

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 16373 of 2015

**Mina Debi Singh & Ors.
Versus
Union of India & Ors.**

For the petitioners : Mr. Achin Kumar Majumder

For the Union of India : Mr. Subrata Santra

Heard on : 24.01.2024.

Judgment on : 10th April, 2024.

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, challenging the enquiry proceeding, the findings of the enquiry officer dated 29th September, 2013, the order of dismissal dated 12th October, 2012, the order passed by the appellate authority dated 29th January, 2014 and the order passed by the revisional authority dated 21st November, 2014.
2. Shorn of unnecessary details, the facts are that the petitioner was a constable of the Railway Protection Force (RPF) of Eastern Railways and at the material point of time was posted at C & T.E. Coy, Asansol. While being posted at the RPF post, Andal, a departmental

proceeding was initiated against the petitioner by issuing a charge-sheet dated 28th August, 2000 whereby, a charge of discreditable conduct was levelled against him on the basis of an allegation that while on duty the petitioner along with his colleague S.K. Vatsa alleged to have raped a girl aged about 20 years which had brought discredit to the reputation of the force and the same was also in violation of the Railway Service Conduct Rules.

3. On the basis of the aforesaid charge-sheet, an enquiry proceeding was conducted which ultimately, culminated in an order of dismissal dated 31st January, 2007 issued by the Senior Divisional Security Commissioner, RPF. Although, the petitioner had filed a statutory appeal, the same was, however, dismissed by an order dated 16th July, 2007.
4. Complaining of procedural irregularity, the petitioner had filed a writ petition before this Hon'ble Court which was registered as WP No. 22160(W) of 2007. On contested hearing by a judgment and order dated 18th May, 2010, a Co-ordinate Bench of this Court after hearing the parties was pleased to dispose of the said petition by not only setting aside the enquiry report, the order of dismissal passed by the disciplinary authority as also the order passed by the appellate authority but by the self-same order had also granted liberty to the respondents to proceed *de novo* on the basis of the charge-sheet dated 18th August, 2000. It was further provided that in the event no steps are taken by the disciplinary authority within

the period mentioned therein, it would be presumed that the respondents do not intend to proceed against the petitioner on the basis of charge-sheet.

5. Although, an intra Court appeal was preferred by the respondents challenging the aforesaid order, which was registered as FMA 1534 of 2011, the Division Bench of this Hon'ble Court without interfering with the other directions passed by the co-ordinate bench had only granted the respondents liberty to proceed *de novo* in relation to the charge-sheet dated 28th August, 2000 and to conclude the same within a period of 8 months therefrom. The other directions contained in the said order are not relevant for the present case.
6. Records reveal that the respondents had unsuccessfully challenged the order passed by the Hon'ble Division Bench before the Hon'ble Supreme Court of India by filing a special leave petition which was registered as Special leave to appeal (civil) CC No. 12754 of 2013. The Hon'ble Supreme Court by an order dated 15th July, 2013 while dismissing the said petition had only extended the time by a further period of 3 months, for compliance of the order.
7. Admittedly, pursuant to the aforesaid a memorandum of charge dated 22nd July, 2013 was issued calling upon the petitioner to respond to the same. Particulars of the charges levelled against the petitioner would corroborate from annexure – 1 to the said

memorandum. To morefully appreciate the same, the charges are extracted hereinbelow:

“Constable/3692 S.B. Singh of RPF-Post/UDL(P) now at RPF/Post/ Andal is Charge (Diesel Shed) for gross misconduct and serious neglect of duty in that:-

- i) He along with his colleague Const./6136 S.K. Vatsa on duty at Down Home Signal, Andal to Fly. Over Bridge, Andal from 16.00 hrs to 24.00 hrs of 20.08.2000 with Arms and ammunition vide CC No. 613(8) 2000 dt. 20.8.2000 alleged to have raped one girl named Dolon Roy aged 20 yrs. Daughter of Bimal Kanti Roy of Arbinda Nagar, South Bazar, Andal, P.S. – Andal, Dist – Burdwan for which case No. 23/2000 dt. 20.8.2000 u/s – 376(2)(b)(g) IPC has been registered at Andal GRPs against Constable/3692 S.B. Singh and Const./6136 S.K. Vatsa.*
- ii) He indulged in an act which brought discredit to the reputation of the force, thereby violating Rule 146.4 of RPF Rules – 1987.*
- iii) He also violated Rule 3(i) (iii) of Railway Service Conduct Rules – 1966.*
- iv) He did not attend his post for dismounting after completion of his duty thereby violating Rule 146.2 of RPF Rules – 1987.*

Hence the charge.

C/S- under Rule – 153”

8. Along with the said memorandum of charge the petitioner was also supplied with the statement of allegations in annexure-II, *inter alia*, including list of witnesses and list of documents to be relied on, in annexures III and IV.

9. The petitioner while responding to the said charge-sheet by a communication in writing dated 30th July, 2013 had, *inter alia*, claimed that the said charge-sheet/memorandum dated 22nd July, 2013 was unsustainable in law as the same suffers from a closed mind in as much as the disciplinary authority while framing the charges and the allegations had come to a conclusion, in effect, by holding that the petitioner by his act had brought discredit to the reputation of the force and that the memorandum opines about the guilt of the petitioner and such fact stood fortified by reasons of disclosure of the names of the witnesses and the particulars of the documents to be relied on.
10. Upon receipt of the reply to the charge-sheet and the respondents having formed an opinion that the response given by the petitioner to the charge-sheet was not satisfactory decided to hold an enquiry in respect of the charges by appointing an enquiry officer and accordingly, by order dated 1st August, 2013 an enquiry officer was appointed. Records further reveal that by a communication dated 25th September, 2013, the enquiry officer had notified the petitioner with regard to his appointment and had informed that the said proceeding shall be conducted in terms of the provisions of Railway Protection Force Rules 1987. (hereinafter referred to as the “said Rules”).
11. In the interregnum in the criminal proceeding initiated against the petitioner a full-fledged trial was conducted by the Additional

District and Sessions Judge, First Track, 3rd Court, Asansol, who by judgment and order dated 30th August, 2005 had held the petitioner along with a co-accused guilty, for committing offences under Section 376(2)(b)(g)/511 of the Indian Penal Code and ordered that he be convicted under Section 235(2) of the Criminal Procedure Code. On the subsequent date after hearing the parties, had sentenced them to suffer rigorous imprisonment of 7 years along with a fine of Rs.5,000/- each, in default, to suffer imprisonment for a further period of one year.

12. Records reveal that the petitioner by a communication in writing dated 27th July, 2013 in his written defense statement before the disciplinary authority while referring to the prosecution witnesses and the judgment delivered by the Additional Sessions Judge, 3rd Court at Asansol had contended that the allegation of rape had not been proved against him and that he had been implicated in a false and fake case which is based on a concocted story of the victim girl. Ultimately, the enquiry proceeding was concluded and the findings of the enquiry officer along with the proceeding wherein the petitioner was held guilty of the charges, was forwarded to the petitioner by cover of letter dated 30th September, 2013, for the petitioner to respond to the same. The petitioner had duly made a representation to the findings of the enquiry officer and had, *inter alia*, contended as follows: -

- The victim girl had not been produced, notwithstanding the aforesaid the enquiry officer had considered the statements of the victim girl. This according to the petitioner constitutes failure of justice.
- The enquiry officer refused to take note of the statement of Jitendra Paswan, who had allegedly accompanied the victim girl on the faithful day of the incident. He claimed that the enquiry officer had transposed himself to that of a prosecutor and had submitted evidence in the form of FIR, charge-sheet and conviction report and had exhibited the same without affording any opportunity to the petitioner to cross-examine him. This according to the petitioner also constituted violation of the principles of natural justice.

13. It is submitted that admittedly, in this case the departmental proceeding did not wait for conclusion of the criminal trial, the proceeding was initiated in the year 2000. By placing reliance on Rule 161(i) of the said Rules it is submitted that although, a special procedure has been provided, for the disciplinary authority to proceed and to inflict punishment on an enrolled member of the force on the ground of conduct which has led to his conviction on a criminal charge, such a procedure in this case was not followed.

The respondents themselves having not invoked the procedure as laid down in rule 161(i) of the said Rules could not have considered the evidence led against the petitioner in the criminal trial. By placing further reliance on rule 153.14, he submits that there is a specific bar for application of the provisions of Evidence Act, and evidence led in the criminal trial, for the same to be relied on in a disciplinary proceeding. According to him the medical report did not substantiate the charge of rape. He submits that once, a disciplinary proceeding had been initiated, it was obligatory for the enquiry officer/disciplinary authority to return a finding on the basis of the materials on record. According to him there must be some co-relation to the materials produced and the charge framed. In this case the charge of rape could not be established as against the petitioner. In support of his contention, he places reliance on the judgment delivered in the case of **Anil Kumar v. Presiding Officer & Ors.**, reported in **AIR 1985 (SC) 1121**.

14. It is specifically submitted that there was no charge of dereliction of duty nor there was any charge of outraging the modesty of a women. Having regard to the aforesaid, the findings arrived at by the enquiry officer/disciplinary authority are dehors the charges and as such the same cannot be sustained. The disciplinary authority overlooked the specific objections raised by the petitioner as regard the aforesaid and had mechanically passed the order of dismissal by proceeding on the basis of conjecture and

surmise. On the question that a delinquent cannot be punished unless he is charged of an offence and is given opportunity to defend, reliance has been placed on the judgment delivered by the Hon'ble Supreme Court in the case of ***M.V. Bijlani. v. Union of India & Ors.***, reported in **(2006) 5 SCC 88**.

15. According to Mr. Majumdar, in absence of disclosure of the documents in the charge sheet, the same could not have been relied upon by the respondents during the enquiry. Placing reliance on the FIR, the charge sheet and evidence lead during the criminal trial has effect of vitiating the enquiry. In support of his contention, he has please reliance on the judgement delivered by the Hon'ble Supreme Court. In the case of ***Kuldeep Singh v. Commissioner of Police & Ors.***, reported in **(1999) 2 SCC 10**. According to Mr. Majumdar, the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry proceeding. In support thereof, he places reliance in the case of ***Roop Singh Negi v. Punjab National Bank & Ors.***, reported in **(2009) 4 SLR 78**. It is still further argued that the enquiry officer has acted as a departmental representative. No oral evidence has been led, the documents having not been proved, the same could not have been taken into consideration to conclude the charges have been proved against the petitioner. In support of the aforesaid contention, reliance is placed on the judgement delivered in the

case of ***State of Uttar Pradesh and Ors. v. Saroj Kumar Sinha.***, reported in **(2010) 2 SCC 772**.

16. Although, the petitioner had preferred a statutory appeal the appellate authority despite being obliged to consider the same in accordance with Rules 217.3 of the said Rules, mechanically rejected the said appeal without applying his mind. The revisional order passed by the revisional authority is no better than the order passed by the appellate authority.
17. In the facts as noted hereinabove, the aforesaid order of dismissal including the order passed by the appellate authority and the revisional authority cannot be sustained and the same should be set aside.
18. *Per contra*, Mr. Santra learned advocate representing the respondents by placing reliance on the enquiry proceeding submits that the petitioner was given due opportunity to defend. There has been no violation of principles of natural justice. According to him, there is no bar for the enquiry officer to consider the documents forming part of criminal trial. On the question whether it is obligatory in a departmental enquiry to prove the charges beyond reasonable doubt reliance has been placed on the judgment delivered in the case of ***Deputy Inspector General of Police, Traffic and Railways and Anr., v. Ram Nath Tiwary.***, reported in **200 (3) CHN page 386**. And the case of ***Swapan Kumar Maity v. South Eastern Railways & Ors.***, reported in **(2007) 4 CHN 616**. He also placed reliance on the provisions of

Rule 153.12, 153.13, 153.14, 153.15 and 153.18 to, *inter alia*, contend that there is nothing in the rules which prohibited the enquiry officer from placing reliance on admitted documents. Having regard to the aforesaid, no interference is called for.

19. Heard the learned advocate for the parties and considered the materials on record. Admittedly, a Memorandum of charge dated 22nd July, 2013 was issued calling upon the petitioner to respond to the same. The charges not only included allegation of rape but the same also included an allegation that he had indulged in an act which brought discredit to the reputation of the force thereby, violating Rule 146.4 of the said Rules. There are also other charges. According to the respondents, the petitioner primarily contends that the charge-sheet was issued with a closed mind and from the charge-sheet it would be apparent that while issuing the charge-sheet the disciplinary authority had come to the conclusion that by his act he had brought discredit to the reputation of the force. I have carefully considered the charges although, the charges are inter-linked, from a perusal of the Memorandum of charge dated 22nd July, 2013, it would appear that the disciplinary authority in clear and in unequivocal terms had proposed to hold an enquiry and for the purpose had issued the charge-sheet enclosing therewith all particulars and information as required. From the aforesaid, it does not appear that the disciplinary authority had

made up its mind to hold the petitioner guilty or that the memorandum opines about the guilt of the petitioner.

20. Admittedly, in this case, in respect of the selfsame offence a criminal proceeding had been initiated against the petitioner and in a full-fledged criminal trial conducted by the learned Additional District and Sessions Judge, First Track, 3rd Court, Asansol, by a judgment and order dated 30th August, 2005 has held that the petitioner along with his co-accused guilty for commission of offence under Section 376(2)(b)(g)/511 of the Indian Penal Code and had ordered that he be convicted under Section 235(2) of the Criminal Procedure Code. Although, Mr. Majumder, learned advocate by placing reliance on Rule 153(14) has attempted to contend that the provisions of Code of Criminal Procedure and the Indian Evidence Act shall not apply to departmental proceeding, I find that there is no bar in placing reliance on the proceedings of the criminal trial, *inter alia*, including the order of conviction of the petitioner. It is true that the Code of Criminal Procedure and the Indian Evidence Act may not strictly apply to a departmental proceeding but there is no bar at least in the rules which can prevent the enquiry officer from considering the proceeding of the criminal trial, *inter alia*, including the order of conviction of the petitioner. The object of disclosure of the documents in the charge-sheet is not to take the delinquent by surprise and for the purpose the enquiry officer is not permitted to collect any materials from outside sources during the

conduct of the enquiry. However, since, the petitioner himself was a party to the criminal trial and the documents considered by the enquiry officer formed the part of the selfsame criminal trial, in my view, the same does not constitute gathering of documents from outside source by the enquiry officer. Having regard to the same, the judgment relied on in the case of **Roop Singh Negi** (*supra*) cannot come in aid of the petitioner.

21. Although, it has been repeatedly contended on behalf of the petitioner that none had come forward to establish the proceeding of the criminal trial by leading oral evidence, in my view, a certified copy of the order of conviction and the order holding the petitioner guilty does not require any oral evidence to substantiate the same. The judgment relied on by the petitioner in the case of **State of Uttar Pradesh & Ors.**, (*supra*) also does not assist the petitioner. In the aforesaid case, the delinquent had failed to submit an explanation to the charge sheet, it was incumbent upon the enquiry officer to fix a date for his appearance in the enquiry. Although, the delinquent had made representation demanding copies of the documents relied upon in the charge sheet, the disciplinary authority or the enquiry officer did not make available the same to the delinquent. Apprehending bias, a representation was made for change of the enquiry officer. Although, the government had acceded to such request, however, by then the enquiry had been completed and an enquiry report was submitted. Upon appointment

of the new enquiry officer, and being unaware of the enquiry report, the delinquent had made a representation to the new enquiry officer praying for supply of relevant documents. The new enquiry officer had submitted the enquiry report prepared by the former enquiry officer, since according to him, the delinquent is deemed to have accepted the charges levelled against him by reasons of non-submission of reply. Based on the aforesaid report, a show cause notice was issued which was challenged in the writ petition. It is in this context that the Hon'ble Supreme Court in paragraphs 28 to 30 of the judgment had observed that since, no oral evidence had been examined, the documents have not been proved. Admittedly, in the present case the documents are all admitted documents, consideration of such documents, in my view by the enquiry officer did not prejudice the petitioner in any way.

22. It is to be borne in mind that unlike a disciplinary proceeding, the burden of proof in a criminal trial is much higher. While in a domestic enquiry the proof of charges is based on preponderance of probability, in a criminal trial the proof is based on proof beyond reasonable doubt. Admittedly, in this case, the petitioner has been held guilty of a charge under Section 376(2)(b)(g)/511 of the Indian Penal Code. Although, the prosecution could not prove the factum of rape beyond reasonable doubt but from the materials on record, it was clear that the accused persons who were RPF constables on duty had done all necessary acts in furtherance of their intention to

commit gang rape and as such, they were found guilty for committing the offence for attempting to commit gang rape under Section 511 of the Indian Penal Code and not for gang rape. The learned judge further taking note of the above and the gravity of the offence was of the opinion that this is not a fit case to apply the lenient provisions of Probation Offenders Act and accordingly, had found the petitioner guilty. In my view, there is no irregularity on the part of the enquiry officer in taking note of the aforesaid development, especially when the petitioner was a party to the same, nothing new had been introduced. The petitioner also could not demonstrate the prejudice caused.

23. Insofar as the contention of the petitioner that a delinquent cannot be punished unless he is charged with an offence and given opportunity to defend, I find that all the charges levelled against the petitioner has been proved in course of the enquiry. The judgment delivered in the case of **M.V. Bijlani**. (*supra*) does not assist the petitioner. In the said case, the delinquent was charged for non-maintenance of ACE-8 Register. He was not charged for theft or misappropriation of 4000 KG of telegraph, copper wire or miss utilization thereof. The enquiry officer, however, in the said case proceeded against the delinquent for misutilization or misappropriation of the said amount of copper wire. As such in the facts of the case it was held that it was for the disciplinary authority to frame appropriate charges in that behalf.

24. Admittedly, in this case, the doctor, who had examined the victim girl, had deposed. The petitioner did not attend the T.I., parade. The petitioner was arrested on 21st August, 2000. The other co-accused had remained absconding. From the record of criminal proceeding, sperm marks were visible on the frontal underwear of the victim girl as also on the side of the uniform/ trousers on the lower part. The deposition of the victim girl before the judicial magistrate, Asansol was also considered. Admittedly, the petitioner did not produce any defense witness. It is apparent that it is not a case, which is based on no evidence or the evidence produced have no correlation with the charges. It must be noted that in a departmental proceeding, unlike a criminal trial, the proof is based on preponderance of probabilities and not on the basis of proof beyond reasonable doubt. It is well settled when the departmental proceeding is conducted in a fair and reasonable manner and the conclusion reached is based on some evidence, no interference is called for. This Court in exercise of its powers under judicial review is not called upon to re-examine evidence.

25. Having regard to the aforesaid, at this stage declaring the enquiry to stand vitiated would tantamount to failure of justice. I have carefully considered the orders passed both by the Disciplinary Authority as also by the Appellate Authority. There is no irregularity in procedure committed either by the enquiry officer or by the Disciplinary Authority in conducting the enquiry and the

disciplinary proceeding. Having regard to the aforesaid, I find that the petitioner has failed to make out any case for interference. The Appellate Authority has taken note of the petitioner's contention and having not found any reason to interfere had rejected the appeal. Having regard to the aforesaid, the writ petition fails and is accordingly dismissed.

26. The case records of CRA 614 of 2005, which were directed to be produced and retained with the writ petition, be sent down to the Department.
27. Office is directed to return of the original records of the case to the learned advocate representing the respondents, against a proper receipt to be retained in the file.
28. There shall be no order as to costs.
29. 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.)