

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 3375 of 2013

**Vijay Kumar Shukla
-Vs-
Union of India & Ors.**

For the Petitioner : Mr. Achin Kumar Majumder

For the Respondents/UOI : Mr. Ranjan Kumar Sinha

Heard on : 18.12.2024, 06.02.2025,

Judgment on : 02.09.2025

Ananya Bandyopadhyay, J.:-

1. The petitioner, rendered his service as a Head Constable under the Railway Protection Force (RPF) of the Eastern Railway, being posted at RPF Post Panagarh under the administrative control of the Asansol Division. During such continuance of his service, the petitioner was abruptly served with a charge-sheet dated 14th December, 2010, framed under Rule 158 of the Railway Protection Force Rules, 1987 (hereinafter referred to as "the said Rules of 1987"). The gravamen of the allegation, in the said charge-sheet, impeached the petitioner to have overstayed his leave from 27th September, 2010 to 18th November, 2010, thereby remaining absent for a continuous period of 53 days without any authority, sanction or approval.

2. Although, a charge of misconduct was purportedly framed alleging serious derelictions of duty, no regular departmental enquiry as mandated by law was ever held. The petitioner, save and except the solitary opportunity to file a written representation against the allegations, was not afforded any real, meaningful, or effective chance of defending himself. He was never confronted with any evidence, no witnesses were examined in his presence, no enquiry officer was appointed, and no opportunity was granted to cross-examine the reporting authority or to adduce defence evidence. The entire process, therefore, suffered from glaring absence of compliance with the principles of natural justice and the very substratum of due process was rendered nugatory.
3. On 24th December, 2010 the petitioner submitted a detailed representation to the Disciplinary Authority, in which he categorically set forth the compelling and unavoidable circumstances which constrained him to remain absent during the aforesaid period. It was specifically mentioned that he had, in fact, prayed for extension of leave for 20 days commencing from 27th September, 2010. The said leave application was dispatched under Speed Post to the competent authority. However, the petitioner was never apprised as to whether his prayer for extension was acceded to or rejected. The conspicuous silence and inaction of the authority in responding to such prayer cannot be disguised to the prejudice of the petitioner.
4. The petitioner contended the order of punishment dated 30th December, 2010 was inherently unsustainable in law. The Disciplinary Authority, while purporting to impose punishment, transgressed the settled principles by

taking into account extraneous and irrelevant factors such as the past service record of the petitioner. The allegation of the petitioner being a “habitual offender” of overstaying of leave was never the subject matter of the charge-sheet dated 14th December, 2010. Such an allegation was neither framed nor communicated to the petitioner and no opportunity was ever afforded to rebut the same.

5. The petitioner further submitted that the findings of the Disciplinary Authority dated 30th December, 2010 were wholly cryptic, arbitrary, and suffered from a patent non-application of mind. The representation dated 24th December, 2010 filed by the petitioner was not dealt with in its proper spirit or substance. Instead of recording cogent reasons, the Disciplinary Authority brushed aside the petitioner’s plea with a bald observation that the petitioner “ought to have appeared before the competent authority for sanction of leave.” Such reasoning betrayed a superficial consideration of the issues raised, and the rejection of the representation on such flimsy grounds amounted to a miscarriage of justice.
6. Being aggrieved by the said order of punishment, the petitioner preferred a statutory appeal before the Appellate Authority on 2nd February, 2011, wherein he once again reiterated in detail the compelling circumstances which necessitated his absence from duty. He prayed for sympathetic and judicious consideration of his case and for the setting aside of the illegal order of punishment.
7. However, the Appellate Authority by its order dated 28th February, 2011 rejected the appeal in a most perfunctory and mechanical manner without

considering the mandate of Rule 217(3) of the RPF Rules, 1987. The Appellate Authority failed to examine the three-fold test embodied in the said rule, namely: (a) whether the procedure laid down in the Rules had been duly complied with; (b) whether the findings of the Disciplinary Authority were supported by evidence; and (c) whether the punishment imposed was commensurate with the gravity of the charge.

8. The petitioner submitted that the said order of the Appellate Authority could not be sustained in law inasmuch as it failed to conform to the statutory requirements of Rule 217(3). The order was bereft of any analysis, consideration, or reasoning. The Appellate Authority, by not examining the mandatory ingredients, abdicated its quasi-judicial responsibility. The Appellate Authority did not advert to the grounds urged by the petitioner in the appeal dated 2nd February, 2011. No reasons whatsoever were disclosed as to why the petitioner's explanations and grounds did not merit acceptance. Such orders, which affect the civil consequences of an employee, must be reasoned and speaking, failing which they fall foul of the requirement of fairness enshrined under Article 14 of the Constitution of India.
9. The petitioner submitted both the orders, namely the order of punishment dated 30th December, 2010 passed by the Disciplinary Authority and the order dated 28th February, 2011 passed by the Appellate Authority, were wholly unsustainable in law, suffering from violation of natural justice, non-application of mind, absence of due enquiry, extraneous consideration, variance between charge and findings, and lack of reasons. Accordingly, the

petitioner prayed that the said orders be set aside and the petitioner be granted consequential reliefs as may be deemed just, fit and proper in the circumstances of the case.

10. The learned Advocate appearing for the petitioner had assailed the impugned disciplinary and appellate orders on several legal infirmities, urging that the same are unsustainable in law.
11. It was submitted when the allegation levelled against the petitioner was of serious misconduct involving gross negligence and dereliction of duty, it was incumbent upon the Disciplinary Authority to hold a regular enquiry proceeding in conformity with the mandate of law. The petitioner was entitled to a fair opportunity of hearing, which included producing defence documents and adducing defence witnesses to prove his innocence. The purported order of punishment dated 30.12.2010, having been passed without the conduct of such enquiry, stands vitiated as being in gross violation of the principles of natural justice.
12. Learned Counsel appearing for the petitioner further contended while imposing the punishment, the Disciplinary Authority relied upon the petitioner's past record of service and imputed against him a finding of habitual absenteeism, though no such charge was ever framed in the charge-sheet dated 14.12.2010. It was urged by travelling beyond the charge and considering extraneous materials without affording the petitioner an opportunity to defend himself, the Disciplinary Authority violated the settled principle that punishment must be co-extensive with the charge framed. The

findings dated 30.12.2010 are thus at variance with the actual charge, rendering the order legally untenable.

13. It was further urged that the Disciplinary Authority failed to consider the petitioner's representation dated 24.12.2010 in its true spirit. The rejection of the said explanation on the mere premise that the petitioner ought to have physically appeared before the competent authority for sanction of leave betrayed a clear non-application of mind. The order, cryptic and bereft of reasons, is demonstrative of arbitrariness and cannot withstand judicial scrutiny.
14. As regards the appellate order dated 28.02.2011, it is contended that the same suffers from grave legal infirmities. Rule 217(3) of the RPF Rules, 1987 obligates the Appellate Authority to consider three specific ingredients—(a) whether the procedure laid down in the Rules has been complied with, (b) whether the findings of the Disciplinary Authority are justified, and (c) whether the penalty imposed is excessive, inadequate or appropriate. The impugned order, however, is devoid of any such consideration and does not disclose any reasoning as to why the petitioner's detailed grounds of appeal did not find favour. Such an order, bereft of reasons, is antithetical to the settled principle that justice must not only be done but must manifestly appear to be done.
15. The Learned Advocate for the petitioner had also drawn attention to the violation of Rule 155 of the RPF Rules, 1987 which explicitly provides that the previous record of service or past punishment may not be considered in determining the penalty unless specifically made a subject matter of charge

in the disciplinary proceeding. The impugned punishment, having been founded on extraneous materials without notice to the petitioner, is thus liable to be struck down.

16. It was lastly urged that the Appellate Authority, while rejecting the petitioner's appeal, saddled him with a new allegation that he had intentionally overstayed leave, an allegation which did not find place in the original charge-sheet, which demonstrated that the appellate order was not only non-speaking and mechanical but also perverse, being at variance with the foundation of the charge itself.
17. On these grounds, it was forcefully contended that both the disciplinary order dated 30.12.2010 and the appellate order dated 28.02.2011 were vitiated, being in violation of statutory mandate, principles of natural justice, and the requirement of reasoned decision-making.
18. The Learned Counsel representing the respondents has controverted the submissions advanced on behalf of the petitioner and urged that the instant writ petition is devoid of merit and liable to be dismissed with costs.
19. It was submitted that the petitioner was rendering his service as a Head Constable in the Railway Protection Force and was posted at RPF Post, Panagarh, under Asansol Division. The petitioner had applied for and availed one day rest along with three days of compensatory rest with effect from 23.09.2010 to 26.09.2010, and was required to resume duty on 27.09.2010. However, from 27.09.2010 to 18.11.2010, he overstayed his leave for 53 days without any valid sanction from the appropriate authority.

20. A report was submitted by the Inspector-in-Charge, RPF Post, Panagarh, who is the Controlling Officer of the petitioner. The said report clearly reflected that the petitioner was a habitual offender in overstaying leave. The report enumerated several prior instances of unauthorized absence, namely, from 17.10.2008 to 22.10.2008, from 01.03.2009 to 07.03.2009, and from 25.07.2009 to 04.08.2009. Such conduct, it is urged, demonstrated a persistent pattern of indiscipline and dereliction of duty.
21. Based upon the report of the Inspector, a Memorandum of Charge was issued against the petitioner, alleging misconduct for serious dereliction and neglect of duty, constituting offences under Rule 147(1) and (vi) of the RPF Rules, 1987, and punishable under Rule 158 thereof. The petitioner duly submitted his written reply on 24.12.2010, which was considered by the Disciplinary Authority. Being dissatisfied with the explanation, the Assistant Security Commissioner, RPF, Eastern Railway, by order dated 30.12.2010, held the petitioner guilty of the charges and imposed the punishment as provided under the Rules.
22. It was further contended that the petitioner's appeal was duly considered by the Appellate Authority and was rejected upon due application of mind. The respondents point out that the petitioner has a history of indiscipline, having been previously punished on seven occasions for misconduct. The present punishment, therefore, cannot be viewed in isolation, but is part of a continued course of behaviour detrimental to discipline in the force.
23. Attention is drawn to the statutory scheme under the RPF Rules, 1987, namely Rule 147(1) and (vi), Rule 158, and Rule 219 which provides a

specific remedy of revision. It is urged that the petitioner did not avail himself of the statutory remedy of revision under Rule 219, and therefore, the writ petition suffers from the vice of non-exhaustion of alternative remedy.

24. The allegation of the petitioner that no opportunity of hearing was afforded to him was stoutly denied. It is submitted that the petitioner was given the opportunity to submit his written representation against the charges, which he did on 24.12.2010. The said representation was duly considered by the Disciplinary Authority before awarding punishment. Thus, the claim of denial of natural justice is untrue and unfounded.

25. It was therefore contended that the punishment imposed is strictly in accordance with the provisions of the RPF Rules, 1987, and upon due consideration of the petitioner's service record. The Appellate Authority had also affirmed the punishment by rejecting the appeal. No procedural irregularity or violation of natural justice can be attributed to the process.

26. The relevant portion of Memorandum of Charge bearing No. PF/158/10 dated 14.12.2010 issued by the Assistant Security Commissioner, RPF, Eastern Railway, Andal, against the petitioner is replicated hereinbelow:-

“C H A R G E

Hd. Constable/4923, V.K. Shukla of RPF/Post/PAN is charged for gross misconduct and serious dereliction of duty in that, he overstayed from leave w.e.f. 27.09.2010 to 18.11.2010 without any authority.

The above act of HC/4923, V.K. Shukla is tantamount to neglect of duty and serious breach of discipline being a member of an Armed Force of the union.

*As such he violated Rule 147 (i) & (vi) of RPF Rule 1987.
Hence the charge U/R 158”*

27. The order of punishment being D.O. No. 123/10 dated 30.12.2010 issued by the Assistant Security Commissioner, RPF, Eastern Railway, Andal is reproduced hereinbelow:-

“D.O. NO. 123/10

Dated:30.12.2010

I have carefully gone through the representation submitted by the delinquent, all other relevant documents on record and have reached the following conclusion:-

HC/4923 V.K. Shukla of RPF/Post/PAN is charged for gross misconduct and serious dereliction of duty in that, he overstayed for leave w.e.f. 27.9.2010 to 18.11.2010 without any authority. In representation the delinquent stated that the situation of his home was most essential and he remained there for solving the problem, accordingly he overstayed. But the delinquent plea is not acceptable because, if he was facing some problem at his home, he must be put up before competent authority for sanction of leave. Moreover his previous record say that he is habitual offender of overstaying from leave.

Hence, I hold him guilty of the charge leveled against him and awarded punishment stoppage of his next annual increment for a period of two years with N.C.E.”

28. Rule 147 of the Railway Protection Force Rules, 1987 stated as follows:-

“147. Offences relatable to duties of enrolled members:-

Commission of any of the following act or acts by an enrolled member of the Force –

(i) violation of any duty;

.....

(vi) absenting himself without proper intimation to his controlling authority or without sufficient cause overstaying leave granted to him or failing without reasonable cause to report himself for duty on the expiry of such leave;”

29. Rule 155 of the Railway Protection Force Rules, 1987 stated as follows:-

“155. Determination of punishment:- In determining the punishment, the character, previous bad record and punishment of party charged shall not be taken into consideration unless in a case where they are made subject-matter of a specific charge in the proceeding itself. Offences connoting moral turpitude shall be carefully distinguished from smaller lapses of conduct. It is essential that the punishment shall be inflicted keeping in view the nature of duties expected from the member of the Force and the misconduct by him.”

30. Rule 158 of the Railway Protection Force Rules, 1987 stated as follows:-

“158. Procedure for imposing minor punishments:-

158.1 The disciplinary authority may impose any of the minor punishments provided in sub-rule (3) of rule 148 and in rule 149 after –

(a) informing the enrolled member of the Force charged in writing of the proposal to take action against him and of imputations of misconduct or misbehaviour on the basis of which action is proposed to be taken and giving him a reasonable opportunity of making such representation within a period of 10 days from the date of the communication as he may wish to make against the proposal;

(b) taking the representation, if any, submitted by the party charged under clause (a) into consideration and recording a finding on each imputation of misconduct or misbehaviour.

158.2 Notwithstanding anything contained in clause (a) of sub-rule (1), if it is proposed, after considering the representation, if any, made by the party charged under the said clause (a) to withhold

increments of pay and such withholding of increment is likely to affect adversely the amount of pension payable to the party charged or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period or to reduce him by more than three stages in his scale of pay, an inquiry shall be held, as far as possible, in the manner laid down in rule 153 before making any order imposing on the party charged any such punishment.”

31. Rule 155 of the Railway Protection Force Rules, 1987 statutorily and strictly stipulated the character previous on record and punishment of the party charge shall not be taken into consideration in determining a punishment to be imposed upon an employee in a disciplinary proceeding unless the allegations in the charge-sheet specified the accusation of a particular subject.
32. The charge as delineated above categorically mentioned overstay of leave with effect from 27.09.2010 to 18.11.2010, the memorandum of charge as aforesaid did not denote earlier period of overstay by the petitioner to constitute misconduct or dereliction of duties which otherwise implied condonation of the same if at all since the respondent authority did not initiate any penal proceedings against the petitioner. Therefore, to constitute his previous record with a nomenclature of the petitioner to be a habitual offender in the instant proceeding in accordance with the provisions of Rule 155 had been distinguishable and distinct.
33. The petitioner had been granted an opportunity to file representation and compliance of the same did not yield positive result in his favour as such

representation on behalf of the petitioner had been disregarded without any reason. The punishment imposed by the Disciplinary Authority subsequently confirmed by the Appellate Authority will definitely affect the retirement benefits of the petitioner.

34. The Learned Advocate representing the respondent authority did not cite further instances whereby the petitioner had faulted in discharging his duties or had been implicated in moral turpitude, financial irregularities or to have occasioned any loss, harm or irreparable impairment to the respondent authority.

35. Under such circumstances, the punishment inflicted by the respondent authority be reduced to impose minor punishment in accordance with Rule 148.3(b) of the Railway Protection Force Rules, 1987, i.e., withholding of next increment without corresponding punishment of subsequent increments. This Court opines the writ petition to have been filed in the year 2013 and to refer the same to the Disciplinary Authority or for consideration will result in further time to be consumed in the process to the detriment of either of the parties.

36. In view of the above discussions, the instant writ petition WPA 3375 of 2013 is allowed in part.

37. Under the facts and circumstances, the writ petition is disposed of.

38. There is no order as to costs.

39. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)