
Before H. S. Bedi & Viney Mittal, JJ.

UNION OF INDIA,—*Petitioner*

versus

OM PARKASH AND ANOTHER,—*Respondents*

L.P.A. NO. 179 of 2004 IN

C.W.P. NO. 4483 OF 1988

16th November, 2005

Constitution of India, 1950—Art. 226—Railway Protection Force Rules, 1959—RI. 47—Appointment of respondents as Constable in R.P.F.—Respondents found to be mixed up with criminals in commission of organized thefts on railway booked consignments—Disciplinary authority dispensing with holding of a departmental enquiry by invoking RI. 47 (b) and ordering dismissal of respondents from service—Appeal of respondents also dismissed by the competent authority—Learned Single Judge allowing petition of respondents while holding the dispensing with the enquiry not proper and justified—Challenge thereto—RI. 47 (b) requires the disciplinary authority to take into consideration the facts and circumstances of the case to come to the conclusion as to whether the department enquiry was reasonably practicable or not—Statements of accused persons clearly disclose that respondents were taking illegal gratification for commission of thefts—A part of stolen property was also recovered from respondents—No other material available on record to support the allegations against the respondents except the statements of the accused persons—Disciplinary authority wholly justified in invoking the provisions of Rule 47—Appeal allowed while setting aside the order of learned Single Judge.

Held, that a perusal of Sub Clause (b) of Rule 47 of the Railway Protection Force Rules, 1959 would show that 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 rules, the disciplinary authority may consider the circumstances of the case and pass such orders as it deems fit. It is thus clear that the disciplinary authority was required to take into consideration the facts and circumstances of the case to come to the conclusion as to whether the departmental enquiry was reasonably

practicable or not. It would, thus, follow that the disciplinary authority must have some material before it to come to such conclusion. The statements of accused persons indeed disclose that there was a gang operating for committing the thefts of railway properties and also the goods consigned in goods trains and that the aforesaid gang was operating in connivance with the personnel of RPF staff. The names of SI Dilbagh Singh and the present respondents have been duly disclosed in the said statements. The details of the thefts committed by the said gang, in connivance with Om Parkash and Gurpal Singh have been given and it has been detailed thefts an illegal gratification was paid to the present respondents. No other material was available on the record to support the allegations against the respondents except the statements of the aforesaid accused persons. The accused persons could not be expected to make a statement against the present respondents during the departmental enquiry. No other independent witness was available to prove the charges against the respondents. In these circumstances, the disciplinary authority was wholly justified in invoking the provisions of rule 47 of the Rules and dispense with the formal disciplinary enquiry. After dispensing with the aforesaid enquiry, the order of dismissal was passed against the present respondent.

(Para 12)

Puneet Jindal, Advocate, *for the appellant.*

K. L. Arora, Advocate, *for the respondents.*

JUDGMENT

VINEY MITTAL, J.

(1) The present appeal under Clause X of the Letters Patent has been filed by the Union of India challenging the judgment of the learned Single Judge, dated 19th May, 2004,—*vide* the aforesaid judgment, learned Single Judge has allowed the Writ Petition filed by respondents, Om Parkash and Gurpal Singh and, consequently, set aside the dismissal order passed against them.

(2) The facts emerging from the record show that respondent No. 1, Om Parkash, was appointed as a Constable in the Railway Protection Force on 7th February, 1966. Similarly, respondent No. 2, Gurpal Singh, was appointed as a Constable in the Railway Protection Force on 14th January, 1979. After due training, both the said

respondents were assigned regular duties. The said respondents were on duty at Chakki Bank Railway Station near Pathankot in the year 1996. The duty of the petitioners was to guard the properties of the Railway. They were also required to inspect the seal checking of the goods wagons. The said respondents also claimed that when they reported for duty, they were handed over the charge by the officials whom they relieved and in the evening while going off duty, they relinquished the charge to the next official. The respondents have claimed that no adverse remarks were ever communicated to them and they performed their duties to the best of their capability.

(3) However, a large number of thefts of railway property were detected. The authorities investigated the matter and found that respondents Om Parkash and Gurpal Singh and other officials, namely, Ajaib Singh and Jagjit Singh etc. 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 said facts came to the notice of the authorities on the statement of Bishan Singh, son of Jagan Nath on 3rd April, 1987 when he was arrested in case No. 2/87 by RPF Post, Pathankot. At the instance of aforesaid Bishan Singh, a part of the stolen property was recovered from the respondents also. The railway property was found to be 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 NAC 23911 in which 49 bundles of blankets from each wagon were stolen. The aforesaid Bishan Singh further admitted having committed several thefts along with his associates from the Railway Wagons with the tacit consent and active connivance of RPF staff. It was also found that the aforesaid criminals used to pay illegal gratification to the RPF staff on duty as a share of the booty. The said accused also disclosed that this gang used to get deputed RPF men of their choice through Sub Inspector, Dilbagh Singh. After commission of the theft, the aforesaid officials used to refix and manipulate the seals of the concerned wagon. On 24th August, 1987, a similar statement was made by Devinder Pal *alias* Shikanha during the investigation. Since on disclosure statement, a part of the stolen property was recovered from the respondents, their statements were found to be correct. No other witness was present. The matter had become very serious and the authorities found that

the RPF staff which had been deployed to protect the property of the railways was conniving with the criminals to commit serious offences. The authorities further found that SI Dilbagh Singh was creating serious apprehension in the minds of the accused persons and had influenced them not to testify against them in case of a departmental enquiry. Further Gurpal Singh, respondent No. 2, himself admitted in his statement before the RPF that he was in league with the criminals and had taken illegal gratification for commission of thefts. On that basis, the competent authority, acting under rule 47 of the Railway Protection Force Rules, 1959 (hereinafter referred to as the 'Rules') held that it was not possible and practicable to hold a departmental enquiry against the respondents and, therefore, the holding of a departmental enquiry was dispensed with. The respondents were ordered to be dismissed from service,—*vide* order dated 31st August, 1987. The respondents challenged the aforesaid order by filing a departmental appeal. The said appeal was dismissed by the competent authority on 9th March, 1988. The order dated 31st August, 1987 and the appellate order dated 9th March, 1988 were impugned by the respondents through a Writ Petition before this Court.

(4) The claim of the respondents was contested by the department. The facts, as noticed above, were reiterated in the written statement. The dismissal order as well as appellate order were defended.

(5) Learned Single Judge,—*vide* his judgment dated 19th May, 2004 found that there was no justification for the competent authority to have resorted to rule 47(b) of the Rules and, therefore, the departmental enquiry could not have been dispensed with. On that basis, it was held that the dismissal order passed against the respondents (Writ Petitioners) could not be legally sustained. It was further found that the appellate order was also a non-speaking order and, therefore, was liable to be set aside. Consequently, the Writ Petition filed by the present respondents was allowed and consequently they were ordered to be reinstated in service with all consequential benefits.

(6) The Union of India has now filed the present appeal challenging the judgment of the learned Single Judge.

(7) We have heard Shri Puneet Jindal, learned counsel appearing for the appellant—Union of India and Shri K.L. Arora, learned counsel appearing for the respondents and with their assistance have also gone through the record of the case.

(8) Shri Puneet Jindal, learned counsel appearing for the appellant—Union of India has vehemently argued that facts of the case which had been duly noticed by the learned Single Judge as well, would show that all the allegations against the respondents were with regard to theft of railway property in connivance with a gang of criminals and, aforesaid facts had come to the notice of the authorities on the statement of Bishan Singh and Devinder Pal who were the members of the gang. It has further been pointed out by Shri Jindal that there was no other evidence available with regard to the said allegations. As a matter of fact, the stolen property had been recovered from the respondents on the statements of the aforesaid persons. On the basis of the aforesaid facts, learned counsel has argued that it was totally futile and impracticable to hold any departmental enquiry against the respondents since no other independent witness was available *qua* the charges levelled against the respondents and, in these circumstances, the competent authority had rightly and justifiably invoked the provisions of rule 47 (b) of the Rules to dispense with the said departmental enquiry. Shri Jindal has placed strong reliance upon a judgment of the Hon'ble Supreme Court of India in the case of **Sahadeo Singh and others versus Union of India and others (1)** Accordingly, it has been argued that the judgment of the learned Single Judge holding that the dispensing of the enquiry was not improper, was unjustified under the facts and circumstances of the cases.

(9) On the other hand, Shri K. L. Arora, learned counsel appearing for the respondents has supported the judgment of the learned Single Judge. Shri Arora has argued that before invoking the provisions of rule 47 (b) of the Rules, it was incumbent upon the authorities to be satisfied for the reasons to be recorded in writing that it was not reasonably practicable to follow the procedure of departmental proceedings. Shri Arora has argued that there was no such material before the disciplinary authority.

(10) We have given our thoughtful consideration to the rival contentions of the learned counsel for the parties.

(11) At the outset, it may be relevant to extract the provisions of rule 47 of the Rules as follows :

“47. Special procedure in certain cases :—

Notwithstanding anything contained in Rules 44, 45 and 46 where a penalty is imposed on a member of the Force.

- (a) on the ground of conduct which has led to his conviction on a criminal charge, or
- (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 orders thereon as it deems fit.”

(12) A perusal of Sub Clause (b) of Rule 47 of the Rules would show that 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 rules, the disciplinary authority may consider the circumstances of the case and pass such orders as it deems fit. It is thus clear that the disciplinary authority was required to take into consideration the facts and circumstances of the case to come to the conclusion as to whether the departmental enquiry was reasonably practicable or not. It would, thus, follow that the disciplinary authority must have some material before it to come to such conclusion. During the course of arguments, Shri Jindal has placed before us the record of the case including the statements of Bishna and Devinder Pal. We have perused the aforesaid statements also. The said statements indeed disclose that there was a gang operating for committing the thefts of railway properties and also the goods consigned in goods trains and that the aforesaid gang was operating in connivance with the personnel of RPF staff. The name of SI Dilbagh Singh and the present respondents have been duly disclosed in the said statements. The details of the thefts committed by the said gang, in connivance with Om Parkash and Gurpal Singh, have been given and it has been detailed that for the aforesaid thefts an illegal gratification was paid to the present respondents. As a matter of fact, we find, as in the case of **Sahdeo Singh versus Union of India** (*supra*) that no other material was available on the record to support the allegations against

the respondents except the statements of the aforesaid accused persons. The aforesaid accused persons could not be expected to make a statement against the present respondents during the departmental enquiry. No other independent witness was available to prove the charges against the respondents. In these circumstances, the disciplinary authority was wholly justified in invoking the provisions of rule 47 of the Rules and dispense with the formal disciplinary enquiry. After dispensing with the aforesaid enquiry, the order of dismissal was passed against the present respondents.

(13) At this stage, we may also notice, certain observations made by the Apex Court in Sahadeo Singh's case (*supra*) as follows :

"6. We have heard learned counsel for the parties and perused the records. Having done so, we find it difficult to accept the argument of the learned counsel for the appellants. Before the disciplinary authority decided to dispense with the inquiry exercising the power under Rule 47 of the Rules, three internal enquiries were conducted by the officials of the Railway Protection Force. A perusal of these enquiry reports clearly shows that though there were witnesses who had seen the incident of theft of rice bags from the goods train in question to which the appellants and others were parties, none of them was willing to either give a statement in writing or give evidence apprehending danger to his life. The facts narrated in these internal reports clearly go to show that these appellants were in league with certain desperate miscreants, therefore, the locals who witnessed the theft were not willing to come forward to give any evidence, therefore, the disciplinary authority, in our opinion, rightly came to the conclusion that it would be impracticable for the Railways to hold an enquiry wherein witnesses could be examined to establish the misconduct of the appellants. From the preliminary reports, it is clear that these appellants were involved in the theft of the rice bags from 733 UP goods train on 25th February, 1983 and in view of the apprehension expressed by the witnesses, the Railways was not in a position to hold a proper enquiry. In these circumstances, in our opinion, the authorities rightly invoked Rule 47 of the Rules.

“7. Learned counsel for the appellants as stated above, strongly relied upon the judgment of this Court in the case of Singasan Rabi Dass 1991(1) SCC 729. A perusal of this case shows that the observations of this Court in the said case do not apply to the facts of the present case. In that case, the Railways gave an excuse that it is not feasible or desirable to procure the witnesses because they were likely to suffer personal humiliation and may become the targets of acts of violence. This opinion expressed in the said case was held to be not justified as could be seen from the said judgment because of lack of material produced by the Railways, hence, this Court proceeded on the basis that on facts of that case, the Railways were only trying to protect the witnesses and in fact there was no reasonable apprehension that the witnesses will not appear before the inquiry officer. That is not the case in these appeals, as noticed by us hereinabove. The three preliminary enquiries made on the spot, clearly established the fact that though people have witnessed the theft of rice bags in which incident these appellants are involved, they are not willing to come forward because they apprehend danger to their lives. The apprehension of danger to life in this appeal is not that of the inquiry officer but is that of the witnesses themselves. Therefore, we do not think the appellants can take advantage of the observations of this court in the case of Sigasan Rabi Dass.”

(14) From the perusal of the aforesaid observations made by the Apex Court, we find that the facts of the present case are identical and the law laid down by the Apex Court in the aforesaid judgment is fully attracted to the facts of the present case.

(15) In view of the aforesaid discussion, the present appeal is allowed. The judgment of the learned Single Judge dated 19th May, 2004 is set aside and, consequently, the Writ Petition filed by the present respondents is dismissed.