

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 7899 of 2008

Ramendra Kumar Pandey
Vs.
Union of India & Ors.

Mr. Achin Majumder
... For the petitioner

Ms. Aparna Banerjee
... For the Union of India

The present writ application has been filed, *inter alia*, challenging the charge-sheet dated 14th May, 2007, findings of the report of the Enquiry Officer, the show cause notice dated 7th August, 2007, the order of punishment dated 31st August, 2007 and the order of the Appellate Authority dated 21st November, 2007.

The petitioner is a Constable of the Railway Protection Force (in short, RPF). While the petitioner was posted at RPF Post, Durgapur, under Asansol Division he was served with a charge sheet dated 14th May, 2007 issued by the Assistant Security Commissioner, RPF, Eastern Railway, Andal. The charges levelled against the petitioner are as follows: -

- 1) *He failed to prevent and detect theft of 02 M.T. Iron/manganese wire during his duty period at Rly Goods shed Durgapur.*
- 2) *Though he was present at Rly Goods shed, are Durgapur failed to detect the theft of huge*

quantity Iron/manganese wire, which was recovered and seized by Officer and staff of RPF/Post/DGR and CIB/team/Asansol on 17.4.2007.

Mr. Majumder learned advocate appearing in support of the aforesaid application submits that the aforesaid charge sheet had been issued with closed mind as the respondents have not bothered to issue any show cause to the petitioner. By referring to the aforesaid charge sheet, it is submitted that at the time of framing charges not only did the Disciplinary authority make up its mind regarding holding of an enquiry and supplied the petitioner the statement of allegations, list of witnesses but simultaneously, an order directing appointment of an enquiry officer to conduct an enquiry against the petitioner, was also issued by the Disciplinary Authority. By placing reliance on Rule 153.3 of the Railway Protection Force Rules, 1987 (hereinafter referred to as the said Rule) it is submitted that the Disciplinary Authority at the first instance upon receipt of the complaint or otherwise or on going through the facts alleged or brought out had to consider, whether it is a case for major or minor punishment. It is only thereafter charges ought to have been framed and an opportunity ought to have been afforded to the petitioner to respond to such chargesheet. It is only after receipt of such reply, that an enquiry should be ordered, if the reply is not

found satisfactory. In the instant case, the Disciplinary Authority, while framing charge-sheet did not bother to issue any show-cause notice inviting response from the petitioner. The Disciplinary Authority further while assuming the mantle of an enquiring authority, fixed the date of the enquiry.

It is submitted that the Disciplinary Authority had made up his mind at the time of issuance of the charge-sheet, to hold an enquiry against the petitioner. This, itself, according to Mr. Majumder, shows bias and is sufficient to vitiate the entire enquiry proceedings. In support of his aforesaid contention, he places reliance on a judgment delivered by this Hon'ble Court in the case of **Sanjoy Kumar Singh vs. Union of India & Ors.**, reported in **2002 (2) SLR, 266** and an unreported judgment delivered by this Hon'ble Court in the case of **Dilip Kumar Palit vs. Union of India & Ors.**, in a writ application, being WP. No. 5097 (W) of 2003.

The next point urged by Mr. Majumder is with regard the validity of the charge sheet itself. By referring to the statement of allegations appended to the charge-sheet wherein it had been alleged "*R.K. Pandey misguide and directed him to remain at the main gate (DGR, East/cabine end) of Goods shed after taking their dinner and in the mean time taking the opportunity of his inexperience c/6856 R. K. Pandey failing his wail intention*

for his personal gain”., it is submitted that these allegations itself constitute a charge. However, the same did not find place in the charges levelled against the petitioner. According to Mr. Majumder the aforesaid vitiates the charge sheet.

It is submitted that the writ petitioner participated in the enquiry proceedings and was supplied with the enquiry report and ultimately after receiving his reply, the Disciplinary Authority had passed a final order by holding the petitioner guilty of the charges and awarded punishment of reduction of his pay by three stages for three years with cumulative effect. By drawing attention of this Court to the order dated 31st August, 2007 issued by the Disciplinary Authority, it is submitted that what weighed in the mind of the Disciplinary Authority while inflicting punishment on the petitioner was not the charges framed against the petitioner, but extraneous charges for which no enquiry was held. Mr. Majumder submits that the Disciplinary Authority in fact while proceeding to inflict punishment on the petitioner based his findings on the following portion of the order which is reproduced below :-

“.....so it is crystal clear that the recovered Iron / manganese wire stolen from the Rly goods, Shed., DGR during the duty of the party charged and without his connivance huge quantity of Iron

materials could not been removed.....”.

Mr. Majumder submits that no charge of *connivance* was framed, unfortunately the punishment that was inflicted on the petitioner, was based on allegations which did not even form part of the charges leveled against the petitioner. Thus without holding a proper enquiry the petitioner was awarded punishment of reduction in pay, by three stages for three years with cumulative effect.

It is submitted that the writ petitioner thereafter had preferred a statutory appeal. The Appellate Authority by its order dated 21st November, 2007 while declining to interfere with the order passed by the Disciplinary Authority had also concluded that without the *connivance* on the part of the petitioner, huge quantity of iron ore/manganese ore could not have been removed. In this context to substantiate the same Mr. Majumder places reliance on the 5th paragraph of the aforesaid order dated 21st November, 2007, which is reproduced herein below:-

“...So it is clearly proved that open loot of Govt. property from DGR goods shed happened in presence of the appellant and without his connivance huge quantity of iron manganese ore could not be removed...”.

It is still further submitted on behalf of the petitioner that the Appellate Authority, which is the creature of a statute was bound to consider the appeal

preferred by the petitioner in terms of Rule 217.3 of the said Rules. Unfortunately, the Appellate Authority did not render any findings as to whether the prescribed procedure in the Rules has been complied with or whether non-compliance thereof has resulted in violation of Constitutional provisions or in miscarriage of justice. According to Mr. Majumder, the Appellate Authority did not apply its mind, while dismissing the appeal. In the facts as stated hereinabove, he submits that not only the charge-sheet should be quashed but the entire enquiry proceedings including the order passed by the Disciplinary Authority and the Appellate Authority should be quashed and set aside.

Per contra, Ms. Banerjee, learned advocate representing the respondents submits that in reality a loot of Government property from Durgapore Goods Shed was attempted on 16th April, 2007. Due to timely intervention, the attempt was foiled and one person was apprehended and a mini truck seized. A case was also registered. The petitioner was charged with failure to prevent the theft. She submits that on 14th May, 2007 a charge-sheet was issued on the petitioner. By referring to Rule 153 of the said Rules, it is submitted that there is no prescribed procedure to issue any show-cause accompanying the charge sheet and it is for such reason the petitioner was not called upon to show-cause. The failure on the part of the Disciplinary Authority to call upon the petitioner to

show-cause thus cannot be faulted. While referring to page 47 of the writ application it is submitted that the document captioned statement of allegations is in fact a statement in the form of report. The same does not constitute a charge and the petitioner was only charged, on the basis of the allegations as set-forth in the said statement, Ms. Banerjee submits that the writ petitioner was given ample opportunity of hearing and to defend. The writ petitioner duly participated in the enquiry proceedings, filed written statement, cross-examined the management witnesses, and was duly supplied with the copy of the enquiry report. The writ petitioner also responded to the enquiry report. In course of the enquiry proceedings not once, had the petitioner questioned the chargesheet on the ground of non-issuance of the show-cause. She says that there had been no violation of the principles of natural justice. The enquiry proceedings cannot stand vitiated, simply because he has not been given an opportunity of show-cause. The points as canvassed on behalf of the writ petitioner in this writ application, had never been raised by the petitioner either before the Enquiry Officer, the Disciplinary Authority or before the Appellate Authority. The challenge to the finding of convince, forming basis of punishment was also not raised before the Appellate Authority. The charges had been proved, there are sufficient grounds to hold the petitioner guilty. This Hon'ble Court at this belated stage

should not permit the petitioner to raise such allegation and she prays for dismissal of the writ application.

I have heard the submissions advanced by the advocates appearing for the respective parties and considered the materials on record. I find, in the instant case, no show-cause notice has been issued. The Disciplinary Authority had at the first instance framed the charges and appointed an enquiry officer to hold enquiry. Although Ms. Banerjee, learned advocate representing the respondents had attempted to make out a case that there is no necessity to issue such show-cause, since the rules do not provide for the same, I am not in agreement with the above view. In service jurisprudence it is too well settled that while issuing the charge sheet an opportunity is required to be given to the delinquent employee to reply to the same. The right to respond to a chargesheet and explain, why enquiry should not be conducted is a right which is as fundamental as a right to defend. It is only on the basis of the reply that the disciplinary authority should take a final decision whether or not to hold an enquiry. I find that this Court had the occasion to consider such an issue and in the case of **Sanjoy Kumar Singh** (supra), this Hon'ble Court by placing reliance on the judgment delivered by the Hon'ble Supreme Court in the case of **State of Punjab vs. V. K. Khanna** reported in **AIR 2001 SC 343** was, *inter alia*, pleased to observe as follows:-

“9. Let us not make any discussion regarding the suspension order since the said suspension order has been revoked after the issuance of the same.

Now, let us have a look into the charge-sheet which is Annexure-C to the writ petition. In this context at the very outset it requires to be stated that basic principles of service jurisprudence speaks of arriving at a decision by the authority as to whether a charge-sheet is to be issued. On the issuance of the charge-sheet the delinquent employee should be given a chance to give his reply stating about his deference to the allegations levelled against him, the authority is then to scrutinize and scan the charge-sheet as well as the reply and after careful scrutiny authority is to come to a decision whether enquiry against the delinquent employee need be conducted or not.

10. In the memorandum dated 15.4.91 Annexure -C to the writ petition the Articles of charges statement of allegations list of witnesses and list of documents have been annexed. The first paragraph of the Memo states;

“Allegations on which the enquiry was proposed to be held are set out in the enclosed statement of allegations and the charges framed on the basis of the said allegations are specified in the enclosed statement of charges”.

11. As stated earlier the authority has to come to a decision first whether there will be charge-sheet, then whether there will be enquiry then the question of naming the enquiry officer and then it is the duty of the enquiry officer (not the duty of the disciplinary authority) to fix up the date and venue of the enquiry. But in the instant case; the Assistant Security Commissioner, the charge-sheet issuing authority at the very first memorandum decided about the enquiry without even considering or before submission of the reply to the charge-sheet by the delinquent employee and fix the date and place of enquiry himself with observation that in case of failure to attend the enquiry it will be made ex parte. This indicates the mind of the disciplinary authority which is closed and it is real bias.

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13. Hon’ble Supreme Court in its decision reported in AIR 2001 SC 343 (State of Punjab vs. V. K. Khanna & Ors.) discussed about the test of existence of bias or mala fide in an administrative action and scope of judicial review in such an

administrative action and observed:

“The case test is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, a conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained”.

The Hon’ble Supreme Court in this case further observed:-

“It is well settled in service jurisprudence that the authority has to apply its mind upon receipt of reply to the charge-sheet or show cause as the case may be as to whether a further enquiry is called for. In the event upon deliberation and due consideration, it is in the affirmative – the enquiry follows but not otherwise. Thus, where even before reply was filed by the delinquent Chief Secretary to the charge-sheet issued against him, the Chief Minister made an announcement appointing an enquiry officer to go into the charges thus indicating its mind set that the enquiry shall proceed irrespective of the reply it cannot be said that the attitude of the authorities towards the delinquent is free and fair.

14. In the instant case it appears also from the Memorandum itself that Articles of charges were furnished in which Memorandum the authority informed the petitioner that there will be an enquiry in the same Memorandum the authority declared the name of the inquiry officer and also fixed the venue and time of the enquiry. Therefore, before receiving any reply to the allegations/charges levelled against the petitioner, the authority took a decision to conduct the enquiry and even the authority assumed the jurisdiction of the enquiry officer and fixed the venue and time of the enquiry, which clearly shows that the Memorandum containing Article of charges has been issued by the authority with a biased mind and the same indicate its mind set that the enquiry shall proceed irrespective of reply and as quoted above in the case of V. K. Khanna & Ors. (supra) the Hon’ble Supreme Court observed the attitude of the authority towards the delinquent in such circumstances is not free and fair”.

A similar view has been taken by this Hon’ble Court

in the case of **Dilip Kumar Palit** (supra). A perusal of the

aforesaid judgments would make it clear that the Disciplinary Authority while issuing the charge sheet acted with a closed and biased mind. I find at the time of framing the charges, the Disciplinary Authority had decided to hold the enquiry without calling for any response from the petitioner. Thus the decision to hold an enquiry was taken without giving the petitioner an opportunity to show cause or to explain. In this case the Disciplinary Authority had gone even a step further and, in his zeal to expedite the enquiry had also appointed the enquiry officer. It is true, that the writ petitioner had not raised the aforesaid points in course of enquiry proceedings, however, the same does not absolve the Disciplinary Authority to act in accordance with law and to give an opportunity to show cause, though not specifically mandated by the said Rules. The threat of bias is writ large on the Disciplinary Authority. It was not just an apprehension of bias, the danger of the petitioner being punished without any proper enquiry was thus real. The above conduct of the Disciplinary Authority, thus has the effect of vitiating both the charge-sheet and the enquiry, the same is also liable to be set aside on the ground of appointment of the Enquiry Officer at the time of issuance of the charge-sheet.

I would have proceeded to decide this writ application on the short point, however, since Mr.

Majumder argued this matter extensively, the other points urged, also required to be dealt with.

I find from a perusal of the order of punishment passed by the Disciplinary Authority, the Disciplinary Authority has proceeded to inflict punishment on the petitioner *inter alia* by observing as follows:-

“So it is crystal clear that the recovered Iron/manganese wire stolen from the Rly goods, Shed, DGR during the duty of the party charged and without his connivance huge quantity of Iron materials could not been removed”.

I find that the Appellate Authority had also proceeded on the same premise and concluded that it was clearly proved that open loot of Government property from DGR goods shed, happened in presence of the appellant and without his *connivance* huge quantity of iron manganese ore could not be removed.

I find that there is no charge that the petitioner had connived, in connection with the theft. There is also no allegation that the petitioner had connived with someone which could have resulted in the theft. Unfortunately, both the Disciplinary Authority and the Appellate Authority have proceeded to inflict punishment on the petitioner by holding, that without the connivance of the petitioner, such theft was not possible. It is thus clear

without framing a proper charge an enquiry was held and the petitioner had been held guilty and punished, based on allegations which did not even constitute a charge. I am of the view that the aforesaid orders passed by both the Disciplinary Authority and the Appellate Authority cannot be sustained.

The Appellate Authority, which is the creature of the statute, was obliged to render finding in terms of Rule 217.3 of the said Rules. The order passed by the Appellate Authority does not speak of such finding. It appears that the Appellate Authority had mechanically disposed of the appeal by basing its findings, on the order passed by the Disciplinary Authority, without independently applying its mind. The aforesaid order passed by the Appellate Authority stand vitiated on such ground as well.

For reasons more-fully discussed hereinabove and taking into account the sequence of events and the entirety of the circumstances, I am of the view that the charge-sheet dated 14th May, 2007, the enquiry proceedings, the order passed by the Disciplinary Authority on 31st August, 2007 and the order passed by the Appellate Authority on 21st November, 2007 cannot be sustained, the same are liable to be set aside and are accordingly set aside.

The petitioner shall be entitled to all consequential benefits.

With the above observations/directions the writ

petition, being WPA 7899 of 2008 is allowed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)