

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 26th June, 2020

+ W.P.(C) 3764/2020 & CM No.13460/2020 (for stay)

VIKAS

.... PETITIONER

Through: Ms. Saahila Lamba, Adv.

Versus

UNION OF INDIA & ORS.

...RESPONDENTS

Through: Mr. Jitesh Vikram Srivastava, Adv.
for R-1.

Jitendra Kumar Singh, Adv. R-2 to 4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

CM No.13461/2020 (for exemption from filing duly affirmed affidavits and requisite court fees).

1. Allowed, subject to just exceptions and as per the extant rules.
2. The application is disposed of.

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3. The challenge by the petitioner, working as a Constable in Railway Protection Special Force (RPSF), in this petition, is to the chargesheet dated 2nd March, 2020 initiating major penalty departmental proceedings against him.

4. Writ jurisdiction ordinarily cannot be invoked with respect to each and every stage of a departmental enquiry, or against a chargesheet and the charged officer is required to participate in the departmental enquiry and challenge only the ultimate decision, if aggrieved therefrom. If challenge to each and every stage of proceedings in a departmental enquiry is entertained, no enquiry would ever be concluded and the same would also result in multiplicity of litigation. Only when any stage of the departmental enquiry is shown to be contrary to Rules or otherwise resulting in irreparable prejudice, can the challenge be entertained.

5. The petitioner however has pleaded, that (i) a Memorandum dated 5th July, 2018, under Section 9(I)(ii) and (iii) of the Railway Protection Force Act, 1985 (RPF Act) read with Rule 158 of the Railway Protection Force Rules, 1987 (RPF Rules), was issued to the petitioner for imposing minor punishment upon him; (ii) the gravamen of the allegation against the petitioner was that the petitioner, without obtaining any written consent from the competent authority, had received a sum of Rs.3,00,000/- from Constable Devender who had collected the said amount from 33 colleagues, for instituting a case for transfer of RPSF personnel to Railway Protection Force; (iii) the petitioner filed a reply to the aforesaid Memorandum dated 5th July, 2018, denying the charge; (iv) however the defence of the petitioner was not accepted and the Disciplinary Authority, vide order dated 31st August, 2018 held the petitioner guilty of charge and imposed penalty upon the petitioner, of withholding of next increment without corresponding postponement of subsequent increments, for a period of one year; (v) the petitioner preferred an appeal and the Appellate Authority vide order dated 17th October, 2018, reduced the punishment to, withholding of next

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increment without corresponding postponement of subsequent increments, for six months; (vi) on 24th July, 2019, the Revisional Authority of the petitioner issued a show cause notice to the petitioner under Rule 219.4 of the RPF Rules, requiring the petitioner to show cause as to why the punishment should not be enhanced; and, (vii) thereafter, much belatedly, on 2nd March, 2020, a chargesheet under Section 9(i) of RPF Act read with Rule 153 of RPF Rules was issued to the petitioner for imposing major punishment upon him.

6. It is the contention of the petitioner that the aforesaid is in violation of Rule 219.4 of RPF Rules, proviso whereto prohibits revision, after one year of expiry of the order.

7. We have heard the counsel for the petitioner who has also drawn our attention to Rule 219.4 of RPF Rules, which is as under:

“219.4 Any authority superior to the authority making the original order may, on its own motion, or otherwise, call for the records of any inquiry and revise any order made under these rules and may:-

- (a) confirm, modify or set aside the order; or
- (b) confirm, enhance, reduce or set aside the punishment imposed by the order, or impose any punishment where no punishment has been imposed; or
- (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or
- (d) pass such other orders as it may deem fit:

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

Provided further that no proceeding for revision shall be commenced until after-

- (i) the expiry of the period for making an appeal specified in subsection (2) of section 9 ; or
- (ii) the disposal of the appeal, where any such appeal has been preferred :

Provided further that in a case in which it is proposed to enhance punishment further, the aggrieved member shall be given an opportunity to show cause either orally or in writing as to why his punishment should not be enhanced.”

[Emphasis added]

8. We have however enquired from the counsel for the petitioner, how the initiation of powers by the Revisional Authority, in the present case, is after one year from the date of order of the Appellate Authority; the order of the Appellate Authority is of 17th October, 2018 and the show cause notice issued by the Revisional Authority is within one year therefrom i.e. of 24th July, 2019.

9. The counsel for the petitioner contends that the initiation by the Revisional Authority within the meaning of first proviso to Rule 219.4 would be, on the date of issuance of the chargesheet, and not on the date of issuance of the show cause notice.

10. We have however drawn the attention of the counsel for the petitioner to the proviso to the third proviso of Rule 219.4, which also provides for issuance of show cause notice, and enquired, that once the Rule itself

provides for issuance of a show cause notice before initiation of proceedings in exercise of powers under Rule 219.4 of the RPF Rules, how it can be said that the initiation is not by issuance of the show cause notice but by issuance of chargesheet.

11. No answer has been forthcoming.

12. The counsel for the petitioner then states that the show cause notice required reply thereto to be given within 30 days, which expired on 23rd August, 2019 or thereabout, and the chargesheet has been issued after long delay therefrom, on 2nd March, 2020.

13. There is however no time period prescribed in the Rule aforesaid, for issuance of chargesheet after the show cause notice. The counsel for the petitioner also has not shown any other Rule or requirement to the said effect. In the absence thereof, challenge in this writ petition cannot be made on the ground of delay in issuing the chargesheet after receipt of reply to the show cause notice. It is also not the case that the said delay even if any has caused any prejudice to the petitioner. It has also not been pleaded that the respondents, by delaying the issuance of the chargesheet, have gained any advantage. It will however be open to the petitioner to, if so deems appropriate, take the said ground in the reply to the chargesheet.

14. The counsel for the petitioner then contends that the Revisional Authority has exercised powers beyond that conferred on it under Rule 219.4 supra.

15. The counsel however fairly admits that no such ground has been pleaded or taken in the petition.

16. We thus find, the sole ground on which this writ petition has been filed i.e. of initiation of proceedings under Rule 219.4 of the RPF Rules beyond the period permitted thereby, to be not made out.

17. There is no merit in the petition.

Dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

JUNE 26, 2020

‘gsr’..