

\$~13

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 9550/2015 & CM No.22522-23/2015**

Decided on : 29.1.2016

IN THE MATTER OF:

VINAY KUMAR

..... Petitioner

Through : Mr. Ashwani Kumar Misra with
Mr. Paritosh Kr. Singh, Advocate
versus

UNION OF INDIA & ORS.

..... Respondents

Through : Ms. Perna Mehta, Advocate
for R-1 to 5.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUNIL GAUR

HIMA KOHLI, J. (Oral)

1. The present petition has been filed by the petitioner impugning the order dated 7.5.2015 passed by the respondent No.4/Assistant Commandant, Railway Protection Special Force who has nominated another Enquiry Officer to continue the inquiry proceedings against the petitioner by observing that the inquiry conducted by the previous Enquiry Officer had been perused and it was noticed that the proceedings were incomplete as some witnesses had not been examined and the Enquiry Officer appointed earlier had superannuated after submitting his report dated 3.3.2015.

2. Vide order dated 22.11.2014, the petitioner has been charge-sheeted by the respondents and the following three charges were levelled against him:-

“CHARGES :-

1. He had submitted fake caste certificate for the want of Government Service in Railway as a Constable in RPSF.
2. He submitted false declaration on the Application Form which filled by him on 20.6.2007 prior to appointment in this Force.
3. He does not belong to ST Category as per reports but claimed ST category during the appointment by producing fake caste certificate (Mina) and achieved Government service in Railway.”

3. Mr. A.K. Misra, learned counsel for the petitioner submits that vide Enquiry Report dated 3.3.2015, the Enquiry Officer appointed initially, had returned a finding to the effect that the petitioner is not guilty of the charges levelled against him. However, the respondents were of the opinion that the Enquiry Officer had failed to examine certain important evidence on record and resultantly, another Enquiry Officer was appointed to conduct the inquiry in continuation of the earlier inquiry, which order is illegal.

4. Ms. Prerna Mehta, learned counsel for the respondents submits that further inquiry directed vide order dated 07.5.2015 has already been conducted and the said inquiry report was submitted to the

competent authority on 25.9.2015. In the meantime, the petitioner had approached this Court by filing the present petition and vide order dated 7.10.2015, the respondents were restrained from conducting any further departmental proceedings. She refers to Rule 154.7 of the Railway Protection Force Act, 1957 (in short '**the Act**') which prescribes that if the disciplinary authority, having regard to its finding on all or any of the articles of charge and on the basis of the evidence on record, is of the opinion that penalty is liable to be imposed on the charged officer, then he is to be afforded an opportunity to make a representation in that regard. She submits that the present petition is premature as the said process has yet to take place and the petitioner can take all the pleas available to him at the time of submitting his representation.

5. Learned counsel for the petitioner submits that the petitioner is also aggrieved by the order dated 20.8.2014 issued by the respondent No.6/Additional Regional Commissioner, Jaipur Region, Jaipur, Rajasthan on the aspect of variation of the report of the petitioner's caste certificate, whereunder it has been observed that the petitioner is an original resident of District Bulandshahar, Uttar Pradesh and "Mina" caste to which he belongs has only been recognized as a Scheduled Tribe (ST) in the State of Rajasthan and since the petitioner

is not an original resident of Rajasthan, he is not entitled to rely on the said caste certificate obtained in an illegal manner from the Tehsildar, Mahwa, District Dausa, Rajasthan.

6. We are informed by learned counsel for the respondents that in the year 2012, the petitioner has filed a suit against the District Administration before the District Court, Dausa, registered as Suit No.33/2012. Pertinently, the writ petition is absolutely silent about the institution of the said suit by the petitioner or the relief prayed for by him in the said proceedings. Even in the rejoinder filed by the petitioner in response to the counter affidavit filed by the respondents, the petitioner does not reveal the status of the said suit or the relief prayed for therein.

7. Counsel for the petitioner orally submits that the said suit has no relevance for deciding the present petition.

8. We are of the opinion that the petitioner ought to have come to the Court with clean hands while invoking the extraordinary powers vested in the Court under Article 226 of the Constitution of India, which has not been done in the present case and we take a dim view against the petitioner. The respondents are justified in relying on the provisions of Rule 154 of the Act which by virtue of the principles of natural justice, affords an opportunity to the petitioner to submit a

representation to the disciplinary authority before a decision is taken on the basis of the findings returned by the Inquiry Officer.

9. The grievance of the petitioner is that in his case, constitution of the Scrutiny Committee that is required to examine the caste certificate submitted by an applicant was not in accordance with the guidelines laid down by the Supreme Court in several decisions including in the cases of Baswant vs. State of Maharashtra, reported as **JT 2000 (10) SC 280** and Dayaram vs. Sudhir Batham & Ors., reported as **(2012) 1 SCC 333** and is required to be followed by the respondent No.6.

10. Pertinently, though the respondent No.6 who is the Additional Regional Commissioner, Jaipur, Rajasthan has been impleaded as a party to the present proceedings, but the petitioner has not taken any steps to serve the said respondent. As a result, the respondents No.1 to 5 alone are represented through counsel before this Court.

11. In view of the aforesaid position, it is deemed appropriate to dispose of the present petition with the following directions :

i). Now that the Inquiry Report has been submitted to the Disciplinary Authority with a copy furnished to the petitioner, the respondents shall follow the procedure laid down in Rules 153 and 154 of the Act and take further action on the inquiry report,

only after issuing a notice to show cause to the petitioner and affording him an opportunity to submit a representation.

- ii) Upon a show cause notice being issued by the respondents to the petitioner, he shall be entitled to take all the pleas that may be available to him both on facts and in law, including the decisions cited by him with regard to the mandatory requirement of constituting a Scrutiny Committee relating to caste verification.
- iii) Upon receiving a representation from the petitioner, the respondents shall duly consider the same and pass a speaking order, under written intimation to him.
- iv) If the petitioner is aggrieved by the decision that may taken by the respondents, then he shall be entitled to seek his remedies in accordance with law.

12. The writ petition is disposed of, along with the pending applications. No orders as to costs.

(HIMA KOHLI)
JUDGE

(SUNIL GAUR)
JUDGE

JANUARY 29, 2016/sk/ap