

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 25230 of 2007

Rakesh Kumar Mishra
Vs.
Union of India & Ors.

For the petitioner : Mr. Achin Kumar Majumder
Mr. Ananya Adhikary

For the respondents : Mr. Subrata Roy

Heard on : 8th August, 2023.

Judgment on : **8th August, 2023.**

Raja Basu Chowdhury, J:

1. The writ petition was filed, *inter alia*, challenging 4 several charge-sheets 3 of them dated 16th October, 2007 and the other dated 8th November, 2007.
2. The petitioner is an Inspector of Railway Protection Force of Eastern Railway (hereinafter referred to as the "RPF") and at the relevant point of time was posted at RPF Post, T.E. Coy, Malda under Malda Division.

3. The petitioner contends that while he was posted at the aforesaid RPF post, he was entrusted with a duty to conduct a raid and to enquire a case of large number of cable theft from Malda and submit a special report.
4. It is the petitioner's case that as per the direction of the Chief Security Commissioner, RPF, Eastern Railway, the petitioner conducted the raid and recovered 3079 metres of cable from 3 drums loaded in a wagon and accordingly a case was registered at the Malda yard.
5. Following the recovery, the criminals involved in the said theft were arrested and the petitioner had submitted his detailed report. Since, according to the petitioner, certain RPF personnel were involved in the aforesaid racket, the Chief Security Commissioner, RPF, Eastern Railway by a supervisory note dated 7th September, 2007, had directed to the Divisional Security Commissioner to arrest the criminal gang responsible and also directed disciplinary proceedings against RPF Officers and staff found to be involved in the aforesaid offence.
6. According to the petitioner, the respondent nos. 3 and 4 with a view to protect certain RPF staff and officers and to hush up the aforesaid matter, had directed the petitioner to hand over all documents in connection with the aforesaid incident. Such fact would corroborate from the copy of the order issued by the

Deputy Security Commissioner, RPF, Eastern Railway, Malda dated 24th September, 2007.

7. It is the petitioner's case that on 24th September, 2007, the respondent no.4 issued an order of transfer thereby posting the petitioner from T.E. Coy, Malda, to RPF post Bhagalpur. Such order of transfer was issued despite, according to the petitioner, the respondent no.4 having no power or jurisdiction to effect such transfer. In the interregnum, the petitioner fell ill and was treated by the District Medical Officer, Burdwan. Since then, the petitioner had brought the aforesaid fact to the notice of the Chief Security Commissioner, RPF, Eastern Railway, by his letter dated 27th September, 2007. The petitioner states that Divisional Security Commissioner, RPF, Eastern Railway with a view to victimize the petitioner had issued 3 several charge-sheets all dated 16th October, 2007. The same was followed up by another charge-sheet dated 8th November, 2007.
8. Challenging the aforesaid charge-sheets, the present writ petition has been filed.
9. Mr. Majumder, learned advocate representing the petitioner, by referring to the aforesaid charge-sheets, inter alia, including the charge-sheet dated 8th November, 2007, submits that while issuing the aforesaid charge-sheets, the respondents themselves had made up their mind to hold an enquiry against the

petitioner and to punish him. No show-cause notice was issued prior to issuance of the charge-sheets and no opportunity was given to the petitioner to explain his conduct.

10. By further referring to the charge-sheet dated 8th November, 2007, he submits that the Disciplinary Authority, had already while issuing the charge-sheet, held the petitioner guilty of the charges. The mind set of the Disciplinary Authority is apparent from the statement of allegation in the charge-sheets where the Disciplinary Authority has, *inter alia*, recorded as follows:-

“The whole episode clearly indicates IPF/R. K. Mishra did his some own gains and for compelling the competent/controlling/Disciplinary Authority too i.e. DSC to face embarrassing situation”.

11. Mr. Majumder still further submits that even before the petitioner could responded to the charge-sheets, the Disciplinary Authority had appointed the Enquiry Officer. Such fact would appear from page 61 of the writ petition.
12. When the writ petition was moved, a Co-ordinate Bench of this Court, taking into consideration the principles laid down in the case of ***State of Punjab vs. V. K. Khanna & Ors.***, reported in **AIR 2001 SC 343** was, *inter alia*, pleased to pass an interim order in favour of the petitioner thereby, restraining the respondents from further proceedings on the basis of the

aforesaid charge-sheets dated 16th October, 2007 and 8th November, 2007. Affidavits have since been exchanged.

13. Subsequently, when the aforesaid matter came up for consideration, after arguing the matter for some time, Mr. Roy, learned advocate representing the respondents, submits on instructions that though, the respondents have used an affidavit denying all material allegations, however, since the enquiry could not be proceeded by reasons of the interim order and to put an end to the controversy at hand, the respondents are willing to withdraw the aforesaid charge-sheets with liberty to proceed against the petitioner in accordance with law.
14. In view of the fair stand taken by Mr. Roy, learned advocate representing the respondents, I am of the view that the writ petition can be disposed of by quashing the aforesaid charge-sheets, however, at the same time, by granting liberty to the respondents to proceed against the petitioner in accordance with law in respect of the self same allegations forming subject matter of the charges.
15. In view thereof, the three charge-sheets all dated 16th October, 2007 and the charge-sheet dated 8th November, 2007 issued by the respondent no.4 stand quashed and/or set aside.
16. The aforesaid order, however, shall not stand in the way of the respondents proceeding against the petitioner in respect of the

selfsame allegations, forming subject matter of the charges, if so advised in accordance with law, after following the principles of natural justice.

17. With the aforesaid observations/directions the writ petition stands disposed of.
18. There shall, however, be no order as to costs.
19. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)

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