

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. 1471-1473 OF 2005

SURYA MANI SHARMA & ORS. APPELLANTS

VERSUS

UNION OF INDIA & ORS. RESPONDENTS

O R D E R

1. By this common judgment and order, we propose to dispose of all these appeals as the issues raised are interconnected and similar.

2. The appellants herein were Constables (Rakshak) [one being Head Rakshak and the other two being Rakshaks] with the Railway Protection Force. One of the respondents herein namely Sub Inspector (Investigation), Railway Protection Force lodged a complaint in respect of theft of G.P. Sheets at Police Station Hirapur, District Burdwan. A case was registered and thereafter the appellants were put under suspension. However, subsequently, the aforesaid order of suspension was revoked. After revocation of the aforesaid suspension

order an order was passed by the respondents terminating the services of the appellants herein by exercising the power vested under Rule 47 of the Railway Protection Force Rules, 1959. The said order was passed on 5th February, 1981.

3. The aforesaid order came to be challenged by the appellants by filing a writ petition in the High Court which was registered as Civil Rules No. 1117W to 1119W of 1981. A learned Single Judge of the Calcutta High Court took up the aforesaid Writ Petitions for final hearing and by judgment and order dated 14th March, 1991 the said writ petitions were allowed and the impugned order of termination was set aside. The High Court also directed that the appellants should be reinstated in service and the period of suspension would be treated as the period spent on duty and that the appellants would be entitled to all service benefits excepting the arrears of salaries which the Court directed that they would receive only to the extent of 50 per cent of the arrears of salaries which would have been payable to them had they continued in service.

4. Being aggrieved by the said judgment and order dated 14th March, 1991, of the learned Single Judge of the Calcutta High Court, an appeal was filed before the Division Bench of the High Court. The High Court,

however, allowed the said appeal holding that the order passed by the respondents terminating the service was justified. According to the Division Bench, it was a case where it was not reasonably practicable to hold an inquiry. However, the appellants being aggrieved filed the present appeals on which we have heard the learned counsel appearing for the parties.

5. When the matter was taken up, the counsel appearing for the parties have taken us through the records. A perusal of the said record indicates that the records showing the satisfaction of the Authority that it was not possible to hold an inquiry due to the circumstances and the reasons which were formally recorded in the records of the respondents could not be produced before the learned Single Judge by the respondents or even before us. The learned Single Judge in the judgment had observed that the report of the inquiry dated 10th October, 1980, had not been produced before the Court. Since no material was placed which could justify the action taken under Rule 47 of the Railway Protection Force Rules, the order terminating the service was set aside. The Division Bench, however, has referred to reasons recorded insofar as S.M. Sharma is concerned which is extracted from the order itself which was issued under Rule 47 of the Rules aforesaid.

It does not appear from the tenor of the said judgment that any additional record wherein such satisfaction was recorded was produced before the Division Bench.

6. Before us also no such record is placed either by filing a counter affidavit or otherwise and, therefore, it could not be shown to us that any reason has been recorded to justify the action of not holding an appropriate inquiry which is required to be done otherwise. The power provided to the Authority under Rule 47 is an extraordinary power which must be exercised with due care and attention and also upon proper application of mind. Such a power cannot be exercised arbitrarily as in the present matter the respondents have not been able to show us any record to justify the action of the respondent in not holding an inquiry.

7. Therefore, we are of the opinion that the impugned judgment and order passed by the Division Bench is required to be set aside which we hereby do. While doing so, we restore the order of the learned Single Judge. We are however, informed that except for appellant No. 4 Bhanu Pratap Dubey all other appellants have already reached the age of superannuation. We are also informed that all the appellants were reinstated in service after the order was passed by the learned Single

Judge and received the benefit till June, 2002 i.e., all the benefits that were ordered to be given to them by the learned Single Judge. However, since the order of the learned Single Judge was set aside by the Division Bench on 13th March, 2002, thereafter the services of the appellants again stood terminated and they remained out of service till the date of their superannuation. We, however, do not intend to pass any order for payment of any back wages for the aforesaid period from 2002 namely the date of their subsequent order of release on till the date of their superannuation/reinstatement but we order that all these appellants shall be entitled to continuity of service and other benefits for the purpose of payment of pension and gratuity.

8. As informed earlier by the learned counsel that Bhanu Pratap Dubey is yet to attain the age of superannuation, he shall, therefore, be reinstated in service giving him continuity of service and all other benefits but except for payment of any arrear salaries between the period from 2002 to the date of reinstatement which shall be issued by the respondents as expeditiously as possible preferably within a period of four weeks from the date of receipt of copy of this order.

9. We dispose of the appeals in terms of the

aforesaid observations.

.....J
[DR. MUKUNDAKAM SHARMA]

.....J
[ANIL R. DAVE]

NEW DELHI
SEPTEMBER 07, 2011.

