

UNION OF INDIA & ORS. A

v.

RAM BAHADUR YADAV

(Civil Appeal No. 9334 of 2010)

NOVEMBER 26, 2021 B

[R. SUBHASH REDDY AND HRISHIKESH ROY, JJ.]

Service law:

Railway Protection Force Rules, 1987: r. 161 – Special Procedure in certain cases – Mandate of the Rule to record reasons – On facts, allegation that the head constable had conspired with the main accused for commission of theft of Non-Judicial Stamp Papers nearly worth of Rs.1 Crore – Disciplinary enquiry dispensed with – Dismissal order was passed without indicating any reasons for dispensing with the inquiry except stating the allegation against the Constable – High Court set aside the dismissal order – On appeal, held: To pass an order as disciplinary measure, by adopting special procedure in certain cases, r. 161 itself mandates recording of reasons – Dismissal of a regular member of Force, is a drastic measure – r. 161 which prescribes dispensing with an inquiry and to pass order against a member of Force, cannot be invoked in a routine and mechanical manner, unless there are compelling and valid reasons – By merely repeating the language of the Rule in the order of dismissal, will not make the order valid one, unless valid and sufficient reasons are recorded to dispense with the inquiry – When the Rule mandates recording of reasons, the very order should disclose the reasons for dispensing with the inquiry – Words ‘not reasonably practicable’ as used in the Rule, are to be understood in a manner that in a given situation, ordinary and prudent man should come to conclusion that in such circumstances, it is not practicable – In the instant case, there appears no valid reason to dispense with inquiry and to invoke r. 161 – As regards grant of back wages, grant of 50% of back-wages is just and fair in the facts and circumstances of the case – Thus, the order passed by the High Court upheld.

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A **Dismissing the appeal, the Court**

HELD: 1.1 From a reading of r. 161 of the Railway Protection Force Rules, 1987, it is clear that to pass an order as disciplinary measure, by adopting special procedure in certain cases, Rule 161 itself mandates recording of reasons. The normal rule for conducting an inquiry is governed by Rules 132, 148 and 153 of the RPF Rules. If the Authorities invoke special procedure, unless they record reasons, as contemplated in the Rule itself, no order could have been passed by invoking Rule 161. At no point of time, appellants have produced file to show that any reasons are recorded in such file also. It is a settled legal position that when Rules contemplate method and manner to adopt special procedure, it is mandatory on the part of the authorities to exercise such power by adhering to the Rule strictly. Dismissal of a regular member of Force, is a drastic measure. Rule 161, which prescribes dispensing with an inquiry and to pass order against a member of Force, cannot be invoked in a routine and mechanical manner, unless there are compelling and valid reasons. The dismissal order does not indicate any reason for dispensing with inquiry except stating that the respondent had colluded with the other Head Constable for theft of Non Judicial Stamp Papers. By merely repeating the language of the Rule in the order of dismissal, will not make the order valid one, unless valid and sufficient reasons are recorded to dispense with the inquiry. When the Rule mandates recording of reasons, the very order should disclose the reasons for dispensing with the inquiry. The submission that if file contains reasons, same is sufficient to maintain the order, cannot be accepted. When inquiry is not conducted, member of the Force is entitled to know the reasons for dispensing with inquiry before passing any order as a disciplinary measure. The respondent was only a Head Constable during the relevant point of time and he was not in powerful position, so as to say that he would have influenced or threatened the witnesses, had the inquiry was conducted. The very fact that they have conducted confidential inquiry, falsifies the stand of the appellants that it was not reasonably practicable to hold an inquiry. The words 'not reasonably practicable' as used in the Rule, are to be understood in a manner that in a given situation, ordinary and prudent man

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should come to conclusion that in such circumstances, it is not practicable. In the instant case, there appears no valid reason to dispense with inquiry and to invoke Rule 161 of the Rules. The view taken by the High Court is accepted. [Para 9][281-C-H; 282-A-C]

1.2 With regard to grant of back wages, by the time, the order came to be passed by the Single Judge, the respondent had retired from service on attaining the age of superannuation. In normal course, it would have been permitted to hold inquiry, but keeping in mind that the respondent had retired from service even before the judgment was rendered by the Single Judge, this Court is not inclined to do so at this stage. Though, it is alleged that the respondent had conspired with the main accused for commission of theft of Non-Judicial Stamp Papers nearly worth of Rs.1 Crore, but not even a police complaint was filed for reasons best known to the appellants. Grant of back wages depends on facts and circumstances of each case. In the instant case, the respondent was not given any opportunity to defend his case at all. It is clearly well settled that any amount of suspicion cannot be equated to proof. The grant of 50% of back-wages is just and fair in the facts and circumstances of the case. The High Court has correctly granted 50% of the back wages to the respondent. There is no ground to interfere with the impugned order passed by the High Court [Para 11, 13][282-E, F-H; 283-A-B, C, D-E]

Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Others (2013) 10 SCC 324 : [2013] 9 SCR 1 – relied on.

Sahadeo Singh & Others v. Union Of India & Others (2003) 9 SCC 75; Tarsem Singh v. State of Punjab & Others (2006) 13 SCC 581; Commissioner of Police, Delhi & Others v. Jai Bhagwan (2011) 6 SCC 376 : [2011] 7 SCR 558; Jaswant Singh v. State of Punjab & Others (1991) 1 SCC 362 : [1990] 3 Suppl. SCR 354; M/s. Hindustan Tin Works Pvt. Limited v. The Employees of M/s. Hindustan Tin Works Private Limited & Others (1979) 2 SCC 80 : [1979] 1 SCR 563 – referred to.

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A	<u>Case Law Reference</u>	
	(2003) 9 SCC 75	referred to
	(2006) 13 SCC 581	referred to
	[2011] 7 SCR 558	referred to
B	[1990] 3 Suppl. SCR 354	referred to
	[2013] 9 SCR 1	relied on
	[1979] 1 SCR 563	referred to

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9334

C of 2010.

From the Judgment and Order dated 07.04.2009 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Special Appeal No.230 of 2009.

D Ms. Kiran Suri, Sr. Adv., Piyush Beriwal, Ms. Nidhi Khanna, Ms. Reena Pandey, Amrish Kumar, Advs. for the Appellants.

S. R. Singh, Sr. Adv., Prateek Yadav, Ankur Yadav, Krishna Kumar Yadav, Mitr Rao, Advs. for the Respondent.

The Judgment of the Court was delivered by

E **R. SUBHASH REDDY, J.**

1. This Civil Appeal is filed aggrieved by the judgment and order dated 07.04.2009, passed by the High Court of Judicature at Allahabad in Special Appeal No.230 of 2009. By the aforesaid order, the intra-Court Appeal filed by the Appellants is dismissed confirming the order

F of the learned Single Judge allowing the writ petition filed by the respondent.

2. The respondent herein was working as Head Constable in the Railway Protection Force. In the disciplinary inquiry initiated against him, he was charged for collusion with main accused in the incident

G involving theft of more than Rs.1 Crore of Non-Judicial Stamp Papers. The competent Authority, stating that it was not reasonably practicable to hold an inquiry, has passed order dated 22.10.1998, dismissing the respondent from service. The appeal and revision filed by him, ended in dismissal. When the said orders were questioned, the learned Single Judge allowed the writ petition by judgment and order dated 17.02.2009,

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by setting aside the dismissal order with a direction for payment of all pensionary benefits and 50% of back wages. The said order was passed as the respondent-employee has attained the age of superannuation. When the said order was challenged by way of intra-Court Appeal, the same ended in dismissal. Hence, this Civil Appeal.

3. We have heard Ms. Kiran Suri, learned Senior Counsel appearing for the appellants and Sri S.R. Singh, learned Senior Counsel appearing for the respondent.

4. It is contended by learned Senior Counsel for the appellants that Rule 161 of the Railway Protection Force Rules, 1987 (hereinafter, referred to as 'RPF Rules') empower the authorities to dispense with inquiry, where the competent Authority is of the view that it is not reasonably practicable to hold an inquiry. It is contended that having regard to nature of allegations, as the delinquent employee has threatened the witnesses who were not willing to participate in the inquiry, the Authorities have invoked Rule 161 and passed orders. It is further submitted that even if the order of dismissal does not contain reasons, it is sufficient if the file discloses recording of reasons before passing the order. Against the order allowing the writ petition, though the Special Appeal was filed before the Division Bench, the High Court has not considered various grounds raised by the appellants and erroneously confirmed the order of the learned Single Judge. Lastly, it is contended that in any event, the High Court has committed error in ordering payment of 50% of back-wages.

5. In support of the order of dismissal, learned Senior Counsel has placed reliance on the judgment of this Court in the Case of *Sahadeo Singh & Others v. Union Of India & Others*¹. Against grant of back wages, learned Senior Counsel appearing for the appellants has relied on the judgment of this Court in the case of *Tarsem Singh v. State Of Punjab & Others*². It is submitted that as the allegations made against the respondent, are serious, no back wages were to be granted in his favour. Reliance is placed on the judgment of this Court in the case of *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Others*³ and also in the case of *Commissioner of Police, Delhi & Others v. Jai Bhagwan*⁴ in support of her argument.

¹ 2003 (9) SCC 75

² 2006 (13) SCC 581

³ 2013 (10) SCC 324

⁴ 2011 (6) SCC 376

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A 6. On the other hand, Sri S.R. Singh, learned Senior Counsel appearing for the respondent has drawn our attention to Rule 161 of the RPF Rules and submitted that no reasons are recorded for passing such order by invoking the said rule. It is submitted that the very rule requires recording of reasons, order passed without recording any reason cannot stand to legal scrutiny. Further, it is contended that the allegation against the respondent that he conspired with the other Head Constable in commission of theft of Non-Judicial Stamp Papers, is vague and is no ground at all, to dispense with the inquiry. It is submitted that conduct of inquiry before any punishment, is a normal rule and Rule 161 of the RPF Rules can be invoked only in exceptional cases, but not in a routine manner. It is submitted that when the Rule itself mandates recording of reasons, the argument of the other side that it is sufficient if file contains reasons, is no ground to sustain the order. Learned Senior Counsel appearing for the respondent has placed reliance on the judgment of this Court in the case of *Jaswant Singh v. State of Punjab & Others*⁵ to support the view taken by the High Court.

D 7. We have heard learned Senior Counsel for the parties and perused the material on record.

E 8. The disciplinary proceeding against the respondent is governed by the RPF Rules, 1987. The regular inquiry against a member of Force, was only a Head Constable at the relevant point of time. Allegation against him is that he conspired and colluded with another Head Constable by name Mr. Jai Veer Singh in commission of theft of Non-Judicial Stamp Papers. The alleged incident was on 17th/18th September 1998, and order of dismissal was passed against the respondent on 22nd October, 1998

F by dispensing with inquiry by invoking Rule 161 of the RPF Rules. Rule 161 of the RPF Rules itself indicates special procedure in certain cases. The relevant portion of Rule 161 of RPF Rules, reads as under:

“161. Special Procedure in certain cases:

G *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; A

(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; B

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

9. From a reading of the above said Rule, it is clear that to pass an order as disciplinary measure, by adopting special procedure in certain cases, Rule 161 itself mandates recording of reasons. The normal rule for conducting an inquiry is governed by Rules 132, 148 and 153 of the RPF Rules. If the Authorities invoke special procedure, unless they record reasons, as contemplated in the Rule itself, no order could have been passed by invoking Rule 161. At no point of time, appellants have produced file to show that any reasons are recorded in such file also. It is a settled legal position that when Rules contemplate method and manner to adopt special procedure, it is mandatory on the part of the authorities to exercise such power by adhering to the Rule strictly. Dismissal of a regular member of Force, is a drastic measure. Rule 161, which prescribes dispensing with an inquiry and to pass order against a member of Force, cannot be invoked in a routine and mechanical manner, unless there are compelling and valid reasons. The dismissal order dated 22.10.1998 does not indicate any reason for dispensing with inquiry except stating that the respondent had colluded with the other Head Constable for theft of Non Judicial Stamp Papers. By merely repeating the language of the Rule in the order of dismissal, will not make the order valid one, unless valid and sufficient reasons are recorded to dispense with the inquiry. When the Rule mandates recording of reasons, the very order should disclose the reasons for dispensing with the inquiry. The argument of learned Senior Counsel for the appellants that if file contains reasons, same is sufficient to maintain the order, deserves rejection. When inquiry is not conducted, member of the Force is entitled to know the reasons for dispensing with inquiry before passing any order as a disciplinary measure. The respondent was only a Head Constable during the relevant

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- A point of time and he was not in powerful position, so as to say that he would have influenced or threatened the witnesses, had the inquiry was conducted. The very fact that they have conducted confidential inquiry, falsifies the stand of the appellants that it was not reasonably practicable to hold an inquiry. The words 'not reasonably practicable' as used in the Rule, are to be understood in a manner that in a given situation, ordinary and prudent man should come to conclusion that in such circumstances, it is not practicable. In the present case, there appears no valid reason to dispense with inquiry and to invoke Rule 161 of the Rules. We are in agreement with the view taken by the High Court. In the case of *Sahadeo Singh & Others v. Union of India & Others*¹, this Court has held that
- B in the facts and circumstances of the said case, it was not reasonably practicable to hold a fair inquiry, as such, it was held to be justifiable on the facts of the case. Whether it is practicable or not to hold an inquiry, is a matter to be considered with reference to the facts of each case and nature of charge, etc.
- C 10. In the judgment in the case of *Tarsem Singh v. State of Punjab & Others*², this Court has categorically held that when the Authority is of the opinion that it is not reasonably practicable to hold inquiry, such finding shall be recorded on the subjective satisfaction by the authority, and same must be based on the objective criteria. In the aforesaid case, it is further held that reasons for dispensing with the inquiry must be supported by material.
- D 11. With regard to plea of the appellants for grant of back wages, in the case of *Tarsem Singh*², this Court has held that payment of back-wages would depend on result of the inquiry. In the present case on hand, by the time, the order came to be passed by the learned Single Judge, the respondent had retired from service on attaining the age of superannuation. In normal course, we would have permitted to hold inquiry, but keeping in mind that the respondent had retired from service even before the judgment was rendered by the learned Single Judge, we are not inclined to do so at this stage. Though, it is alleged that the
- E respondent had conspired with the main accused for commission of theft of Non-Judicial Stamp Papers nearly worth of Rs.1 Crore, but not even a police complaint was filed for reasons best known to the appellants. Opposing the award of back wages, learned Senior Counsel for the appellants has placed reliance on the judgment of this Court in the case of *Deepali Gundu Surwase*³. Grant of back wages depends on facts
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and circumstances of each case. In the aforesaid case, while dealing with grant of back-wages, this Court has held that in the case of wrongful termination of service, reinstatement with continuity of service and back-wages is normal rule and the adjudicating authority to take into consideration the length of service of the employee, nature of misconduct, financial condition of the employer and similar other factors. Coming to the case on hand, the respondent was not given any opportunity to defend his case at all. It is clearly well settled that any amount of suspicion cannot be equated to proof. Keeping in mind ratio in the judgment of this Court in the case of *Deepali Gundu Surwase*³, we are of the considered opinion that grant of 50% of back-wages is just and fair in the facts and circumstances of the case. The judgment relied on by the learned Senior Counsel for the appellants would not, in any way, support their case.

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12. On the other hand, in the case of *M/s. Hindustan Tin Works Pvt. Limited v. The Employees of M/s. Hindustan Tin Works Private Limited & others*⁶, this Court has held that reinstatement with back-wages, fully or partially, is a matter of discretion of the Tribunal.

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13. In the facts of the present case, we are of the view that the High Court has correctly granted 50% of the back wages to the respondent.

14. For the aforesaid reasons, we do not find any good ground to interfere with the impugned order passed by the High Court. Accordingly, this Civil Appeal is dismissed, with no order as to costs.

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Nidhi Jain

Appeal dismissed.

⁶(1979) 2 SCC 80