

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
(Through Video Conference)

WPA 19889 of 2021

Mahendra Kumar
Vs.
Union of India & Ors.

Mr. Ujjal Ray
Mr. Arpa Chakrabarty
... For the petitioner

Mr. Samitendra Dutta
Mr. Sourav Chakrabarty
... For the respondents

Affidavit of service filed in Court today is taken on record.

The petitioner was served with a charge sheet on 5th November, 2020. Pursuant thereto, the enquiry proceedings was conducted by the Enquiry Officer (in short "EO"). The enquiry report has been filed with the Disciplinary Authority. The Disciplinary Authority has sent a copy of the enquiry report to the petitioner inviting the petitioner's comment on the enquiry report. The petitioner has given his comment on the enquiry report by a letter dated 22nd November, 2021. After considering the representation, the Disciplinary Authority by a letter dated 24th November, 2021, has directed the EO to complete the enquiry as per the provisions of Rule 153 of the Railway Protection Force Rules, 1987 (hereinafter referred to as the

“RPF Rules”) as the charge sheet has been issued under the provisions of the said Rule. The Disciplinary Authority has also opined that the question of agreeing or disagreeing with the findings of the EO does not arise at this stage since the enquiry was not concluded properly.

The petitioner says that in terms of Rule 154.4 of the RPF Rules, the Disciplinary Authority is free to remit the case to the EO for further enquiry and report, if he is not satisfied with such report or in the alternative in terms of the provisions of the Rule 154.5, the Disciplinary Authority if is in disagreement with the findings of the EO on the article of charge, record its reasons for such disagreement and record its own findings of such charge, if the evidence on record is sufficient for the purpose. The petitioner also says that after inviting the comments, the Disciplinary Authority could not have directed the EO to complete the enquiry as the petitioner’s defence is already made known to the Presenting Officer (in short “PO”) who will now try to fill in the loopholes, if any, in the evidence led before the EO before the enquiry authority. The petitioner further submits that the enquiry report is a complete one after conclusion of the enquiry proceedings and, as such, the same could not have been held to be an incomplete one by the Disciplinary Authority.

On behalf of the respondents, it is submitted that the writ petition is premature and the Disciplinary Authority is well within its bounds while directing the EO

to complete the enquiry proceedings upon finding the same to be incomplete.

After hearing the parties and considering the materials on record, I am unable to accept the contention of the petitioner that his defence is made known to the PO upon giving the comments on the enquiry report to the Disciplinary Authority on being invited to do so. The enquiry proceedings in a disciplinary proceedings is the trial stage where the evidence is laid down. The petitioner, being the charged employee, is required to put forth all his defence before the enquiry authority to disprove the charges levelled against him. The comments made on the enquiry report upon being notified to do so by the Disciplinary Authority are submissions elucidated the petitioner's case before the EO to impress upon the Disciplinary Authority for not accepting the enquiry report. The Disciplinary Authority upon finding that the enquiry report is not complete has directed the EO to complete the proceedings following the Rules.

In such circumstances, it cannot be said at this stage that the PO upon coming to know about the petitioner's objection against the enquiry report will attempt to plug the gaps in evidence. The petitioner in an indirect manner has attempted to challenge the enquiry proceedings even before the final order has been made by the Disciplinary Authority. It cannot also be said that the

Disciplinary Authority by the process adopted by it has assisted the employer in fishing out the evidence.

The writ petition is, thus, disposed of without any order, as it appears to this Court that the same is premature. It should not be, however, construed in any manner whatsoever that by not entertaining the writ petition, this Court has not accepted any objection raised by the petitioner against the enquiry report in his comment to the Disciplinary Authority.

The EO shall act strictly in accordance with the provisions of the RPF Rules and shall not allow either of the parties to take advantage of the order of the Disciplinary Authority directing the EO to complete the proceedings.

The petitioner shall be free to take all points in his defence before the EO as also at the subsequent stage before the Disciplinary Authority irrespective of the fact that the some of the defence may have been taken in the instant writ petition to challenge the action of the Disciplinary Authority.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted.

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

(Arindam Mukherjee, J.)