



GAHC010259662022

Page No.# 1/12



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/8143/2022

AAYUSH TOMAR
CONSTABLE GD,RPF, UNIT NO-125N1550366,
S/O- AYYOOR TAUMAR,
R/O- VILLAGE ROSHANPUR @ CHANDPURA, POST JHARWAN, BLOCK-
GANGO THESIL NAKUR,
P.S- TITRON, DIST- SAHARANPUR, UTTAR PRADESH

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE , SECRETARY, MINISTRY OF RAILWAYS , NEW
DELHI-01

2:THE PRINCIPAL CHIEF SECURITY COMMISSIONER
NORTH EAST FRONTIER RAILWAY
MALIGAON
GUWAHATI 11
ASSAM

3:THE CHIEF SECURITY COMMISSIONER
RPF
NORTH EAST FRONTIER RAILWAY
MALIGAON
GUWAHATI 11
ASSAM

4:THE DIVISIONAL SECURITY COMMISSIONER
RPF
NORTH EAST FRONTIER RAILWAY
MALIGAON
GUWAHATI 11
ASSAM



5:THE CHIEF SECURITY COMMISSIONER
RPF
O/O THE NORTH EASTERN RAILWAYS (NER)
GORAKHPUR
UTTAR PRADESH
PIN-27301

Advocate for the Petitioner : SWATI. B. BARUAH (TG)
Advocate for the Respondent : SC, RAILWAY

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

JUDGMENT & ORDER (CAV)

Date : 30-03-2023

Heard Swati B. Baruah (TG), learned counsel appearing for the petitioner. I have also heard Ms. S. Baruah, learned CGC appearing for the respondents.

[2] The writ petitioner, while serving as a Constable (GD), in the Railway Protection Force (RPF), was removed from service by the impugned order dated 24-03-2020 passed by the respondent No. 4 without holding any departmental enquiry or giving him any opportunity of being heard. By the order dated 08-09-2020, the appellate authority had rejected the appeal filed by the petitioner and the revisional authority had also confirmed the order of the disciplinary authority as well as the appellate authority by the order dated 09-12-2020. Hence, this writ petition.

[3] The facts of the case, briefly stated, are to the effect that pursuant to a selection process, the petitioner was appointed as Constable (GD) in the RPF. While discharging his duties at the Dibrugarh Railway Station premises, the petitioner, along with his colleague CT/ Arun Sharma and one Ashif Khan, were allegedly caught red handed while having



possession of about 13 k.g.s of contraband goods (suspected ganza). As such, by the order dated 24-03-2020, the petitioner was removed from service. The grounds on which the petitioner was removed from service as well as the purported reasons for not holding a departmental enquiry have been indicated in the impugned order dated 24-03-2020. As such, the order dated 24-03-2020 is reproduced herein-below for ready reference:-

*Northeast Frontier Railway
Office of the Divisional Security Commissioner
Railway Protection Force
Tinsukia – 786125*

No. TP/G-5 Sec/GB/Susp./2020/99

TSK, the 24th March, 2020

ORDER

On 23-03-2020 CT/Arun Sharma & CT/Aayush Taumar of RPF/Post/Dibrugarh were on shift duty from 14:00 Hrs. to 22:00 Hrs. at DBRG Railway Station Premises i.e. at main entrance gate and sickline respectively but both were marked absent from duty at around 17:45 Hrs. of 23/03/2020 for deserting their duty beats. Later on at around 18:30 Hrs. Information was received that CT/Arun Sharma and CT/ Aayush Taumar along with one outsider Ashif Khan, M/22 years, son of Istiyaque Khan of Lahorpatti Gali No. 3, Dibrugarh (Assam), were detained by I/C Local Police, Gabharupathar Police Outpost from the local area outside of DBRG Yard. On receipt of the information. IPF/DBRG along with officers and Staff immediately attended the site and found DSP/ HQrs/ Dibrugarh Shri Nitumani Das, I/C Gabharupathar Police Outpost with force had detained both the RPF Staff & the outsider with recovery of about 13 Kgs., contraband goods (suspected to the Ganja) from their possession. While they tried to disposed of the said contraband goods. Further DSP/HQrs/DBRG intimated that the said recovered contraband has been seized from the possession of both the RPF staff & outsiders and have been taken into custody. Subsequently, the police took them to Gabharupathar Police Outpost at around 19:00 Hrs. for further course of action.

In this connection, Sadar Thana, Dibrugarh registered a case vide No. 571/2020 dated 23/03/2020 U/s 20(11)(C) & 29 NDPS Act, and both the RPSF staff are now under police custody.

ASC/TSK was nominated to conduct fact finding enquiry into the case ASC/TSK conducted discreet enquiry into the above incident and submitted his fact finding enquiry report vide No. TP/C-5/CB/2020 dated 24/03/2020 on the unlawful possession of



contraband goods (suspected to be ganja) are arrest of both RPF staff CT/ Arun Sharma & CT/Aayush Taumar of DBRG post along with one outsider near outside of DBRG station year on 23-03-2020 at around 18:00 hours. During the course of enquiry ASC/TSK has examined 03 officers of DBRG post and recorded their statements, examined documents related to the incident and recommended for stringent action against CT/Arun Sharma and CT/Aayush Taumar.

A. List of Witnesses:-

1. Shri P. Biswakarma, IPF/DBRG
2. Shri L.B. Deori, SI/DBRG
3. Shri B.B. Deori, ASI/DBRG

B. List of Documents:-

1. Certified Diary extracts copy of DBRG Post
2. Certified Duty Roster copy of DBRG post
3. Certified FIR copy of Local Police
4. Certified complaint copy of Local Police.

I have gone through the fact-finding enquiry report of ASC/TSK vide letter No. TP C-5/CB/2020 dated 24/03/2020, statements of witnesses concerned viz. IPF/P. Biswakarma. SI/L.B. Deori & ASI/ B.B. Deori. Diary extract copy & FIR of police concerned. On perusal of the fact finding report, it is found that both the Constable CT, Arun Sharma and CT/ Aayush Taumar have tarnished the image of the Force and at this juncture. I am of the considered opinion that it is not practicable to hold enquiry under the prescribed RPF Rules of 1987.

Sd/-

Divl. Security Commissioner
N.F. Railway, Tinsukia

Secondly, the departmental proceedings are based on preponderance of probability and technicalities of criminal law should not be evoked. I find sufficient evidentiary material in the fact finding enquiry report that proves both the staff i.e. CT/Arun Sharma and CT/Aayush Taumar along with one outsider were in possession of about 13 KGS. Contraband Goods (Suspected to be Ganja) and were trying to dispose off the same in association with the outsider, the same was reported by SDP/HQrs./Dibrugarh.

Thirdly, the duties of both RPF staff CT/Arun Sharma and CT/Aayush Taumar, who were deployed at Dibrugarh Station premises (main entrance gate and sick line respectively from 14:00 hours to 22:00 hours of 23/03/2020 but they have intentionally deserted their duty and were moving outside their duty area, which is totally unbecoming of an uniformed personnel of RPF and also a criminal act. This conduct of CT/Arun Sharma and CT/Aayush Taumar is very reprehensible and it has tarnished the image and reputation of RPF organization in particular. A security personnel is expected to inspire confidence and instill as sense of security among the passengers but by their illegal activity they have failed on all fronts. In the instant case, CT/Arun Sharma and CT/Aayush



Taumar have become a threat to the department/ Railways which is extremely objectionable and condemnable. Therefore to maintain the integrity of the Force, it is not expedient to hold departmental proceedings. Further, there is no scope for regular departmental enquiry against the two offenders since they are in jail custody and all the records are under the custody of Police and Court.

On going through the pros & cons of the entire evidence on record and the prima facie case as registered by Police on the basis of substantial proof of the alleged crime with recovery & arrest of the RPF personnel it is undoubtedly a serious crime of grave nature, where the person meant for protection and safeguarding have intentionally involved themselves in such criminal activities which have seriously tarnished the image & morals of the force. It is a crime in uniform, as the two on duty Constables on 23/03/2020 deserted their duty beats and engaged themselves in murky criminal activities for their personal gain, which was detected by Local Police.

In light of the above and after careful perusal of available records, I have arrived at the conclusion that both CT/Arun Sharma and CT/Aayush Taumar have unlawfully been dealing with contraband goods which is against the ethos of uniform and assigned duties and also violates the very purpose for which they were appointed.

Therefore, by exercising the power under Rule 161(ii) of RPF Rules, 1987, I hereby impose the penalty of "REMOVAL FROM SERVICE" with immediate effect to both CT/Arun Sharma and CT/Aayush Taumar.

Sd/-

(ETWA ORAM)

Divl. Security Commissioner/RPF

N.F. Railway: Tinsukia

Copy to:-

- 1. The IG cum PCSC/MLG for favour of kind information, please.*
- 2. Shri A. Chakraborty, ASC/TSK (enquiry officer) for information and necessary action.*
- 3. IPF/DBRG for information and necessary action.*
- 4. Shri Arun Sharma, CT/DBRG*
- 5. Shri Aayush Taumar, CT/DBRG*

Sd/- 24/03/2020

(ETWA ORAM)

Divl. Security Commissioner/ RPF

N.F. Railway: Tinsukia

Divl. Security Commissioner

N.F. Railway, Tinsukia

[4] By referring to the impugned orders Swati B. Baruah, learned counsel for the writ



petitioner has argued that Rule 153 of the Railway Protection Force Rules, 1987 (hereinafter referred to as "Rules of 1987") prescribes the procedure for imposing major penalty. According to Rule 153.1 a member of the force cannot be removed from service without holding an enquiry or giving him an opportunity of being heard. The learned counsel for the petitioner further submits that although Rule 161 of the Rules of 1987 prescribes a special procedure to be adopted in certain cases, yet, unless the grounds for invoking such special procedure is available, any order passed under Rule 161 would be illegal and hence, liable to be set aside. Swati B. Baruah has further argued that in the present case, no proper ground has been cited so as to justify dispensation of holding of a disciplinary enquiry against the petitioner before issuing the order of removal from service. Since the impugned order of removal from service has been issued by resorting to a process not having the sanction of law, hence, the same, according to the learned counsel, is liable to be set aside. In support of the above arguments decisions rendered in the cases of ***UoI & Ors. Vs. Ram Bahadur Yadav*** reported in ***(2022) 1 SCC 389*** as well as in the case of ***Deepali Phukan Vs. Dibrugarh University & Ors.*** reported in ***2019 (4) GLT 435*** have been relied upon.

[5] By referring to a recent decision rendered in the case of ***035090958CT/GD, Ruben Kalita Vs. UoI & Ors.*** passed in ***W.P.(C) No. 2277/2010***, Swati B. Baruah, learned counsel for the petitioner has further argued that the reasons for dispensing with the enquiry proceeding before imposing an order of major penalty must be adequate and relevant, failing which, the order would be unsustainable in law.

[6] Responding to the above Ms. S. Baruah, learned CGC has argued that the petitioner



was caught red handed along with another Constable viz. CT/Arun Sharma and one outsider Asif Khan while possessing contraband goods. That apart, on the day of the incident, they were also found to be unauthorizedly absent from duties. Taking note of the facts and circumstances of the case and the evidence available before the authorities the order of removal from service has been issued by dispensing with the enquiry proceeding. The learned CGC has further submitted that the instant case comes under the sweep of Rule 161 of the Rules of 1987. Therefore, by invoking the special procedure under Rule 161, the petitioner was removed from service. Since the impugned order has been issued as per the procedure laid down in the Rules of 1987, hence, submits Ms. Baruah, interference with the impugned order by this Court is not called.

[7] I have considered the submissions advanced by the learned counsel for both the sides and have also gone through the materials available on record. At the very outset, it deserves to be mentioned herein that there is no dispute about the fact that the service condition of the writ petitioner is covered by the Rules of 1987. Rule 132 of the Rules of 1987 provides that an enrolled member of the force shall be governed by the Rules of 1987. Rule 148 describes the punishments that can be imposed on a member of the force which includes the major penalty of removal from service.

[8] Rule 153 of the Rules of 1987 deals with the procedure for imposition of major punishment. Rule 153.1 would be relevant for the purpose of this case and therefore, is being reproduced here-in-below for ready reference:-

“153.1 Without prejudice to the provisions of the Public Servants Inquires Act, 1850, no order of dismissal, removal, compulsory retirement or reduction in rank shall be passed on any enrolled member of the Force (save as mentioned in

rule 161) without holding an inquiry, as far as may be in the manner provided hereinafter, in which he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded a reasonable opportunity of defending himself.”

[9] Rule 161 of the Rules of 1987, on the other hand, lays down a special procedure to be adopted in certain cases. Rule 161 starts with a non-obstentive clause and provides as follows:-

“161. Special Procedure in certain cases:-

Notwithstanding anything contained anywhere in these rules-

- (i) where any punishment is imposed on an enrolled member of the Force on the ground of conduct which has led to his conviction on a criminal charge; or*
- (ii) where the authority competent to impose the punishment is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules;*
- (iii) where the President is satisfied that in the interest of security of State and the maintenance of integrity in the Force, it is not expedient to hold any inquiry in the manner provided in these rules;*

the authority competent to impose the punishment may consider the circumstances of the case and make such orders thereon as it deems fit.”

[10] From a bare reading of the impugned order dated 24-03-2020, it is apparent that the said order was issued by invoking the powers under Rule 161(ii) of the Rules of 1987 on the very next day when the incident took place. However, on a careful reading of the impugned order dated 24-03-2020, this Court finds that adequate reason have not been recorded therein so as to justify invocation of the special procedure under Rule 161(ii) in the facts and circumstances of the case.

[11] In the above context, it would also be significant to note herein that from the



impugned order dated 24-03-2020, it is apparent that the disciplinary authority has relied upon various materials placed before it including the version of the witnesses and documents produced by the concerned authority. Not only that, there was also a fact finding enquiry report submitted by SDC/TSK forwarded to the disciplinary authority which was taken note of so as to arrive at a conclusion that it was not reasonably practicable to hold an enquiry under RPF Rules, 1987. However, neither the impugned order dated 24-03-2020 passed by the appellate authority nor the orders passed by the revision authority records proper reason as to why, it was not reasonably practicable to hold an enquiry in the matter. There is also nothing on record to indicate as to why, even a preliminary show-cause notice could not have been served upon the writ petitioner, atleast to give him one opportunity to put his version on the record.

[12] In the case of **Ram Bahadur Yadav (Supra)**, the Supreme Court was dealing with an issue of similar nature. After considering Rule 161 of the Rules of 1987, it was held that Rule 161 mandates recording of reasons. The normal procedure for conducting an enquiry is governed by Rules 132, 148 and 153 of the RPF Rules and if the authorities invoke special procedure, unless they record reasons, as contemplated in the rule, no order can be passed by invoking the Rules of 161. It was further observed that Rule 161, which prescribes dispensing with an enquiry and to pass order against a member of the force, cannot be invoked in a routine and mechanical manner unless there was compelling and valid reason for doing so.

[13] From a careful reading of the relevant provisions of the Rules of 1987 this Court finds that although the authorities would have the power to dispense with an enquiry by



invoking Rule 161 of the Rules of 1987, yet, such a power cannot be invoked in a routine manner, merely to circumvent the prescription of Rules 132, 148 and 153 of the Rules of 1987. Rule 161 is an exception to the procedure laid down in Rule 153 and can be invoked only when there are sufficient and adequate reasons recorded in writing, to show that it is not reasonably practicable to hold an enquiry. The reasons so recorded must not only be proper but also relevant for the purpose of arriving at a conclusion that it is not reasonably practicable to hold an enquiry against the member of the force. Invoking Rule 161, without there being proper reason for doing so, would not only be in violation of Rules 132, 148 and 153 of the Rules of 1987 but also in violation of the principles of natural justice. Materials available on record indicates that the petitioner was released on bail on 13-05-2020. Therefore, the mere fact that the petitioner was arrested in connection with the criminal case could not have been a good ground to dispense with the enquiry proceeding. Merely because the alleged misconduct, in the perception of the authorities is serious in nature also cannot by itself be a ground to invoke Rule 161.

[14] It would be significant to mention herein that the impugned order dated 24-03-2020 has also taken note of the allegation of unauthorized absence from duty brought against the petitioner but there is no mention as to why, it was reasonably not practicable to hold any enquiry on the charge of unauthorized absence from duty. From the order dated 24-03-2020, it is not clear as to which factors had actually weighed in the mind of the respondent No. 4 and in what manner while issuing the impugned order of removal from service.

[15] As noticed above, the impugned order dated 24-03-2020 was issued by the



authorities after taking note of a number of documents and statements of the witnesses.

The observation made in the impugned order further goes to show that the petitioner has been declared to be a criminal even before he was convicted by the trial court. Moreover, the order also clearly puts a stigma on the petitioner.

[16] The petitioner is facing trial in a criminal proceeding arising out of an FIR lodged by the authorities but he is yet to be convicted. It may so happened that eventually, the charge framed against the petitioner may be established in the criminal court. However, since there are allegations brought against the petitioner based on materials collected against him, principles of fairness and natural justice demanded that atleast one opportunity was afforded to the petitioner to explain his conduct, which was apparently not given to him in this case. Therefore, this Court is of the unhesitant opinion that the impugned orders have been issued not only in utter violation of the principles of natural justice but also in violation of the procedure laid down in the Rules of 1987.

[17] In the case of ***Ruben Kalita (Supra)***, this Court, while considering the law laid down by the Hon'ble Supreme Court in the cases of ***UoI Vs. Tulsiram Patel & Ors.*** reported in ***(1985) 3 SCC 398***, ***Reena Rani Vs. State of Haryana & Ors.*** reported in ***(2012) 10 SCC 215*** as well as in ***Jaswant Singh Vs. State of Punjab & Ors.*** reported in ***(1991) 1 SCC 362*** has held that the reason as to why the disciplinary authority had felt it was not practicable to hold an enquiry against an employee must be properly recorded. However, as noted above, no proper reasons for dispensing with holding an enquiry against the writ petitioner, in the opinion of this Court, finds mention in the impugned order(s).



[18] For the reasons stated hereinabove, this Court is of the opinion that the impugned orders dated 24-03-2020, 08-09-2020 and 09-12-2020 are unsustainable in the eye of law. Therefore, the same are set aside.

The respondents are directed to reinstate the petitioner within a period of 04 weeks from the date of receipt of certified copy of this order. The respondents may, thereafter, proceed against him, in accordance with law, if so advised, after giving the petitioner an opportunity to show cause. In doing so, it will be open for the authorities to place the petitioner under suspension, if deemed necessary.

With the above observation, this writ petition stands disposed of.

JUDGE

GS

Comparing Assistant