
(1974) 08 CAL CK 0037

Calcutta High Court

Case No: None

Union of India and
Others

APPELLANT

Vs

Harsanarayan Singh

RESPONDENT

Date of Decision: Aug. 19, 1974

Citation: (1974) 08 CAL CK 0037

Hon'ble Judges: Salil Kumar Datta, J; Bankim Chandra Ray, J

Bench: Division Bench

Advocate: Ajoy Kumar Basu, for the Appellant; Basudeb Banerjee and Mrs. Kanika Banerjee, for the Respondent

Final Decision: Allowed

Judgement

1. The only point in this appeal is whether the disciplinary authority considered the record of the enquiry and recorded its findings on each charge before he issued show cause notice to the delinquent. It appears that the Petitioner was a Rakshak in the armed wings of the Railway Protection Force, Eastern Railway and he was charged with the following misconduct: -

(1) You are hereby charged with gross neglect of duty and grave misconduct under Rule 44 of the Railway Protection Force Rules 1959 in that you at . . . on the 23rd night of August 1961 you were issued with command certificate No. 328 dated 23.8.1961 at 23/48 hrs., to proceed to take up your duty in between up outer location box and Taratala Gate after relieving the "C" shift party consisting of RK 630 Jamuna and R K 610 S. N. Singh. But you did not care to proceed to take up your duty and remained in the barrack unauthorisedly.

(2) You assaulted SR 702 Phani Bhusan Nag at about 02/00 hrs. on 4.8.1961 near Taratala Level Crossing Gate causing bleeding injuries on his person . . . and you are hereby called upon to show cause . . . the penalties prescribed under Rule 41 of the Railway Protection Force Rules 1959 should not be imposed upon you or you should not

be punished with any of the lesser penalties specified therein.

2. There was an enquiry held to the charges by an Assistant Security Officer and the Petitioner was found guilty of both the charges. The enquiry officer however was not the disciplinary authority and the Security Officer who was the disciplinary authority passed the following order against the Petitioner on 18.2.63.

After considering (i) the documentary evidence (ii) your written explanation dated 29.6.61 in reply to the C/sheet No. 297/61 of 8.9.61 and (iii) the findings of the departmental enquiry drawn up on 16.9.61 or (b) your oral defence or further explanation given at the time of personal interview, I have arrived at the conclusion that the following charge/charges has/have been proved against you and that you are guilty of the same:

Charges

(a) Gross neglect of duty and grave misconduct under Rule 44 of the RPF Rules 1959 in that on the 23rd night of August 1961 (1) you were issued with command certificate No. 328 dated 23.8.61 at 23/48 hrs. to proceed to take up your duty in between up outer location box and Taratala Gate after relieving the C/Shift party consisting of RK/630 Jamuna and RK/610 S. N. Singh. But you did not care to proceed to take you duty and remained in the barrack unauthorisedly. (2) You assaulted SR/702 Phani Bhusan Nag at about 02/00 hrs. on 24.8.61 near Taratala level crossing gate causing injuries on his person.

2. I have, therefore, provisionally formed the opinion that you should be dismissed from service.

3. You are hereby given 7 clear days time from the receipt hereof to show cause why the proposed penalty should not be inflicted on you. Any representation that you may make in this connection will be taken into consideration before passing final orders.

3. To this there was a reply by the Petitioner and after considering the cause shown by the Petitioner the disciplinary authority passed a formal order of dismissal against the Petitioner. The Petitioner's appeal thereafter was also dismissed. A rule was obtained against this order directing a writ in the nature of Mandamus restraining the Respondents from giving effect to the same.

4. It was contended on behalf of the Petitioner before the learned Judge that the enquiry officer took into consideration certain statements made by some witnesses also in an exparte fact finding proceeding which was not disclosed to the Petitioner and the Petitioner had no opportunity to examine the witnesses. Reliance was placed on the decision of (1) Khardah & Co. Ltd. and its workmen, 1963 (2) LLJ 452. In an earlier case in (2) [State of Mysore Vs. S.S. Makapur](#), the Supreme Court laid down that in the case of departmental enquiries held against a public servant the witnesses who have been examined in the absence of the delinquent public servant need not be examined afresh in

the presence of the public servant and if a copy of their statement is given to the public servant and an opportunity is also given to the public servant to cross-examine such witnesses that would serve the purpose of natural justice. In Khardah Company's case an exception to this rule was made in respect of enquiries of industrial employees but as the Petitioner was not an industrial employee, the principle therein had no application, and the case, it was held, was governed by the decision in Shivabasappa as referred to above.

5. But the Court found that there was a violation of sub rule (9) of Rule 44 of the Railway Protection Force Rules, 1959 in that the Disciplinary Authority did not consider the record of the inquiry and record its findings on each charge as required, as it appeared from the order-sheet that the disciplinary authority simply perused the findings of the connected papers. In that view of the matter the Rule was made absolute and direction was issued quashing the order of dismissal and a writ of Mandamus was also issued calling upon the Respondents to proceed in accordance with the directions contained in the order, that is, to consider the record of inquiry and arrive the findings as provided in Rule 44(9).

6. Mr. Basu appearing for the Union of India has referred us to the decision reported in the case, (3) [Union of India \(UOI\) and Others Vs. K. Rajappa Menon](#), . It was held in that case that Rule 1713 of the Railway Servants Conduct and Disciplinary Rules does not lay down any particular form or manner in which the disciplinary authority should record its findings on each charge. It was held that all that the Rule requires is that the record of the enquiry should be considered and the disciplinary authority should proceed to give its findings on each charge. This does not and cannot mean that it is obligatory on the disciplinary authority to discuss the evidence and the facts and circumstances established at the departmental enquiry in details and write as if it were an order or a judgment of a judicial tribunal. It was further observed that when after giving consideration to the record of the proceedings of the departmental enquiry the disciplinary authority agreed with the findings of the Enquiry Officer that all the charges mentioned in the charge-sheet had been established it meant that he was affirming the findings on each charge and that fulfills the requirement of the Rule. The Rule after all has to be read not in a pedantic manner but in a practical and reasonable way. Strongly relying on this decision Mr. Basu submitted that the words would indicate that the disciplinary authority considered the record of the enquiry and gave it finding on the charge though it did not give any judgment or reason for the order particularly in view of his agreeing with the findings of the enquiry officer. This according to Mr. Basu was sufficient compliance of the provision of Rule 44(9) and the judgment under appeal the contrary view could not be sustained.

7. Mr. Banerjee appearing for the Respondent-workman has submitted that the court should have considered the case of Khardah & Co. and there was no reason for exonerating from consideration the principles laid down therein as it has been held in a recent decision in (4) Joydeb Mondal v. Union of India, by Basak, J. on July, 9, 1974 that the railway employees are also workmen governed by the Industrial Disputes Act. Accordingly, Mr. Banerjee submits that the decision would apply to the facts of this case,

the railway being an industry.

8. It appears to us that the Petitioner being a Rakshak is employed under the provisions of the Railway Protection Force Act 1959. There are specific Rules by which the procedures for imposing minor penalties are governed. We need not look into any other law for considering the legality or validity of the proceeding except the Rules themselves. This relevant Rule 44(9) is to the following effect:

The Disciplinary Authority shall, if it is not the Inquiring Authority, consider the record of the inquiry and record its findings on each charge.

9. This Rule is in parimateria of the Rule 1713 of the Railway Servant Conduct and Disciplinary Rules. The Rule has interpreted in the manner we have already indicated. That being the position, we need not look into any other law for examining the validity of the order passed under the said rules. Accordingly we are of opinion that the principles in Khardah & Co. case have no application and we shall have to look into the said Rules to examine the validity of the procedure. There could be no dispute that the impugned order which is annexure "D" to the petition recites that the disciplinary authority considered the documentary evidence, written explanation of the delinquent, the findings of the enquiry officer and the oral defence and further explanation and it also recorded that the said authority arrived at the conclusion that the charges against the delinquent had been proved against him and that he was guilty of the same and thereafter the second show cause notice was issued. Mr. Banerjee, however, referred to a note in the order-sheet which is as follows:

Perused the finding and other connected papers. I agree with the finding that the accused is guilty of the charge found against him. Issue show cause notice for his dismissal from the force.

10. B.N. Banerjee, J. was of opinion that this requirement of Rule 44(9) merely by perusing the finding and the connected papers enjoined was not discharged. It however appears to us that the connected papers and the findings were perused by the authority and also agreed with the finding that the Petitioner is guilty of the charge found against him. To "peruse" means also to go through critically or to consider in detail, which imply consideration of the record. That being the position, this action of perusal in our opinion, implied that the disciplinary authority considered the findings and the connected papers before he could agree with the findings of the enquiry officer. We therefore consider that there was due compliance of the provision of Rule 44(9) of the Railway Protection Force Rules and accordingly the impugned order finding the Petitioner guilty has to be sustained.

11. In the above view this appeal is allowed. The judgment and the order under appeal are set aside and the Rule is discharged. There will be no order as to costs. All interim orders are vacated.

Ray, J.

12. I agree.