

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7343 of 2020

Nasibullah Son of Late Abdul Baqui Khan Resident of House No. , Shershah Road, near Bakri Bazar, Azimabad Colony, P.S.-Sultanganj, District-Patna.

... .. Petitioner/s

Versus

1. The East Central Railway through its General Manager through its General Manager, Hazipur,
2. The Chief Security Commissioner, Railway Protection Force, East Central Railway, Hazipur,
3. The Senior Divisional Security Commissioner, Railway Protection Force, East Central Railway, Danapur,
4. The Inspector Incharge, Railway Protection Force, Danapur Post, Danapur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh
		Mr. Ram Binod Singh
For the Respondent/s	:	Mr. Kumar Priya Ranjan

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

Date : 01-12-2020

While posted as Assistant Sub-Inspector of Police under Railway Protection Force at Danapur, the petitioner was arrested by a Central Bureau of Investigation/ACB/Patna, allegedly while accepting bribe. A criminal case was registered as RC No.22(A)/2014-PAT on 05.11.2014 for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988. He was placed under suspension on 05.11.2014 and subsequently a departmental proceeding was initiated against him with the framing of charge under Rule 153 of the Railway



Protection Force Rules, 1987. The Inquiry Officer submitted his report dated 15.01.2016 communicated to the disciplinary authority through letter dated 07.01.2016. The Inquiry Officer concluded in his report, in the background of nature of allegation that till the criminal case was decided by a Court of law, it would not be legally proper to record any conclusion in his capacity as Inquiry Officer. The disciplinary authority, acting on the said report of the Inquiry Officer issued Divisional Order No. 131 of 2016 dated 05.05.2016 to the following effect:-

“Without any prejudice to the outcome of the CBI case, the above Major Penalty Charge Sheet issued to Sri Nasibullah, ASI/Danapur is hereby kept in abeyance till finalization of the CBI case pending before the Hon’ble Court.”

2. Nearly three and half years thereafter the Senior Division Security Commissioner, Railway Protection Force, East Central Railway, Danapur has issued a letter dated 24.02.2020 to the petitioner enclosing a charge memo and the statement of imputation of misconduct and the petitioner has been asked to appear before the Inquiry Officer. On comparison of the charge memo earlier issued to the petitioner on



01.04.2015 and the present one it can be easily seen that both relate to the same occurrence of the petitioner's arrest by the CBI team on 05.11.2014.

3. The petitioner has challenged the said letter No. 963 dated 24.02.2020 issued by respondent No.4 mainly on two grounds, namely:-

(i) The disciplinary authority after having once accepted the opinion of the Inquiry Officer to the effect that it was not possible for him to record any clear finding till disposal of the criminal case by a Court of law and thereby it was decided to keep the disciplinary proceeding itself in abeyance till conclusion of the criminal trial, subsequent disciplinary authority did not have the jurisdiction to review his earlier order and allow the disciplinary proceeding to proceed.

(ii) The subsequent charge memo, though relates to the same occurrence for which earlier the departmental proceeding was initiated, is not exactly the same and it gives an impression that fresh proceeding has been initiated in respect of the same misconduct ignoring completely the earlier decision of the disciplinary authority.

4. A counter affidavit has been filed on behalf of the Union of India. There does not appear to be any dispute in



relation to the facts pleaded in the writ application, relevant aspects of which have been taken note of hereinabove.

5. Mr. Bindhyachal Singh, learned counsel appearing on behalf of the petitioner has submitted that Rule 153 of the Railway Protection Force Rules, 1987 prescribes the procedure for imposing major punishments and Rule 154 thereof discloses the actions which can be taken on the inquiry report. He has argued that issuance of the impugned communication dated 24.02.2020 by the disciplinary authority amounts to disagreeing by him with the report of Inquiry Officer, which was earlier accepted by the disciplinary authority.

6. He has submitted that the disciplinary authority did not have the power to review its earlier decision and, in case the disciplinary authority intended to disagree with the findings of the Inquiry Officer or any article of charge, he was required to record his finding in respect of such charge, if the evidence on record was sufficient for the said purpose. He has submitted that as the disciplinary authority had decided to keep the memo of charge in abeyance in the disciplinary proceeding till conclusion of the criminal trial, there was no basis for the respondent to reopen the same issue in the garb of re-framing of the of charges arising of the same set of allegation.



7. Mr. Kumar Priya Ranjan, learned Central Government Counsel has submitted with reference to the statement made in paragraph 20 of the counter affidavit that it was in compliance of DG/RPF/New Delhi's order vide Railway Board's letter No. 2019/Sec(E)/DAR-3/1 dated 14.10.2019 and the Principal Chief Security Commissioner, RPF, East Central Railway, Hajipur's letter No.-E/p/CBI Trap/HQ/19/2403 dated 16.10.2019 that the above major penalty charge sheet earlier framed was dropped, in the light of the order of the superior Officers. He has argued that there is no legal bar to initiate departmental proceeding under the Rules during the pendency of criminal case in respect of same set of allegations. He has then relied on Rule 219 of the Rules and has submitted that it is well within the jurisdiction of any authority superior to the authority making original order to call for the records of any inquiry and revise any order made under the Rules either on its own motion or otherwise. He has submitted that it was in exercise of power under Rule 219(4)(d) of the Rules that the superior officers had directed the disciplinary authority to frame proper and complete charge which was not duly framed in the earlier charge-sheet for the ends of justice. He has argued that certain errors were noticed in the earlier set of charge which



have now been removed by issuing a proper charge-sheet through impugned communication dated 20.02.2020. He has further submitted that the previous disciplinary authority had erroneously passed the order to keep the proceeding in abeyance which was found to be contrary to the rules which stipulate that criminal proceeding and the departmental proceeding can run side by side.

8. In reply to the submission made on behalf of Mr. Kumar Priya Ranjan, Mr. Bindyachal Singh, learned counsel appearing on behalf of the petitioner has argued that the provision under Rule 28.2 of the Railway Servant (Discipline and Appeal) Rules, 1966 enables the disciplinary authority to initiate and allow the disciplinary proceeding to continue during the progress of a criminal case or trial in relation to the same set of charges against a Railway servant governed by the Rules. He has submitted that it is true that there is no such legal bar but at the same time, he contends, it cannot be said that the disciplinary authority is precluded from passing any order to keep a disciplinary proceeding in abeyance during the pendency of a criminal trial. He has argued that once a conscious decision was taken by a disciplinary authority for keeping the disciplinary proceeding in abeyance during the pendency of a



criminal case, subsequent decision by superior authority after so many years in purported exercise of power under Rule 219 of the Rules is not tenable.

9. The submission advanced on behalf of the petitioner with reference to Rule 154(4) of the Rules that the impugned order is unsustainable because it amounts to recording disagreement by the disciplinary authority with the findings of the Inquiry Officer and, therefore, reasons ought to have been recorded for such disagreement and the disciplinary authority ought to have recorded his own findings on such charge is not sustainable. This is not a case of disagreement with the findings of the Inquiry Officer by the disciplinary authority because no finding has been recorded by the Inquiry Officer. He has simply given his opinion, considering the nature of circumstances, which he emerged during the departmental enquiry that he should not record any finding till the conclusion of the criminal case. This opinion of the Inquiry Officer was accepted by the disciplinary authority and accordingly by Divisional Order dated 05.05.2016, the major penalty charge was ordered to keep in abeyance by the disciplinary authority till finalization of the criminal case. It has emerged from the counter affidavit filed on behalf of the respondents and other materials on record that it



was not the disciplinary authority who subsequently decided to recall the order, whereby the disciplinary proceeding was kept in abeyance but the same was done by the disciplinary authority under the orders of the superior officers in purported exercise of power under Rule 219 of the Rules. It is specific case of the respondents that the superior authorities exercised their power under Rule 219.4 of the Rules, which empowers them to call for records of any inquiry or for revise any order made under the said Rules. First proviso to Rule 219.4 is significant and reads as under:-

“Provided further that no action under this sub-rule shall be initiated after the expiry of one year from the date of the order aforesaid.”

10. In the present case the date of the order which is sought to be revised in purported exercise of power under Rule 219.4 is dated 05.05.2016. There is no provision under the Rule which has been shown to the Court which enables the superior authority/revisional authority to exercise power under Rule 219.4 of the Rules even after lapse of one year from the date of an order sought to be revised under the said rules.

11. In view of the above, in my opinion, the impugned order does not conform to the requirement of the mandatory



statutory provisions under Rule 219.4 of the Rules. The impugned order is, accordingly, not sustainable and, is, therefore, set aside.

- 11. This application is allowed.
- 12. There shall, however, be no order as to costs.

arun/- **(Chakradhari Sharan Singh, J)**

AFR/NAFR	NAFR
CAV DATE	13.11.2020
Uploading Date	01.12.2020
Transmission Date	

