

(1996) 05 CAL CK 0013

Calcutta High Court

Case No: F.M.A.T. No. 129 of 1996

M. P. Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: May 6, 1996

Citation: 100 CWN 1166

Hon'ble Judges: Satya Narayanyan Chakraborty, J; Satya Brata Sinha, J

Bench: Division Bench

Advocate: Moloy Chakraborty, for the Appellant;

Final Decision: Allowed

Judgement

Satya Brata Sinha, J.

This appeal is directed against a judgment and order dated 14th February, 1982 passed by a Id. single Judge of this Court in C.O. No, 1296(W) of 1992 whereby and wherein the said learned court dismissed the writ application tiled by the.writ petitioner in limine. The writ petitioner was working as a constable in lire R.P.F. A Charge-sheel was issued against him on 1.2.1988 for "his failure.to prevent the entry of two criminals in Liluah workshop and arrest them when they were scaling the boundary wall with hand bags containing welding rods weighing about 20 and 30 Kgs. respectively and to render any assistance to IPF Liluah and Assistant Security commissioner(G) who were on ambush watch in arresting the criminals with the recovery of the stolen property which was recovered by IPF/Liluah on the same date." An Enquiry Officer was appointed to enquire into the charges levelled against the petitioner and found him not guilty thereof. However, the Disciplinary Authority differed with the said findings in purported exercise of the power under Rule 153 of the Railway Protection Force Rules on the following reasons:

1 differ with the EO and feel that the charges have been proved against the delinquent C/5177 M.P. Singh for the following reasons:

1) He was inside the workshop and criminals did carry materials. from, inside the workshop at the West gate. The time was dusk and visibility was clear as has been proved during the course Of "enquiry. Further, there was not reason for this constable to fail to detect the criminals carrying the materials climbing the Well. In fact, one had climbed. Recovery has been made and RP UP Act case has been started after arrest of the "criminal. There cannot be any doubt that theft did occurrence.

A bare perusal of the aforementioned findings.will show that the Disciplinary authority has failed of assign cogent reasons in differing with the findings of the Enquiry Officer. The enquiry Officer considered the cadence of all the witnesses and indicated hereinbefore arrived at a finding to the effect that the petitioner was not guilty of the charges levelled against him. There cannot be any doubt that the Disciplinary authority is entitled to differ with the findings of the Enquiry Officer but while doing so he must assign sufficient and cogent reasons therefor. Having perused his order we are satisfied that the reasons assigned by the disciplinary authority can neither be said to be sufficient nor cogent having to the findings of the enquiry Officer.

2. Moreover, we are satisfied that the.Disciplinary authority had found the petitioner of a charge which was not framed against.him namely he failed to prevent the theft also. The disciplinary authority did not analyse the. materials on record at all and came to the conclusion on the basis of such materials to arrive at a finding that on such materials the appellant was guilty of said charges.

3. The petitioner preferred an appeal as against the said order before the Deputy Security Commissioner. The appellate authority also did not assign sufficient reasons. The Appellate authority took a third view of the matter holding-

It is not material whether the appellant was inside the workshop or outside the workshop. Since there was adequate flight at the material time, therefore, no matter the appellant was performing the duty outside the workshop, the movement of anti-social persons near the boundary wall should have come to the notice. Obviously, the appellant was not alert as a, result of which he failed to detect such odd movements of the anti-social elements.

In view of the above reasons, it is not considered proper to interfere with the orders of disciplinary authority. The appeal is, therefore; rejected and the punishment already imposed is confirmed.

In this view of the matter we are of the opinion that the petitioner has made out sufficient cause for interference with the.impugned orders as contained in annexure K and N to the writ application. The matter is remitted back to the Disciplinary authority for a fresh consideration in accordance, with law. Having regard to the facts and circumstances of this case and keeping in view of the fact that the appeal is pending for a long time the; disciplinary authority is hereby directed to consider

the matter afresh and pass an appropriate order after giving an opportunity of hearing to the writ petitioner. The disciplinary authority while passing the said order shall consider the facts and circumstance of the case including the fact that the case has been pending for a long time. The appeal is allowed and the judgment and order passed by the trial Judge is set aside with the aforementioned directions.

Satya Narayan Chakraborty

I agree.