

Form No.J(2)

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

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 15500 of 2009

**Hira Lal Singh
Versus
Union of India & Ors.**

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

For the Union of India : Mr. Sukumar Bhattacharyya
Ms. Sayani Roy Chowdhury

Heard on : 16.02.2024

Judgment on : **3rd April, 2024**

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, challenging not only the order of suspension dated 26th September, 2007 but the disciplinary proceeding including the charge-sheet dated 22nd October, 2007, the findings of the enquiry officer dated 27th November, 2008, the second show-cause notice dated 4th December, 2008, the order of punishment dated 16th December, 2008 and the order passed by the appellate authority dated 20th April, 2009. The petitioner is a constable of the Railway Protection Force (in short, "RPF") of Eastern Railways and at the

time of institution of the instant writ petition was posted at RPF, Jamalpur Yard Post under Malda Division. In course of employment and while working at CIB Asansol, as a Constable, he was placed under suspension with immediate effect from 26th September, 2007 on the ground of a contemplated disciplinary proceeding. He was further directed to give his attendance at Liluah Revenue Line. Following the aforesaid order of suspension, a charge-sheet dated 22nd October, 2007 was issued by the Assistant Security Commissioner wherein it has been, *inter alia*, alleged that the petitioner had absented himself from duty without any intimation. The particulars of charge against the petitioner as would corroborate from the statement of charges is extracted hereinbelow:

“ Statement of Charges

Sri Hira Lal Singh, C/3814/CIB/ASN is charged for gross misconduct and dereliction of duty in that:

- 1. On 15.09.07, he left HQ/ASN and visited Gayman local area, Andal alone on his own accord and without taking permission/intimation from his controlling officer i.e. IPF/CIB/ASN or any other officer of CIB/ASN and he has absented himself from his duty without any intimation.*
- 2. Sri Hira Lal Singh, C/3814/CIB/ASN directly informed CSC/KKK over phone about false recovery of some coal dust at Gayman area without informing Sr. DSC/ASN or IPF/CIB/ASN and hereby violated/encroached the hierarchy of a discipline force like RPF.*

3. *Sri Hira Lal Singh, C/3814/CIB/ASN gave mis-declaration of his actual identity before the Police Officer by mentioning his fake chest number.*
4. *Sri Hira Lal Singh, C/3814/CIB/ASN, neither received any source information regarding shifting of coal dust from DSEY/Andal to the Kanta of one Bapi Modi, nor he recovered any coal dust as was clarified from the report of SI/Ramjee Singh submitted to Sr. DSC/ASN vide no. RPF/UDL(P)/CON/2007/1938 dt. 16.09.07 rather it was his lame excuse to save his responsibility to avoid registration of any case by local Police Station of Waria Investigation Centre. He falsely took the plea to avoid his responsibility.*
5. *While Sri Hira Lal Singh, C/3814/CIB/ASN was detained by Police at Waria Investigation Centre, he voluntarily accepted in writing i.e. black and white that he had gone to the Kanta of Bapi Modi to collect illegal money as established by the diary entry no. 849 dt. 15.09.07 of RPF(Proper) Post, Andal that has tarnished the image of a disciplined force like RPR.*
Thus he was violated sub rule (i), (ii), (vi), (vii), (ix) of rule 147 of RPF rules 1987.”

2. The same was supported by a statement of allegations, list of documents and a list of witnesses, as well. The disciplinary proceeding was conducted based on the aforesaid charge-sheet and ultimately, the enquiry officer found the petitioner guilty of the charges. Consequent to the aforesaid, by a communication in writing dated 4th December, 2008, Assistant Security

Commissioner as the disciplinary authority of the petitioner forwarded the copy of the enquiry report to the petitioner. The petitioner had since, responded to the said enquiry report whereupon a final order dated 16th December, 2008 was passed holding the petitioner guilty thereby, imposing a penalty of withholding the next increment due for two years with cumulative effect and his suspension period was to be treated as suspension for all purpose. Being aggrieved, the petitioner preferred an appeal on 1st January, 2009. By an order dated 20th April, 2009, the appellate authority had upheld the order of punishment and the petitioner was informed accordingly. Being aggrieved the present writ petition has been filed.

3. Mr. Majumder, learned advocate by drawing attention of this Court to the charge-sheet dated 22nd October, 2007, submits that prior to issuance of the charge-sheet, no show-cause was issued calling upon the petitioner why enquiry proceeding shall not be initiated against him. By referring to the list of documents to the charge-sheet which is at page 36 of the writ petition, it is submitted that the report of IPF/CIB/ASN vide no. ASN/CIB/Con/07 dated 3rd August, 2007 was never supplied to the petitioner. It is still further submitted that when the aforesaid charge-sheet was issued, the Assistant Security Commissioner had already made up his mind to hold an enquiry against him and as such simultaneously with issuance

of the charge-sheet had also appointed an enquiry officer to enquire into the charges. The aforesaid would clearly demonstrate more than an element of bias against the petitioner. The disciplinary authority even without waiting for a reply to be given by the petitioner had outrightly appointed the enquiry officer to enquire into the charges. The aforesaid procedure adopted by the disciplinary authority is sufficient to vitiate the entire enquiry.

4. By referring to the final order of punishment issued by the disciplinary authority, it is submitted that the disciplinary authority was not the enquiry officer. While considering the enquiry report and the representation given by the petitioner, he had concluded that the delinquent constable's attitude is not like a member of a disciplined force and based on such finding had found the petitioner guilty of the charges and had inflicted a punishment of imposing the penalty of withholding his next increment for two years with cumulative effect and the period of suspension was also directed to be treated as suspension for all purpose. He submits that once, the disciplinary authority had awarded a minor penalty in terms of Rule 54B of the Fundamental Rules and the clarification issued by the Government, the period of suspension was to be treated as duty. In support of his aforesaid contention, he has placed reliance on a judgment delivered by a Coordinate Bench of this Court in the

case of ***Babu Ram Pramanick, Constable of RPF, S.E. Railway v. Assistant Security Commissioner, RPF, S.E. Railway, Santragachi at Shalimar & Ors.***, reported in **2003 (107) CWN 1095**. It is next submitted that the Disciplinary Authority had passed its finding by holding that the petitioner's attitude is not like a member of the disciplined force and proceeding on such premise had awarded the punishment. According to Mr. Majumder, there was no such charge based on which the aforesaid penalty could be inflicted. The final order otherwise stands vitiated. He next argued that although, he had preferred an appeal and the appellate authority was bound to follow the provision of Rule 217.3 of the Railway Protection Force Rules, 1987, and address the issues raised in the petitioner's appeal, the same had not been done. By a cryptic order, the appeal had been rejected. In view thereof, the order of punishment including the period of suspension should be set aside and the petitioner should be paid all consequential benefits.

5. *Per contra*, Mr. Bhattacharyya, learned advocate representing the respondents, has submitted that the Fundamental Rules do not apply to members of the disciplined force. According to Mr. Bhattacharyya, the Fundamental Rules specifically provide that they shall apply, subject to the provisions of Rule 3, to all Government servants whose pay is debitable to civil estimates

and to any other classes of Government servants to which the President may, by general or special order, declare them to be applicable. By referring to Rule 3 of the Fundamental Rules, it is submitted that unless, in any case it be otherwise distinctly provided by or under these rules, these rules do not apply to Government servants whose conditions of service are governed by Army or Marine Regulations. By referring to Article 33 of the Constitution of India, it is submitted that the power of the Parliament to move the rights conferred by the Part III in their application to forces has been identified and it has been provided that Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to the members of the Armed Forces, or members of the Forces charged with the maintenance of public order, or to others be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them. By referring to Section 3 of the Railway Protection Force Act, 1957 (hereinafter referred to as the “said Act”), it is submitted that the said provision specifically provides for the Constitution and maintenance by the Central Government, an Armed Force of the Union to be called the Railway Protection Force for better protection and security of the Railway property. As such the Railway Protection Force is a part of the Armed Forces and

otherwise comes within the restrictions imposed under Rule 3 of the Fundamental Rules.

6. Having regard to the aforesaid, it is submitted that the Fundamental Rules cannot be made applicable insofar as the petitioner is concerned since, the petitioner is a part of the Armed Forces. It is still further submitted that this Court in exercise of its powers under judicial review cannot be called upon to reappraise evidence. In support of his contention, he has placed reliance on a judgment delivered by the Hon'ble Supreme Court in the case of ***Union of India & Ors. v. Managobinda Samantaray***, reported in **2022 SCC OnLine SC 284**, and submits that the petitioner had only been inflicted with a minor penalty, no prejudice has been caused to the petitioner. As regards non-supply of the report to the petitioner, it is submitted that only a vague statement has been made in paragraph 9 of the writ petition as regards non-supply of copies of few documents, no case has been made out so as to identify the prejudice caused to the petitioner with regard to non-supply of such documents. The petitioner has also failed to identify the prejudice suffered by the petitioner on account of the alleged failure on the part of the authorities to give the petitioner an opportunity to show-cause. Having regard to the aforesaid, it is submitted that no case for interference has been made out.

7. Heard the learned advocates appearing for the respective parties and considered the materials on records. It would appear that in contemplation of an enquiry the petitioner had been suspended. Although, the petitioner had questioned the order of suspension, I find that the order of suspension was issued in contemplation of an enquiry and as such there cannot be any irregularity in issuing the same.
8. From the charge-sheet dated 22nd October, 2007, it would, however, appear that the same was issued in terms of Rule 153 of the RPF Rules. As such, it would be apparent and clear from the aforesaid that a major penalty proceeding had been initiated against the petitioner. Incidentally, even before calling upon the petitioner to show-cause or waiting for the petitioner's response to the charge-sheet, the enquiry officer had been appointed. The aforesaid, in my view, cannot be said to be in consonance with the provisions laid down in the said Rules for holding major penalty proceeding. However, taking note of the fact that a proper enquiry had been conducted, I have proceeded to test out the prejudice caused to the petitioner on account of failure on the part of the respondents to afford the petitioner with an opportunity to show-cause prior to issuance of the charge-sheet.
9. As would appear, the petitioner was clearly informed of the specific charges. It is, however, interesting to note that although, the respondents in the charge-sheet had disclosed

that it would rely on five several documents, the report forming the last document in the list was not supplied to the petitioner along with the charge-sheet. The petitioner had duly sought for a copy of such report by his communication in writing dated 21st November, 2007, which was duly received by the enquiry officer as would corroborate from the endorsement made on such letter. Records of the proceeding, however, demonstrate that the report identified under serial no.5 of the list of documents, was not exhibited. I find that the petitioner was duly given an opportunity to respond to the charge-sheet. Incidentally, the petitioner had chosen not to disclose his response to the charge-sheet. In absence of such disclosure, it is difficult to test out the prejudice caused to the petitioner with regard to non-supply of the aforesaid report. It would, however, appear from the records that the Assistant Security Commissioner by analyzing the documents had returned a finding to the following effect.

“ I have carefully, gone through the reply submitted by the delinquent and also the documents available on record of the whole episode. It is crystal clear that the delinquent constable’s attitude is not like a member of the Disciplinary (Disciplined) Force.

As such, I find that the party charged i.e. Constable/3814 Hiralal Singh of CIB/ASN now at Jamalpur (Yd) of Malda Division is guilty of the charges -as the charges are proved against him. However considering his considerable period of service

& to give a chance for rectifying himself in all respect; a lenient view is hereby taken & that is why; I hold him guilty of the charge. I, the undersigned imposing the penalty of withholding of his next due increment for Two (02) years with C.E. (Cumulative effect) and this punishment will effect after completion of previous punishment if any. His suspension period is treated as suspension in all purpose. He may appeal to DSC/RPF/MLDT within 30 days of receiving of this order.”

10. It may be noticed that notwithstanding the above findings, the disciplinary authority despite the charges being proved, taking note of the considerable period of service of the petitioner and to afford an opportunity to the petitioner for rectifying himself, had taken a lenient view and despite holding him guilty of the charges had imposed a minor penalty of withholding his next increment due for two years with cumulative effect. At the same time, the period of suspension has been directed to be treated as suspension for all purpose.

11. I find that Mr. Majumder, by placing reliance on the judgment delivered in the case of **Babu Ram Pramanick, Constable of RPF, S.E. Railway** (supra), has submitted that once, the disciplinary authority had proceeded to impose a minor penalty, it was no longer open to the Disciplinary Authority to treat the period of suspension as suspension. In this context, it may be noticed that Mr. Bhattacharyya, by placing reliance on the

Constitution of India and the Fundamental Rules and its applicability to the Railway Protection Force has attempted to claim that the members of the Railway Protection Force are members of the Armed Forces. To morefully appreciate the above, Article 33 of the Constitution of India and Rule 3 of the Fundamental Rules are extracted hereinbelow:

“33. Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc. — Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,—

- a) the members of the Armed Forces; or
- b) the members of the Forces charged with the maintenance of public order; or
- c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or
- d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.”

“F.R.3. Unless in any case it be otherwise distinctly provided by or under these rules, these rules do not apply to Government servants whose conditions of service are governed by Army or Marine Regulations.”

12. From a perusal of Article 33, it would appear that the Parliament may by law determine to what extent any of the rights conferred by Part III of the Constitution of India shall apply to members of the Armed Forces or to members of the Forces charged with maintenance of public order. As would appear from Rule 3 of the Fundamental Rules, the same only excludes Government Servants whose conditions of service are governed by Army or Marine Regulations. Admittedly, the petitioner is a member of the Railway Protection Force constituted under Section 3 of the said Act and is not a member of the Armed Forces. There is nothing in the said Act which excludes or restricts application of the Fundamental Rules in respect of the members of the force constituted under Section 3 of the said Act.

13. This apart, Section 10 of the said Act categorically and in no uncertain terms provides that every member of the Force shall for all purposes be regarded as Railway servants within the meaning of Indian Railways Act, 1890. To more fully appreciate the above, the same is extracted hereinbelow:

“10. Officers and members of the force to be deemed to be railway servants.- [Director-General and every member of the Force] shall for all purposes be regarded as railway servants within the meaning of the Indian Railways Act, 1890 (9 of 1890) other than Chapter VIA thereof, and shall be entitled to exercise the powers conferred on railway servants by or under that Act.”

14. In view of Section 10 of the said Act, the petitioner is deemed to be a Railway servant, and in absence of any law excluding applicability of the Fundamental Rules and Rule 3 of the Fundamental Rules only excluding the government servants whose services are governed by Army or Marine Regulations, there can be no doubt that the provisions of the Fundamental Rules are squarely applicable to the petitioner. The Coordinate Bench of this Court in the case of **Babu Ram Pramanick, Constable of RPF, S.E. Railway** (supra) has also found that the provisions of Fundamental Rule 54B and the clarification issued by the Central Government to squarely apply to the members of the Force. To appreciate the above paragraphs 4 and 6 of the judgment are extracted below:

“4. Mr. Roy Chowdhury, the learned Counsel appearing on behalf of the petitioner, by placing reliance upon the clarification issued by the government as mentioned above has contended that the Fundamental Rules being applicable to the petitioner, a member of the force, in view of the clarification, ‘his client is entitled to get such benefit and as such, the orders impugned should be modified to that extent. The clarification issued by the government to fundamental Rule 54(B) is quoted below:

“Period of suspension to be treated as duty if minor penalty only is imposed-Reference is invited to O.M. No. 43/56/64-AVD, dated 22-10-1964 [not printed], containing the guidelines for placing Government servants under suspension and to say that these instructions lay down, inter alia, that Government servant could be placed under

officer which could result in major punishment but if, infact, the authority ultimately imposes minor punishment, in such a case, the delinquent officer should get the benefit of full pay and allowances during the period of suspension. Thus, the petitioner is entitled to the benefit of aforesaid clarification.”

15. In view thereof, similar benefit could not have been denied to the petitioner. Having regard to the same, the period of suspension of the petitioner consequent upon passing of the final order could not be treated as a period of suspension for all purpose. To the aforesaid extent, the order passed by the disciplinary authority cannot be sustained.

16. Although, it has been strenuously argued by Mr. Majumder by placing reliance on the final order dated 16th December, 2008 that the disciplinary authority has based the imposition of penalty by placing reliance on extraneous considerations and by holding the petitioner guilty based on his finding that the delinquent constable's attitude is not likes of a member of a disciplined force, I, however, do not find that the punishment imposed on the petitioner is based on the aforesaid consideration. In fact, it may be noted that the disciplinary authority despite holding the petitioner guilty of the charges had taken a lenient view. Although, the initiation of proceeding by the respondents may not have been proper as per the rule book but the ultimate conclusion reached by the authorities could

not be said to be unjustified, save to the extent interfered herein.

17. Having regard to the aforesaid, the final order in so far as the same treats the period of suspension of the petitioner as suspension for all purpose, cannot be sustained. The same is accordingly set aside. The appellate authority also did not take the aforesaid aspect into consideration. For reasons morefully indicated herein, the order of appellate authority dated 20th April, 2009, to the extent the same does not interfere with the final order on the issue of treatment of the period of suspension, is also set aside. The period of suspension shall be treated as 'on duty' for all purpose. The petitioner shall accordingly be paid all consequential benefits, including actual pay benefits in terms of the direction by this Court.

18. With the above observations and directions, the instant writ petition is partly allowed. There shall be no order as to costs.

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.)