

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8523 OF 2015

Muzaffar Hussain Mansoori	PETITIONER
VERSUS	
The Union of India and others	RESPONDENTS

AND

WRIT PETITION NO.8034 OF 2014

Salim Khan s/o Jahangir Khan	PETITIONER
VERSUS	
The Union of India and others	RESPONDENTS

AND

WRIT PETITION NO.4257 OF 2015

Rajesh Sing Rajkishor Sing	PETITIONER
VERSUS	
The Union of India and others	RESPONDENTS

AND

WRIT PETITION NO.4262 OF 2015

Anil Kumar Dayashankar Tiwari	PETITIONER
VERSUS	
The Union of India and others	RESPONDENTS

AND

WRIT PETITION NO.4883 OF 2015

Ashok Ankush Sapkale	PETITIONER
VERSUS	
The Union of India and others	RESPONDENTS

AND

WRIT PETITION NO.8198 OF 2015

Ramesh Kabirdas Khobragade	PETITIONER
VERSUS	
The Union of India and others	RESPONDENTS

AND

WRIT PETITION NO.8199 OF 2015

Sanjay Narayan Pawar	PETITIONER
VERSUS	
The Union of India and others	RESPONDENTS

AND

WRIT PETITION NO.8524 OF 2015

Hiralal Guljar Ahirwar	PETITIONER
VERSUS	
The Union of India and others	RESPONDENTS

AND

WRIT PETITION NO.8706 OF 2015

Brajkishor Jaigovind Dwivedi	PETITIONER
VERSUS	
The Union of India and others	RESPONDENTS

Mr. Swapnil S. Patil, Advocate for the petitioners
Mr. S.B. Deshpande, Additional Solicitor General of
India (A.S.G.I.) for the respondents

**CORAM : S.V. GANGAPURWALA AND
R.G. AVACHAT, JJ.**

**RESERVED ON : 16th OCTOBER, 2018
PRONOUNCED ON : 26th OCTOBER, 2018**

COMMON ORDER (PER : R.G. AVACHAT, J.) :

Heard the learned counsel for the petitioners and the learned Additional Solicitor General of India (A.S.G.) for the respondents.

2. A short question that falls for consideration in these writ petitions is, "Whether a person exonerated or found guilty may afterwards be subjected to another Departmental Enquiry for a charge, which might have been made against him at the former enquiry ?"

3. The facts relevant to decide the writ petitions are as follows :-

. The petitioners herein are the members of the constabulary of the Railway Protection Force ("RPF", for short). At the relevant time, the petitioners were serving with RPF, Thana, Kurla. The F.I.R. (No.213 of 2010) was registered with Police Station, Kurla against the petitioners for the offences punishable under Sections 420, 466, 467, 471 read with Section 34 of the Indian Penal Code. Simultaneously, a Departmental Enquiry was also initiated against them. The chargesheet was served on the petitioners on 11th April, 2012. The

petitioners were alleged to have been involved in illegal activities such as, arresting, intimidating and releasing of accused on fake bail bonds by extorting money in fake Court at C Beat on platform No.9 of Kurla Railway Station. One of the petitioners was alleged to have acted as a Judge in fake Court. Fake bail bonds were brought in gunny bundles by Mail/Express trains to Lokmanya Tilak Terminus and then by taxi to Kurla and were kept in Malkhana as well as in the office of the Police Station.

. The Enquiry Officers were appointed to inquire into the charges levelled against the petitioners. The enquiries took place wherein number of witnesses were examined on behalf of the Disciplinary Authority. The Enquiry Officers exonerated the petitioners. The Disciplinary Authority did not agree with the reports of enquiry. After giving an opportunity of hearing to the petitioners, the Disciplinary Authority held them guilty of the charges levelled against them. The Disciplinary Authority, by its order dated 31st March, 2015, imposed penalty of reduction from rank Head Constable to Constable for a period of two years with cumulative effect.

4. On 16th August, 2014, the Disciplinary Authority issued fresh Statement of Article of Charge alongwith Statement of Allegations against the petitioners. It was alleged that the petitioners collected sum of Rs. 40,000/- from the passengers as a fine but did not deposit the said amount with the Indian Railways, as such, the petitioners were alleged to have misappropriated the amount of fine.

5. The Memorandum of Chargesheet dated 16th August, 2014 issued by the Disciplinary Authority against the petitioners is under challenge in these writ petitions.

6. The learned counsel for the petitioners would submit that the second Departmental Enquiry based on the same set of facts is not permissible in law. According to learned counsel, principle of *double jeopardy* would come in the way of the respondents to subject the petitioners to the second round of enquiry based on same facts, may be for a different charge.

7. The learned A.S.G. would, on the other hand, submit that the principle of doctrine of *Autrefois Acquit and Autrefois Convict* has no application to

service jurisprudence and altogether different charge in aggravated form, based on the same set of facts could be framed against the petitioners. The learned A.S.G., in support of his submissions, relied on the judgments in the cases of ***Union of India Vs. Kunisetti Satyanarayan, AIR 2007 SC 906, Devendra Sharma Vs. State of Uttar Pradesh AIR 1962 SC 1334, S.A. Vyankatraman Vs. the Union of India AIR 1954 SC 375, The Union of India Vs. Purusottam AIR 2015 SC 961, The Union of India Vs. sunil Kumar Sarkar AIR 2001 SC 1092 and Raj Kuvatkar Vs. the Union of India 2012(5) ALL MR 532.*** According to the learned A.S.G., the previous charge was for gross neglect of duty, in that, while they were working as Constables, were involved in bringing fake bail bonds in gunny bags from Jabalpur. They extorted money (as fine) from gullible passengers under the pretext of prosecuting them under Railway Act using fake bail-bonds. Thus, they contravened Rule No.146.2 (I) and 146.4 of the RPF Rules, 1987.

. Whereas the subsequent charge, which is under challenge in these writ petitions, is as regards misappropriation of money recovered from gullible passengers as fine.

8. Admittedly, the petitioners were subjected to the Departmental Enquiry vide Memorandum of Charge dated 11th April, 2012. The hearing in the proceeding concluded on or before 16th August, 2014. The verdict therein was, however, awaited. Respondent Nos.1 to 3 (for short, "Disciplinary Authority") proposed to subject the petitioners to another round of Departmental Enquiry on the basis of the same set of facts. The second Memorandum of Charge dated 16th August, 2014 was served on the petitioners. Upon reading of the statement of allegations and charge in the already concluded enquiry and the one proposed to be initiated, it would be crystal clear that the Disciplinary Authority has proposed to charge the petitioners, although for a different kind of charge but on the same set of facts, much less the same incident. The list of documents and the names of the witnesses to be examined to sustain the proposed charge are the same, which were let in and examined, respectively in the former Departmental Enquiry.

9. Chapter-XII of the Railway Protection Force Rules, 1987 ("RPF Rules", for short) speaks of

disciplinary and penal punishments. None of the Rules under this Chapter empowers the Disciplinary Authority to restart the exercise of Departmental Enquiry.

10. Learned counsel for the petitioners relied on the judgment of a Division Bench of this Court in the case of **Chattu Jathan of Bombay Vs. The Bombay Dock Labour Board and others, 1996 (4) Bom.C.R.658**, wherein it has been held that once an enquiry is concluded, the Disciplinary Authority has no power to review and/or to hold a fresh enquiry in respect of the same incident. A power must be specifically conferred on the Disciplinary Authority to enable it to start or issue a fresh charge-sheet in respect of the same incident.

. The Division Bench relied on the judgment of the Hon'ble the Supreme Court of India in the case of **State of Assam Vs. J.N. Roy Biswas, 1975 AIR (SC) 2277**, wherein it was held that no rule of double jeopardy bars but absence of power under a rule inhibits a second inquiry by the Disciplinary Authority after the delinquent had once been absolved.

11. The learned A.S.G. could not point out a statutory provision or any authoritative pronouncement

in support of his submissions. The authorities relied on by the learned A.S.G. have no bearing on the facts of the writ petitions at hand. He would simply contend that the charge for misappropriation of money is an aggravated charge that could be sustained in the second Departmental Enquiry. He would submit that the charge of misappropriation of money is an aggravated and altogether different charge that could be sustained in the second Departmental Enquiry, based on the same incident and the evidence as well.

12. Chapter-XII of the RPF Rules does not empower the Disciplinary Authority to initiate second Departmental Enquiry on the same facts, when the delinquent has either been exonerated or found guilty. We are, therefore, at one with the submissions advanced by learned counsel for the petitioners. The writ petitions, therefore, succeed. In the result, we pass the following order:-

ORDER

(i) The impugned Memorandums of Charge-sheet, dated 16th August, 2014, issued by respondent No.3 – Assistant Security Commissioner, Railway Protection Force, Nanded

alongwith Statement of Allegations and Statement of Article of charge framed against the petitioners, are quashed and set aside.

(ii) The Writ Petitions are allowed in above terms and stand disposed of accordingly.

(iii) No costs.

[R.G. AVACHAT]
JUDGE

[S.V. GANGAPURWALA]
JUDGE

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