the writ jurisdiction of this Court should not be invoked against the orders of dismissal for which the writ application

was moved. Therefore, practically the Respondents having conceded the question of jurisdiction there can be any question of lack of jurisdiction of this Court. Apart from that, from the writ application it cannot be said that this Court has no jurisdiction to entertain this writ application.

Accordingly, the above submission of Mr. Ali is overruled.

19. For the reasons aforesaid, the impugned orders of dismissal passed by the concerned authorities are set aside and the Respondents shall immediately reinstate the writ Petitioner with all back wages as admissible under the law.

The writ application is allowed to the extent indicated above.

There will be no order as to costs.

20. Mr. Ali, the learned Advocate appearing for the Respondent authorities prays for stay of operation of this judgment. In the facts and circumstances of this case, I do not find any reason to stay the operation of this judgment, as prayed for by the learned Advocate of the Respondents.

Accordingly, the prayer of Mr. Ali, the learned Advocate appearing for the Respondents is refused.

Office is directed to supply the certified xerox copies of this judgment to the learned Advocates appearing for the forthwith if they applied for obtaining the same.