

Form No.J(2)

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

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 15366 of 2017

Sudhir Kumar Singh
Versus
Union of India & Ors.

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

For the Union of India : Mr. Souvik Nandy

Heard on : 20th February, 2024

Judgment on : 10th April, 2024.

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, challenging the charge sheet dated 8th September 2015, the findings of the enquiry officer dated 25th May 2016, the order of dismissal dated 1st July 2016 and the order passed by the appellate authority dated 12th April 2017.
2. The petitioner, at the material point of time, was posted at RPF, Chakradharpur, when by an order dated 19th March 2014 passed by the Assistant Security Commissioner, South Eastern Railway, he

was placed under suspension on the ground of contemplation of disciplinary proceeding in terms of Section 134 (a) of the Railway Protection Force Rules, 1987 (hereinafter referred to as the “said Rules”). After expiry of more than one year and six months, the petitioner was served with a charge sheet dated 8th September 2015, wherein, it was alleged that the petitioner had committed an indiscipline, undesirable and unwarranted act which has tarnished the image and reputation of the force.

3. The petitioner had duly responded to the said charge sheet by filling a written statement. Following the aforesaid, a disciplinary enquiry was held against the petitioner and after conclusion of enquiry by a cover of letter dated 31st May 2016, was served with a copy of the enquiry report. Although, the petitioner had responded to the same, a superior disciplinary authority of the petitioner being the Senior Divisional Security Commissioner held the petitioner guilty by passing an order dated 1st July 2016. The petitioner had thereafter, preferred an appeal before the appellate authority.
4. Since, the same was kept pending the petitioner was constrained to file a writ petition before this Court which was registered as WPA 26950 of 2016. In terms of direction passed by a Coordinate Bench of this Court, the appellate authority was, *inter alia*, pleased to reject the said appeal by holding that there is no valid reason to interfere with the order passed by the disciplinary authority.

5. Mr. Majumder, learned advocate appearing for the petitioner, by placing the provisions of Rule 153.3 of the said Rules submits that the disciplinary authority while deciding to hold an enquiry is bound to decide whether it is a case for minor or major penalty. Admittedly, in the present case, no opportunity to show cause was given to the petitioner prior to taking a decision to hold an enquiry against him. By referring to the charge sheet it is submitted that at the time of framing the charges, not only the disciplinary authority had made up its mind for holding of an enquiry but also by appointing the enquiry officer fixed the date of enquiry.
6. By placing reliance on Rule 153.3 of the said Rules it is submitted that the disciplinary authority at the first instance upon receipt of the complaint or otherwise or on going through the facts alleged or brought out has to consider, whether it is a case for major or minor penalty. It is only, thereafter, charges ought to be framed and an opportunity ought to have been afforded to the petitioner to respond to such charge sheet. It is only upon receipt of the reply to such charge sheet, if the reply is not found to be satisfactory that an enquiry should be ordered. In the instant case, the disciplinary authority, while framing the charges, did not bother to issue any show cause notice inviting response from the petitioner. The disciplinary authority further while assuming the mantle of an enquiry authority, fixed the date of enquiry.

7. It is submitted that the disciplinary authority had made up its mind at the time of issuance of the charge sheet to hold an enquiry against the petitioner. This, itself according to Mr. Majumder shows bias and is sufficient to vitiate the entire enquiry proceeding.
8. In support of the aforesaid contention, he has placed reliance on the judgment delivered by a Coordinate Bench of this Court in the case of **Sanjoy Kumar Singh v. Union of India & Ors.**, reported in **2002 (2) SLR 266** and another unreported judgment delivered by this Court on 13th December 2022 in the case of **Ramendra Kumar Pandey v. Union of India & Ors** in WPA no. 7899 of 2008.
9. Mr. Majumder further submits that a preliminary enquiry forms the basis of the charge sheet. The makers of such report were not examined as witnesses. None had come forward to prove the enquiry report. This according to Mr. Majumder is an irregularity in procedure adopted by the disciplinary authority.
10. The next point urged by Mr. Majumder is that the preliminary enquiry conducted, which forms basis of the charge sheet was by persons who are superior in rank than the enquiry officer and as such, the enquiry officer was incompetent to proceed further with the enquiry. Despite the objections raised by the petitioner, the enquiry officer continued with the enquiry. This according to Mr. Majumder is also sufficient to vitiate the enquiry proceeding. In support of his contention, he has placed reliance on a judgment

delivered by this Court in the case of ***Hira Lal Singh v. Union of India & Ors.***, reported in **2023 SCC Online Cal 1371**.

11. By referring to the show cause notice dated 31st May 2016, it is submitted that the disciplinary authority without giving the petitioner an opportunity to respond to the findings of the enquiry report, had held the petitioner guilty of the charges and the aforesaid show cause notice was only confined to the quantum of punishment to be inflicted on the petitioner. This also, according to Mr. Majumder is an irregularity in procedure committed by the disciplinary authority.
12. Mr. Majumder further submits that the disciplinary authority did not stop there. Although, the petitioner had responded to the said show cause notice, the disciplinary authority had forwarded his findings based on the petitioner's representations to the higher disciplinary authority for the said disciplinary authority to take further action. The petitioner was never made aware with regard to the findings returned by the original disciplinary authority and the final order of punishment passed by the higher disciplinary authority is based on the findings returned by the original disciplinary authority which the petitioner was not privy to.
13. It is submitted that any action taken to hold a person guilty on the basis of a confidential document which is the foundation of the order, has the effect of vitiating the same. In support of his contention, he has placed reliance on a judgment of the Hon'ble

Supreme Court delivered in the case of ***State Bank of India & Others v. D.C. Aggarwal & Another***, reported in **(1993) 1 SCC 13**.

14. He submits that although, the petitioner had preferred an appeal from the aforesaid order, the appellate authority without complying with the provisions of Rule 217.3 of the said Rules had rejected the said appeal. The aforesaid has the effect of vitiating the order passed by the appellate authority as well. In the facts as noted above, Mr. Majumder submits that the entire enquiry proceeding stands vitiated and should be quashed.
15. *Per contra*, Mr. Nandy, learned advocate representing the respondents by placing reliance on the provisions of Rule 152.1 of the said Rules submits that the appointing authority or any other authority who is otherwise empowered by general or special orders may institute a disciplinary proceeding. In the instant case, the disciplinary proceeding has been initiated by the Assistant Security Commissioner, who is otherwise competent to initiate a disciplinary proceeding. The Enquiry Officer had been appointed by the disciplinary authority in terms of Rule 153.2.1 of the said Rules. By placing reliance on the provisions of Rule 153.2.1, it is submitted that the Enquiry Officer is higher in rank than the petitioner as such, there is no irregularity on the part of the respondents in having the enquiry conducted by the Enquiry Officer so appointed.
16. By referring to the charge-sheet it is submitted that the charge-sheet itself would demonstrate that a decision has been taken to

proceed with issuance of a major penalty charge-sheet and the same satisfies the requirement of Rule 153.3 of the said Rules. There is nothing in the Rules, which require issuance of show-cause prior to issuance of charge-sheet. Charge-sheet cannot stand vitiated by reasons of non-issuance of show-cause.

17. In support of his aforesaid contention, he has placed reliance on a judgment delivered by the Hon'ble Supreme Court in the case of ***South Bengal State Transport Corporation v. Ashok Kumar Ghosh & Ors.***, reported in **(2010) 11 SCC 71**, as also on the Circular No. 1 of 2015 dated 29th April, 2015, issued by IG cum Chief Security Commissioner/RPF, S. E. Railway.
18. Mr. Nandy, further submits that there is no requirement in law for the makers of the preliminary enquiry report to be examined. In any event it is submitted that from the enquiry proceeding it would be apparent and clear that the individual witnesses who had deposed before preliminary enquiry board had individually deposed before the Enquiry Officer and as such on such ground the enquiry proceeding cannot stand vitiated. The petitioner had duly cross-examined the management witnesses. The petitioner could not identify violation of principles of natural justice. Due procedure was followed in the instant case. The petitioner also could not demonstrate prejudice suffered by the petitioner by reasons of makers of the preliminary enquiry report not being produced. Having regard to the aforesaid, it is submitted that there is no

substance in the contention raised by the petitioner. The disciplinary authority had also duly favored the petitioner with the enquiry report and prior to taking any final decision had sought for his representation.

19. By referring to the records of the proceeding, Mr. Nandy submits that the decision to refer the matter by the disciplinary authority to the higher authority is confidential decision. The petitioner cannot be entitled to copy of such decision. The higher disciplinary authority had duly taken note of all aspects of the matter and only thereafter passed the final order. As such in this case no interference is warranted. The writ petition deserves to be dismissed with costs.

20. Heard the learned advocates appearing for the respective parties and considered the materials on record.

21. In this case, it is noticed that the petitioner was initially placed under suspension by an order dated 19th March, 2014. Later after expiry of more than one year and six months therefrom he was served with a charge-sheet dated 8th September, 2015. In this context, it would be relevant to consider the charges leveled against the petitioner, the same is extracted hereinbelow:-

“ARTICLE OF CHARGE

Indiscipline undesirable and unwarranted act done by Constable 9777 Sri S.K. Singh in that on 17.03.14 at about 12.45 hrs during Holi Celebration at SIB unit office/CKP, Sri S.K. Singh Constable 9777 of RPF Post/CKP opened fire from country made Pistol on Sri K. Naik HC 2524 of SIB/CKP

resulting which Sri K. Naik got bullet injury on his right thigh. After the incident, Sri S.K. Singh Constable 9777 (Assailant) immediately fled away with his motorbike. Sri K. Naik HC 2524 was taken to the Railway Hospital/CKP and subsequently referred to Tata Motor Hospital/Jamshedpur where the bullet was removed from his right thigh.

Consequently, a Criminal Case Vide No 45/14 dt 19.03.14 U/S 341/323/307 IPC and 27 Arms Act was registered against Constable 9777 the said Constable tarnishes the image and reputation of the force.

A Court of Enquiry was ordered in this connection to elicit the truth of the incident wherein the Enquiry Committee held him (Constable 9777 S.K. Singh) Guilty for committing above illegal act. This act on his part is serious misconduct as a member of the Disciplined Force of the Union.

Thus he violated Rule 146.4, 146.5 and 147(xiii) of RPF Rules, 1987.

Hence the Charge.

*(M. K. RAI)
Asst. Security Commissioner
RPF/S.E. Railway/Chakradharpur”*

22. Mr. Majumder learned advocate representing the petitioner has submitted that issuance of the charge-sheet without permitting the petitioner to show-cause constitutes not only violation of principles of natural justice but the same demonstrates a closed mind and bias. As would be apparent and clear from Rule 153.3 of the said Rules, the same does not make any provision for service of any show-cause prior to issuance of the charge-sheet. Mr. Nandy by referring to the aforesaid Rules has strenuously argued that since, the statutory provisions do not mandate service of notice prior to

issuance of charge-sheet, the disciplinary authority did not commit any irregularity in procedure in straight away issuing the charge-sheet, as also in appointing the enquiry officer and fixing a date of enquiry. I am, however, not in agreement with such view. In service jurisprudence, it is well settled that prior to issuance of a charge-sheet, an opportunity is required to be given to the delinquent employee to reply to the same. The right to respond to the show-cause and explain as to why enquiry should not be conducted is a right which is as fundamental as a right to defend. It is only on the basis of the reply to the show-cause that the disciplinary authority should take a final decision whether or not to hold an enquiry.

23. I find that this Court had the occasion to consider such an issue and in the case of **Sanjoy Kumar Singh** (*supra*), this Hon'ble Court by quoting a passage from the judgment delivered by the Hon'ble Supreme Court in the case of **State of Punjab v. V.K. Khanna & Ors.**, reported in **(2001) 2 SCC 330** was, *inter alia*, pleased to observe as follows:-

“19. Hon'ble Supreme Court in its decision reported in (3) (2001) 2 SCC 330 : AIR 2001 SC 343, State of Punjab v. V.K. Khanna discussed about the test of existence of bias or mala fide in an administrative action and scope of judicial review in such an administrative action and observed:—

“The case test is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event,

however, a conclusion is otherwise that there is existing a real danger if bias administrative action cannot be sustained.”

20. The Hon’ble Supreme Court in this case further observed:—

“It is well settled in service jurisprudence that the authority has to apply its mind upon receipt of reply to the charge-sheet or show cause as the case may be as to whether a further enquiry is called for. In the event upon deliberation and due consideration, it is in the affirmative—the enquiry follows but not otherwise. Thus, where even before reply was filed by the delinquent Chief Secretary to the charge-sheet issued against him, the Chief Minister made an announcement appointing an enquiry officer to go into the charges thus indicating its mind set that the enquiry shall proceed irrespective of the reply it cannot be said that the attitude of the authorities towards the delinquent is free and fair.”

21. In the instant case it appears also from the Memorandum itself that Articles of charges were furnished in which Memorandum the authority informed the petitioner that there will be an enquiry in the same Memorandum the authority declared the name of the inquiry officer and also fixed the venue and time of the enquiry. Therefore, before receiving any reply to the allegations/charges levelled against the petitioner, the authority took a decision to conduct the enquiry and even the authority assumed the jurisdiction of the enquiry officer and fixed the venue and time of the enquiry, which clearly shows that the Memorandum containing Articles of charges has been issued by the

authority with a biased mind and the same indicate its mind set that the enquiry shall proceed irrespective of reply and as quoted above in the case of V.K. Khanna (supra), the Hon'ble Supreme Court observed the attitude of the authority towards the delinquent in such circumstances is not free and fair.”

24. Similar view has been taken by this Court in the case of **Ramendra Kumar Pandey** (supra). The judgement relied on by Mr. Nandy delivered in the case of **South Bengal State Transport Corporation.,** (supra) is distinguishable on facts in as much as in the said matter the charge sheet was issued on the basis of a checking conducted by flying squad of the Corporation and in that backdrop of such facts and the nature of charges, it was held that the disciplinary authority, appointing the enquiry officer without considering the reply from the delinquent employee does not reflect bias. I find support from the unreported judgement delivered by the Coordinate Bench of this Court in the in the case of **Shri Ambarish Prasad Singh v. Union of India and Ors.,** in WP 1237 (W) of 2007 on 7th May 2014. The interference in the cases of **Hira Lal Singh** (supra) and **Ramendra Kumar Pandey** (supra) was called for on the ground of bias. Although, the petitioner complains of bias I do not at this stage propose to decide the same finally, in view of the ultimate conclusion reached.
25. Next point urged by Mr. Majumder is that although, the preliminary enquiry form the basis of the charge-sheet, the makers

of such report were not examined as witnesses, and as such in absence of proof of the report, the charges leveled against the petitioner could not have been proved. Records reveal that although, the makers of the report were not examined as witnesses and although, the report did not stand proved yet, the witnesses who were examined during the preliminary enquiry, were independently examined and the petitioner had also cross-examined such witnesses. As such, the proof of the charges was not solely dependent on the preliminary report nor can it be said that the enquiry was based on no evidence. Having regard to the aforesaid, I do not find substance in the aforesaid submissions of Mr. Majumder. This apart although, Mr. Majumdar has argued that the makers of the preliminary enquiry report being superior in rank than the enquiry officer, the enquiry officer was incompetent to proceed, I however, notice that the makers of the report were not identified as witness in the charge sheet nor were they examined. There was thus, no reason for the enquiry officer to be influenced by the makers of the preliminary enquiry report. The case of **Hira Lal Singh.**, (supra) is thus, distinguishable on facts.

26. The next point urged by Mr. Majumder is with regard to non-supply of the enquiry report in its entirety prior to the higher disciplinary authority taking a decision for holding the petitioner guilty of the charges. In this context, I may note that by cover of letter dated 31st May, 2016, the petitioner was served with the copy

of the enquiry report by the Assistant Security Commissioner in his capacity as the disciplinary authority of the petitioner. To morefully appreciate the same, the contents of the letter is extracted hereinbelow: -

“Through :IPF/CKP

Sub: Show cause pursuant to the DE Proceedings Case No DA/R-153/07-15/6857 dt 08.09.15 against Sri S.K. Singh Constable 9777.

Enclosed copy of the Enquiry Report in connection with above said departmental proceedings.

You are advised to acknowledge the Notice along with the copy of the Enquiry report of the E.O. and submit your representation, if any, within 10 (Ten) days as to why you should not be punished under Rule 148.2 of RPF Rules, 1987 and in case punishment warrant beyond the competence of the undersigned, why the same should not be forwarded to the higher disciplinary authority.

Encl/ Copy of the Enquiry Report

In 16 sheet

(M. Chenchaiiah)

*Asst. Security Commissioner
RPF/S.E. Railway/Chakradharpur”*

27. According to Mr. Majumder, the disciplinary authority, by the time supplied the enquiry report, had already taken a decision to hold the petitioner guilty and it is for such reason the aforesaid show-cause notice was issued calling upon the petitioner to show-cause why he shall not be punished under Rule 148.2 of the said Rules.
28. Records, however, reveal that although, the petitioner had responded to the said show-cause, the final decision was not taken by the Assistant Security Commissioner. The final order dated 1st

July 2016 was passed by the Senior Divisional Security Commissioner. The said order records that not only did the higher disciplinary authority take into consideration the enquiry report but also the opinion of the original disciplinary authority of the petitioner being the Assistant Security Commissioner. Admittedly, the said opinion of the Assistant Security Commissioner was not made available to the petitioner.

29. It is well settled that where an enquiry is conducted by a person other than the disciplinary authority, it is obligatory for the disciplinary authority, prior to accepting the findings rendered by the enquiry officer, to forward the findings thereof, to the delinquent employee, for the delinquent employee to respond to the same and it is on the basis of the representation to be made by the delinquent employee, if any, that the final decision in that regard can be taken by the disciplinary authority.

30. Denial of such opportunity to the delinquent employee to prove his innocence has been held to be in breach of the principles of natural justice. In this context, I find support from the judgment delivered by the Hon'ble Supreme Court in the case of **Managing Director, ECIL, Hyderabad & Ors. v. B. Karunakar & Ors.** reported in **(1993) 4 SCC 727**. To morefully appreciate the same paragraph 29 of the above the judgment is extracted hereinbelow:

“29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee

has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

31. In the instant case, it is noticed that when the Assistant Security Commissioner had issued the show-cause dated 31st May, 2016 he had already made up his mind to hold the petitioner guilty. Subsequently, when he had forwarded the same with his opinion to the Senior Divisional Security Commissioner, such opinion was not made available to the petitioner. The petitioner was entitled to know the views of the Assistant Security Commissioner since, the final authority was not the Assistant Security Commissioner as such he was entitled to make a representation to the same. Having regard to the aforesaid, I am of the view that subsequent consideration of the petitioner's representation by the higher disciplinary authority after the Assistant Security Commissioner having made up his mind to hold the petitioner guilty and accordingly having issued the show cause dated 31st May, 2016 in relation to the punishment/ penalty

to be inflicted/imposed on the petitioner, cannot be sustained and the disciplinary proceeding on such ground stands vitiated at least from that stage.

32. In view thereof, the enquiry proceeding from the stage of the communication dated 31st May, 2016, including the final order passed by the higher disciplinary authority dated 1st June 2016 stands set aside. The appellate authority also did not appropriately consider the aforesaid issue and had mechanically refused to interfere. Having regard to same the order passed by the appellate authority dated 12th April, 2017 is also set aside.

33. The Senior Divisional Security Commissioner being the respondent no. 4 is directed to make available, as the higher disciplinary authority, the opinion of the Assistant Security Commissioner for the petitioner to respond to the same. Since, the enquiry report has already been served on the petitioner, the petitioner shall be at liberty to respond to the enquiry report and the opinion of the Assistant Security Commissioner within a period of four weeks from the date of communication of such opinion. Upon receipt of such representation or on the failure on the part of the petitioner to respond to the same within the time specified herein, the higher disciplinary authority of the petitioner shall take a final decision and shall communicate the same to the petitioner. It is made clear that if the Senior Divisional Security Commissioner does not forward the petitioner the opinion of the Assistant Security

Commissioner in terms of the directions passed by this Court, within a period of four weeks from the date of communication of this order, the entire enquiry proceeding shall stand lapsed and the respondents shall be obliged to reinstate the petitioner in service. The petitioner in such case shall be entitled to all consequential benefits and the period between the date of dismissal till the date of reinstatement shall be treated as an extraordinary leave for which only notional benefit shall be available to the petitioner.

34. With the aforesaid directions and observations, the present writ petition stands disposed of.

35. Officer is directed to return the original records of the case to the learned advocate representing the respondents, against a proper receipt to be retained in the file.

36. There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties on priority basis upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)