

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 444 of 2012

Vijay Kumar Singh
Vs.
Union of India & Ors.

For the petitioner : Mr. Achin Kumar Majumdar

For the respondents : Ms. Dipika Sarkar
Ms. Shreya Deashi

Heard on : 15th April, 2024

Judgment on : **15th April, 2024.**

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, challenging the charge-sheet dated 3rd June, 2010, the findings of the Enquiry Officer dated 31st March, 2011, the second show-cause dated 5th April, 2011, the final order dated 30th April, 2011 and the order passed by the Appellate Authority dated 30th September, 2011.
2. The petitioner was a Sub-Inspector of Railway Protection Force (RPF) of Eastern Railways and at the material point of time was posted as RPF, GB Unit, Asansol. While being so posted, by an order dated 7th April, 2010 passed by the Divisional Security

Commissioner, RPF, ER, the petitioner was placed under suspension in contemplation of a departmental proceeding.

3. The said order of suspension was, however, subsequently revoked and the petitioner was reinstated in service. Later, he was served with a copy of a draft charge-sheet dated 2nd May, 2010. According to the petitioner, the respondents while issuing the charge-sheet had already made up its mind to hold a major penalty disciplinary proceeding in terms of Rule 153 of the RPF Rules, 1987 (hereinafter referred to as the Rules of 1987). The petitioner had duly responded to the same. It appears that by an order dated 3rd June, 2010 the disciplinary authority while observing the defence statement submitted by the petitioner to be not convincing while proposing to hold an enquiry caused the charge sheet dated 3rd June, 2010 to be issued. The petitioner contends that the enquiry proceeding was conducted in an irregular manner. Despite the petitioner repeatedly calling upon the respondents to make available copies of relevant documents the same were not supplied. In fact, when the petitioner on being called upon by the Enquiry Officer by communication in writing dated 17th November, 2010, to disclose the list of defense witness, had by his letter dated 24th November, 2010 requested the Enquiry Officer to ensure production of five several persons attached with the respondents as defense witness, such request

was not only turned down but the witness action of the petitioner was also declared to be closed.

4. Mr. Majumdar, learned advocate representing the petitioner submits that Enquiry Officer without following due procedure had concluded the enquiry. The Disciplinary Authority without taking into consideration the representation made by the petitioner, to the Enquiry Officer's report had passed the final order dated 30th April, 2011 and imposed a penalty of reverting the petitioner to the rank of Assistant Sub-Inspector, for a period of two years with cumulative effect and the suspension period to be treated as suspension. Although, the petitioner had preferred an appeal the Appellate Authority did not take into consideration the grounds on which such appeal had been filed and had mechanical by an order dated 30th September, 2011, while agreeing with the findings of the Enquiry Officer and the Disciplinary Authority, only reduced the penalty from two years to one year without any modification in the nature of penalty imposed. According to Mr. Majumdar, the final order as also the appellate order stands vitiated on account of violation of principles of natural justice. Pointing out to the procedural irregularities committed by the Enquiry Officer which have been overlooked both, by the Disciplinary Authority and the Appellate Authority it is submitted that in the facts as noted above both the final order as also the appellate order needs to be set aside.

5. Ms. Sarkar, learned advocate representing the respondents on the other hand submits that the petitioner was given all opportunities to defend. By drawing attention to the charge-sheet dated 3rd June, 2010 it is submitted that along with the charge-sheet which was issued in terms of Rule 153 of the Rules of 1987, the petitioner was supplied with the Articles of charge in annexure I, the statement of allegation in annexure II, and the list of documents and witness in annexure III & IV respectively. All documents which formed the part of the disclosure in the aforesaid charge-sheet were made over to the petitioner. Since, the petitioner wanted additional documents which according to the Enquiry Officer were not relevant, were not supplied. However, at the same time, the Enquiry Officer by his communication in writing dated 11th August, 2010 had also advised the petitioner to make appropriate representation to the Disciplinary Authority. Since, the petitioner did not make any further representation, no further documents were made available to him. The respondents cannot be faulted for not making available documents which did not form part of the disclosure in the chargesheet.
6. In so far as alleged refusal on the part of the Enquiry Officer to allow production of defense witness, it is submitted that all the aforesaid witnesses which were called for by the petitioner were involved in RP(UP Act) Case No. 1 of 2010 dated 6th April, 2010 and as such the Enquiry Officer cannot be faulted for declining to

make available the aforesaid person as defense witnesses. By drawing attention of this Court to the Appellate Authority's order she submits that the Appellate Authority in due consideration of the case made out by the petitioner had reduced the punishment. In view thereof, no interference is called for.

7. Heard the learned advocates appearing for the respective parties and considered the materials on record. It is noticed that a charge-sheet dated 3rd May, 2010 was issued. The articles of charges levelled against the petitioner are extracted below:

“Articles of charge against SIPF/V.K.Singh of CIB/Asansol.

Shri V. K. Singh, Sub-Inspector/RPF of CIB/Asansol is charged for gross neglect of duty and serious violation of his duty for the following omissions and commissions.

Article – 1

Shri V. K. Singh, Sub-Inspector/RPF of CIB/Asansol inspite of being posted as Sub-Inspector/RPF of CIB/Asansol in Asansol Division since 21.04.2005, failed to collect any intelligence and failed to monitor the illegal activities of the firm M/S Hira Concast Ltd., situated at Mouza Nakra Joira on Dendua Kalyaneswari Road, P.S. – Salalpur, Dist. Burdwan, West Bengal, near Sitarampur Railway Station in Asansol Division, receiving stolen Railway iron materials, inspite of the fact that the said firm was repeatedly searched by different units of RPF of Asansol Division and by Shri V. K. Singh, himself on 15.07.2008. He also failed to collect intelligence on presence of huge quantity of stolen Railway iron materials in M/S Hira Concast Ltd. on 06.04.2010, let alone search and recover, though the team of CIB/HQs. searched and recovered different type of Railway stolen iron materials valued, Rs.5,80,000/- from the said firm M/S Hira Concast Ltd., on 06.04.2010, with arrest of 01 offender. Hence Shri V. K. Singh, SIPF of CIB/Asansol is charged for gross neglect of duty and violation of duty committing

breach of rule 146.2(i), 147(i) and 147(ii) to be read with rule 41.2(vii) and (viii) of RPF Rules 1987.

Article – 2

Shri V. K. Singh, Sub-Inspector/RPF of CIB/ Asansol along with Inspector A.M. Kisku of STN RPF Post conducted an illegal search in the factory premises of M/S Hira Concast Ltd., situated at Mouza Nakra Joira on Dendua Kalyaneswari Road, P.S. – Salalpur, Dist. Burdwan, West Bengal on 15.07.2008 vide D. E. No.661 dtd. 15.07.2008 of RPF Post Sitarampur without search warrant and detained 05 lorries, bearing Nos. WB-25B/7287, WB-25A/4534, WB-03/5966, WB-23A/5357, WB-25B/8977 loaded with CST-9 plates of the Railways from the said factory premises. But he released the lorries subsequently without taking any legal action and did not submit any written report of his searching of M/S Hira Concast Ltd., illegally, detaining and releasing CST-9 plates loaded in 05 lorries to DSC/ASN.

Shri V. K. Singh, SIPP of CIB/Asansol committed gross neglect of duty in that he entered and conducted a search without lawful authority without any search warrant, made no seizure in breach of Section 10 of RP(UP) Act and rule 147(xviii) of RPF Rules, 1987 and again failed to submit any written report to his superior officer i.e. DSC/Asansol to that effect.

Hence, Shri V. K. Singh, Sub-Inspector/RPF of CIB/Asansol is charged for gross neglect of duty and entering and conducting search unlawfully thereby committing breach of rule 146.2(i) and 147(xviii) of RPF Rules, 1987.

Hence charged under rule, 153 of RPF Rule 1987.”

8. Records reveal that immediately upon receipt of draft charge-sheet, which was later confirmed the petitioner by communication in writing dated 6th May, 2010 had sought for certain documents listed thereat, by calling upon the Disciplinary Authority to favour him with those documents as identified in a list, for him to effectively defend the charges and prepare his response/defense. The particulars of documents as

sought for by the petitioner by communication dated 6th May, 2010 is extracted hereinbelow:

“List of documents required:

1. Copy of Statement of the arrested person namely Sandeep Kumar in connection with RPF/Post/Sitarampur case No.01/2010. Dated 07.04.2010. U/S 3(a)RP(up) Act.
2. Copy of post diary of Sitarampur post made by IPF/STN dtd. 06.04.2010 after returning from raid/search jointly with HQ/CIB from Hira Concast/Nakrajuri and Regn. of RP(up) Act case at STN Post vide No.1/10 dtd. 07.04.2010.
3. Copy of theft report of the seized materials if collected/connected by E.O. of RP(UP) Act case No.01./2010 dtd. 07.04.2010 regd. at RPF/Post/STN.
4. Copy of enquiry report submitted by E.O. on different dates (17.4&06.5.2010) in the Court of Ld. ACJM/ASN on verification of the papers received from Ld. ACJM court/Asansol as well as the auctioned papers seized vide seizure list 1&2 into the RP(up) Act case 1/2010 dtd. 07.04.2010.
5. Copy of statement of PWI/Patratu whose statement was recorded by the E.O. of the case.
6. Copy of challan of A.P. Enterprises Bandhaghat/Howrah vide No.6/10-11 dated 03/04/2010 as mentioned vide seizure list 1 in S.L. No.6.
7. Copy of sale order of Store department of E.Rly. vide No. 08/2/10/09/082 dated 23/10/2009 in favour of Purchaser N.K.Louha Udyog(P) Ltd. of Belur for sale of Rail vide seizure list-1.
8. Copy of Bill No. P.E./01/PTRU/2010-11. Dated 03/04/2010 of M/S Pooja Enterprises of black more main road Patratu issued to M/S TAJA Agrico Industries Ltd. 94/C Lal Babu Road Howrah as mentioned vide seizure list-2 in S.L. No.7(I).
9. Copy of challan vide No.PE/01/PTRU/2010 dated 03/04/2010 as mentioned vide Seizure list 2 in SL No.7(ii).

10. *Copy of requisition and issue note issued to the purchaser M/S Pooja Enterprises Vide No.121/Sale/PTRU/10 dtd 03/04/2010 for 660 Nos. CST-9 Plates as mentioned vide Seizure list-2 in S.L. No.7(IX).*
11. *Copy of auction delivery order of E.C. Rly. Samastipur as mentioned vide Seizure list-2 in S.L.No.7(X).”*

9. In response to the aforesaid letter, the respondents, by their communication dated 13th May 2010 claimed that the document sought for by the petitioner by his letter dated 6th May 2010 were not related with the charge, all documents which are related and necessary would be provided to the petitioner.
10. Records reveal that after commencement of enquiry, by a further communication dated 11th August, 2010 the petitioner had requested the Enquiry Officer to supply the petitioner with the relevant documents as sought earlier for the purpose of effectively defending the case.
11. On this occasion the Enquiry Officer by a communication in writing dated 11th August, 2010, specifically refused to make available the documents sought for by the petitioner, *inter alia*, on the ground that the same had not been relied on in the charge-sheet.
12. Following the same by a further communication dated 17th November, 2010, the Enquiry Officer had called upon the petitioner to produce the list and address of the defense witnesses. In response to the same by letter dated 24th November, 2010 the

petitioner had requested the Enquiry Officer to permit the petitioner to produce five several witnesses who were in the employment of the respondents. It, however, appears that by a communication in writing dated 9th September, 2010 the Enquiry Officer had informed the petitioner that it was not possible for the Enquiry Officer to adhere to the request made by the petitioner as the defense witnesses were all part of the proceedings pending in RP(UP Act) Case No. 1 of 2010 dated 6th April, 2010. In the self-same letter, the Enquiry Officer further informed that the witness action in so far as the petitioner is concerned was treated to be closed.

13. It may be relevant to note that from the charge-sheet it would appear that the same was issued in connection with alleged theft and/or recovery of railway iron materials from one M/s. Hira Concast on 6th April, 2010, one accused was also arrested. Ms. Sarkar upon going through the records has confirmed that the name of the person arrested is Sandip Kumar. I find that amongst the documents sought for by the petitioner was statement of the arrested person Sandip Kumar. The other documents sought for are in relation to the said incident of theft. Having regard to the aforesaid I am of the view that the documents sought for by the petitioner cannot be said to be irrelevant for the purpose of holding the enquiry proceeding. Although, Ms. Sarkar has strenuously argued that the defense witnesses being involved in RP(UP) Act Case No. 1 of 2010, and

some of them being involved in a separate enquiry proceeding involving the same case of theft, it was not possible for the respondents to have them produced, I am of the view that the same cannot constitute cogent grounds for the Enquiry Officer to refuse production of defense witnesses nor could the Enquiry Officer straightway close the witness action of the petitioner by his communication in writing dated 9th December, 2010, without affording the petitioner a further opportunity.

14. Although, the petitioner had duly made a representation to the findings of the Enquiry Officer, pointing out procedural irregularities, the same appears to have been overlooked by the Disciplinary Authority and the Disciplinary Authority on the basis of the purported enquiry conducted by the Enquiry Officer and having held that the charges levelled against the petitioner stood established, had imposed a penalty of reverting the petitioner to the rank of Assistant Sub-Inspector for a period of two years with cumulative effect and the suspension period to be treated as suspension. I find that although, the petitioner had duly preferred an appeal and had raised several grounds unfortunately the Appellate Authority by his order dated 13th September, 2010 had brushed aside the same and had only reduced the period of penalty from two years to one year without any modification in the nature of penalty imposed.

15. In my view by reasons of denial of the documents, the petitioner lost his right to appropriately defend the charges. The above constitute violation of principles of natural justice. Failure on the part of the enquiry officer to afford opportunity to the petitioner to present his case by calling defense witness, on the ground of such witness either being involved in a separate enquiry proceedings or in the criminal case, also constitutes denial of principles of natural justice as the same had effect of denying the petitioner, appropriate opportunity to defend. Both the Disciplinary Authority has also the Appellate Authority ignored the specific objections raised by the petitioner and held the petitioner to be guilty, notwithstanding the enquiry itself being vitiated by reasons of failure of natural justice and procedural irregularity as noted above.

16. Having regard to the aforesaid and taking note of the fact that the petitioner was not only denied inspection or copies of relevant documents but also denied the opportunity to place defense witness, I am of the view that the final order passed by the Disciplinary Authority as also the order passed by the Appellate Authority is perverse, cannot be sustained, the same are accordingly set aside. The petitioner shall be entitled to all consequential benefits.

17. With the above observation, the present writ application stands disposed of.

18. There shall, however, be no order as to costs.

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

(Raja Basu Chowdhury, J.)

Koushik