Before S. S. Nijjar, J

OM PARKASH AND ANOTHER—*Petitioners*

versus

GOVERNMENT OF INDIA AND OTHERS,—*Respondents*

C.W.P. NO. 4483 OF 1988

19th May, 2004

Constitution of India, 1950—Art. 226—Railway Protection Force Rules, 1959—Rl. 47(b)—Duty of petitioners to gurard properties of Railways—Theft of the property—Charges of theft against petitioners—Some part of stolen property recovered from them—Dismissal from service—No departmental enquiry held—Rules 44 to 46 provide a departmental enquiry beofore passing an order of major penalty—Rule 47 requires that the disciplinary authority has to record reasons for coming to the conclusion that it is not reasonably practicable to hold a departmental enquiry—Department dispensing with enquiry only on the statement of a co-accused—No other material before the respondents to show that petitioners had in any manner connived with any of the co-accused-Dispensing with departmental enquiry is a very serious matter—Order of Appellate Authority rejecting application of petitioners is also a non-speaking order—Petition allowed, impugned orders terminating the services of petitioners quashed.

Held, that a perusal of Rule 47 of the Railway Protection Force Rules, clearly shows that the disciplinary authority has to record reasons for coming to the conclusion that it is not reasonably practicable to hold a departmental enquiry. A perusal of the order dated 31st August, 1987 dispensing with the enquiry clearly shows that it is based purely on the statement of co-accused. There is no other material to show that the petitioners had in any manner connived with any of the alleged co-accused. The respondents have failed to establish that it was not reasonably practicable to hold any enquiry, and therefore, the same could not have been dispensed with in the exercise of the powers under Rule 47(b) of the Rules.

(Paras 7, 9 & 10)

Further held, that dispensing with the regular enquiry is a very serious matter. It is an exception to the normal rule. This power, therefore, has to be exercised with caution and circumspection by the authorities. There was no relevant material before the respondents to come to the conclusion that it would not be reasonably practicable to hold the departmental enquiry.

(Para 12)

Further held, that petitioners had filed a statutory appeal before the appellate authority. A perusal of the order passed by the Appellate Authority clearly shows that the appeals have been dismissed by passing a non-speaking order. The observations of the appellate authority would not satisfy the requirements of a speaking order. The decision rendered in appeal by an appellate authority has to be passed after considering the grounds raised in the appeal. Cogent reasons have to be given as to why the submissions made in the appeal do not merit acceptance. It is not sufficient for the appeallate authority to merely State the conclusion. The order must disclose the reasons for the conclusion also.

(Paras 12 & 13)

K. L. Arora, Advocate, for the petitioners.

Puneet Jindal, Advocate, for the respondents.

JUDGMENT

S. S. NIJJAR, J, (ORAL)

(1) Petitioner No. 1 was appointed as constable in the Railway Protection Force on 7th February, 1966. He remained on training up to 10th January, 1967. He joined duties after training at Amritsar on 11th January, 1967. On account of his consistently good record of service, he was promoted as Naik in 1985. It is further averred in the writ petition that the work and conduct of petitioner No. 1 has been very good throughout his service career. Nothing adverse has been conveyed to him. Petitioner No. 2 was recruited as Constable on 14th January, 1979. He remained on training upto 18th September, 1979. He joined duties as Constable at Amritsar on 19th September, 1979. His work and conduct has been very good and nothing adverse has been conveyed to him. Both the petitioners were on duty on

3rd February, 1986 and 4th February, 1986 from 8 P.M. to 8 A.M. at Chakki Bank Railway Station near Pathankot. The duties of the petitioner were to guard the properties of the railway. They were required to inspect the seal checking of the goods wagons. Everyday when the petitioners came on duty, they were handed over the charge which they relinquished to the next officials when they went off duty. The charge was always taken over and handed over properly in the relevant register. This is duly recorded in the roznamcha and also in the Seal Checking Book. They were also to perform other watch and ward duties for the whole of the yard. On 3rd/4th February, 1986, the next person on duty was Naik Sarwan Singh son of S. Udham Singh. A number of incidents are alleged to have happened during the period when the petitioners were on duty where the property of the railways was stolen. It is the case of the respondents that the property had been stolen with the active connivance of the petitioners with criminals.

(2) In the written statement, the respondents have stated that the petitioners alongwith Ajaib Singh Ex./NK and Jagjit Singh Ex./Const. were mixed up with criminals in commission of organised thefts on Railway booked consignments from wagons standing at Old Military siding, Chakki Bank Station of Pathankot Post. The thefts were committed with the active connivance of the petitioners and their associates who were recruited for the job of protection of Railway properties. These facts were disclosed by accused Bishan Singh son of Jagan Nath on 3rd April, 1987 when he was arrested in case crime No. 2/87 of RPF Post Pathankot. At the instance of accused Bishan, certain part of the stolen property was recovered from the petitioners. The railway property was said to have been stolen by the gang of criminals headed by Dharam Paul in the night of 21st January, 1987 and 21st February, 1987 from Wagon No. WRC 62453 and NRC 23911 in which 49 bundles of blankets from each wagon were stolen. Accused Bishan Singh also admitted to have committed several thefts with his associates from the Railway Wagons while standing in CHKB Yard with the tacit consent and active connivance of RPF staff. The criminals used to pay illegal gratification to the RPF staff on duty as a share of the booty. This accussed also disclosed that his gang used to get deputed the RPF man of their choice through Ex-SI Dilbagh Singh. After commission of the theft, they used to refix and manipulate the seals of the concerned wagon to mislead

the enquiry officer. On 24th August, 1987, another accused, namely, Devinder Pal alias Shikanha also joined the investigation and corroborated the facts narrated by accused Bishna. Since a part of stolen property was recovered in pursuance of disclosure statement of the accused persons, their statements are considered to be true and believable. These accused persons have admitted to have committed the following thefts :—

1.	Theft of 99 jeep tyres 2 bdls tubes from wagon No. NRC 29062	4-2-1982	N.K. Om Parkash
2.	Theft of 10 bdls of Blankets Wagon No. HRC 21989.	19-12-1986	Const. Gurpal Singh
3.	Theft of 49 bdls of Blankets from Wagon No. WRC 63453.	21-02-1987	NK Tej Singh NK Ajaib Singh
4.	Theft of 49 bdls of Blanket from Wagon No. NRC 23911	21-02-1987	Const. Jagjit Singh

(3) The statment of the accused was recorded during investigation. There was no other witness except the accused persons. The Staff had stooped down to the extent of conniving with the criminals in the commission of crime. The matter had become very serious as the thefts were committed in connivance with the railway police force staff whose duty was to protect and safeguard the railway property. The RPF staff involved in the case, including Ex. SI Dilbagh Singh were creating terror in the minds of the accused persons and influenced them not the testify against them in case a departmental enquiry is held against them. Moreover, petitioner No. 2 has admitted in his statement that the RPF staff was in league with the criminals and took illegal gratification for commission of thefts. The petitioners were dismissed from service by the order dated 31st August, 1987 (Annexure P-2), under Rule 47 (b) of the Railway Protection Force Rules, 1959 (hereinafter referred to as "the RPF Rules"). The petitioners challenged the aforesaid order by filing a

departmental appeal which has been dismissed by order dated 9th March, 1988 communicated to the petitioners by covering letter dated 15th March, 1988 (Annexure P-4).

(4) Mr. Arora, learned counsel appearing for the petitioners, submits that the impugned order (Annexure P-4) cannot be sustained under Rule 47 (b) of the RPF Rules. No reasons are set forth in respect of the conclusion that it was not reasonably practicable to hold the enquiry. He submits that mere inability or inefficiency of the department to obtain evidence to prove the charges cannot be said to be reason for dispensing with the enquiry. It was incumbent on the respondents to hold a proper departmental enquiry as envisaged under Rules 44 to 46 of the RPF Rules, before passing an order of dismissal. He further submits that the appellate order is liable to be quashed on the short ground that it has been passed without application of mind. No reasons are disclosed as to why the grounds of appeal of the petitioners which had been elaborately pleaded, did not find favour with the appellate authority. Mr. Arora then submits that even otherwise, the petitioners have been subjected to discriminatory treatment. In similar circumstances, appeal of a similarly situated person was accepted and the order of dismissal was set aside whilst allowing the appeal of Ex. Const. Balbir Singh and Vinod Kumar Tyagi. The appellate authority, the then Director General, RPF, observed that no one can be given the maximum penalty of dismissal just because witness cannot be produced. In support of his submissions, learned counsel for the petitioners has relied on a Full Bench decision of the Allahabad High Court rendered in the case of **Muksudan Pathak** *versus* **The Security Officer, Eastern Railway, Mughalsarai and another (1)** and the judgments of the Supreme Court rendered in the cases of **Chief Security Officer and others** *versus* **Singasan Rabi Das (2)** and **Chandigarh Administration, Union Territoty, Chandigarh and others** *versus* **Ajay Manchanda and others (3).**

(5) Mr. Jindal, learned counsel appearing for the respondents has submitted that in view of the fact that Bishna has confessed about the complicity of the petitioners in the commission of theft, it was not necessary to hold any departmental enquiry. The confessional statements of a co-accused are admissible in evidence against the other

(1) 1981 (2) All India Services Law Journal 31
(2) JT 1991 (5) S.C. 117
(3) (1986) 3 S.C.C. 753

co-accused. The bar under Section 25 of the Indian Evidence Act would not apply in such circumstances. The petitioners had created terror in the minds of the witnesses, and therefore, it was not reasonably practicable to hold enquiry against the petitioners. Therefore, provisions of Rule 47(b) of the RPF Rules have been rightly invoked in the present case.

(6) I have given anxious thought to the submissions made by the learned counsel for the parties. It is undisputed that no departmental enquiry was held against the petitioners. It is also undisputed that the charges levelled against the petitioners were with regard to thefts of specified articles. It is also undisputed that the thefts had been committed in the presence of a number of witnesses, even though they were alleged to have been acting in a conspiracy. These were very serious matters, and therefore, undoubtedly, the petitioners had to be proceeded against departmentally. Rules 44 to 46 of the RPF Rules set out the procedure which is to be followed before an order of major penalty can be passed against a Railway employee. Rule 47 provides that where the disciplinary authority is satisfied for the reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the said rules, the disciplinary authority may consider the circumstances of the case and pass such orders as it deems fit. Rule 47 of the RPF Rules reads as under :—

> "47.Special procedure in certain cases ;
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> Notwithstanding anything contained in Rules 44 to 46 where penalty is imposed a member of the force can be removed.
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> (a) On the ground of conduct which has led to his conviction on a criminal charge, or
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> (b) where the disciplinary authority is satisfied for the reasons to be recorded in writing that it was not reasonably practicable to follow the procedure prescribed in the said rules, the disciplinary authority may consider the circumstances of the case and pass such order as it deems fit."

(7) A perusal of the aforesaid Rule clearly shows that the disciplinary authority has to record reasons for coming to the conclusion that it is not reasonably practicable to hold a departmental enquiry. The factual position and the point of law raised by the Full Bench

of the Allahabad High Court in **Muksudan Pathak's case (supra)** was similar to the present case. In that case also in the counter-affidavits, the respondents had given the following reasons :—

> "8. ..."Since the possibility of their collusion with the local RPF staff of Pusauli during the material time cannot also be ruled out. I am fully satisfied, it is difficult to follow the procedure under Rules 44 to 46 of RPF Rules, 1959."
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> "9. ...I am satisfied that such large scale theft of 71 bags wheat seed could not have been committed from the aforesaid wagon unless the above noted RPF staff had miserably failed either to detect or prevent it. Since the possibility of their collusion with the local RPF Staff of Pusauli during the material time cannot also be ruled out, I am fully satisfied it is difficult to follow the procedure under Rules 44 to 46 of RPF Rules, 1959, and, as such, reasonably not practicable to hold any departmental proceeding against him."
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> 10...."Since it is not reasonably practicable to follow the procedure under Rules 44 to 46 of RPF Rules, 1959, in the case as the Rakshak had developed influence at Pusauli and as such it may not be possible to collect sufficient evidence. I hereby decide that he be removed from service under Rule 47 of the Rules, 1959, with immediate effect."

(8) The Full Bench, therefore, examined the question as to whether the Security Officer had validly exercised his jurisdiction in dispensing with the enquiry under Rule 47 of the Rules. After examining the matter on principle as well as precedent, it has been held as follows:—

> "22. We are therefore, of the opinion that the words "reasonably practicable" would apply in a case where the authority cannot, in a reasonable manner put into practice the clauses in relation to an enquiry, namely, because of certain facts and circumstances peculiar to each case, the authority cannot, in a reasonable manner, hold an enquiry. There may be case where the charged person may have absconded, or a case where in spite of the best efforts, the disciplinary authority may not have been able to serve the notice of the enquiry on the person charged or it may

be a case where it is not possible for the person against whom the charge had been made to come and join, at the enquiry or there may be similar other valid reasons depending on the facts and circumstances of each case.'

24. Similarly, in **Karam Singh** *versus* **Transport Commr., Fazal Ali, J.** in a unanimous judgment, has given the following interpretation to the words "reasonably practicable" (At P. 55).

"It must be shown that it was not possible or feasible with due diligence to afford him a reasonable opportunity of showing cause against the action proposed to be taken against him. Impracticability for not giving such an opportunity may arise out of various circumstnaces. For instance an employee may be at such a place that it would not be reasonably possible to ensure his attendance or such other similar cases. In the instant case, the only reason given by the authority concerned was that the petitioner was found guilty of having stolen defence stores. Such an eventuality, in our opinion, could not have been contemplated by the language used by the aforesaid proviso."

25. We respectfully agree with the observations made in the case of **State of Orissa** *versus* **Krishnaswami Murty,** *(supra)* as well as **Karam Singh** *versus* **Transport Commissioner,** *(supra).* In view of the principles laid down above, we have to examine whether, in the present case the order passed by the Security Officer, dispensing with the enquiry, was vitiated in law or not. There was no evidence on the record at all to show that any attempt was made to serve a notice on the petitioners. If an attempt had been made and the authority was not successful in serving the charge-sheet, it may have been a case where the authority may have come to a conclusion that it was not reasonably practicable to hold an enquiry. In the case of Maqsoodan Pathak, the only ground for dispensing with the enquiry is the collusion with the local R.P.F. staff. This circumstance relates to the merit of the charge and not to the practicability of holding an enquiry. In the case of Kavindra Nath Rai, similarly, the only reason given is the possibility of a collusion with the local R.P.F. Staff. This

also cannot possibly be a reason for not holding the enquiry. The relevant consideration for passing the orders would have been the practicability of holding an enuiry, and not whether the charge could be made out on the basis of the other evidence on the record or not. In the case of Panchanand Singh also, the only reason given is that he had developed influence at Pussaul and, as such, it may not have been possible to collect sufficient evidence. The mere "inability" or "inefficiency" of the investigating authority to obtain evidence to prove the charge cannot be a reason for dispensing with the enquiry. We are, therefore, of the opinion that, in the instant case, the orders dispensing with the enquiry were wholly arbitrary. There was no evidence on the record, which could establish that the enquiry was not reasonably practicable."

(9) I am of the considered opinion that the aforesaid observations of the Full-Bench are fully applicable to the facts and circumstances of the present case. A perusal of the order dated 31st August, 1987 (Annexure P-2) dispensing with the enquiry clearly shows that it is based purely on the statement of Bishna. There is no other material to show that the petitioners had in any manner connived with any of the alleged co-accused. The relevant part of the aforesaid order is as under :—

"...NK Om Parkash and Const. Gurpal Singh have been found fully involved in getting the thefts committed. They are not fit to be retained in the Force whose job is to protect the Railway property. The witnesses at the time of offence are all accused persons, from the facts of the case, attempts to tamper and manipulate evidence cannot be ruled out. Alleged attempts of the RPF personnel involved to prevent the witnesses from testifying against them in case a DAR enquiry is held U/R 44 of the RPF Rules, 1959, are also relevant for forming an opinion that an enquiry under rule 44 of RPF Rules cannot be carried out to its logical end. As such it is not reasonably practicable to hold the DAR enquiry under the said Rules (Rules 44 to 46) or RPF Rules, 1959. As such both Naik Om Parkash and Const. Gurpal Singh are dismissed from service U/R 47-B of RPF Rules, 1959 with immediate effect."

(10) I am of the considered opinion that the respondents have failed to establish that it was not reasonably practicable to hold any enquiry, and therefore, the same could not have been dispensed with in the exercise of the powers under Rule 47(b) of the RPF Rules. In the case of **Chief Security Officer** *(supra)*, the Supreme Court was again considering a case of a government employee who had allegedly lifted railway material and allowed outsiders to carry the stolen material, after taking Re.1 from each of the outsiders. The enquiry under Rules 44, 45 and 46 of the RPF Rules was dispensed with on the reasons which were given as under :—

> "1... "because of the facts that it is not considered feasible or desirable to procure the witnesses of the security/other Railway Employees since this will expose them and make them ineffective for future. These witnesses if asked to appear at a confronted enquiry are likely to suffer personal humiliation and insults thereafter or even they and their family members may become targets of acts of violence."

(11) In the aforesaid case, the respondent was dismissed from service without any enquiry into the charges and without an opportunity being given to him to show cause against the proposed punishment. The respondent challenged the order of dismissal in the High Court. It was held by the High Court that the reasons given in the impugned order were sufficient and on those materials the disciplinary authority could have been satisfied that it was not reasonably practicable to follow the normal procedure. However, it was of the view that the respondent was entitled to show cause notice against the proposed punishment. Thus the order of removal was quashed. Hence the Chief Security Officer of the Railways had approached the Supreme Court against the judgment of the High Court. It was contended that in view of the law laid down by the Supreme Court in the case of **Union of India and another** *versus* **Tulsi Ram Patel (4)** no fresh notice was required to show cause against the propsoed punishment. The Supreme Court observed as follows :—

> 5. In our view it is not necessary to go into the submissions made by Dr. Anand Prakash because we find that in this case the reason given for dispensing with the enquiry is

(4) 1985 (3) S.C.C. 123

totally irrlevant and totally insufficient in law. It is common ground that under rules 44 to 46 of the said Rules, the normal procedure for removal of an employee is that before any order for removal from service can be passed the employee concerned must be given notice and an enquiry must be held on charges supplied to the employees concerned. In the present case the only reason given for dispensing with that enquiry was that it was considered not feasible or desireable to procure witnesses of the security of other Railway employees since this will expose these witnesses and make them ineffective in the future. It was stated further that if these witnesses were asked to appear at confronted enquiry, they were likely to suffer personal humiliation and insults and even their family members might become targets of acts of violence. In our view these reasons are totally insufficient in law. We fail to understand how if these witnesses appeared at a confronted enquiry, they are likely to suffer personal humiliation and insults. These are normal witnesses and they could not be said to be placed in any delicate or special position in which asking them to appear at a confronted enquiry would render them subject to any danger to which witnesses are not normally subjected and hence these grounds constitute no justification for dispensing with the enquiry. There is total absence of sufficient material or good grounds for dispensing with the enquiry. In this view it is not necessary for us to consider whether any fresh opportunity was required to be given before imposing an order of punishment. In the result the appeal fails and is dismissed. There will be no order as to costs."

(12) I am of the considered opinion that the aforesaid observations of the Supreme Court are fully applicable to the facts and circumstances of the present case. Dispensing with the regular enquiry is a very serious matter. It is an exception to the normal rule. This power, therefore, has to be exercised with caution and circumspection by the authorities. In the present case, I am of the opinion that there was no relevant material before the respondents to come to the conclusion that it would not be reasonably practicable to hold the departmental enquiry. As noticed earlier, the petitioners had filed a statutory appeal before the appellate authority. A perusal of the order

passed by the Appellate Authority (Annexure P-4) clearly shows that the appeals had been dismissed by passing a non-speaking order. The order merely states as under :—

> "...The decision and the orders of dismissal from service of the above four appellants by DSC/FZR does not suffer from any procedural, legal defect or lacuna and I, therefore, do not find any cogent reason, whatsoever, to interfere with the said orders passed by the DSC/FZR. The appeals submitted by the appellants viz. S/Shri Ajaib Singh, Ex. NK., Om Parkash, Ex. NK., Jagjit Singh, Ex. Const. and Gurpal Singh, Ex. Constable of Ferozepur Division are, therefore, rejected.
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> They should be informed accordingly."

(13) I am of the considered opinion that the aforesaid observations would not satisfy the requirements of a speaking order. The decision rendered in appeal by an appellate authority has to be supported by reasons. The order has to be passed after considering the grounds raised in the appeal. Cogent reasons have to be given as to why the submissions made in the appeal do not merit acceptance. It is not sufficient for the appellate authority to merely state the conclusion. The order must disclose the reasons for the conclusion also. The Supreme Court in the case of **Ram Chander** *versus* **Union of India and others (5)** has observed as follows :-

> "9.... The word "consider" has different shades of meaning and must in R. 22(2), in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision."

(14) I am of the considered opinion that the order passed by the appellate authority cannot be said to be a speaking order.

(15) In view of the above, the writ petition is allowed. The impugned orders (Annexures P-2 and P-4) are quashed. The petitioners are directed to be reinstated in service with all consequential benefits. No costs.

R.N.R.

(5) 1986 (2) SLR 608