

**W.P.A. 10662 of 2021
(Through Video Conference)**

**Sri Utpal Chatterjee
Vs.
Union of India & ors.**

**Mr. Pratik Mazumder
...for the petitioner
Mr. Samitendra Dutta
..for the U.O.I.**

This writ petition has been filed by an Assistant Sub Inspector of Railway Protection Force (hereinafter referred to as the R.P.F.) of Eastern Railway. The petitioner is posted at the R.P.F. I.T. Cell, Malda.

The petitioner is aggrieved by a charge sheet dated March 25, 2021 issued by the Divisional Security Commissioner, R.P.F., Eastern Railway, Malda contemplating a disciplinary proceeding under Rule 153 of the Railway Protection Force Rules, 1987. The substance of the imputations of misconduct in respect of which the enquiry was proposed to be held are procurement of 18 nos. of four wheelers and one Bullet Motor Cycle, purchased of an immovable property in 1995, alleged non-disclosure of source of Rs.60,000/-, impersonating the signature of the wife, namely, Smt. Shova Chatterjee and running the business Ganesh Travels himself under the name of wife and finally procurement of loans for the same

business without informing the employer.

Mr. Mazumder, learned Advocate for the petitioner challenges the charge sheet on various grounds. That the charges of 1995-96 are stale, the allegations of procurement of Motor Vehicles and running Ganesh Travels were already subject matters of an earlier disciplinary proceeding which ended with the punishment of the petitioner. He submits that as the petitioner had undergone the punishment for non-disclosure of the procurement of the vehicles to run the business Ganesh Travels, the petitioner cannot be vexed twice on the self-same allegations relating to the business of Ganesh Travels. Lastly, Mr. Mazumder pointed out to the concluding part of the charge sheet whether disciplinary authority has opined that the charges 'clearly reflects' gross misconduct and non-compliance of the Rules of the Railway Protection Force by the petitioner. He also prayed that documents relevant for the defense has not been supplied.

Mr. Dutta submits that the petitioner having participated in the proceeding cannot now turn around and challenge the charge sheet before this Court. That the disciplinary authority did not issue the charge sheet with a closed mind, but the charge sheet was issued as there were reasons to proceed against the alleged misconduct. He further submits that irrelevant documents shall not be

supplied to the petitioner.

I have heard Mr. Mazumder, learned Advocate for the petitioner and Mr. Dutta, learned Advocate for the respondents.

With regard to the allegations regarding procurement of vehicles to run Ganesh Travels, I find that some additional charges have been levelled in the subsequent charge sheet. It has been alleged that the petitioner himself was running the travel company “impersonating” the signature of the wife and also procured loans etc. That the business was being run by the petitioner and not the petitioner’s wife. These allegations are factual in nature and have to be decided on the basis of evidence.

With regard to stale charges, Mr. Mazumder’s submission is that these facts of 1995 were already known to the authorities. Thus, these charges cannot be enquired into. In my opinion, this is also a matter of evidence which the petitioner will have to prove. Whether the facts acquisition of land during 1995-96 had been disclosed and the authorities being aware of the same sat tight over the matter have to be gone into at the proceedings.

With regard to non-supply of documents, in my opinion, the petitioner should be allowed photo copies of the documents mentioned in paragraph 19 of the written objection dated April 3, 2021 filed by the petitioner. In my

opinion, such documents are relevant for the purpose of the enquiry. With regard to the allegation that the disciplinary authority had made up his mind by using the terms “clearly reflects” in the penultimate paragraph of the charges, I am of the view that the term “clearly reflects” has been used loosely. The expression should be construed as if the disciplinary authority had reasons to believe that the petitioner was allegedly guilty of misconduct and violation of rules as mentioned in the charge sheet. The expression shall not be considered as a final opinion of the disciplinary authority.

This writ petition is disposed of with the following directions :-

a) Photo copies of the documents in paragraph 19 of the written objection shall be supplied to the petitioner by July 8, 2021 from date. Upon receipt of the said documents, the petitioner shall file a supplementary written objection within July 19, 2021. The disciplinary authority shall not proceed with the enquiry upto July 25, 2021 from this date. Thereafter he may proceed if the petitioner does not file the supplementary objection.

b) If the enquiry officer does not accept the contentions of the petitioner after consideration the supplementary written objection, then the enquiry officer shall proceed independently and in a free and fair manner without being influenced by the term “clearly reflects”

which appears in the charge sheet. The enquiry officer shall proceed independently and on the basis of records and evidence. The expression “clearly reflects” shall not have any influence on the enquiry officer with regard to the allegations of misconduct. The enquiry officer is duty bound to conduct the proceedings in an unbiased manner and in accordance with law.

c) All opportunities shall be given to the petitioner to adduce evidence, both oral and documentary, summons witnesses, cross-examination witnesses etc.

d) The petitioner shall also be allowed to deal with the expert opinion/forensic report in accordance with law and shall also be given an opportunity to cross examine the said expert witness, if the document/forensic report is relied upon and tendered in evidence by the railway authorities.

There will be however no order as to costs. The allegations against the respondents are deemed to have been denied.

The concerned authorities are directed to act on the basis of the server copy of this order.

(Shampa Sarkar,J.)

