

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

Before:

The Hon'ble Justice Lapita Banerji

W.P.A 16826 of 2009

Anjan Chatterjee

Vs.

Union of India & Ors.

For the petitioner : Mr. Achin Kumar Majumdar, Adv.

For the U.O.I. : Mr. Partha Ghosh, Adv.
Mr. Madhu Jana, Adv.

Heard Concluded on : 01.03.2023.

Judgment On : 29.03.2023.

Lapita Banerji, J:- The petitioner at the material point in time worked as an Inspector in the Railway Protection Force (for short, "RPF"). By an order of penalty the petitioner was **removed** from service. The petitioner challenged the Charge Sheet/Memorandum dated September 5, 2007, findings of the Enquiry Officer dated April 5, 2008, Second Show-Cause Notice dated June 13, 2008, Order of Removal by the Disciplinary Authority dated August 6, 2008 and the Order of the Appellant Authority dated June 8, 2009 in the present writ petition.

2. Mr. Majumder, Learned Counsel appearing for the petitioner submitted that in the Charge Sheet directly the time and date of enquiry was fixed.

Furthermore, the Enquiry Officer (E.O) was also nominated. It was also intimated by the Impugned Memorandum of Charges dated September 5, 2007 that in the event the petitioner failed to attend the enquiry proceedings, the same shall be concluded ex-parte. He relied on various Judgments in support of his contention that in the event a charge sheet was issued without giving an opportunity to the delinquent employee to show-cause, then, the said course of action would indicate that the Disciplinary Authority proceeded with a closed mind. There was the real bias in proceeding with the enquiry and the very initiation of the proceedings was vitiated by law. He referred to a Judgment reported in 2002 (2) SLR 266 (**Sanjay Kumar Singh vs. Union of India & Ors.**) and an un-reported Judgment in M.A.T. 429 of 2008 (**Union of India & Ors. Vs. Ram Pravesh Dubey & Anr.**) in support of his contention. Other un-reported Judgments of the Co-ordinate Benches of this Hon'ble High Court have also been relied upon by him.

3. He relies on a Judgment reported in 2001 (2) SCC 330 (**State of Punjab Vs. V.K. Khanna & Ors.**) for the proposition that in service jurisprudence, the authority concerned has to apply its mind upon receipt of a reply to the charge sheet or show-cause, as to whether a further enquiry is called for. In the event it is held affirmative upon due deliberation and consideration, an enquiry is to follow but not otherwise. The non-consideration of the reply to show-cause led to the conclusion that the authorities were biased and proceeded with a closed mind.

4. He further submitted that due to the non-compliance of Rule 248.1 of RPF Rules, 1987, the said Charge Sheet was bad. Under Rule 248.1 it was mandatory on the part of the Disciplinary Authority to either make a preliminary enquiry himself or appoint any other officer of and above the rank of the Security Commissioner for holding the preliminary enquiry against the petitioner who was an Inspector. No preliminary enquiry could have been made by an authority in the rank of an Inspector. But, in the present case, the Prosecution Witness No.4 was an Inspector in the Eastern Railway. He made the Preliminary Enquiry against the petitioner on the basis of a public complaint. The said Preliminary Enquiry Report dated April 5, 2008 was in clear violation of Rule 248.1 of RPF Rules. He submitted that the purported findings of the E.O dated April 5, 2008 suffered from complete non-application of mind. In cross-examination most of the Prosecution Witnesses along with the complainant (P.W.1) and his son/first abducted person (P.W.2) and the second abducted person (P.W.3) admitted that the petitioner did not abduct the two persons but some other RPF Personnel abducted them. He further submitted that the complainant or the abductees did not report the incident to the Police Station and the complainant admitted that he was not aware of the exact happenings as he was not present at the place of occurrence. The son of the complainant, (P.W.2) who was purported to be abducted, in cross-examination admitted that the petitioner was not there at the place of occurrence and he had not seen any transaction of money between his father and the petitioner. His father only paid a sum of Rs.256/- to the T.T.E. The

abducted son (P.W.2) further stated that he heard that the petitioner was present in the scene of occurrence.

5. Mr. Majumder submitted that on the basis of the statements made by various Witnesses, the enquiry officer (EO) could not have come to the finding that one RanjitKumar Jaiswal (RJ)/PW2 and Sanjay Kumar Gupta (SG)/PW3 were abducted at the behest of the petitioner. It has been admitted that the petitioner was not personally present during the abduction. Furthermore, on charge to extortion of money it seemed **very probable** to the E.O that illegal money was extracted from the family members of RanjitJaiswal (RJ) and Sanjay Kumar Gupta (SG) by the petitioner either by himself or through a Constable named Upadhayay, but, there was no supporting evidence for the same. The Enquiry Officer held that the statements that R.J and S.G were arrested during a drive, **appeared** to be “**fictitious**” to him.

6. On one hand the Enquiry Officer recorded that none of the Prosecution Witnesses corroborated the fact that money was given by the complainant to the petitioner for releasing his son and his companion and on the other hand he came to the conclusion that having regard to the circumstances/evidence on record and exhibits, that physical torture was inflicted upon both the abducted/detained persons to terrorize them for extortion of money from their family members by the petitioner.

7. The findings of theEnquiry Officer against Charge-1 is at variance with the actual charge. In the Charge – 1 of the Memo it has been alleged that the petitioner with active assistance of one Upadhyay/Constable abducted two

innocent persons, R.J and S.G, detained them in RPF custody at the outpost, Sheoraphuli without valid reason and tortured them by electric current.

8. After conducting the purported enquiry, the Enquiry Officer held that RJ and SG were abducted by some RPF personnel at the behest of the petitioner. The names of such personnel were not disclosed. The purported findings are vague and ambiguous and based on **surmise** and **conjecture**.

9. The purported findings with regard to charge II were also based on **conjecture** as it **appeared** from **probability** that illegal money had been extorted from the guardians/acquaintances of RJ and SG for their release from illegal detention from RPF custody by the petitioner himself or through Constable Upadhyay/an accomplice.

10. He submitted that the purported findings were against the evidence given by the Prosecution Witnesses and the findings and reasons for the same were contradictory to each other. He referred to decisions reported in 2006 (5) SCC 888 (**M.P. Bijlani Vs. Union of India**), 1999 (2) SCC 10 (**Kuldeep Singh Vs. Commissioner of Police and & Ors.**), 2006 (3) SLR 92 (**Narinder Mohan Arya Vs. United India Assurance Company Limited & Ors.**), 1978 (2) SLR 46 (**Nand Kishore Prasad Vs. State of Bihar & Ors.**), 1972 SLR 85 (**State of Punjab Vs. Bakhtawar Singh & Ors.**) and also a Judgment reported in 1992 (7) SLR 51 (**Allahabad Bank Vs. Sri Pronab Kumar Mukherjee & Ors.**).

11. Furthermore, he contended that the purported Second Show-Cause Notice dated June 13, 2008 issued by the Chief Security Commissioner (CSC)

was tainted with bias and contrary to the principles of Natural Justice. It has been recorded in the Second Show-Cause Notice that:

“There is no doubt from all the evidence/statements on record that the charges levelled against you have been proved/established.”

“Your behavior/conduct goes against all canons of justice expected from an officer at the Post level and if he indulges in such serious violations of human rights and tortures with intention to extort money from persons, there can be no place for such an officer in the Force.”

12. He submitted that it was a Cardinal Principle of Law that after the report of the Enquiry Officer is supplied to the delinquent employee and an explanation is asked for, the Disciplinary Authority would have to apply its mind as to whether the delinquent employee is guilty of the charges upon consideration of the reply/defence and on the basis of all the evidence of record. But from the language of the Second Show-Cause Notice, it is evident that the Enquiry Officer came to the final/firm conclusion that the charges against the petitioner was proved/established. The charges were very serious in nature and the involvement of the petitioner was clear from the circumstances of the case. The findings in the Second Show-Cause Notice dated June 13, 2008 is contrary to the principles of Natural Justice.

13. Without analyzing the evidence and the defence of the petitioner, the Disciplinary Authority came to the firm conclusion of guilt and only issued show-cause against the purported punishment of **Removal** from service. The same not only is violative of principles of Natural Justice but also indicative of the existence of bias against the petitioner. The Second Show-Cause Notice is at variance with the charges framed in the Charge Memorandum. It was held

that the behavior/conduct of the petitioner goes against all canons of justice expected from an officer and if he indulges in serious violations of human rights and torture with the intention to extort money from persons, there can be no place for such an officer in the Force. The said Charge has been purportedly introduced without giving any opportunity of hearing to the petitioner and the same is not permissible under the law.

14. He relied on Supreme Court Service Law Judgments, Volume 5 at page 509 (**State of Assam &Anr. Vs. Bimal Kumar Pandit**), 1981 (1) SLR 533 (**NripendraNathVs. Union of India**), 1991 (1) CLJ 343 (**Bishnu Prasad Vs. Union of India &Anr.**).

15. He then argued that the purported findings/recommendations of the original Disciplinary Authority/Senior Divisional Security Commissioner dated June 2, 2008 was suppressed from the petitioner and he was not given an opportunity to make representations against such purported findings. Since the Disciplinary Authority after going through the charges recommended a punishment of dismissal from service, the said findings dated June 2, 2008 constituted material before the punishing authority, the same were a part of disciplinary proceedings and the petitioner was entitled to submit his explanation against the said purported findings. Denial of such opportunity led to the violation of principles of natural justice. He relies on decisions reported in 1992(5) SLR 598 (**State Bank of India & Ors. Vs. D.C. Aggarwal & Anr.**).

16. According to Schedule 3 of RPF Rules, 1987, the Senior Divisional Security Officer got the power to impose punishment like reduction in rank/grade or reduction to a lower stage in existing scale of pay. But, instead of imposing such punishment, the Senior DSC came to the conclusion that the petitioner deserved punishment like “**removal**” from service. The Order of **Removal** dated August 6, 2008 has been challenged by him for being perverse since it suffers from non-application of mind and is at variance with the initial charge.

17. The Order of the Appellate Authority dated June 8, 2009 issued by the Director General, RPF did not conform to Rule 217.3 of the RPF Rules. It suffered from non-application of mind and is a non-speaking order that is not supported by any reason. None of the grounds taken in appeal whatsoever considered by the Appellate Authority and no reason for arriving at the said conclusion was disclosed to the petitioner.

18. Such an unreasoned and non-speaking order was not permissible in law. He relied on the decisions reported in AIR 1986 SC 1040 (**R.P. Bhatt Vs. Union of India & Ors.**), AIR 1986 SC 1173 (**Ram Chander Vs. Union of India & Ors.**), 2009 (4) SLR 78 (**Roop Singh Negi Vs. Punjab National Bank & Ors.**).

19. Therefore, he prayed for quashing of the entire proceedings and reinstatement with back wages and consequential reliefs.

20. Mr. Ghosh, Learned Counsel appearing on behalf of the Union of India, submitted that the RPF Rules itself permitted fixing of a time and date of enquiry while issuance of Memorandum of Charges. He submitted that the

Second Show-Cause Notice was not required to be given by the Disciplinary Authority under Rule 154.7 of the RPF Rules and the findings arrived at by the Enquiry Officer is on the basis of records and exhibits and there was no infirmity in the said findings. A sum of Rs.256 was paid to T.T.E. to cover the illegal actions on the part of the petitioner and his accomplice Constable Upadhay.

21. During the enquiry, the PW2 and PW3 (abducted persons) gave evidence that they were physically tortured. The Disciplinary Authority confirmed the guilt of the petitioner after disclosing sufficient reason.

22. Since the DSC was of the opinion that the punishment of **dismissal/removal** from service was not within the competence of the Divisional Security Officer/RPF, the case was forwarded to Chief Security Commissioner (CSC)/RPF as per the Rules. The punishment that was imposed by the Disciplinary Authority on August 6, 2008 had all the reasons in detail for imposing such punishment.

23. The Appellate Authority vide its Order dated June 8, 2009 saw no reason to interfere with the Order of the Disciplinary Authority. The quantum of punishment was within the sole discretion/power of the Disciplinary Authority once misconduct stood proved. Therefore, the writ Court should not interfere with the quantum of punishment and should not decide the issue whether or not the punishment was proportionate to the gravity of the offence.

24. The Disciplinary Authority is to decide the charges based on “preponderance of probabilities” and not by using the standard of “beyond all reasonable doubt”.

25. He relied on an un-reported Judgment of the Hon’ble Divisional Bench of This High Court in F.M.A. 839 of 2001 (**Manoj Kumar Singh Vs. Union of India & Ors.**) for supporting his contention that the Writ Court may not act as a Court of Appeal in case of the departmental proceedings. He submitted that reasons may not have been avoidable in the Order of the Appellate Authority and the said reasons were available in their internal recordings of the proceedings. So it could not be argued that the order of the Appellate Authority was without reasons. He filed a supplementary affidavit in Court to bring such internal documents on record.

26 (i).Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that:

- (a) There were two charges framed against the petitioner in the memorandum of Charges. The said charges are as follows:

“CHARGE – I – Shri A. Chatterjee, IPF/SHE/OP is charged for abuse of authority in that:-

On 01.017.07 Shri A. Chatterjee, with active assistance of C/9275 – D.D. Upadhyay abducted two innocent persons, namely RanjitJaiswal and Sanjoy Kr. Gupta and detained them in custody of RPF/OP/JHE without valid reason and tortured them by the means of Electric current.

As such he has violated provisions mentioned in Rule – 146.8(a&b)) of RPF Rules – 1987.

CHARGE – II

Shri A. Chatterjee, IPF/SHE/OP is charged for corrupt and improper practice in that:-

On 1.7.07, Shri A. Chatterjee along with C/9275 - D.D. Upadhyay asked the detained persons namely Ranjit Jaiswal and Sanjoy Kr. Gupta to pay Rs.90,000/- and Rs.55,000/- respectively for their release from custody. Further those two persons have been falsely shown as travelling without Ticket and charged for unauthorized travelling. As such, he has violated provision mentioned in Rule – 147.7(iii) of RPF Rules – 1987.”

(ii) Charge – I could not be proved on evidence and was subsequently modified by E.O and the petitioner was held to be guilty since the said two people RJ and SG were held to be abducted by some RPF personnel at the behest of the petitioner. It was categorically found that the petitioner was not personally present during abduction based on the evidence of PW2 and PW3 (abductees). Charge- I had two parts:- (a) The petitioner with the help of constable Upadhyay abducted the innocent persons RJ & SG and (b) the petitioner tortured them with electric current.

(iii) The E.O came to the finding that several anomalies were detected with regard to the time of the unlawful arrest of RJ and SG but how such anomalies were detected have not been reasoned. The E.O came to the finding that the abducted persons were detained in RPF custody sometime before 5 p.m. It was categorically recorded that there was no evidence of abduction by the petitioner of RJ (PW2) and SG (PW3) or PW4 (preliminary fact finding authority). During the examination the PW2, PW3 and PW4 stated that they had not been abducted by the petitioner, ASI/J.L. Chowdhury and Constable, D.D. Upadhyay on July 1, 2007 from Basudeopur More.

(iv) Despite the said finding, the E.O came to the conclusion that RJ/PW2 and SG/PW3 were abducted at the instance of the petitioner and altered the charge no.1.

(v) The second part of Charge-I related to torture of RJ and SG by use of electric current. The Enquiry Officer found that there was no evidence to prove such allegation and no instruments came out (produced or referred to) in the course of enquiry.

(vi) It was also found that no diary/medical report was produced regarding torture of the aforesaid abductees. Furthermore, they did not lodge any complaint/FIR with the local police.

(vii) After coming to the aforesaid findings, the Enquiry Officer reached a conclusion that from overall circumstances and indicators it “**appeared**” that some physical torture inflicted upon the abductees to terrorize them to call their guardians to come and pay the ransom amount.

(viii) Again, there was no evidence to show that the abductees were tortured by electric current as was alleged in charge-I.

(ix) With regard to Charge-II, regarding the allegation of the petitioner being involved in corrupt and improper practice by asking for Rs.90,000/- and Rs.55,000/- from RJ and SG for their release from custody and showing that two persons were falsely alleged to have been shown as travelling without tickets, thereby, violating the provisions of

Rule 146.7(iii) of RPF Rules – 1987, it was found by the Enquiry Officer that:

- (a) None of the PWs corroborated the fact that the complainant's (PW1's) statement that he paid Rs.90,000/- to the petitioner for release of his son from the custody of RPF/Sheoraphuli Outpost;
- (b) However, with regard to the allegation of payment of Rs.55,000/- for release of SJ, three witnesses were called and out of them only one corroborated allegation of payment of Rs.55,000/- to the Constable, Upadhyay for release of SG. The other two persons left by refusing to get themselves examined by the Enquiry Officer.
- (x) Even in such circumstances the EO held that it appeared **very probable** that illegal money to the extent of Rs.90,000/- and Rs.50,000/- had been extorted from the guardians of RJ and SG, respectively, for their release from illegal detention by the petitioner or through Constable, Upadhyay. There was no evidence of the money being given to petitioner. The EO found that the fact that the RJ and SG were arrested during a drive at Sheoraphuli Station by ASI, Chowdhury of RPF **"appeared fictitious"** to the EO.
- (xi) No reasons have been given as to why the said drive **"appeared"** to be **"fictitious"** and why the EO came to the finding that it had been falsely shown that the two persons have been travelling without tickets.

(xii) Still, the EO held the petitioner to be guilty of Charge-II.

(xiii) This Court is of the view that the decisions of **Bijlani**(Supra), **Kuldeep Singh**(Supra), **Narinder Mohan Arya**(Supra), **Nand Kishore Prasad** (Supra), **Bakhtawar Singh**(Supra) and **Sri Pronab Kumar Mukherjee**(Supra) come to the aid of the petitioner as the findings of the E.O are contradictory to the conclusions arrived at by him.

(xiv) It is true that the jurisdiction of the court in judicial review is limited. However, in disciplinary proceedings being quasi-judicial in nature, there has to be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial, “beyond all reasonable doubt”, still upon analyzing the documents the Enquiry Officer performing a quasi-judicial function, must arrive at a conclusion that there is “preponderance of probability” to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of **surmises** and **conjectures**. He cannot inquire into the allegations with which the delinquent officer has not been charged with.

(xv) In the present case, the Enquiry Officer has refused to consider the relevant evidence on record and proceeded to come to his findings on the basis of **surmises** and **conjectures**. He has also proceeded to charge the delinquent officer with a charge that was not there in the initial charge

sheet. ***Suspicion*** or ***presumption*** cannot take a place of ***proof*** even in a domestic/departmental enquiry.

(xvi) This Court is aware of the fact that it is not sitting in appeal against the findings/order of the Disciplinary Authority and cannot get into the question of sufficiency of evidence but where there is no evidence at all or there is contrary evidence, then, the decision making process of the Disciplinary Authority including the findings of the Enquiry Officer based on which the Order of Punishment was issued, needs to be reviewed.

(xvii) This Court finds that there was no evidence at all to substantiate/corroborate the charge that the petitioner had abducted the abductees/PW2 and PW3 or had tortured them with electric current.

(xviii) In fact, the evidence of PW 1, 2, 3 and 4 goes to show that neither the petitioner nor the Constable, Upadhyay were present during the abduction. Despite such evidence the E.O altered Charge-I and came to the finding that the abduction was done at the *behest* of petitioner. It is perplexing as to how the E.O came to such finding.

(xix) There was no witness corroborating the fact that the complainant/PW1 paid a sum of Rs.90,000/- to the petitioner for release of his son, RJ/P.W.2.

(xx) One witness, PW 10, who was closely associated with SG corroborated the fact that Rs.55,000/- was paid to Constable, Upadhyay for release of SG but even the said witness did not corroborate the fact

that the same was paid to the petitioner or collected at the behest of the petitioner.

(xxi) Therefore, there is no evidence at all against the petitioner in accepting money which was a corrupt and improper practice.

(xxii) This Court also finds that there was no reason/evidence for the Enquiry Officer to come to the finding that the drive at Sheoraphuli Station “**appeared**” to be “**fictitious**”. On the basis of “**surmises/conjectures**”, the Enquiry Officer came to the finding that the party charged/petitioner was found guilty on both charges levelled against him. The Enquiry Officer himself sought to modify Charge – I against the petitioner and found the petitioner guilty of the modified charge.

(xxiii) Based on the Enquiry Officer’s report, the Show-Cause dated June 13, 2008 was issued where by the petitioner was directed to show-cause why the punishment of “**removal from service**” should not be imposed on him.

(xxiv) In the said Show-Cause, the Chief Security Commissioner held that “*there was no doubt from all the evidences/statements on record that the charges levelled against the petitioner had been proved/established and the said charges are very serious in nature.*” It was held in the second Show-Cause notice that the **involvement** of the petitioner was clear from the **circumstances** of the case. It is apparent from the language of the Show-Cause dated June 13, 2008 that the Chief Security

Commissioner/CSC held that the petitioner was involved in the case based on the **circumstances** and not on the **evidence** of the witnesses who were present during the enquiry proceedings. In the Impugned Order dated August 6, 2008, the CSC held that the evidence on record proves that the abduction was organized by the petitioner. Therefore, the allegation that the Enquiry Officer deviated from the charge framed, was not valid. He further held that there was sufficient proof and witnesses were examined and documents were produced during enquiry. Charges were very specific and framed under the provisions of RPF Rules. The party charged/petitioner was given several opportunities to produce defence witness/defence documents. Therefore, the Enquiry Officer conducted the proceedings in accordance with the RPF Rules.

(xxv) He held that the petitioner in order to cover up his illegal activities, arranged realisation of charges of railway tickets from RJ and SG by calling the Ticket Checking Staff and got the EFT issued.

(xxvi) CSC also found that the responsibility of ticket checking and realisation of charges from the railway passenger vested with the Commercial Department.

(xxvii) It is perplexing to note that the CSC before deciding the issue whether or not a drive was actually conducted at Sheoraphuli Station on July 1, 2007, neither called for a witness from the Commercial Department nor questioned a witness from the Ticket Checking Staff on that issue.

(xxviii) Neither the Enquiry Officer found it necessary to enquire from their staff nor did the CSC/Punishing Authority thought it necessary to question them as witnesses before holding that the abductees were **shown** to have been arrested during a drive and the said defence/factual submission appeared to be **fictitious**. The CSC did not apply its mind to the conclusions arrived at by the Enquiry Officer based on documents/evidence on record. The E.O took into account irrelevant considerations and failed to take into account relevant considerations. The findings of the E.O were so unreasonable that no reasonable person could have arrived at the same base on the materials/evidence placed on record.

(xxix) Even if there was no requirement of issuance of Second Show-Cause Notice, under the RPF Rules since the same was issued and a response was called for from the delinquent officer, a conclusion had to be arrived at in accordance with law by application of mind. Since the reply was invited from the delinquent officer on the quantum of punishment to be imposed, the said Show-Cause had to be disposed of by taking into consideration the reply that was given by the delinquent officer. Had the Disciplinary Authority not issued the second Show-Cause in terms of the RPF Rules, then there would have been no question of consideration of the reply given by the delinquent officer in respect to the Second Show-Cause Notice. The contents of the second

show cause notice can be considered to find out whether or not the punishing authority proceeded with a closed mind.

(xxx) The cases of **Sanjay Kumar Singh** (Supra), **Ram PraveshDubey**(Supra) and **V.K. Khanna**(Supra) do not come to the aid of the petitioner since the RPF Rules itself provide for fixing the time and date of enquiry while issuance of Memorandum of Charges. The proceedings as stipulated under 153.4 and 153.5 have been followed by the Enquiry Officer. Rules 153.4 and 153.5 are produced herein under:

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 misbehavior into definite and distinct articles of charge;*
- (b) a statement of the imputations of misconduct or misbehavior 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.*

153.5 The disciplinary authority shall deliver or cause to be delivered to the delinquent member, at least seventy-two hours before the commencement of the inquiry, a copy of the articles of charge, the statement of imputations of misconduct or misbehavior and a list of documents and witnesses by which each article of charge is proposed to be sustained and fix a date when the inquiry is to commence; subsequent dates being fixed by the Inquiry Officer.”

(xxxi) The petitioner was an Inspector in RPF. From the table appearing in 248.1 of the RPF Rules, it appears that in the event of a person worked in the rank of Inspector/Assistant Security Commissioner, then, the officers 'of' and 'above' the rank of a Security Commissioner could conduct the enquiry proceedings. In the present case, the Divisional Security Commissioner conducted the enquiry proceedings. Therefore, there was no violation of the procedure as framed in Rule 248.1 of the RPF Rules as per the table contained in **Schedule III** of the RPF Rules. Under column 6 of **Schedule-III** the Divisional Security Commissioner/Security Commissioner could act as a Disciplinary Authority for persons in the Rank of Inspectors and award punishment upto reduction of rank/grade. Only if a higher punishment was proposed the case had to be considered by an authority under column 4, as was the case here. Only the preliminary fact finding was done by PW4/an Inspector and as such it did not vitiate the enquiry proceedings.

(xxxii) The Impugned Order of **Removal** was passed on August 6, 2008 by the CSC without taking into account the defence /reply of the petitioner. Thereafter, the petitioner preferred an appeal on August 25, 2008.

(xxxiii) The said appeal was disposed of by an Impugned Order dated June 8, 2009. The Impugned Order is as follows :

*"I have carefully considered the appeal submitted by Shri Anjan Chatterjee, Ex IPF/SCNL/HWH-I/ER along with all the relevant documents on record. It appears that the punishment awarded is **fair** and **adequate***

and does not need to be interfered with. I find no merit in the appeal and hence the petition is rejected.”

(xxxiv) The said finding of the Appellate Authority is not in accordance with 217.4 of the RPF Rules regarding the disposal of the appeals.

(xxxv) Under the said Rule, the appeals were required to be disposed of by a **speaking order**. The **speaking order** of the Appellate Authority should have been communicated to the petitioner. In the instant case, the *cryptic* and *non-speaking order* was communicated to the petitioner.

(xxxvi) During the course of hearing a supplementary affidavit was filed on behalf of the respondents. From the said supplementary affidavit Mr. Ghosh, appearing on behalf of the respondents, tried to place reliance on a document to show that a **speaking order** was passed by the Appellate Authority and retained as an internal document.

(xxxvii) Whether or not the purported document was a **speaking order** or not, the same was *not communicated* to the petitioner. The respondents cannot be now allowed to improve their case by filing a purported speaking order retained with their internal records. The reason for the Appellate Authority to pass a **speaking order** was for the delinquent employee to understand and appreciate *how* and *why* the charges levelled against him stood proved and how the defence filed by him had been considered and rejected by the appellate authority justifying the quantum of punishment.

(xxxviii) It is a Cardinal Principle of Law that “*justice should not only be done but seen to be done*”. It is a principle of Natural Justice that no one should be “*condemned unheard*”.

(xxxix) The petitioner had a right to have himself heard and his defence being considered by the Appellate Authority by application of mind. The actions/conduct of the Appellate Authority was in breach of the legal rights of the petitioner and the RPF rules.

(xl) Even assuming that purported reasons were given for dismissal of the appeal by way of an internal document, even then, upon perusal of the purported document, it appears to this Court that the defence of the petitioner was not considered and the findings of the Enquiry Officer were not analyzed by the Appellate Authority.

(xli) The cases of **Ram Chander** (Supra) and **R.P. Bhatt** (Supra) **Roop Singh Negi** (Supra) come to the aid of the petitioner in that *unreasoned* and *non-speaking Orders* were not permissible in law.

27. In the light of the discussions above, this Court sets aside and/or quashes the Order of the Appellate Authority dated June 8, 2009, the Order of Removal dated August 6, 2008 passed by the disciplinary authority, the second Show-Cause Notice dated June 13, 2008 and the purported findings of the Enquiry Officer dated April 5, 2008.

28. This Court is of the view that even if there was no necessity to give a second show-cause notice under 154.7 of the RPF Rules to invite a reply to the quantum of punishment but since the second Show-Cause Notice was given,

the same had to be dealt with in accordance with the law. Once the Second Show-Cause Notice was issued, this Court would have to consider whether or not the enquiry/proceedings were conducted with the closed mind or with fairness and in accordance with the principles of Natural Justice. Here, the language of the second Show Cause Notice indicated a closed mind and bias against the petitioner.

29. Even if there was no infirmity in the initial issuance of the charge sheet the Respondent authorities failed to prove both the charges. Therefore, the charge sheet dated September 5, 2007 is set aside and/or quashed.

30. Accordingly, the petitioner is directed to be reinstated in service immediately with effect from August 6, 2008 being the date of **Removal** with 50% of his back wages payable to him since August, 2008. The said arrears will be paid within 6 months from date. The petitioner will also receive the notional benefits of service.

31. With the directions aforesaid, the **WPA 16826 of 2009** is **disposed of**.

32. All parties to act on the downloaded server copy of this order from the website.

33. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance of all the requisite formalities.

(Lapita Banerji, J.)