

Form No.J(2)

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

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 756 of 2021

**Ghanshyam Datt Meena
versus
Union of India & Ors.**

For the petitioner	: Mr. Bikramaditya Ghosh Mr. Pratik Majumdar Ms. Supriya Ghosh Ms. Swarnali Ghosh
For the Union of India	: Mr. Sudipto Kr. Majumder, DSGI Mr. Ajoy Kumar Singhania Mr. Saurab Kar
Heard on	: 24.04.2024, 25.04.2024, 29.04.2024, 30.04.2024.
Judgment on	: 25th July, 2024

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, challenging the charge sheet dated 26th April, 2018, the findings of the enquiry officer dated 10th February, 2019, the order of punishment dated 22nd February, 2019, the show cause notices for enhancement of punishment dated 13th June, 2019 and 8th June, 2020 (mistakenly recorded as 2019 in the document). The petitioner also challenges the order passed by the Railway Board dated 23rd June, 2021, in

terms of the liberty afforded by the Coordinate Bench of this Court vide order dated 24th September, 2021.

2. The petitioner was a constable of the Railway Protection Security Force (RPSF) and at the relevant point of time was posted at 'D' Coy, 4th Battalion, New Jalpaiguri. While being so posted at the 4th Battalion, New Jalpaiguri he was placed under suspension by an order dated 4th April, 2018 for allegedly commenting on social media through Facebook. It is the petitioner's case that subsequently, the said order of suspension was revoked by an order dated 26th April, 2018 and he was reinstated in service. Following the aforesaid, the petitioner was served with a charge sheet. Simultaneously with the issuance of the charge sheet, without waiting for the petitioner's response, the Disciplinary Authority had appointed an enquiry officer. The aforesaid appointment of the enquiry officer according to the petitioner indicates a closed mind and bias. On the basis of the aforesaid charge sheet, an enquiry proceeding was conducted and finally the enquiry authority had forwarded the enquiry report (hereinafter referred to as the "first enquiry report") to the Disciplinary Authority.
3. It is the petitioner's contention that without affording the petitioner opportunity to respond to the said first enquiry report, the enquiry officer had once again started the enquiry *de novo* and had filed a fresh report. The said report dated 10th February, 2019 was subsequently served on the petitioner by letter dated 14th February, 2019 (hereinafter referred to as the "second enquiry report"). The petitioner duly responded to the said second enquiry report and had highlighted that the procedure adopted by the respondents to hold a *de novo* enquiry was not permissible in law. Records reveal that the Disciplinary Authority, however, by order dated 22nd February, 2019, taking note of the second enquiry report

while holding the petitioner guilty of suppression of facts/information, purported to impose a punishment of stoppage of next annual increment for a period of 5 years with cumulative effect. The petitioner was thereafter, served with a show cause notice dated 13th June, 2019 issued by the DIG-cum-CSC/RPF, Railway Board, whereunder it was observed that the charge leveled against the petitioner having been proved and the charge leveled against the petitioner being very serious and grave and the punishment having been found to be imposed by the Disciplinary Authority not commensurate with the gravity of the charge proved against the petitioner, the DIG-cum-CSC/RPFC, in exercise of powers conferred under Rule 219.4 of the Railway Protection Force Rules, 1987 (hereinafter referred to as the “said Rules”) proposed to offer opportunity to the petitioner to explain as to why higher punishment should not be imposed on the petitioner for passing such a comment on social media platform which ratifies and praises the act of murder of a superior officer on duty by his subordinate officer.

4. The petitioner submits that challenging the aforesaid show cause notice dated 13th June, 2019, a writ petition was filed before this Court which was registered as W.P. No. 14423 (W) of 2019. By an order dated 6th August, 2019, Coordinate bench of this Court in the case of a similarly situated person namely, Krishna Ram, the writ petitioner therein, registered as W.P. No. 14422 (W) of 2019 had stayed/kept the show cause notice dated 13th June, 2019 issued by the Railway Board in abeyance and had by extending the time had permitted the petitioner therein to file a belated appeal from the original order of punishment. The petitioner herein being similarly circumstanced had also preferred an appeal on 29th October, 2019. Following the aforesaid, the Railway Board (superior

authority) by a show cause notice dated 8th June, 2020 (mistakenly recorded as 2019) while examining the petitioner's appeal had formed an opinion that the punishment imposed on the petitioner is not appropriate and needs to be modified to commensurate with the gravity of the charges. Challenging, *inter alia*, the said notice, the writ petition had been filed. During pendency of the writ petition, the superior authority had passed the order dated 23rd June, 2021, thereby, removing the petitioner from Service. A Coordinate bench of this Court taking note of the aforesaid development by order 24th September, 2021, had granted leave to the petitioner to challenge the order dated 23rd June, 2021 by filing a supplementary affidavit. Pursuant to such leave, the petitioner has filed a supplementary affidavit on 1st October, 2021. After exchange of affidavits the writ petition has been taken up for final hearing.

5. Mr. Ghosh, learned advocate appearing for the petitioner by drawing attention to the two separate enquiry reports submits that the procedure adopted by the respondents in holding two separate enquiries for the self-same charge sheet based on the same cause of action is unknown in law. The provisions of Railway Protection Force Act, 1987 (hereinafter referred to as the "said Act") or the Rules framed thereunder do not sanction holding of multiple enquiries. By placing reliance on Rule 154.4 of the said Rules, he submits that although, the Disciplinary Authority has been conferred with the jurisdiction to hold a further enquiry, in the guise thereof, the respondents cannot be permitted to hold a fresh/*de novo* enquiry. In support of his contention that in the guise of a further enquiry, *de novo* enquiry cannot be ordered, he has placed reliance on a judgment of the Hon'ble Supreme Court delivered in the case of ***K.R. Deb v. The Collector of Central Excise, Shillong***, reported in (1971) 2 SCC 102.

6. By drawing attention of this Court to the first enquiry report, it is submitted that the enquiry officer in his first report had, on the basis of the materials on record, arrived at a conclusion that the copy of the screenshot of the Facebook comment was the only available document and that the charge brought against the petitioner appears to be doubtful, as the photo is blurred. Proceeding on such basis, he had specifically come to a finding that on the basis of the statements taken on record and the documents produced, the charge brought against the petitioner was found to be doubtful.
7. While referring to the second enquiry report, it is submitted that the enquiry officer in his findings had clearly recorded that the Facebook profile was of one Ghanshyam Khoda and that the conclusion reached by the enquiry officer is based on no evidence. Simply because the petitioner did not produce any document, the enquiry officer had concluded that the charge leveled against the petitioner stood proved. The aforesaid findings reached by the enquiry officer are perverse to say the least.
8. By referring to the order passed by the Disciplinary Authority dated 22nd February, 2019, it is submitted that the Disciplinary Authority by ignoring the previous enquiry conducted by the enquiry officer and by placing reliance on the second enquiry report had held the petitioner to be guilty of suppression of facts/information, and consequentially imposed punishment of stoppage of next annual increment for five years with cumulative effect. This according to Mr. Ghosh was not permissible as the petitioner was inflicted with a punishment on the basis of proof of certain allegations which did not form part of the charge.
9. By referring to the show-cause notice dated 13th June, 2019, and the notice dated 8th June, 2020 (mistakenly recorded as 2019), it is submitted that the

findings arrived at by the DIG-cum-CSC in both the aforesaid notices are at variance with the findings of the Disciplinary Authority. Since, the Disciplinary Authority did not hold the petitioner guilty of the charge, the superior authority could not have held the petitioner guilty of such charge nor could have imposed a higher punishment on the basis thereof. In the facts as noted hereinabove, he submits that not only the chargesheet, the enquiry proceeding, but the final order passed by the Disciplinary Authority and the order passed by the superior authority, all stand vitiated and should be accordingly set aside. Consequentially, the petitioner should be directed to be reinstated in service.

10. *Per contra*, Mr. Majumder, learned DSGI representing the respondents submits that in this case before the charge sheet was issued against the petitioner, a preliminary enquiry was held. Subsequently, the chargesheet was issued. The petitioner was given ample opportunity to defend. At the instance of the petitioner, the enquiry officer was also changed. The aforesaid would demonstrate that the authorities acted not only within the four corners of the said Act and Rules framed thereunder but also permitted all reasonable opportunity to the petitioner to defend. By referring to Rule 153.19 of the said Rules it is submitted that the enquiry officer is obliged to return a finding as to whether a delinquent is guilty or not guilty. In the instant case, since in the first enquiry report no such clear finding was returned, a further enquiry was ordered in terms of Rule 154.4 of the said Rules. There is no irregularity on the part of the Disciplinary Authority in directing the enquiry officer to hold a further enquiry. He submits that the judgment relied on by the petitioner in the case of **K. R. Dev** (supra) is distinguishable on facts as the respondents are permitted to hold multiple enquiries. In any event, a judgment is an authority

for what it decides and a slight variation in facts may alter the final outcome. Having regard thereto, the aforesaid judgment can have no manner of application in the present case.

11. He further submits that in the present case since, the final order passed by the Disciplinary Authority was found not to commensurate with guilt of the petitioner, the superior authority had issued a show-cause. The petitioner did not respond to the show cause, though had preferred an appeal. The Superior Authority had disposed of the appeal preferred by the petitioner and had modified the penalty from the punishment of “stoppage of next annual increment for a period of 05 years with cumulative effect” to that of “removal from service with immediate effect”. He submits that this Hon’ble Court in exercise of its power under judicial review is not called upon to re-appreciate evidence. Since, in this case there is substantial evidence to support the proof of charge against the petitioner, this Court should not interfere.
12. Heard the learned Advocates appearing for the respective parties and considered the materials on record. Admittedly, in this case it is seen that on the basis of an alleged comment posted on the Facebook, an enquiry was initiated based on the charge sheet dated 26th April, 2018. To morefully appreciate the charge leveled against the petitioner, the article of charge is extracted hereinbelow: -

“ARTICLE OF CHARGE

Shri Ghanshyam Datt Meena CT/04SF1521397 of ‘D’ Coy 4BN/RPSF/NJP is charged for serious breach of discipline, violation of lawful orders and discreditable conduct prejudicial to the discipline of the Force in that:-

Shri Ghanshyam Datt Meena CT/04SF1521397 of 'D' Coy, 4BN/RPSF/NJP *Illegal and undesirable comments in social Media i.e. in Facebook. "AC M.C. TYAGI SE CHUTTI MANGNE PER GALI BHI DIYA THA", pertaining of passing of objectionable and illegal comments on the Facebook/social media in connection with the post killing period of Shri M.C. Tyagi AC/6BN/RPSF/DBSI. Report reveals that CT/Yogendra Singh Koyar, RPF/WCR did initial post on Facebook/Tiger conversation upload & video clip at 06:21hrs on the day of assassinate in and like most of derogatory comments against deceased A.C.*

Therefore contravened Rule 146.4 & 146.6 (i) of RPF Rules-1987 and committed the offence of Rule-147.1 (ii) of RPF Rules-1987."

13. It may be seen from the chargesheet itself that at the time of calling upon the petitioner to respond to chargesheet, the enquiry officer had been appointed. I may note that 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. I find that a Coordinate Bench of this Court had the occasion to consider such an issue in the case of **Sanjoy Kumar Singh v. Union of India & Ors.**, reported in **2002 (2) SLR 266**, where the 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.”

14. As such, it is amply clear that respondents at the stage of issuance of the chargesheet and without waiting for the response from the petitioner to show-cause had already made up its mind to conduct an enquiry against the petitioner. This ordinarily would be sufficient to raise serious questions as regards the validity of the enquiry as the element of bias cannot be ruled out, however, since, the petitioner had participated in the subsequent stage of the enquiry proceeding, I have proceeded to test out as to whether in course of such enquiry the charge leveled against the petitioner had been proved and whether the enquiry had been conducted by following due procedure.
15. It is seen that in this case, two several enquiry reports are on record. The petitioner was not served with a copy of the first enquiry report prior to enquiry officer holding a fresh enquiry. Enquiry report was served on the petitioner by a cover of letter dated 14th February, 2019 issued by the Disciplinary Authority.
16. Admittedly, a second enquiry was conducted and a report had been served on the petitioner. The learned Deputy Solicitor General of India by placing reliance on the order dated 26th January, 2019 which forms part of the original record has submitted that Disciplinary Authority in terms of the powers conferred under Rule 154.4 of the said Rules had directed holding of a further enquiry in accordance with the provisions of Rule 154.4 of the said Rules. According to

him the same was necessitated by reasons of the enquiry officer failing to identify in clear terms whether the petitioner was guilty or not guilty.

17. I, however, notice that in both the reports, the enquiry officer has concluded that only a screenshot of the facebook profile is available and that the person on whose facebook profile the comment was made was of one Ghanshyam Khoda. As such it is clear that screenshot of facebook profile of the person which was exhibited was not of the petitioner but it refers comments allegedly made by the petitioner. It is further noticed that the Disciplinary Authority by ignoring the first enquiry report by its order dated 22nd February, 2019, on the basis of the findings reached by the enquiry officer in his second enquiry report, had concluded that he agreed with the findings of the enquiry report though, the exact charge leveled on the party charged could not have been conclusively established through prosecution exhibits. To morefully appreciate the findings arrived at by the Disciplinary Authority, the relevant part of the final order dated 22nd February, 2019 is extracted hereinbelow :-

“Hence, I agree with the findings of the enquiry report and though the exact charges levelled on the party charged could not be conclusively established through the prosecution exhibits, what cannot be denied is that an objectionable comment on a heinous incident had been passed through a facebook account whose name, photos, address etc. closely resembled with that of the party charged and the information of which ought to have been provided to the department or local police through FIR. But the party charge did not do so.

So, I hold him guilty of suppressing facts/information, the implications of which could have been serious as RPSF is a law enforcing agency. Hence, I impose punishment of

“Stoppage of next annual increment for a period of 05 years of cumulative effect”.

Appeal against the order may be represented to the CSC/RPSF (Railway Board), New Delhi (Appellate Authority), provided the same is sent within a stipulated period of 30 days, does not contain intemperate language and routed through proper channel.”

18. It, however, appears that a superior/appellate authority by its notice dated 13th June, 2019 had issued a show-cause, *inter alia*, observing that though the charge leveled against the petitioner had been proved, the punishment inflicted against the petitioner does not commensurate with the gravity of charge proved against him. Similar finding has also been recorded in the subsequent show cause notice dated 8th June, 2020 (mistakenly recorded as 2019). The aforesaid findings reached by the superior/appellate authority is at variance with both the reports of the enquiry officer as also with the Disciplinary Authority. Ordinarily, when a Disciplinary Authority differs with the findings of the enquiry officer, in such a case the Disciplinary Authority is obliged to give its tentative findings on the charges by issuance of a show-cause on the delinquent for the delinquent to respond to the same. In this case, I find that superior/appellate authority by holding that the charge leveled against the petitioner had been proved, had issued the show cause. The aforesaid appears to be contrary to the principles of natural justice and the law as laid down in ***Lav Nigam. v. Chairman & Md. ITI Ltd. & Anr.***, reported in **(2006) 9 SCC 440**.
19. It also appears that the Disciplinary Authority in the guise of ordering further enquiry in terms of Rule 154.4 of the said Rules had directed *de novo* enquiry to

be conducted, I find that the Hon'ble Supreme Court in the case of **K. R. Deb** (supra) had while considering Rule 15(1) of the Classification and Control Rules had observed that although, it is upon to the Disciplinary Authority to direct a further enquiry in a particular case where no proper enquiry has been held or there are serious defects in the enquiry, the same cannot authorize the Disciplinary Authority to set aside the previous enquiry on the ground that the report of the enquiry officer or the evidence does not appeal to the Disciplinary Authority. In this case it is noticed that the Disciplinary Authority had completely ignored the findings of the first enquiry report. This in my view is an irregularity in procedure adopted by the Disciplinary Authority to say the least.

20. This apart, considering the evidence on record, I may note that in this case, the Disciplinary Authority had proceeded to hold the petitioner guilty of certain charges without the same forming part of the charge-sheet. There is nothing or no credible evidence on record, to demonstrate that on the facebook profile of Ghanshyam Khoda the petitioner had allegedly commented. The photo as appearing is blurred. The enquiry officer had in the second report in his zeal to somehow hold the petitioner guilty, had proceeded to conclude that it is normal that the accused denies charges leveled against him, and on the basis of the premise that the enquiry proceeding had been conducted after giving the petitioner full opportunity and no evidence having been disclosed by the petitioner, had held the petitioner guilty. I have no doubt in my mind that the aforesaid finding reached by the enquiry officer is perverse to say the least. The enquiry officer without having the charge proved purported to shift the burden of disproving the charge on the delinquent. This, in my view, is not permissible. The findings arrived at by the enquiry officer are thus, based on no evidence.

The superior/appellate authority without giving opportunity to the petitioner to show cause by way of making available his tentative findings, had held the petitioner guilty by recording the same in the show-cause notice. Since the enquiry proceeding stand vitiated, the said show-cause notices also stand vitiated.

21. It may be relevant to take note of the object and rationale behind affording the delinquent an opportunity to represent to the findings of the enquiry officer which has been recorded in 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**. From the aforesaid, it would be crystal clear that the enquiry report along with the findings are required to be made available to the delinquent for an effective defence. In this case, since, the findings of the superior/appellate authority were at variance with the findings reached both by the enquiry officer as also by the Disciplinary Authority, before the superior authority had reached a final conclusion it was imperative that a tentative view thereof ought to have been provided to the petitioner. On such ground as well, the aforesaid show-cause notices stand vitiated. Since, the final order passed by the superior authority directing removal of service was based on the above show cause notices, the same also cannot be sustained and the same is accordingly set aside. The order passed by the appellate authority for the aforesaid reasons is also accordingly set aside.
22. The respondents are directed to reinstate the petitioner in service within a period of six weeks from date. The period of absence of the petitioner from the date of removal from service till the date of reinstatement shall be treated as

extra-ordinary leave without pay. The petitioner shall, however, be entitled to all notional benefit and continuity in service.

23. With the above observations and directions, the writ petition being WPA 756 of 2021 stands ***disposed of***.

24. The Department is directed to return the original records of the case to the learned Advocate for the respondents upon proper receipt to be retained in the file.

25. There shall be no order as to costs.

26. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the necessary formalities.

(Raja Basu Chowdhury, J.)