

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN
WPA 8618 of 2012

Santosh Kumar
-Vs-
Union of India and Ors.

For the Petitioner: Mr. Achin Kumar Majumder, Adv.,
Ms. Ananya Adhikary, Adv.

For the respondents/UOI: Mr. D.N Ray, Adv.,
Mr. A.B Datta, Adv.,
Ms. Sabita Roy, Adv.

Hearing concluded on: 26.03.2025.

Judgment on: 02.04.2025.

PARTHA SARATHI SEN, J. : -

1. By filing the instant writ petition the writ petitioner has prayed for issuance of appropriate writ/writs against the respondents/authorities for quashing of the charge sheet dated 11.02.2010, the findings of the enquiry officer dated 04.09.2010, the order of punishment dated 31.10.2010 as passed by the respondent no.6 and the order dated 06.09.2011 as passed by the appellate authority being respondent no.5 herein.

2. Admittedly the writ petitioner was appointed as a constable in RPF by a recruitment process and in the said recruitment process a written

test was conducted on 28.03.2007 at 16:00 hours at RPF/Ajni ground/ Nagpur. The respondents/authorities received a complaint against the writ petitioner to the effect that some other person appeared on behalf of the writ petitioner in the said written test by committing fraud upon the respondents/authorities.

3. A preliminary enquiry reveals that the said complaint has substance since on verification and examination of the application form as filled up by the writ petitioner, the answers sheet and the specimen writing of the writ petitioner by the Government Examiner of Questioned Documents, Directorate of Forensic Science, Hyderabad reveals that the differences as noticed in those documents are fundamental in nature and beyond the scope of natural verification and leads to the opinion of different authorship and thus it has been found by the said Government Examiner that the aforementioned documents were written by different persons.

4. The writ petitioner was thereafter placed on suspension on 29.01.2010. On 11.02.2010 the writ petitioner was served with a memorandum of charge sheet containing the statement of articles of charges and statement of imputations of misconduct and negligence of duty in respect of articles of charges. A disciplinary proceeding was initiated. On 04.09.2010 the enquiry officer by a reasoned order came to a finding that the charges against the writ petitioner/delinquent have been duly proved. On 07.10.2010 a memo was issued by the Adjutant no.11BN/RPSF/GHZ enclosing therewith a copy of the report of the

enquiry officer asking the writ petitioner to submit his representation against the finding of the enquiry authority. On 31.10.2010 the respondent no.6 being the disciplinary authority passed the final order of punishment whereby and whereunder the writ petitioner was removed from his service. The writ petitioner thereafter approached the appellate authority. However, such attempt was found to be unsuccessful and hence the present writ petition.

5. In course of his submission Mr. Majumder, learned advocate appearing on behalf of the writ petitioner contended the following:-

- i. Drawing attention to page no.36 of the writ petition being a copy of the letter dated 10.11.2009 it is submitted that from the said letter it would reveal that the respondent no.3 being the Chief Security Commissioner of RPF on perusal of the alleged report of the Government Examiner of Questioned Documents directed the disciplinary authority to take appropriate action against the writ petitioner for dismissal from service. It is thus submitted by Mr. Majumder that issuance of the said memo dated 10.11.2009 clearly reflects the bias mind of the respondent no.3 which had materially influenced the mind of the disciplinary authority while passing the order of punishment on 31.10.2010. It is further submitted by Mr. Majumder that the order of suspension of the writ petitioner dated 30.01.2010 also reflects the influence of the respondent no.3.

- ii. While drawing attention to the memorandum of the charge sheet dated 11.02.2010 it is argued by Mr. Majumdar that the said charge sheet cannot be allowed to stand on the ground of gross violation of principles of natural justice as well as on the ground of violation of the rules governing the procedure for initiation of a disciplinary proceeding in view of the fact that prior to issuing charge sheet no opportunity was given to the writ petitioner for furnishing his explanation with regard to the alleged misconduct/fraud by the writ petitioner.
- iii. It is further contended on behalf of the writ petitioner that from the memorandum of the charge sheet containing the statement of articles of charges and the statement of imputation of misconduct and negligence, it would reveal that the said charge sheet was issued by the Adjutant who is in the rank of the Assistant Security Commissioner of RPF and therefore it is clear that the said adjutant /Assistant Security Commissioner of RPF acted as a disciplinary authority. Drawing attention to the order of dismissal dated 31.10.2010 it is argued further that from the said order it would reveal that the commandant i.e. the respondent no.6 imposed punishment as a disciplinary authority. It is thus contended that a serious procedural irregularity occurred since both the Adjutant and the commandant cannot act as a disciplinary authority at the same time.

- iv. Drawing attention of this Court to page nos.41 and 42 of the writ petition being copies of the statement of articles of charges and the imputation of misconduct and negligence it is submitted that from the list of witnesses it would reveal that PW1 is the respondent no.3 i.e the Chief Security Commissioner who is much higher in rank of the Adjutant as well as enquiry officer and therefore it can be easily inferred that the charges as framed against the writ petitioner and the findings of the enquiry authority were influenced and are suffering from biasness.
- v. Drawing attention to Rule 153.3 of the Railway Protection Force Rules, 1987 (hereinafter referred to as the said 'Rules of 1987' in short) it is submitted on behalf of the writ petitioner that the said rules makes it obligatory on the part of the disciplinary authority to come to a decision whether a case comes under major or minor punishment. It is submitted that even after receipt of the letter dated 10.11.2009 from the respondent no.3 the disciplinary authority had not returned any finding pursuant to the Rule 153.3 of the said Rules of 1987 and therefore the punishment as awarded to the writ petitioner cannot be sustained in the eye of law.
- vi. It is further argued that since the said Adjutant acted as disciplinary authority, the said Adjutant ought to have made a recommendation on the basis of the finding of the enquiry

authority to the said commandant only after seeking an explanation from the writ petitioner/delinquent and in not doing so the writ petitioner was deprived of his right to submit his reply before the Adjutant.

- vii. Drawing attention to order of punishment it is submitted that the said commandant mechanically imposed the punishment of removal of service upon the writ petitioner without expressing his independent view which clearly shows his non-application of mind which is not permissible in the eye of law.
- viii. Drawing attention to Rule 217.3 of the said Rules of 1987 it is submitted that the appellate authority also did not apply its independent mind as would reveal from the order of the said appellate authority as passed on 06.09.2011.

6. Mr. Majumder thus submits that the instant writ petition may be allowed and appropriate relief/reliefs may be granted to the writ petitioner as per the prayers made in the writ petition.

7. In course of his submission Mr. Majumder places his reliance upon the following reported decisions:-

- i. ***Sanjoy Kumar Singh vs. Union of India and Ors.*** reported in ***2002 (2) SLR 266***;
- ii. The judgement dated 07.05.2014 as passed in the case of ***Sri Ambarish Prasad Singh vs. Union of India and Ors in WP no.1237(W) of 2007*** by a Co-ordinate Bench of this Court;

- iii. The judgement dated 13.12.2022 as passed in the case of ***Ramendra Kumar Pandey vs. Union of India & Ors. in WPA 7899 of 2008*** by a Co-ordinate Bench of this Court;
- iv. The judgement dated 04.04.2012 as passed in the case ***Utpal Kumar Biswas Vs. Union of India and Ors in WP 6148 of 2012*** by a Co-ordinate Bench of this Court;
- v. The judgement dated 10.11.2008 as passed in the case ***Union of India and Ors. Vs. Utpal Kumar Biswas in MAT 907 of 2012*** by a Division Bench of this Court;
- vi. ***Anandram Jiandrai Vaswani vs. Union of India & Ors. reported in 1983 (1) CLJ 8;***
- vii. ***State Bank of India and Ors. vs. D.C Aggarwal and Anr. reported in 1993 SCC (L&S) 109;***
- viii. ***Anil Kumar vs. Presiding Officer and Ors. reported in AIR 1985 SC 1121;***
- ix. ***Roop Singh Negi vs. Punjab National Bank and Ors. reported in 2009 (4) SLR 78;***
- x. ***Ram Chander vs. Union of India and Ors. reported in AIR 1986 SC 1173;***
- xi. ***R.P Bhatt vs. Union of India and Ors. reported in AIR 1986 SC 1040.***

8. Per contra Mr. Ray, learned Senior Counsel appearing on behalf of the Union of India and its functionaries at the very outset draws attention of this Court to affidavit-in-opposition as filed in connection with the

instant writ petition. It is submitted by Mr. Ray that in such affidavit-in-opposition the respondents/authorities have raised the maintainability of the instant writ petition on two fold grounds namely :-

- i. That the writ petitioner was a resident of the State of Bihar and the alleged misconduct and offence was committed by him in the State of Maharashtra since the recruitment examination where the writ petitioner allegedly participated was held in Nagpur i.e. in the State of Maharashtra and thus no part of causes of action arose in the State of West Bengal and accordingly this High Court has got no territorial jurisdiction to entertain the instant writ petition.
- ii. The writ petitioner had not preferred any revision under Rule 219 of the said Rules of 1987 and thus did not avail the statutory alternative efficacious remedy for which the writ petitioner is not entitled to any relief as prayed for from this Court.

9. In his next limb of submission Mr. Ray draws attention of this Court to Rules 148,148.2,151,153,153.4 and 153.5 of the said Rules of 1987 read with Schedule III of thereof. It is submitted by Mr. Ray that in the event Rule 151 is read with Schedule III of the said Rules of 1987 it would reveal that the respondent no.6 being the disciplinary authority is empowered to impose major punishment like removal from service. It is further argued by Mr. Ray that Rule 153 of the said Rules of 1987 clearly prescribes the procedure for imposing major punishment. It is further

submitted by Mr. Ray that from the materials as placed before this Court it would reveal that the said Rule of 1987 has been duly followed by the respondent/authorities and thus by no stretch of imagination it can be said that submission of charge sheet, the enquiry proceeding as conducted against the writ petitioner, the findings of the enquiry authority and the findings of the disciplinary authority are violative of the established procedure.

10. It is further submitted by Ray that no case has been made out on behalf of the writ petitioner for violation of principle of natural justice and/or non-consideration of materials which vitiated the decision making process of the respondents/authorities. Mr. Ray thus submits that it is a fit case for dismissal of the instant writ petition.

11. In his reply Mr. Majumder draws attention of this Court to page no.3 of the affidavit-in-reply vis-à-vis page no.56 of the writ petition. It is submitted by Mr. Majumder that the respondent no.6 while imposing punishment under cover of its memo dated 31.10.2010 clearly indicated that the appeal against his order has to be preferred before the DIFRPSF/OPS II at Kolkata and therefore a part of cause of action arose within the territorial jurisdiction of this Court and thus the instant writ petition is maintainable.

12. For effective adjudication of the instant lis this Court at the very outset proposes to look to some of the provisions of the said Rules of 1987.

“148. Description of punishments:

148.1 Any of the following punishments may, for good and sufficient reasons and as hereinafter provided, be imposed on an enrolled member of the Force.

148.2 Major punishments :

(a) Dismissal from service (which shall ordinarily be a disqualification for future employment under the Government).

(b) Removal from service (which shall not be a disqualification for future employment under the Government).

(c) Compulsory retirement from service.

(d) Reduction in rank or grade.”

“151Disciplinary Authority :

151.1 The disciplinary authority in respect of any enrolled member of the Force for the purpose of imposing any particular punishment or the passing of any disciplinary order shall be the authority specified in this behalf in Schedule III in whose administrative control the member is serving and shall include any authority superior to such authority.

151.2 The disciplinary authority, in the case of an enrolled member of the Force officiating in a higher rank, shall be determined with reference to the officiating post held by him at the time of taking action.”

“153.Procedure for imposing major punishments :

153.1Without prejudice to the provisions of the Public Servants Inquires Act, 1850, no order of dismissal, removal, compulsory retirement or reduction in rank shall be passed on any enrolled member of the Force (save as mentioned in rule 161) without holding an inquiry, as far as may be in the manner provided hereinafter, in which he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded a reasonable opportunity of defending himself.

153.2.1 Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an enrolled member of the Force, it may itself inquire into, or appoint an Inquiry Officer higher in rank to the enrolled member charged but not below the rank of Inspector, or institute a Court of Inquiry to inquire into the truth thereof.

153.3 On receipt of complaint or otherwise, the disciplinary authority on going through the facts alleged or brought out shall decide whether it is a case for major or minor punishment. No attempt shall be made to convert cases punishable under section 16 A or section 17 into disciplinary cases nor divert cases in respect of which major punishments are imposable to the category of cases where minor or petty punishments are imposable.”

13. Since in course of his argument Mr. Ray strongly contended that the instant writ petition is not maintainable this Court proposes to deal with the point of maintainability at the first instance. It is an admitted position that the recruitment examination through which the writ petitioner was recruited in RPF in the post of constable was conducted in Nagpur in the State of Maharashtra. It further reveals that the alleged misconduct and/or fraud were conducted by the writ petitioner at Nagpur in the State of Maharashtra. It further reveals that pursuant to an adverse report as raised from Government Examiner of Questioned Documents, Directorate of Forensic Science, Hyderabad charge sheet was submitted against the writ petitioner at Baruni in the State of Bihar.

14. It thus appears to this Court that no part of the cause of action for filing the writ petition occurred in the State of West Bengal i.e within the

territorial jurisdiction of this Court. This Court finds no merit in the submission of Mr. Majumder that since in the order of punishment the disciplinary authority indicated to the writ petitioner that against the order of punishment as imposed upon him the writ petitioner has to prefer appeal before the appellate authority who sits at Kolkata a part of the cause of action arose also in Kolkata. In this regard this Court proposes to place its reliance upon the reported decision of ***Calcutta Gujrati Education Society and Anr. vs. Regional Provident Fund Commissioner and Ors.*** reported in **(2020) 19 SCC 380** wherein the Hon'ble Supreme Court while dealing with the territorial jurisdiction of a High Court for entertaining a petitioner either under Article 226 (2) or under Article 227 of the Constitution of India expressed the following view:-

“7. In Ambica Industries case [Ambica Industries v. CCE, (2007) 6 SCC 769], the consideration in the appeal was with regard to the determination of the situs of the High Court in which the appeal would lie under Section 35-G of the Central Excise Act, 1944. The issue therein was with regard to the maintainability or otherwise of the writ petition before the High Court at New Delhi merely because the Central Excise and Service Tax Appellate Tribunal (“Cestat”) is situated at New Delhi. While considering the said question, this Court has arrived at the conclusion that when such tribunals exercise its jurisdiction in respect of the issues arising from the different parts of the country, the territorial jurisdiction for filing the writ petition at the place where the tribunal is situated would not be justified. It has been held therein that the writ petition would be maintainable at the

place where the original authority/court had exercised the jurisdiction.

8. *The relevant paras 13 and 17 read as follows : (Ambica Industries case [Ambica Industries v. CCE, (2007) 6 SCC 769] , SCC pp. 775-76)*

“13. The Tribunal, as noticed hereinbefore, exercises jurisdiction over all the three States. In all the three States there are High Courts. In the event, the aggrieved person is treated to be the dominus litis, as a result whereof, he elects to file the appeal before one or the other High Court, the decision of the High Court shall be binding only on the authorities which are within its jurisdiction. It will only be of persuasive value on the authorities functioning under a different jurisdiction. If the binding authority of a High Court does not extend beyond its territorial jurisdiction and the decision of one High Court would not be a binding precedent for other High Courts or courts or tribunals outside its territorial jurisdiction, some sort of judicial anarchy shall come into play. An assessee, affected by an order of assessment made at Bombay, may invoke the jurisdiction of the Allahabad High Court to take advantage of the law laid down by it and which might suit him and thus he would be able to successfully evade the law laid down by the High Court at Bombay.

17. There cannot be any doubt whatsoever that in terms of Article 227 of the Constitution of India as also clause (2) of Article 226 thereof, the High Court would exercise its discretionary jurisdiction as also power to issue writ of certiorari in respect of the orders passed by the subordinate courts within its territorial jurisdiction or if any cause of action has arisen therewithin but the same tests cannot be applied when the appellate court exercises a jurisdiction over a tribunal situated in more than one State. In such a situation, in our

opinion, the High Court situated in the State where the first court is located should be considered to be the appropriate appellate authority. The Code of Civil Procedure did not contemplate such a situation. It provides for jurisdiction of each court. Even a District Judge must exercise its jurisdiction only within the territorial limits of a State. It is inconceivable under the Code of Civil Procedure that the jurisdiction of the District Court would be exercisable beyond the territorial jurisdiction of the district, save and except in such matters where the law specifically provides therefor.”

15. In view of the settled proposition of law as decided in the case of **Calcutta Gujrati Education Society (supra)** this Court has got no hesitation to hold that this High Court lacks territorial jurisdiction to entertain the instant writ petition since the enquiry proceeding was conducted against the writ petitioner in the State of Bihar.

16. On the point of maintainability Mr. Ray in his second limb of submission draws attention of this Court to Rule 219 of the said Rules of 1987. The relevant portion of the said Rule 219 is quoted hereinbelow in verbatim:-

“Revision :

219.1 An enrolled member of the Force whose appeal has been rejected by a competent authority may prefer an application for revision to the next superior authority. The powers of revision may be exercised only when,-

(a) in consequence of some material irregularity, there has been injustice of miscarriage of justice; or

(b) fresh evidence is disclosed which could not be produced or was not available at the time of passing of the impugned order.”

17. Admittedly the writ petitioner did not prefer any revisional application under Rule 219 of the said Rules of 1987 and therefore the writ petitioner consciously did not avail the alternative remedy.

18. The effect of non-availing the alternative remedy prior to filing of application under Article 226 of the Constitution of India has been considered by the Hon’ble Supreme Court in the reported decision of ***Radha Krishan Industries vs. State of Maharashtra*** reported in **(2021) 6 SCC 771** wherein the Hon’ble Supreme Court expressed the following view:-

“27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where:

(a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution;

(b) there has been a violation of the principles of natural justice;

(c) the order or proceedings are wholly without jurisdiction; or

(d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case

though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

28. These principles have been consistently upheld by this Court in Chand Ratan v. Durga Prasad reported in (2003) 5 SCC 399, Babubhai Muljibhai Patel v. Nandlal Khodidas Barot reported in (1974) 2SCC 706 and Rajasthan SEB v. Union of India reported in (2008) 5 SCC 632 among other decisions.”

19. Keeping in mind the proposition of law as discussed in the case of **Radha Krishan Industries (supra)** if I look to the factual aspects of this case it appears to this Court that the writ petitioner has failed to give any explanation as to what prevented him to avail him the alternative remedy and/or he had also failed to make out a case that falls under the categories of the exception as has been discussed in the reported decisions of **Radha Krishan Industries (supra)**.

20. This Court thus holds that the instant writ petitioner is not at all maintainable.

21. For the sake of argument even if it is accepted that the instant writ petition is otherwise maintainable this Court considers that the instant writ petition is devoid of any merit for the reasons discussed hereinbelow.

22. The writ petitioner has failed to make out a case that prior to imposing a major punishment upon him the respondent/authorities have not complied with Rule 153 of the said Rules of 1987.

23. Admittedly in the reported decision of **Sanjoy Kumar Singh (supra)**, **Sri Ambarish Prasad Singh (supra)** and **Ramendra Kumar Pandey (supra)** it has been held that in the event no explanation has been sought for from the delinquent with regard to his purported misconduct prior to framing of charges, such acts tantamounts to denial of principles of natural justice and the same had an effect to vitiate the entire enquiry proceeding. In considered view of this Court the proposition of law as discussed in the aforementioned three reported decisions are distinguishable from the facts and circumstances of the present case inasmuch as Rule 153 of the said Rules of 1987 does not prescribe for seeking an explanation from the delinquent prior to framing of charges. On the contrary Rule 153 (1) of the said Rules of 1987 clearly prescribes that no order to dismissal, removal, compulsory retirement or reduction in rank shall be passed on any enrolled member of the force without holding an enquiry in the manner as prescribed in the said Rules and without affording a reasonable opportunity of defending the delinquent.

24. From the materials as placed before this Court it reveals that the respondent/authorities prior to imposition of a major punishment i.e.

removal from service had conducted an enquiry proceeding where the writ petitioner being the delinquent participated and thus by no stretch of imagination it can be said that the principles of natural justice has been denied to him and/or the respondent/authority have not followed the established procedure for conducting an enquiry proceeding.

25. In course of his argument Mr. Majumder while placing his reliance upon the reported decision of **Anandram Jiandrai Vaswani (supra)** and **Utpal Kumar Biswas (supra)** though contended that since in the said enquiry proceeding the respondent no.3 adduced evidence as PW1 who is much superior to the enquiry authority and thus the finding of the enquiry authority is not free from biasness and not virtually legal and correct. This Court however finds no force in such submission inasmuch as immediately after receipt of the copy of the charge sheet and /or even in course of participation in the enquiry proceeding the writ petitioner being the delinquent had never raised his apprehension regarding alleged biasness as well as chance of unfair conclusion of the said enquiry proceeding. On the contrary it appears to this Court that the enquiry officer after consideration of the entire materials as placed before him came to a logical conclusion of the same and no materials have been placed before this Court that on account of the deposition of respondent no.3 the decision making process of the said enquiry authority was vitiated.

26. On perusal of the Schedule III of the said Rules of 1987 it further appears to this Court that the respondent no.6 being the disciplinary

authority is very much competent to impose punishment of removal from service of the writ petitioner who was in the rank of the constable and it further appears to this Court that prior to passing of the order of punishment the said disciplinary authority had considered the explanation as offered by the writ petitioner under cover of his letter dated 21.10.2010.

27. In course of his argument Mr. Majumder was very vocal over the said punishment order as passed by the disciplinary authority since according to him the order of disciplinary authority is not at all a speaking order which clearly shows his non-application of mind. In this regard he places reliance upon the reported decisions of **Ram Chandra (supra)** and **R.P Bhatt (supra)**.

28. In considered view of this Court the reported decisions of **Ram Chandra (supra)** and **R.P Bhatt (supra)** are practically in favour of respondents/authorities inasmuch as in the reported decision **Ram Chandra (supra)** the Hon'ble Apex Court held thus:-

“8. Ordinarily, the appellate or revisional authority shall give its own reasons succinctly; but in a case of affirmance where the original tribunal gives adequate reasons, the Appellate Tribunal may dismiss the appeal or the revision, as the case may be, agreeing with those reasons.”

29. The same view was taken by the Hon'ble Supreme Court in the reported decision of **R.P Bhatt (supra)** where the Hon'ble Apex Court expressed the following view:-

“6. It is not the requirement of Art.311(2) of the Constitution of India or of the Rules of natural justice that in every case the appellate authority should in its order state its own reasons except where the appellate authority disagrees with the findings of the disciplinary authority.”

30. On careful consideration of the memo dated 31.10.2010 as issued by respondent no.6 that is the order of punishment of the disciplinary authority it does not transpire to this Court that the said order is in anyway cryptic or unreasoned. In absence of any material that the said order of the disciplinary authority is perverse, this Court finds no reason to interfere with the same in judicial review.

31. In view of the discussion made in the foregoing paragraphs this Court thus finds no merit in the instant writ petition.

32. Accordingly the instant writ petition is dismissed.

33. There shall be however no order as to costs.

34. Urgent photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(PARTHA SARATHI SEN, J.)