

HIGH COURT OF ALLAHABAD**Bench: Hon'ble Prakash Padia, J.****Date of Decision: 31st May 2024**

Case No.: WRIT - A No. - 12973 of 2021

Petitioner(s): Sabha Shankar Dwivedi**Versus****Respondent(s): Union of India and 4 Others****Legislation:**

Rule 153 of the Railway Protection Force Rules, 1987

Rule 18(3) of Railway Services (Conduct) Rules, 1966

Section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988

Railway Protection Force Act, 1957

Railway Act, 1989

Subject: Writ petition challenging disciplinary proceedings and removal from service following allegations of corruption, recovery of undisclosed cash, and violation of conduct rules.**Headnotes:**

Disciplinary Proceedings – Inquiry Report – Petitioner challenged the removal from service following disciplinary proceedings under Railway Protection Force Rules, 1987 – Allegations included recovery of Rs. 15 lacs from a colleague's residence, claimed as loaned amount for daughter's marriage – Inquiry Officer's reliance on insufficient evidence and procedural lapses cited – Orders of removal, appellate, and revisional authority quashed for failing to consider defense and contravening rules [Paras 1-31].

Rule 18(3) of Railway Services (Conduct) Rules, 1966 – Compliance – Court held that failure to report loan transaction exceeding two months' basic pay as per Rule 18(3) was not applicable due to circular permitting loans from friends/relatives without prior sanction – Findings of disciplinary authority considered perverse due to non-consideration of relevant documents and affidavits submitted by petitioner [Paras 25-30].

Procedure in Disciplinary Proceedings – Fairness and Evidence – Violation of principles of natural justice – Enquiry report lacked consideration of key defense evidence and documents not provided to the petitioner –

Contradictory charges regarding corruption involvement and failure to report loan – Inquiry deemed vitiated and contrary to law [Paras 19-31].

Decision: Writ petition allowed – Orders of removal from service, appellate, and revisional authorities quashed – Petitioner entitled to all consequential relief [Paras 31-33].

Referred Cases:

- Shambhu Nath Mehra v. The State of Ajmer, AIR 1956 SC 404
- Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681
- State of W.B. v. Mir Mohammad Omar and Ors., (2000) 8 SCC 382
- Zahira Habibulla H. Sheikh & Anr. Vs. State of Gujarat & Ors., (2004) 4 SCC 158
- Vishal Singh v. State of Rajasthan, (2009) Cri. LJ 2243
- Kikar Singh v. State of Rajasthan, AIR 1993 SC 2426

Representing Advocates:

Counsel for Petitioner: Anil Kumar Bajpai, Ashish Kumar Srivastava, Rudra Kant Mishra

Counsel for Respondent: Manoj Kumar Singh, Vivek Kumar Rai

JUDGEMENT

Hon'ble Prakash Padia, J.

1. Heard Shri Anil Kumar Bajpai, learned counsel for the petitioner and Shri Sudharshan Singh, Advocate holding brief of Shri Manoj Kumar Singh, counsel for the respondents.

2. The facts as stated in the writ petition are that the petitioner was posted as Head Constable, Railway Protection Force at Head Quarter, North Central Railway, Prayagraj and he was suspended vide order dated 22.11.2018. Subsequently, by an order dated 6.5.2019, the suspension of the petitioner was revoked by the Chief Security Commissioner, Railway Protection Force, Prayagraj. While the petitioner was posted in Agra Division, a disciplinary proceedings were initiated against him under Rule 153 of Railway Protection Force Rule. 1987 (hereinafter referred to as "Rule of 1987") and a charge-sheet dated 10.4.2019 was served upon the petitioner, levelling upon him three charges.

3. The first charge was that a locked briefcase was recovered from the residence of Vijay Kumar Maurya, Constable from House No. 341-D, Railway

Colony, Rail Gaon, Subedarganj, Prayagraj. The said briefcase relates to Sanjay Pandey, Inspector, Railway Protection Force. The briefcase was recovered by CBI Team Lucknow on 28.8.2018 and is mentioned in seizure memo as item No. 2. In the charge, it was stated that the petitioner is involved in corruption activity of Sanjay Pandey. The second charge was that during enquiry by CBI, Lucknow on 20.11.2018, the petitioner has stated that amount of Rs. 15 lacs recovered in the briefcase was the amount taken on loan by the petitioner, but no such information of taking loan was provided to the Railway Protection Force Head Office. The third charge was that the conduct of the petitioner is against the conduct of Armed Force and has damaged the good-will of the Railway Protection Force.

4. With the aforesaid charges, it was stated that the petitioner has violated the provisions of Railway Service Conduct Rules, 1966 and Railway Security Force Rules of 1987.

5. The facts giving rise to the aforesaid charge-sheet was that a first information report was registered by CBI ACB Lucknow under section 13(2) read with section 13(1)(d) of Prevention of Corruption Act, 1988 against Sanjay Pandey, Inspector, Railway Protection Force, regarding disproportionate assets. During investigation of the said FIR, CBI conducted raid in the house of Sanjay Pandey on 28.8.2018 and also in the Railway House No. 341-D, Rail Gaon, Subedarganj, Prayagraj, which was allotted to one Constable Vijay Kumar Maurya. During the said raid, a briefcase was recovered from Constable Vijay Kumar Maurya, which contained 15 lacs cash along with some other articles and documents which were seized by the CBI on 28.8.2018.

6. During investigation, the petitioner was called by CBI, where the petitioner clarified his stand and stated that the seized amount of Rs. 15 lacs did not belong to Sanjay Pandey and was in no way connected with Sanjay Pandey. The petitioner further clarified that the amount of Rs. 15 lacs was borrowed by him for solemnizing the marriage of his daughter. The said amount was taken by him from his close friend and relatives. It was further clarified by the petitioner that for safety reason, the briefcase was kept in the residence of Constable Vijay Kumar Maurya.

7. Based on the aforesaid incident, charge-sheet, mentioned above, containing three charges was issued to the petitioner.

8. In the charge-sheet, following documents were referred to be relied upon during enquiry, namely-

(i) Detail of property seized by the police officer mentioned in the search list dated 28.8.2018.

(ii) Statement of Sabha Shanker Dwivedi, Head Constable.

(iii) Statement of Vijay Kumar Maurya, Constable.

(iv) Inspector RPF (Admin).

(v) Any other documents, if considered necessary for enquiry.

In the list of witnesses, only one name i.e. Rajendra Kumar, the then Inspector of RPF (Admin) posted at Head Quarter, North Central Railway, Prayagraj was mentioned.

9. The petitioner has submitted his reply to the aforesaid charge-sheet on 5.1.2020. The petitioner in reply to the first charge has clearly stated that the amount recovered in the briefcase was the amount taken by the petitioner from his friends and relatives for marriage of his daughter. It was further stated that he had gone to his native village Simrat, District Bhadohi in connection with preparation of marriage of his daughter. On account of the aforesaid reason, he gave the briefcase to Sanjay Pandey for safe custody and Sanjay Pandey along with his other articles kept the briefcase in the house of Vijay Kumar Maurya. The petitioner has further stated in his reply that on 20.11.2018, the petitioner has given full detail in writing of aforesaid amount of Rs. 15 lacs to CBI, Lucknow. The petitioner has also annexed the copy of aforesaid list provided to CBI along with his reply to the show cause notice.

10. With regard to the second charge, the petitioner has stated that the said amount of Rs. 15 lacs was collected by the petitioner from his friends and relatives for marriage of his daughter and the same was not for purchase of any movable or immovable property and the said amount was not taken on loan from any persons working along with the petitioner in Railway, as such, no information was required to be submitted to the higher authorities.

11. With regard to the third charge, the petitioner has stated that as the aforesaid two charges are false and baseless, as such, the third charge is also baseless as it is based on first two charges.

12. It is further stated in the writ petition that during enquiry, the petitioner submitted affidavits of persons from whom the amount was taken on loan by

the petitioner for marriage of his daughter, but the Enquiry Officer has not accepted the said affidavits. The said affidavits have been annexed along with Supplementary Affidavit as annexure-1.

13. During enquiry, the Enquiry Officer has relied upon the documents i.e. seizure memo dated 28.8.2018, statement of petitioner, Sabha Shanker Dwivedi, made before CBI though original statement was not available on record, statements of Vijay Kumar Maurya dated 29.8.2018 & 21.11.2018. By way of oral evidence, Rajendra Kumar, the then Inspector RPF, Sachin Kumar, Constable & Vijay Kumar Maurya, Constable has appeared.

14. The Enquiry Officer concluded its enquiry with the findings that the briefcase containing Rs. 15 lacs, which was recovered from residence of Vijay Kumar Maurya was kept in his residence by Sabha Shanker Dwivedi, the petitioner and the information of taking loan/collecting money from friends and relatives was not given to Head Office or any Higher officials.

15. Based on the aforesaid findings, the Enquiry Officer concluded that the charges levelled against the petitioner are proved. The Disciplinary Authority issued the show cause notice dated 17.1.2020 along with enquiry report, with a direction to the petitioner to submit his defense. The petitioner submitted his reply to the Disciplinary Authority, stating therein that the relevant documents, especially the documents collected during preliminary enquiry, has not been provided to the petitioner, despite its repeated demand. In enquiry, Rule 153(15) of Railway Protection Force Rules and the principle of natural justice has been violated. The statement was recorded by the Enquiry Officer and the said statement of witnesses was not explained to the witnesses and they were not provided time to go through the statement and then signed. It was further stated that the enquiry has not been conducted in fair manner.

16. The Disciplinary Authority i.e. Senior Divisional Security Commissioner, Agra, without considering the reply, passed an order of removal of petitioner from services, vide order dated 26.2.2020.

17. The petitioner being aggrieved with the aforesaid order filed appeal before the Chief Security Commissioner/respondent no. 3, which has also been rejected by order dated 15.7.2020, without providing any opportunity of personal hearing to the petitioner.

18. The petitioner being aggrieved with the aforesaid appellate order, filed revision before the Inspector General- cum-Principal Chief Security

Commissioner, Railway Protection Force, North Central Railway, Prayagraj that too has been rejected vide order dated 29.7.2021.

19. The learned counsel for the petitioner has argued that the copy of the statement made by the petitioner before CBI on 20.11.2018 was not provided to him, despite demand made by the petitioner. Copy of the list dated 28.8.2018, which was mentioned in the charge-sheet as relied upon document, has not been supplied to the petitioner, even the said list was also not available before the Enquiry Officer and this fact is also mentioned by the Enquiry Officer in its report. It is further argued that the aforesaid two documents are material document on the basis of which charges have been framed, as such, in absence of such document, which are basis of charge-sheet, the entire proceedings are vitiated and bad.

20. It is further argued that the recovered amount of Rs. 15 lacs belongs to the petitioner, which he collected as loan from his friends and relatives in 3-4 installments for performing the marriage of his daughter. The affidavit submitted by the petitioner before the Enquiry Officer has not been accepted by the Enquiry Officer. It is further argued that the petitioner in his reply to the show cause notice has clearly stated that he has submitted the details of amount on 20.11.2018 to CBI, Lucknow and the copy of the said details was also annexed with the reply to the charge-sheet. Thus, the counsel for the petitioner has vehemently argued that even when full details of persons from whom the petitioner has taken the amount of loan was made available with the respondent, no efforts has been made by the Enquiry Officer or the Disciplinary Authority to verify the fact of taking loan by the petitioner for marriage of her daughter from the aforesaid persons, and a perverse finding has been recorded that the details of persons from whom loan was taken has not been provided by the petitioner.

21. It is further argued that in substance only charge against the petitioner is that the amount recovered from the house of Vijay Kumar Maurya belongs to Sanjay Pandey and the petitioner was involved in the corrupt practice adopted, by Sanjay Pandey and on account of the said reason he was defending Sanjay Pandey by accepting the amount collected by Sanjay Pandey as his own.

22. The Enquiry Officer in the enquiry report has not mentioned that the averment made in the reply to the charge-sheet that the detail of the amount collected as provided to the CBI on 20.11.2018 has not been enclosed with the reply to the charge-sheet. Thus, the sole defence of the petitioner with

regard to the recovery of the amount of Rs. 15 lacs has not at all been considered either by the Enquiry Officer or by the Disciplinary Authority. The Appellate Authority and Revisional Authority have also not at all considered the said fact and at no point of time the statement of any person mentioned in the details provided to the CBI, Lucknow on 20.11.2018 as well as to the Enquiry Officer has been recorded.

23. In the supplementary counter affidavit, the respondents themselves have brought on record the reply to the show cause notice submitted by the petitioner. Along with reply at page 37, the respondents themselves have brought on record the name of persons provided by the petitioner from whom he has taken loan for marriage of his daughter. The details so provided contains the complete address, phone number and the amount taken on loan. Thus, it is clear that this document was available with the respondents, but neither the Enquiry Officer nor the Disciplinary Authority has considered the said document and has not summoned any of the aforesaid persons to verify the contention of the petitioner.

24. It is also clear from the evidence on record that Constable Vijay Kumar Maurya from whose residence the briefcase was recovered has also accepted the fact that the briefcase was kept in his house by the petitioner.

25. From the facts stated above, it is clear that the entire enquiry proceedings were vitiated and has not been conducted in accordance with law. The evidence adduced by the petitioner with regard to the collection of Rs. 15 lacs and keeping the said amount in safe custody of Vijay Kumar Maurya was established even before the Enquiry Officer. The findings recorded by the Enquiry Officer on the aforesaid issues are not independent finding. The Enquiry Officer in the enquiry report has concluded its finding that the intimation of taking loan of said amount has not been given to the higher authorities hence the charges against the petitioner stands proved, whereas the petitioner has argued that Rule 18(3) of Railway Services (Conduct) Rules 1966 provides that where a railway servant enters into a transaction in respect of movable property either in his own name or in the name of his family member, he shall within one month report the same to the Government, if the value of such property exceeds two months basic pay of the railway servant. The monthly basic salary of the petitioner is Rs 41,600/- as such the charge no.2 was not made out against the petitioner . The provisions of Rule 18(3) of Railway Services (Conduct) Rules 1966 is fully applicable in the present facts and circumstances of the case and also in view of the Rule 145 of Railway

Protection Force Rules, 1957 read with Section 10 of Railway Protection Force Act 1957 as well as Section 2(34) of Railways Act, 1989. It is further submitted by the learned counsel for the petitioner that in the circular dated 28.01.2005 issued by the Government of India, Ministry of Railways, for clarification regarding borrowing money by a railway employee under the provisions of Rule 164(4)(1) of Railway Service (Conduct) Rules 1996, is fully applicable in the present case. According to which, no prior sanction of the Government is required if the railway servant borrows money from a relative or a personal friend with whom he has no official dealings.

26. Based on the aforesaid circular dated 28.1.2005, it is argued that since the amount was taken on loan from the persons who are not the Railway employee and were in no way related to the persons with whom he has no official dealing. Thus, the second charge regarding intimation to be provided to the Higher authorities/Head Office also stands vanished. In view of notification/circular 28.1.2005, the court is of the opinion that no information was required to be given, as loan was taken from relative and friends, not connected with service.

27. Along with the supplementary rejoinder affidavit an order dated 27.6.2022 passed by the Senior Divisional Security Commissioner, Agra has been brought on record. By the aforesaid order, for not providing any information of purchase of movable property just only a warning has been issued to Sidh Nath Patidar, the Inspector.

28. From perusal of the enquiry report and the order of punishment passed by the Disciplinary Authority it is clear that the defence of the petitioner with regard to taking loan for marriage of his daughter from the person mentioned in the list has not at all been considered by the respondents. There is no finding or evidence either in the enquiry report or in the order or punishment, establishing the involvement of the petitioner with Sanjay Pandey in corrupt practice of Sanjay Pandey.

29. From perusal of the enquiry report and the order of punishment it is clear that the petitioner has been denied the reasonable opportunity of defending himself as the document submitted by the petitioner has not been considered. The details of person provided by the petitioner along with the reply to the show cause notice has not at all been considered either by the Enquiry Officer or by the Disciplinary Authority, rather a perverse finding has been recorded that no detail of witnesses has been provided. The relied upon documents have also not been provided to the petitioner.

30. It is also pertinent to mention that two charges are self contradictory. The first charge relates to involvement of petitioner in corruption of Sanjay Pandey i.e., to defend Sanjay Pandey, petitioner claimed Rs. 15 lacs as his own amount, and second charge is that he has not provided information of taking loan to higher authority. The Inquiry Officer has held both the charges as proved, when only one charge may be proved i.e., the amount is of Sanjay Pandey or the loan taken by petitioner from friends and relatives but no information was given to higher authorities. Thus, the entire inquiry proceedings are vitiated and contrary to law.

31. Thus, in my opinion the impugned order of removal from service is violative of Article 311(1) of the Constitution of India and is null and void. Accordingly the order dated 26.2.2020 passed by the Senior Divisional Security Commissioner, order dated 15.7.2020 passed by the Chief Security Commissioner/respondent no. 3 and the order dated 29.7.2021 passed by the respondent no. 2/Inspector General- cum-Principal Chief Security Commissioner, Railway Protection Force, North Central Railway, Prayagraj are quashed and the petitioner is entitled for all consequential relief.

33. Writ petition is allowed.

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