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W.P.A. 21869 of 2019

Shri Amit Kumar

-vs-

Union of India & Ors.

Mr. Achin Kumar Majumder

....for the petitioner.

Mr. Subhankar Chakraborty,
Mr. Saptorshi Bhattacharjee,
Ms. Ruchira Manna

....for the respondents.

In the present writ petition challenge has been thrown to the suspension order dated 29th August, 2019 and a charge sheet dated 24th October, 2019 on the score that a preliminary enquiry was conducted by the concerned authority of South Eastern Railway against the petitioner de hors Rule 248.1 of the Railway Protection Force Rules, 1987(hereinafter referred to "Rules of 1987").

Mr. Achin Kumar Majumder, learned advocate, appears on behalf of the petitioner and has submitted that at the time of conducting the preliminary enquiry as it appears from the statement of allegations being part of the charge-sheet dated 24th October, 2019 neither Controlling Officer nor the officer of or above the rank of Security Commissioner held enquiry and a report has been furnished based on which such impugned charge sheet was issued which is not permissible

under the said relevant Rule of 248.1. According to Mr. Majumder, learned advocate, since it is a case of public complaint based on which a proceeding has been initiated against the petitioner such preliminary enquiry needs to be conducted strictly in terms of said Rule of 248.1.

In addition thereto, another limb of submission of Mr. Majumder, is against the suspension order dated 29th August, 2019 which according to the petitioner has been passed not in relation to disciplinary proceeding but such suspension order is related to criminal proceeding. It has further been contended that in view of Rule 135 of the Rules of 1987 there is a requirement of issuing charge sheet within thirty days from the date of suspension after which the member of the force against whom suspension order has been clamped shall be deemed to have been reinstated in the absence of such charge-sheet.

The next part of the submission of the petitioner is permissibility of continuity of disciplinary proceeding during the pendency of the criminal proceeding which has been initiated on the basis of public complaint. According to Mr. Majumder, the nature of charge in the criminal

proceedings and charge No. 1 in the charge sheet dated 24th October, 2019 are identical, therefore, the disclosure of evidence during pendency of the criminal proceeding before the disciplinary authority may prejudice the petitioner in defending himself in such criminal proceeding. Therefore, by making a comprehensive representation dated 30th October, 2019 he has approached the Divisional Security Commissioner for stalling the disciplinary proceeding during the pendency of the criminal proceeding. In support of such submission Mr.Majumder, has placed reliance on an unreported Judgment in an Intra Court Appeal being FMA 3521 of 2014 (Balbir Singh Sindhu @ B.S.Sidhu – vs- Union of India & Ors.)

Per contra, Mr. Subhankar Chatterjee learned advocate, appears on behalf of the South Eastern Railway and on the point of challenge being thrown to the suspension order he has drawn attention of this Court to Rule 211 of the said Rules of 1987. On placing reliance on such Rule of 211 it has been submitted that there is an alternative remedy which is available to the petitioner for redressal of grievance against such order of suspension. Rule 211 provides for preferring an

appeal against an order of suspension to the authority to which the authority which made or is deemed to have made the order is immediately subordinated and accordingly it has been contended that if the petitioner has any grievance it is left open to him to prefer an appeal against such order of suspension.

It has also been submitted on behalf of the respondent authorities that under Rule 248.1 there is no requirement to hold any preliminary enquiry in the case of initiation of proceeding based on public complaint and it has also been submitted that since the charge sheet has been issued by the Divisional Security Commissioner, RPF, South Eastern Railway, Kharagpur there is no violation of the provisions under said Rule 248.1. It is contended that the enquiry, if Court directs and permits the authority, to be conducted against the petitioner strictly in terms of Rules of 1987 by the controlling officer or any officer above the rank of Security Commissioner.

This Court has heard the learned advocates representing the petitioner and the authorities of South Eastern Railway and has perused the relevant documents available on record.

It appears from the case made out in this writ petition that the petitioner is aggrieved by the order of suspension dated 29th August, 2019 and according to the petitioner the same is relating to criminal proceeding and such order of suspension was not issued in contemplation of disciplinary proceeding. Be that as it may since there is a provision under Rule 211 to prefer appeal against the order of suspension the petitioner is granted leave under such provision to take out an appeal strictly in terms of said Rule before the appellate authority. If such appeal is filed within a period of thirty days from this date the appellate authority shall proceed to dispose of such appeal within a reasonable time thereafter without taking the point of limitation.

Now question arises whether the charge sheet issued by the Divisional Security Commissioner on 24th October, 2019 shall qualify the test in terms of Rule 248.1 or not. It does appear on perusal the charge sheet dated 24th October, 2019 that under the statement of allegations an expression has been used by the respondent authorities - "preliminary report".

On reading of the charge sheet, it appears that based on such preliminary report the charges have been framed against the petitioner. The proceeding has been required to be initiated under Rule 248.1 of the Rules of 1987. Since it is a case relating to public complaint this Court does not find any irregularity in issuing charge sheet dated 24th October, 2019 against the petitioner by the Divisional Security Commissioner. For better understanding of the provisions framed under Rule 248.1 the said rule is quoted below:

“248.1 Whenever a complaint against the misconduct of any member of the Force is received from the members of the public or where such complaint is received through a court wherein civil or criminal proceedings against a member of the Force have been instituted or otherwise, and controlling officer of such member of the Force is of the opinion that allegations are verifiable or otherwise an inquiry is called for, he may proceed to inquire himself into the complaint against a member of the Force specified in column (1) of the table below or depute any other officer as specified in the corresponding

entry in column (2) of the said table:

TABLE

Members of the Force against whom complaints received	Inquiry Officer.
(1)	(2)
Constables/ ¹ [***/Head Constables Sub- Inspector/Assistant Sub- Inspector/Assistant Security Commissioner Security Commissioner or above	Of and above the rank of Inspector. Of and above the rank of Assistant Commandant. Of and above the rank of Security Commissioner. ² [Principal Chief Security Commissioner] or the ³ [Chief Security Commissioner] or the Deputy Chief Security Commissioner, if so authorised by him.

It appears that in terms of Rule 248.1 either the controlling officer or any officer of and above the rank of Security Commissioner in the case of Inspectors/Assistant Security Commissioner can hold an enquiry based on such public complaint if the authority is of such opinion that the charges are verifiable or otherwise an enquiry is called for. It does not appear from such Rule 248.1 that there is any requirement of conducting preliminary enquiry before the initiation of proceedings in terms of Rule 248.1.

In the present case, this Court further finds

that the charge sheet dated 24th October, 2019 has been issued by the Divisional Security Commissioner therefore there is no infirmity in such charge sheet and the concerned authority should be permitted to take necessary steps for bringing the proceeding into logical conclusion in terms of relevant provisions of Rules of 1987.

However, in the instant case petitioner has specifically taken a point in the writ petition as well as a comprehensive representation has been made dated 30th October, 2019 addressed to the Divisional Security Commissioner on permissibility of initiating proceeding under the Rules of 1987 during the pendency of the criminal proceedings and till date it has been submitted by the learned advocate representing the writ petitioner that such representation remains unanswered. Therefore, this Court directs the Divisional Security Commissioner, being the respondent no.3 to first take decision on such representation of the petitioner which is annexed to this writ petition being P-7 before proceeding with the enquiry. Such decision shall be taken by the respondent no.3 within a period of four weeks from this date and the decision to be taken by the respondent no.3 shall

be communicated to the petitioner within one week thereafter. If the respondent no.3 decides to proceed with the charge sheet dated 24th October, 2019 after consideration of such representation he is required to give reasons in support of the same prior to proceeding with the enquiry in terms of Rules of 1987.

With the above direction, the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)