

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

% **Date of decision: 31st August, 2020**

+ **W.P.(C) 5793/2020 & CM No.20956/2020 (for stay)**

RAJENDRA SINGH

..... Petitioner

Through: Mr. Sunil Kumar Pandey & Mr.
Santosh Kumar Sahu, Advs.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Jagjit Singh & Mr. Preet Singh,
Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

CM No.20957/2020 (for exemption)

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

W.P.(C) 5793/2020 & CM No.20956/2020 (for stay)

3. The petitioner, a constable in the respondents Railway Protection Force (RPF), has filed this petition impugning the chargesheet dated 22nd June, 2020 issued by the Assistant Security Commissioner (ASC), RPF Nizamuddin, Delhi as well as the order dated 4th January, 2019 of the ASC, RPF, Headquarter, Delhi (East) in pursuance to which the chargesheet dated 22nd June, 2020 has been issued.

4. The counsel for the respondents RPF appears on advance notice and considering the nature of the controversy, with the consent of the counsel for the respondents RPF, we have heard the counsels finally.

5. It is the case of the petitioner, that (i) he passed his High School exam in the year 1990 and his date of birth, as recorded on his High School Certificate, is of 5th October, 1971; (ii) the petitioner, on 20th August, 1994 was selected and in May, 1995 appointed as a constable in the respondents RPF and was last posted at Delhi; (iii) on 3rd August, 2014, an FIR was registered against some person and in the offence subject matter of which FIR, the brother of the petitioner was named as a eyewitness; (iv) the accused in the said FIR, to pressurize the brother of the petitioner to depose in their favour, made a complaint with the respondents RPF, of the petitioner, while seeking employment in the RPF, having concealed his true date of birth; (v) pursuant to the aforesaid, a preliminary enquiry was conducted by the respondents RPF and a chargesheet dated 18th November, 2017 issued to the petitioner; (vi) it was the charge against the petitioner that the actual date of birth of the petitioner was 4th April, 1964 and the petitioner had passed his High School exam in 1983-84 with date of birth of 4th April, 1964 but had in the year 1989-90 again taken the High School exam showing his date of birth as 5th October, 1971; (vii) the Inquiry Officer appointed, recorded the statement of the witnesses; (viii) the Inquiry Officer submitted a report dated 14th December, 2018 *inter alia* to the effect that the charge against the petitioner had not been proved, though no copy of the said report was furnished to the petitioner; (ix) the ASC, Headquarter, Delhi (East) issued an order dated 4th January, 2019 mentioning that the Inquiry Officer had reported that further disciplinary proceedings could not be continued due

to administrative reasons and therefore chargesheet / disciplinary proceedings against the petitioner be expunged; however the said order also was not furnished to the petitioner; (x) however the ASC issued fresh chargesheet dated 15th January, 2020 containing same and identical imputation of charges as levelled against the petitioner in the earlier chargesheet dated 8th November, 2017; and, (xi) however the chargesheet dated 15th January, 2020 was withdrawn through order dated 22nd June, 2020, on a technical ground, and a new chargesheet dated 22nd June, 2020 containing the same and identical charges as levelled in the earlier chargesheet dated 8th November, 2017, was issued.

6. The contention of the counsel for the petitioner is that under Rule 154 of the Railway Protection Force Rules, 1987, as under:

“154. Action on the Inquiry Report. -

154.1 *If the disciplinary authority, having regard of its own findings where it is itself the Inquiry Officer or having regard to its decision on all or any of the Inquiry Officer, if of the opinion that the punishment warranted is such as is within its competence, that authority may act on the evidence on record. However, in a case where it is of the opinion that further examination of any witness is necessary in the interest of justice, it may recall the witness, examine him and allow the party charged to cross-examine him. After that, it may impose on the party charged such punishment as is within its competence according to these rules.*

154.2 *While communicating the order imposing the punishment, a copy of the findings of the Inquiry Officer shall also be given to the party charged.*

154.3 *Where such disciplinary authority is of the opinion that punishment warranted is such, as is not within its competence, that authority shall forward the records of the inquiry to the appropriate disciplinary authority who shall act in the manner as hereinafter provided.*

- 154.4 The disciplinary authority, if it is not itself the Inquiry Officer may, for reasons to be recorded, remit the case to the Inquiry Officer for further Inquiry and report. The Inquiry Officer shall thereupon proceed to hold further inquiry according to the provisions of rule 153 and submit to the disciplinary authority the complete records of such inquiry along with his report.*
- 154.5 The disciplinary authority shall, if it disagrees with the findings of the Inquiry Officer on any articles of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.*
- 154.6 If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the opinion that any of the major punishments should be imposed on the party charged, it shall, notwithstanding anything contained in rule 158, make an order imposing such punishment.*
- 154.7 If the authority, having regard to its findings on all or any of the articles of charge and on the basis of evidence on record, is of the opinion that any of the major punishments should be imposed on the party charged, it shall make an order imposing such punishment and it shall not be necessary to give to the party charged any opportunity of making representation on the punishment proposed to be imposed.”*

though the Disciplinary Authority, if not agreeing with the findings of the Inquiry Officer, after issuing notice to the petitioner, could have ordered further evidence to be taken but could not have ordered initiation of fresh disciplinary proceedings by issuance of a fresh chargesheet.

7. The counsel for the respondents RPF has drawn our attention to, (i) ordersheet dated 27th April, 2018 of the Inquiry Officer; (ii) the order dated 5th December, 2018 of the ASC, Headquarter, Delhi (East); (iii) the report dated 10th December, 2018 of the Inquiry Officer; and, (iv) the order dated 4th January, 2019 of the ASC and has contended that the petitioner, (a) on account of his non-cooperation was not permitting the inquiry proceedings to proceed; (b) was seeking copies of documents which were not on record and

which were not relied upon; and, (c) was delaying the cross-examination of witnesses on one pretext or another, and has further contended that the complainant, on whose complaint inquiry was initiated against the petitioner, also was reported to have died and since he was the main witness and owing to his death could not appear, it was deemed appropriate to hold de-novo inquiry. He has also drawn our attention to Rule 153.18 of the Railway Protection Force Rules as under:

“153.18 Whenever any Inquiry Officer after having heard and recorded the whole or any part of the evidence in an inquiry, ceases to exercise jurisdiction therein and is succeeded by another Inquiry Officer who has and exercises such jurisdiction, the Inquiry Officer so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by him or himself record it fresh as he deems expedient.”

8. We have at the outset enquired from the counsel for the respondents RPF as to what difference the demise of the complainant on whose complaint inquiry was initiated against the petitioner, would make on the inquiry on the subject charge. The complainant only brought to the notice of the respondents RPF that the petitioner, in seeking employment with the respondents RPF, had fabricated documents showing his date of birth as 5th October, 1971 when in fact his date of birth was 4th April, 1964. To prove or to disprove the said charge, the evidence of the complainant was not relevant and the true date of birth of the petitioner had to be investigated. It is not as if on the complainant withdrawing his complaint, the inquiry would have come to an end. Pursuant to a preliminary enquiry, a charge was framed against the petitioner, and the investigation had to be completed with a finding as to the date of birth of the petitioner and which has to be verified from the records of various institutions and not on the basis of testimony of

the complainant. The departmental proceedings moreover are inquisitorial in nature and not adversarial, as seems to be the understanding of the respondents RPF.

9. On perusal of the Rules cited by both the counsels also, we are unable to find the procedure being followed to have the sanction of the Rules. What emerges on a reading of the documents to which attention has been drawn by the counsel for the respondents RPF is, that the inquiry officer vide proceedings dated 14th December, 2018 expressed inability to proceed further in the matter on account of non-cooperative attitude of the petitioner, on account of the report of the preliminary enquiry being not on record and on account of the demise of the complainant who was the main witness. If the Disciplinary Authority did not agree with the said report of the Inquiry Officer, such action of the Inquiry Officer being within the meaning of Rule 153.18 aforesaid i.e. of the Inquiry Officer ceasing to exercise jurisdiction, what ought to have followed was, appointment of another Inquiry Officer, if so deemed necessary. To the said extent, merit is found in the contention of the counsel for the petitioner that de novo inquiry could not have been ordered and a fresh chargesheet could not have been ordered to be issued.

10. The counsel for the respondents RPF has contended that under Rule 153.18, the new Inquiry Officer has power to either proceed on the basis of evidence already recorded or to record evidence afresh. He has argued that the procedure as is being followed, is within the ambit of Rule 153.18.

11. We are unable to agree. Here, what has happened is that rather than leaving the decision to the Inquiry Officer freshly appointed, the Disciplinary Authority has ordered a de-novo inquiry.

12. We, even otherwise are of the opinion that considering the seriousness of the charge against the petitioner, what ought to have prevailed with the Disciplinary Authority was that the time of over two years already undertaken in the inquiry ought not to have been allowed to be wasted and it should have been left to the Inquiry Officer to, after perusing the records, take decision under Rule 153.18.

13. In fact, it is for the aforesaid reason only that we have also not deemed it appropriate to call for the counter affidavit and have felt the need to dispose of the matter immediately so that the punishment, if any to be meted out to the petitioner, is not delayed any further.

14. Accordingly, the petition is allowed.

15. The orders of the Disciplinary Authority for de novo inquiry are set aside. The Disciplinary Authority of the respondents RPF to now, forthwith, on the basis of the report submitted by the Inquiry Officer appointed earlier, take a decision in accordance with the Rules.

16. The counsel for the petitioner has also urged that copies of the proceedings are not being furnished to him.

17. If the petitioner, in accordance with the Rules and law is entitled to any copies of the proceedings, the same be furnished to him and else, reasons in writing denying the request be furnished.

18. The petition is disposed of.

RAJIV SAHAI ENDLAW, J

ASHA MENON, J

AUGUST 31, 2020

‘gsr’..

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