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W.P.A. 31018 of 2017
(IA NO: CAN 2/2021)
(Through Video Conference)

Pran Krishna Roy
-vs-
Union of India & Ors.

Mr. Achin Kumar Majumder,
Mr. Pratik Majumder

....for the petitioner.

Mr. Tapas Kumar Chatterjee

....for the respondents.

Affidavit-in-reply filed by the petitioner
today in Court is taken on record.

This is a writ petition whereby challenge
has been thrown to the charge sheet dated 11th
November, 2017 issued against the petitioner who
is working in the post of Inspector, Railway
Protection Force.

Mr. Majumder, learned advocate appearing
for the petitioner submits that charge sheet dated
11th November, 2017 is devoid of list of documents
as well as list of witnesses by which articles of
charges are proposed to be sustained and
according to Mr. Majumder such issuance of
charge sheet without list of documents and list of
witnesses is contrary to Rule 153.4 of the Railway
Protection Force Rules, 1987(hereinafter referred to

as the said “Rules of 1987”). Therefore according to the petitioner such charge sheet ought not survive. It has further been submitted that if based on this charge sheet dated 11th November, 2017 the disciplinary authority would have initiated the proceedings and concluded the same there would have been gross violation of natural justice since the petitioner had to defend himself without having list of relevant documents and list of witnesses. Placing reliance on Rule 153.4 of the Rules of 1987 it has been argued that the disciplinary authority is required to act within the four corners of the statute and failure to supply the list of documents and list of witnesses vitiates issuance of impugned charge sheet and in support of the same reliance has been placed on the judgment of the Hon’ble Division Bench of this Court, reported in (2000) 3 SLR 202 (Eastern Coalfields Limited & Ors. –vs- Amaresh Roy & Ors.)

Another limb of submission made on behalf of the petitioner is that with closed mind such charge sheet has been issued against the petitioner and at the stage of issuing charge sheet disciplinary authority concluded against the petitioner which is contrary to all canons of disciplinary proceedings. It has further been

submitted that at the time of issuing charge sheet the disciplinary authority appointed enquiry officer and the date and time of enquiry was also fixed which the disciplinary authority is not authorized to do before considering the reply of the petitioner on receipt of charge sheet along with list of documents and list of witnesses.

In addition thereto, Mr. Majumder has argued that the official who issued the charge sheet against the petitioner was not empowered to issue such charge sheet therefore the same cannot be allowed to stand and authorities should not be allowed to proceed on the basis of such faulty charge sheet and the concluding point which has been taken on behalf of the petitioner is that since the criminal proceeding is pending against the petitioner both the criminal proceeding and the disciplinary proceeding cannot be permitted to run simultaneously when the nature of charges are more or less same.

Mr. Chatterjee, learned advocate appears on behalf of the Railway Authorities and submits that one affidavit-in-opposition has been filed in connection with the writ petition though affirmed copy of such affidavit-in-opposition is not found on record and Mr. Chatterjee during course of hearing

has handed over the copy of the said affidavit-in-opposition wherein in paragraph 18 it has been averred that the list of documents and list of witnesses which were required to be supplied in terms of Rule 153.4 have been handed over to the petitioner on 1st February, 2018. Placing reliance on such statement made in the affidavit-in-opposition specially in paragraph 18 it has been submitted since the documents which were required to be supplied to the petitioner has been done during the pendency of the writ petition; let there be direction upon the authorities for concluding the proceeding strictly in accordance with law and on due observance of principles of natural justice.

This Court has heard the learned advocates representing the parties to this writ petition and also perused the relevant documents available on record including the copy of the affidavit-in-opposition which has been placed before this Court today during the course of hearing since the affirmed affidavit-in-opposition is not available on record which has been used on behalf of the Railway Authorities. The copy of the said affidavit-in-opposition is taken on record.

Crux of the issue as framed on behalf of the

writ petitioner is violation of Rule 153.4 (b)(ii) of the Rules of 1987 whereby the disciplinary authority is required to supply the list of documents and list of witnesses while issuing charge sheet against the petitioner and there should be an indication to that extent in the charge sheet. For better understanding Rule 153.4 is quoted below:

“153.4 Where it is proposed to hold an inquiry against an enrolled member of the Force under this rule, the disciplinary authority may order that the enrolled member shall not be transferred to any other place nor given leave without its written permission till the conclusion of the disciplinary proceedings, and the disciplinary authority shall draw up or cause to be drawn up—

- (a) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;*
- (b) a statement of the imputations of misconduct or misbehaviour in support of each article of charge which shall contain,--*
 - (i) a statement of all relevant facts including any admission or confession*

made by the enrolled member of the Force,

(ii) *a list of documents by which and a list of witnesses by whom the articles of charge are proposed to be sustained.”*

On mere perusal of said Rule 153.4 it is clear that disciplinary authority is required to supply the list of documents and list of witnesses by which the authority proposes to substantiate the allegations/charges levelled against the petitioner. In the present case, on perusal of the charge sheet dated 11th November, 2017, it appears that such formality was not complied with. Considering the submissions made on behalf of the writ petitioner, this Court also appreciates that there is a specific requirement of providing list of documents and list of witnesses to the petitioner at the time of issuing charge sheet which has not been done in the present case.

In *Eastern Coalfields (Supra)*, the Hon'ble Division Bench has also held that the statutory authorities are required to act within the four corners of the Statue in the matter of disciplinary proceeding and in consideration of the view

expressed by the Hon'ble Division Bench this Court is also of the view that prior to initiation of enquiry proceeding based on charge sheet in terms of said Rule 153.4, disciplinary authority is required to provide list of documents and list of witnesses and those are required to be provided before offering reply to the charge sheet by the petitioner.

On behalf of the petitioner, it has also been argued that the charge sheet was issued with closed mind and the disciplinary authority came to the conclusion against the petitioner at the stage of issuing charge sheet and the official who issued charge sheet against the petitioner is not empowered to issue such charge sheet in terms of relevant provisions of Rules of 1987. Unfortunately, on perusal of the writ petition, it does not appear to this Court that any case has been made out in support of these two issues and these points have been taken for the first time before this Court during hearing of the writ petition and it appears that these are afterthought. Accordingly, this Court is not required to answer these two issues.

This Court finds substance in the contention of the petitioner that while issuing charge sheet against the petitioner and prior to

consideration of the reply to the charge sheet to be furnished by the petitioner, the disciplinary authority ought not to have fixed the date of enquiry and appointed enquiry officer which has been done in the present case as it appears from the impugned charge sheet dated 11th November, 2017.

It has also been contended that the criminal proceeding and the disciplinary proceeding cannot run simultaneously when the allegations/charges are of similar nature in both the proceedings.

This Court finds it apposite since list of documents and list of witnesses have already been supplied to the petitioner as it appears from paragraph 18 of the affidavit-in-opposition and those were acknowledged by the petitioner on 1st February, 2018, therefore, there is substantial compliance of the formalities which were required to be followed in terms of said Rule 153.4 (b)(ii) and accordingly grants liberty to the petitioner to furnish reply to the charge sheet within a period of thirty days from this date. The disciplinary authority on receipt of such reply to the charge sheet shall take decision whether there is requirement to initiate disciplinary proceeding at all

and if it is decided that the authority will go on with the disciplinary proceeding such decision shall be taken by the disciplinary authority within a period of fortnight from the date of receipt of reply to the charge sheet from the petitioner and the decision to be taken in terms of this order will be communicated to the petitioner within a period of seven days thereafter.

Petitioner will also be at liberty to take the point of permissibility to continue with the disciplinary proceeding during the pendency of the criminal proceeding while offering reply to the charge sheet in terms of this order and the disciplinary authority shall also be required to come to a definite conclusion on such issue while taking decision on reply of the petitioner to the charge sheet.

If ultimately disciplinary authority takes decision to continue with the disciplinary proceeding by holding enquiry after consideration of reply to the charge sheet the authority shall be at liberty to appoint enquiry officer and take other necessary steps for conducting and concluding the proceeding expeditiously. Therefore relevant part of the impugned charge sheet whereby inquiry officer is appointed is set aside.

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

However, there shall be no order as to costs.

In view of the order passed by this Court today on the writ petition, the connected application being CAN 2/2021 also stands disposed of and the interim order passed by this Court stands vacated.

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

(Saugata Bhattacharyya, J.)