

Form No.J(2)

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

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 18298 of 2013

**Sri Man Mohan Kumar Sahu
Versus
Union of India & Ors.**

For the petitioner : Mr. Achin Majumdar
Ms. Ananya Neogi

For the Union of India : Mr. Anirban Mitra

Heard on : 10.04.2024

Judgment on : **10.04.2024**

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, challenging the order of suspension dated 17th February 2010, the charge sheet dated 16th February 2012, the findings of the enquiry dated 29th August 2012, the show cause notice dated 4th September 2012, the final order of punishment dated 23rd November 2012 and the order passed by the appellate authority dated 17th April 2013.
2. The petitioner, at the material point of time was an Assistant Sub-Inspector of Railway Protection Force (RPF) and was posted at RPF post, Howrah I, Eastern Railway. It is the petitioner's case that by reasons of pendency of a criminal case and on account of judicial

custody suffered by the petitioner on 19th September, 2009, he was served with an order of suspension dated 17th February, 2010, issued by the Senior Security Commissioner, RPF of the Eastern Railway whereby he was suspended with effect from 19th September, 2009. Subsequently, the petitioner was served with a charge sheet on 16th February 2012. On the basis of the said charge sheet, an enquiry was conducted which resulted in the final order of compulsory retirement dated 23rd November 2012. Although, an appeal was preferred, the same was rejected by a mechanical order.

3. Mr. Majumder, learned advocate appearing in support of the petition by drawing attention of this Court to the statement of articles of charges submits that despite the fact the petitioner had been suspended vide order dated 17th February 2010, he was charged with non-compliance of instructions issued to him as regards the daily attendance subsequent to his release from jail custody on bail. According to Mr. Majumder, once, an employee is placed under suspension, there is no authority vested in the disciplinary authority to restrict the free movement of the employee or to direct him to be present daily, for attendance to the authority nominated by the disciplinary authority.
4. By drawing attention of this Court to the provisions of Rule 143.2 of the Railway Protection Force Rules, 1987 (hereinafter referred to as the “said Rules”), it is submitted that a Coordinate Bench of this Court in the case of **Suresh Chowdhury v. Union of India & Ors.**,

reported in **2003(2) SLR 426** had declared the aforesaid provision to be violative of Articles 14 and 19(1)(d) of the Constitution of India and has also, thereby, held the same as ultra vires to the Constitution of India. It is further submitted that once, the aforesaid Rule had been declared ultra vires and had been struck down, it was beyond the competence of the disciplinary authority while issuing the order of suspension dated 17th February 2010 to call upon the petitioner to present himself to the RPF, Howrah for daily attendance and to stay at the headquarter post after his release from jail custody. He submits that according to the respondents since, the petitioner did not comply with the aforesaid direction, a memorandum of charge dated 16th February 2012 had been issued. Since, Rule 143.2 of the said Rules can no longer be enforced, the direction contained in the order of suspension dated 17th February 2010 could not have been enforced by the respondents and on account thereof, no charge sheet could have been issued.

5. Mr. Majumder, next, by drawing attention of this Court to the final order of punishment dated 23rd November 2012 submits that the disciplinary authority by taking note of the arrest and detention of the petitioner in jail custody and the factum of accidental death of the petitioner's wife and the institution of criminal proceedings and non-disclosure of such criminal proceedings before the authorities had concluded that he is convinced that the petitioner is guilty of

the charges leveled against him. It is further submitted that the disciplinary authority, had ultimately proceeded to impose penalty of compulsory retirement on the petitioner by taking note of the physical and mental condition of the petitioner without affording any opportunity to the petitioner to explain and despite the same not forming part of the charges.

6. According to Mr. Majumder, no charge as regards non-disclosure of criminal case as also why the petitioner be not removed from service on account of his physical or mental condition had been framed. As such, the final order passed cannot be sustained, the same should be set aside. It is further submitted that since, the appellate authority also did not appropriately consider the aforesaid aspect and had mechanically rejected the appeal, the same also needs to be set aside. In the given facts he prays, appropriate orders be passed directing the respondents to compensate the petitioner with back wages as it is no longer possible to reinstate the petitioner since, he has reached the age of superannuation.
7. Mr. Majumder also places before this Court, the final judgment passed in the criminal proceedings on 31st July 2023, so as to highlight the fact that the criminal case initiated against the petitioner in connection with the accidental death of the petitioner's wife has since, resulted in an order of acquittal and the petitioner has been set at liberty.

8. *Per contra*, Mr. Mitra, learned advocate appearing for the respondents has submitted that pendency of a criminal case is not bar for initiating disciplinary proceeding. Admittedly, in this case since, a criminal proceeding was pending against the petitioner, an order of suspension was issued and by reasons of violating the terms of the order of suspension, a charge sheet dated 16th February 2012 was issued. In course of enquiry, the petitioner on his own volition had placed before the enquiry officer a medical certificate dated 7th October 2012 issued by Dr. Debashis Das, a Neuro Psychiatrist, certifying that the petitioner was suffering from paranoid schizophrenia and was under his treatment since July 2011.
9. According to Mr. Mitra, the disciplinary authority did not commit any irregularity in holding, it is not desirable to continue with a person suffering from schizophrenia in the Armed Forces. By placing reliance on two several judgments delivered by the Hon'ble Supreme Court in the cases of ***Maharashtra State Road Transport Corporation v. Dilip Uttam Jayabhay***, reported in **(2022) 2 SCC 696** and ***Eastern Coalfield Limited & Ors. v. Rabindra Kumar Bharti***, reported in **(2022) 12 SCC 390**, it is submitted that acquittal in a criminal case does not impact the disciplinary proceeding as the standard of proof required in a criminal case and the disciplinary proceeding are different. While in a disciplinary proceeding the standard of proof is based on preponderance of probabilities, in a criminal case it has to be established beyond reasonable doubt.

10. Having regard to the aforesaid it is submitted that acquittal of the petitioner in the criminal case has no bearing. In any event, the disciplinary authority could not have foreseen the acquittal of the petitioner which happened on 31st July 2023. As such, no reliance ought to be placed on the same. Having regard to the aforesaid it is submitted that the petitioner has failed to make out any case and as such no interference is called for by this Court.
11. Heard the learned advocates appearing for the respective parties and considered the materials on record. The first question that falls for consideration is whether the respondents, at the first instance, while issuing the order of suspension could have directed the petitioner to present himself to the RPF, Howrah for daily attendance and whether could have restrained the petitioner from moving out of the headquarters on his release from jail custody.
12. The second important question that falls for consideration is whether the respondents could have enforced the directions contained in the order of suspension. In this context, it would be relevant to reproduce the order of suspension and the Articles of charge in the charge sheet dated 17th February 2010 and 16th February 2012 respectively.

“R.O.No. 52/2010

Dated : 17.02.2010

Sri M.M.K. Sahu, ASI/RPF/HWG attached to CE Post is placed under suspension w.e.f. 19.09.2009 as a criminal case is registered against him by OC/Khajaria PS Case No.47/08 dated 05.02.2008 u/s 304(b)/497/498

Cr.P.C as he was taken to jail custody w.e.f. 19.09.2009 and in accordance with provisions contained under Rule 134.(b) & (c) of RPF Rules, 1987. He is still in jail custody.

During the period of suspension, he will draw subsistence allowance at an amount equal to leave salary which the Rly employee would have drawn if he had been on leave on half average pay or on half pay and in addition to Dearness Allowance and other allowances, as admissible with reference to such leave salary.

During the period of suspension, he will present himself to RPF HWG Post for attendance daily and must stay at his HQrs on release from the jail custody.

Sd/-

Sr. Security Cmmissoiner
RPF/Howrah-1”

Charge Sheet

“1. STATEMENT OF ARTICLE OF CHARGE AGAINST SRI
M.M.K.SHAHU OF HWG POST UNDER RULE-153 OF RPF
RULES 1987

Sri M.M.K.Shahu of HWG Post is charged for gross neglect of duty causing discreditable conduct in that while he was attached to CE Post w.e.f. 14.11.2008. During on deputation at CE Post, he was spared to avail 01 day Rest and 02 days CL w.e.f. 17.09.2009. During his leave period he was arrested on 19.09.2009 in Khagaria PS Case No. 47/2008 dt. 05.01.2008. Consequent upon his being arrested in a police case, he was placed under suspension w.e.f. 19.09.2009 vide this office R.O. No. 52/2010 dt. 17.02.2010 with instruction to present himself at HWG

Post daily for attendance after being released from the jail custody on bail on 29.10.2010 and to remain at HQrs. But since then he was not presenting himself for attendance to HWG Post and also not available at HQrs. This is clear that he has disobeyed and violated the lawful orders of the superior officers. Further, his detention in jail custody for more than 48 hours brought disrepute to the Force which is unbecoming of a member of the Force.

Above omission and commission on the part of Sri M.M.K.Shahu of HWG Post tantamount to breach of RPF Rule 143.2, 146.3(I) and 146.4 of RPF Rules, 1987.

Hence the charge.”

**“1. STATEMENT OF ALLEGATION AGAINST SRI
M.M.K.SHAHU, ASI OF HWG POST**

Statement of allegation on Article no. 1:-

Sri M.M.K.Shah of HWG Post was spared to avail 01 day Rest and 02 days CL w.e.f. 17.09.2009 when he was working on deputation at CE Post. During his leave period he was arrested on 19.09.2009 in Khagaria PS Case No. 47/2008 dt. 05.01.2008. Consequent upon his being arrested in a police case, he was placed under suspension w.e.f. 19.09.2009 vide this office R.O. No. 52/2010 dt. 17.02.2010 with instruction to present himself at HWH Post daily for attendance after being released from the jail custody on bail on 29.10.2010 and to remain at HQrs. But since then he was not presenting himself for attendance to HWG Post and also not available at HQrs. This is clear that he has disobeyed and violated the lawful orders of

the superior officers. Further, his detention in jail custody for more than 48 hours brought disrepute to the Force which is unbecoming of a member of the Force.

Above omission and commission on the part of Sri M.M.K.Shahu of HWG Post tantamount to breach of RPF Rule 143.2, 146.3(I) and 146.4 of RPF Rules, 1987.

Hence the allegation.”

13. It may be noticed that the issue whether any restriction can be imposed on the movement of a person who has been put under suspension and whether any direction can be issued on him, for giving regular attendance had fell for consideration in the case of **Suresh Chowdhury** (*supra*). In the said case, the Co-ordinate Bench of this Court in paragraphs 30, 31 and 32 was, *inter alia*, pleased to observe as follows:-

“30. Unless suspension is a punishment as it is well settled law, that the persons suspended is kept away from the place of enquire so that the enquiry is not influenced or vitiated because of the presence of the suspended person concerned. Here also in Rule 135 it has been stated categorically that the public interest shall be the guiding factor in deciding whether or not an employee should be placed under suspension and if that is so or in the alternative which should be the basic principle, then in that event, the said logic suffers a shock when an arbitrary and uncanalised power is given to the suspending authority saying that suspended persons shall present himself daily for attendance to the authority nominated by the disciplinary authority. Once it is said that the authority before suspending a person shall see

whether suspension will serve the purpose or not for which the person is suspended. Then again, on the other hand, it is said that the suspended employee is to put his attendance daily. It is not known what is the public purpose which will be served by directing a suspended employee to attend the office daily and to put his signature in the attendance register and giving direction he shall not leave the headquarters without any prior permission. For the purpose of enquiry if the employee suspended delivers his address or place of residence from where he can be called for to attend the enquiry, there cannot be any further necessity to attend the office or to put his signature in the attendance register daily. This puts an unreasonable restriction and foils the purpose of suspension as contemplated in Rule 135 of the said rules. This Clause 143.2 must be said to be an arbitrary clause which confers uncanalised power to the authority to roam in an unchartered field. If the presence of an employee in the office influences the enquiry or vitiates the enquiry then why it is again necessary to attend the office regularly and to sign attendance register daily. Power of suspension is there on every employer whether specified in any rule or not and it is the prerogative of the employer but that power cannot be allowed to be exercised arbitrarily. When a disciplinary authority feels that it is necessary for the interest of the public purpose to keep a person suspended then why the same authority feels that his presence in the office or attendance in the office on daily basis is required.

31. *The provision of Rule 143.2 violates the provisions of Article 14 and Article 19(1)(d) of the Constitution of India. It is not also the purpose of the Act to derive undue*

pleasure by putting a person under suspension when a proceeding is being contemplated or is being carried on against an employee and, at the same time, to keep the employee kneeled down daily. The object or purpose of the act is to regulate the conduct of the employees and to keep them disciplined, to make them dutiful and also to penalize a person who commits misconduct or acts in such a manner that tarnishes the image of the force or commits any illegality and if that is so and if Rule 135 is the guiding factor of suspension then Rule 143.2 must be said to be in contradiction with the basic objects of the act. Rule 143.2 of the said rules can therefore said to be ultra vires as such should be struck down.

32. *The impugned order of suspension placing reliance on the said Rule 143.2 is therefore also illegal. It is needless to say that a suspended employee is not required to work as directed by the employer and he is not on duty and there cannot be any conceivable reason to keep him confined within the limits of jurisdiction of; the headquarters and to limit his freedom of movement and this power of the authority confronts this provisions of Article 19(1)(d) of the Constitution of India and to this extent, it is without jurisdiction, as has been decided by this High Court in a case reported in 1962 (1) LLJ 317 (N.N. Bhattacharjee v. Govt, of West Bengal). If at the time of suspension direction is given to the employee to remain at the headquarters and to give attendance to his office regularly, necessarily it does not mean that his works have been suspended.”*

14. As would appear from the above, Rule 143.2 of the said Rules had been declared to be ultra vires as being violative of Articles 14

and 19(1)(d) of the Constitution of India and has been struck down. In view thereof, no direction directing the petitioner not to leave the headquarters or to present himself for daily attendance could have been issued. Since, the aforesaid direction contained in the order of suspension could not have been enforced for reasons detailed above and since, non-compliance of the aforesaid invalid direction forms the very basis of the charge sheet, I am of the view that the final order of punishment inflicted on the petitioner cannot be sustained.

15. This apart, it is still also noticed that the disciplinary authority taking note of the medical certificate, relied upon by the petitioner which claimed that the petitioner was suffering from paranoid schizophrenia and under the treatment of a psychiatrist, had concluded that it is not desirable that a person who is suffering from paranoid schizophrenia should be continued as a member of the force I find that no show cause notice or charge sheet was issued in favour of the petitioner calling upon the petitioner to explain as to why he shall not be removed from service by reason of his mental/physical condition as certified by Dr. Debashis Das in his medical certificate dated 7th October 2012. No opportunity to explain had also been afforded to the petitioner.

16. There also appears to be other infirmities in the order dated 23rd November 2012. Despite, the charge sheet not spelling out any charge as regards non-disclosure of criminal case, the disciplinary authority appears to have proceeded on such basis. The enquiry proceeding, in my view stands vitiated on such ground as well. The order passed by

the disciplinary authority is accordingly set aside and quashed. Since, the aforesaid aspects were not considered and overlooked by the appellate authority, the order passed by the appellate authority is also set aside and quashed.

17. Although, Mr. Majumder, by placing reliance on the case of ***Deepali Gundu Surwase v. Kranti Junior Adhyapak & Ors.***, reported in **(2013) 7 SCC 324**, claimed that the petitioner should be appropriately compensated by way of payment of back wages, I find that there is no averments in the petition with regard to the petitioner remaining unemployed since the date of his compulsory retirement. Having regard to the aforesaid, no back wages can be paid to the petitioner. The petitioner shall, however, be entitled to all consequential notional benefits as may be available to him, had he continued in service till the actual date of superannuation.
18. With the above observations/directions, the writ petition stands disposed of. There shall be no order as to costs.
19. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Raja Basu Chowdhury, J.)