

Form No.J(2)

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

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 15419 of 2018

**Amit Kumar
Versus
Union of India & Ors.**

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

For the respondents : Mr. Souvik Nandi
Mr. Kalidas Saha

Heard on : 24.01.2025

Judgment on : **16th April, 2025.**

Raja Basu Chowdhury, J:

1. The instant writ petition has been filed, *inter alia*, challenging the order of dismissal from service dated 2nd May, 2018 issued in exercise of powers under Rule 161 of the Railway Protection Force Rules, 1987 (hereinafter referred to as the “said Rules”) including the order dated 1st August, 2018 issued by the Appellate Authority.
2. The petitioner was a Constable of the Railway Protection Force of South Eastern Railway and at the material point of time was posted at RPF Post Purulia.

3. It is the petitioner's case that an unfortunate incident had taken place on 25th February, 2018 when an Assistant Commandant of Railway Protection Special Force, M.C. Tyagi was shot dead by a Constable of his own company while he was deployed on election duty at Meghalaya.
4. Notwithstanding the petitioner having not being involved in any incident of this nature, on the basis of a purported allegation that he was engaged in making objectional comments regarding the unfortunate incident over Facebook, thereby indulging in spreading hatred amongst rank and file of the '*force*' by applauding the said personnel who was accused, the petitioner was initially placed under suspension by order dated 28th March, 2018 and later an order of dismissal from service was passed by invoking the powers under Rule 161(ii) of the said Rules.
5. Challenging the aforesaid order of dismissal from service without holding any enquiry under Rule 153 of the said Rules, a statutory appeal was filed before the Appellate Authority. The Appellate Authority, however, by an order dated 1st August, 2018 dismissed the said appeal.
6. Being aggrieved the instant writ petition has been filed.
7. Mr. Majumder, learned advocate representing the petitioner, submits that the order of removal from service dated 2nd May, 2018 has been passed in purported exercise of powers under Rule 161(ii) of the said Rules. Unfortunately, the said order does not identify the

satisfaction, required to be recorded in the order to hold that the enquiry contemplated under the said Rules is not reasonably practicable. It is submitted that the Senior Divisional Security Commissioner had mechanically quoted the provisions of Rule 161(ii) of the said Rules in the order dated 2nd May, 2018 to make out the case of subjective satisfaction. The order also does not reflect that the decision to dispense with the enquiry under Rule 153 of the said Rules has been taken objectively. It is submitted that ordinarily, the procedure available for dispensing an enquiry under Rule 153 of the said Rules ought to be invoked only, in extraordinary circumstances that too by recording the satisfaction for invoking such provision in a given fact, and by recording reasons why the ordinary procedure to hold the enquiry cannot be exercised.

8. By drawing attention of this Court to the order dated 2nd May, 2018, it is submitted that the only reason provided for dispensation of an enquiry under Rule 153 of the said Rules was that delayed departmental action would lead to hooliganism and afford opportunity and time to unruly elements in the Force to organise further undesirable activities which may result in aggravation of the situation which is explosive, cannot constitute satisfaction for not holding a regular enquiry.
9. It is submitted that not only this Hon'ble Court but the Hon'ble Supreme Court has time and again deprecated the practice of invoking the powers of Rule 161(ii) of the said Rules without there

being any justifiability for initiating such proceeding by invoking the powers thereunder. The power to dispense with an enquiry must be exercised with due care, caution and circumspection and such power cannot be exercised solely at the mere *ipse dixit* of the disciplinary/superior authority. It is not open to the disciplinary authority to dispense with an enquiry lightly or abruptly or with an ulterior motive, so as to avoid the same. In support of his aforesaid contention, reliance is placed on the following judgments:

- i. ***State of West Bengal v. Debabrata Singha***,
reported in **2019(5) CHN (Cal) 396**;
- ii. ***Jaswant Singh v. State of Punjab & Ors.***,
reported in **(1991) 1 SCC 362**;
- iii. ***Chief Security Officer & Ors. v. Singasan Rabi Das***,
reported in **AIR 1991 SC 1043**;
- iv. ***Risal Singh v. State of Haryana & Ors.***,
reported in **(2014) 13 SCC 244**;
- v. ***Pintu Kumar v. Union of India & Ors.***,
in **Civil Appeal Nos. 4738-4739 of 2021**;
- vi. ***Sri Gopinath Rout v. Union of India & Ors.***,
in **WPA No. 9593 of 2020**; and,
- vii. ***Tarsem Singh v. State of Punjab & Ors.***,
reported in **(2006) 13 SCC 581**.

10. In the facts noted hereinabove, the order of dismissal has been issued in colourable exercise of power. The same is unsustainable in law and should be set aside with a further direction to reinstate the petitioner in service along with back wages.

11. Mr. Nandi, learned senior advocate representing the Union of India, on the other hand, has been categorical in submitting that one Mr. M.C. Tyagi, Assistant Commandant (AC), 6th Battalion, Railway Protection Special Force (RPSF), Dayabasti, Delhi, who was deployed at Meghalaya on election duty was shot dead by a Constable, namely, Arjun Deshwal of 6th Battalion without any provocation and the firing was made by the Constable from a service (AK-47) rifle. The incident took place on 25th February, 2018. After the killing of the Assistant Commandant, a post was shared in the 'facebook' and 'whatsapp group' namely "RPF Mutual Transfer" in public domain by one Yogendra Singh Koyar which stated "ASC MC Tyagi at Maghalaya, Ko goli Mardi gayi By Constable CT Arjun Deshwal. 06 BN A Coy/RPSF by AK 47. 13 rounds fired. One other Constable Jogendra also injured".

12. He would submit that while responding to the above post several comments were made by the members of the group. The comments included "is bhai ko RPF taraf se salut hai....." by one Amit Raj of RPF, Purulia. The aforesaid comment was made on 26th February, 2018, at 6:24 a.m. by one Amit Rai of RPF Purulia. According to the respondents, there was credible information that unscrupulous personnel among the rank and file of the *force* engaged in spreading unfounded and misleading information through their comments on 'facebook' and 'whatsapp group' so as to justify and support the despicable acts of the constable. Some of these personnel were

arranging financial support through social media. Such undesirable activities on the part of the members of the Railway Protection Force /Railway Protection Special Force were resulting in creating discord amongst the rank and file of the Armed Forces. Such type of activities are detrimental to the discipline which is the foundation of an Armed Force. According to Mr. Nandi, an independent enquiry was conducted by Sri. U.B. Biswal, Assistant Security Commissioner, RPF, South-Eastern Railway, Adra. During the enquiry the profile picture of Amit Raj on the '*facebook*' account was checked and the account of Amit Raj was identified as the account of Amit Kumar, the petitioner herein. Amit Kumar was examined and his statement was recorded. According to the respondents, the petitioner confirmed that he had opened the '*facebook*' account in the name of Amit Raj. On the basis of the enquiry conducted by the Assistant Security Commissioner an enquiry report was filed on 26th March, 2018. The enquiry officer opined that on the basis of the evidence taken during enquiry it is reasonably believed that the objectionable comments were made by the petitioner, following the same the petitioner was kept under suspension.

13. It is in this state of facts that the decision to initiate proceedings under Rule 161(ii) of the said Rules was taken on receipt of relevant documents from the Railway Board. The information given in the '*facebook*' profile of the petitioner was verified with his Service Records. Upon verification, the profile of the petitioner matched with

the profile given in the '*facebook*'. The disciplinary authority was of the view that a grave situation had arisen and if departmental action is delayed further then, the delinquent constable's conduct will lead to hooliganism and other unruly elements in the 'force' like him may take the opportunity and time to organise further undesirable activities which may result in aggravation of the situation which is already explosive. Such provocation remarks of the petitioner, may also lead to further incitement, dissatisfaction and discontent amongst the 'force' personnel and may be dangerous for the public order and tranquility. Considering the above exigencies, the disciplinary authority felt that it is not reasonably practicable to hold departmental enquiry as per the said Rules. Accordingly, a decision was taken to initiate proceedings under Rule 161(ii) of the said Rules. He submits that the disciplinary authority had duly taken into consideration the past conduct of the petitioner and had ultimately awarded punishment of dismissal from service. The petitioner had also availed his statutory remedy. It is submitted that there is no irregularity in taking such a decision. No case for interference has been made out. The judgments relied on by the petitioner are distinguishable on facts. The instant writ petition ought to be dismissed with cost.

14. Heard the learned advocates appearing for the respective parties and considered the materials on record. From the materials on record and the arguments advanced by the learned advocates for

the parties, it would transpire that an unfortunate incident took place on 25th February, 2018 when one of the Assistant Commandant of the RPSF, Dayabasti, Delhi, deployed at Meghalaya, on election duty was shot dead by a constable of his own company from his service rifle. The factum of death appears to have been shared in the 'facebook group' "RPF Mutual Transfer" by one Yogendra Singh Koyar. In response to the said post made in social media, comments were allegedly made by the members of the group which included "*Bhai ko RPF ki taraf se salut hai.....*"

15. Such comments are alleged to have been made by the petitioner on 26th February, 2018 at 6:24 a.m. Based on the above, the disciplinary authority of the petitioner had proceeded to hold departmental action by invoking the provisions of Rule 161(ii) of the said Rules, by dispensing with the ordinary procedure for holding an enquiry. The order dated 2nd May, 2018 records that the petitioner's justifying and applauding the unwarranted incident which took place on 25th February, 2018 and indulging in spreading hatred, incitement, dissatisfaction, provocation and discontent amongst the rank and file of the 'force' and the posting of instigating comment in social media (facebook) by an enrolled member of an Armed Force is a clear violation of Rules 146.4 and 147(xiii) of the said Rules. Considering the gravity of the matter the disciplinary authority while dispensing normal disciplinary proceeding, had awarded the petitioner punishment in the form of dismissal from service with

immediate effect in the larger interest of the administration as well as the public. To morefully appreciate the above, the relevant portion of the order passed by the Divisional Security Commissioner whereby he purportedly records the grounds for dispensing with the enquiry is extracted hereinbelow:

“The comment posted by facebook member Amit Raj “is bhai ko RPF taraf se salute hai ab des me sanik vidroh phir se karna ho ga ap sahamat hai to sear ka res post ko” at 06.24 A.M. of 26.02.2018, clearly indeicates that, he lacks a balanced mind and is unfit to be a member of an Armed Force of the Union. When a member of an armed Force commends the killing of a superior officer of the Force using despicable language and propagate an idea of a mutiny in the Force, he not only disrespects the Force, and its Rules and Regulations but also the laws of our land.

Railway Protection force (RPF) is an Armed Force of the Union Constituted by Section 3 of RPF Act 1957 by Parliament of India. Discipline is sine-qua-non for an Armed Force established for the security of our state and it is state and it is enforced by a command and control, structure governed by laws, rules and regulations passed by the Parliament of India. Even a small breach of this framework will lead to gross indiscipline, which in an Armed Force is the first step towards mutiny.

Members on an armed Force are trained in handling armes and are equipped with Arms and Ammunition during the course of their duty. If impeccable standard of discipline and professional conduct are not maintained, they may become predators and unleash their weapons on the public, leading to unspeakable horror and tragedy. As such, in the instant case, it is not only expected and desired but, obligatory and

mandatory that, Constable/Amit Kumar @ Amit Raj should always behave in an utmost discipline manner.

Now the situation is so grave that, if the departmental action will be delayed further then, the delinquent Constable's conduct will lead to hooliganism and other unruly elements in the Force like him, may take the opportunity and time to organize further undesirable activities which may result in aggravation of the situation which is already explosive. Such provocative remarks of Constable/Amit Kumar, may also lead to further incitement, disaffection and discontentment among the force personnel and may be dangerous for the public order and tranquility.

Considering the exigencies mentioned above, myself, being the Disciplinary Authority, feel that, it is not reasonably practicable to hold a departmental enquiry in the manner provided in RPF Rules, 1987. Therefore, in the instant matter, in terms of provisions contained in Rule 161(ii) of RPF Rules, 1987, an immediate stringent departmental action has become imperative against the potentially dangerous employee i.e. Sri Amit Kumar, Constable (UIN-01SF 1001064) of RPF Post/Purulia, whose action is very detrimental to the discipline and foundation of the Armed Force. It will also caution and deter the other employees indulging in such unscrupulous activity.

After due application of mind and on judicious appreciation of the entire matter, I hold Sri Smit Kumar [read as Amit Kumar] Constable (UIN-01SF 1001064) of RPF Post/Purulia guilty of the charge of disproportionately vocal in expressing inappropriate comments justifying an applauding the unwarranted incident took place on 25.02.2018 and indulging in spreading hatred, incitement disaffection, provocation and discontentment amongst the rank and file of

the Force. Moreover, posting of such an instigating comment in Social Media (facebook) by an enrolled member of an Armed Force is clear violation of Rule 146.4 and 147 (xiii) of RPF Rules 1987. Considering the gravity and exigency of the matter, dispensing with the normal disciplinary proceedings and in exercise of powers conferred vide schedule III of RPF Rules, 1987 read with rule 161 (ii) of RPF Rules, 1987 and Section 18 of RPF Act, 1957 read with Police (Incitement to Disaffection) Act, 1922, I do hereby award him with the punishment of "Dismissal from Service" with immediate effect in the larger interest of Administration as well as the public. Appeal, if any, against the order lies with DIG-cum-CSC/RPF/GRC and it should not contain any intemperate language. The appeal should be submitted within 30 days after receipt of this order and it should be submitted under his own signature and be routed through proper channel."

16. The statutory appeal preferred by the petitioner was also dismissed, *inter alia*, by upholding the exercise of authority of the Disciplinary Authority, to dispense with the enquiry. The relevant portion of the order, which upheld the exercise of authority to dispense regular enquiry by invoking powers under Rule 161(ii) of the said Rules is extracted hereinbelow:

"On judicious appreciation of case file, the undersigned, being the appellate authority, has observed as follows:-

a) In order to resolve the trust & faith among staff & public, the immediate departmental action was very much necessary. The situation was alarming, and there was no scope/time on the part of Disciplinary Authority to ask for defence representation. Giving time for submission of defense representation would create a possibility to worsen the

situation very badly & which was also against the public interest.

b) The Disciplinary Authority i.e. Sr. DSC/RPF/ADA has elaborately narrated the circumstances under which he thought that it was not practicable to hold an enquiry under the relevant provisions of RPF Rules, 1987. Brutal killing of an Assistant Commandant, a Gazetted officer of the Force by an Constable while on election duty in Meghalaya and sharing this incident on Facebook in Public Domain is an act of spreading disaffection among the Force. Furthermore, the Appellant used highly unparliamentary language duly applauding the act of the Constable by commenting as “Is bhai ko RPF ki taraf se salute hai ab des me sanik vidroh phir se karna hoga app sahamat hai to sear ka es post ko”. Such remark by a member of the disciplined armed Force of the union, is nothing but trying to create discord among the rank and file of the Force. If such act is not nipped in the bud by taking stern and exemplary action, it will certainly create a grave threat to public security and can lead to mutiny like situation. Hence, action taken by the Disciplinary authority under Rule 161(ii) of RPF Rules, 1987 is quite appropriate.

c) The other unscrupulous elements in the subject case are not under the same Disciplinary Authority.

d) The contention of the Appellant that he has not posted such comments & he has no knowledge about who & how subject hatred comments was posted through his Facebook Account is not sustainable. If it is so contended, he should have filed a-complaint against such offence at Cyber Crime Cell of State Police Authority.

The Appellant could not bring up any substantial evidence to disprove the charge against him. Further, I find no procedural lapse in the entire disciplinary proceeding in view of provisions contained in Rule 161(ii) of RPF Rules, 1987 & also feel that the punishment-inflicted upon the Delinquent/Appellant is truly commensurate with the gravity of the offence.

In view of the above facts & circumstances, I, being the Appellate authority, do not find any cogent reason to interfere in the disciplinary order issued by Sr. DSC/RPF/ADA. As such, the appeal is rejected.

The appellant may be informed accordingly.”

17. In this context, it would be relevant to consider that the power to dispense with an enquiry flows from the provisions of Article 311(2) Clause (b) of second proviso of the Constitution of India. To morefully appreciate the above, the same is extracted hereinbelow:

“311. (1) *No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.*

(2) *No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges ***.*

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such

inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply—

- (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or*
- (b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or*
- (c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.”*

18. As such from the aforesaid, it would be apparent that although, holding due enquiry is the rule, however, in exceptional circumstances, the ordinary procedure for holding an enquiry may be dispensed with. The provision engrafted in Rule 161(ii) is in consonance with Article 311(2) Clause (b) of second proviso of the Constitution of India.

19. In this context, it would be relevant to note that the Hon'ble Supreme Court in the case of ***Union of India & Anr. v. Tulsiram Pa Tel***, reported in **(1985) 3 SCC 398**, had observed that a disciplinary Authority is not expected to dispense with a disciplinary enquiry lightly or arbitrarily or out of ulterior motive or merely in order to avoid the holding of an enquiry or because the department's case against the Government servant is weak and must fail. The

Hon'ble Supreme Court in the case of **Jaswant Singh** (*supra*) while quoting the aforesaid observation made by the Hon'ble Supreme Court in the case of **Tulsiram Pa Tel** (*supra*) has further added that the decision to dispense with departmental enquiry cannot, therefore, be rested solely on the *ipse dixit* of the concerned authority. When the satisfaction of the concerned authority is questioned in a Court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer. In the case of **Risal Singh** (*supra*), the Hon'ble Supreme Court has noted that the Competent Authority must provide clear reasons for dispensing with an enquiry, not ascribing of the reasons dispensing with an enquiry which otherwise is a must, invalidates such an action. The observation made by the Hon'ble Supreme Court in paragraphs 6 and 7 of the above case are extracted hereinbelow:

“6. We have already reproduced the order passed by the competent authority. On a bare perusal of the same, it is clear as day that it is bereft of reason. Non-ascribing of reason while passing an order dispensing with enquiry, which otherwise is a must, definitely invalidates such an action. In this context, reference to the authority in Union of India v. Tulsiram Patel [(1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985 Supp (2) SCR 131] is apposite. In the said case the Constitution Bench, while dealing with the exercise of power under Article 311(2)(b), has ruled thus : (SCC p. 503, para 130)

“130. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that ‘it is not reasonably practicable to hold’ the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are ‘not reasonably practicable’ and not ‘impracticable’. According to the Oxford English Dictionary ‘practicable’ means ‘Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible’. Webster’s Third New International Dictionary defines the word ‘practicable’ inter alia as meaning ‘possible to practice or perform : capable of being put into practice, done or accomplished : feasible’. Further, the words used are not ‘not practicable’ but ‘not reasonably practicable’. Webster’s Third New International Dictionary defines the word ‘reasonably’ as ‘in a reasonable manner : to a fairly sufficient extent’. Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation.”

7. *In Jaswant Singh v. State of Punjab [(1991) 1 SCC 362 : 1991 SCC (L&S) 282 : (1991) 15 ATC 729] the Court, while dealing with the exercise of power as conferred by way of exception under Article 311(2)(b) of the Constitution, opined as follows : (SCC p. 369, para 5)*

“5. ... Clause (b) of the second proviso to Article 311(2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. This is clear from the following observation at SCR p. 270 of Tulsiram

case [(1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985 Supp (2) SCR 131] : (SCC p. 504, para 130)

‘130. ... A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the department's case against the government servant is weak and must fail.’

The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the authority concerned. When the satisfaction of the authority concerned is questioned in a court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the officer concerned.”

After so stating, the two-Judge Bench quashed the order of dismissal and directed the appellant to be reinstated in service forthwith with the monetary benefits. Be it noted, it was also observed therein that it would be open to the employer, if so advised, notwithstanding the lapse of time, to proceed with the disciplinary proceedings.”

20. A Coordinate Bench of this Court in the case of **Sri Gopinath Rout** (*supra*) has taken a similar view. Having regard to the aforesaid, it is necessary to test out whether the order passed by the disciplinary Authority passed the test of not only the subjective satisfaction of the disciplinary authority but whether the decision to dispense with the enquiry had been made on objective basis. In this context, it may be noted that in the order dated 2nd May, 2018, the reasons provided by the Disciplinary Authority to dispense with the enquiry is that the petitioner in justifying and applauding the

unwarranted incident which took place on 25th February, 2018 and indulging in spreading hatred, incitement, dissatisfaction, provocation and discontent amongst the rank and file of the 'force' and the posting of instigating comment in the social media (facebook) by an enrolled member and Armed Force is clear violation of Rules 146.4 and 147(xiii) of the said Rules and since, delayed departmental action will lead to hooliganism and afford opportunity and time to the unruly elements in the force to organise further undesirable activities which may result in aggravation of the situation which is explosive, a decision to dispense with the enquiry authorizing invocation of special power under Rule 161(2) of the said Rules was taken. Therefore, the Disciplinary Authority was contemplating an immediate disciplinary action. Although, it has been recorded that the Disciplinary Authority concludes that it is not practicable to hold an enquiry under the relevant provisions of the said Rules, no particular reasons for not holding such departmental enquiry had been provided. Initiating the departmental action without delay cannot, in my view, form a ground for dispensing departmental enquiry in the ordinary manner. Merely recording a one liner satisfaction without there being any reasons for such satisfaction does not authorize invoking of special powers under Rule 161(ii) of the said Rules. Nothing has been identified in the order to show that the satisfaction to dispense with the enquiry is based on objective criteria. No materials have

also been disclosed by the respondents to demonstrate that holding a regular enquiry would have had the effect of aggravation of the situation, or the same would lead to mutiny or constitute grave threat to the public.

21. The Hon'ble Division Bench of this Court in the case of ***State of West Bengal v. Debabrata Singha*** (*supra*), while considering the scope of the disciplinary Authority to dispense with formal enquiry has also observed that in absence of subjective satisfaction being arrived at and reasons being recorded, the order to dispense with the enquiry cannot be sustained. Similarly in the present case, not only the order passed by the Disciplinary Authority does not record adequate reasons for dispensing with the ordinary enquiry provided for in the said Rules, the respondents have also failed to demonstrate that the satisfaction to dispense with the enquiry was based on objective criteria. Since, the order dated 2nd May, 2018 does not pass the test of subjective satisfaction based on objective criteria, to dispense with the enquiry and further since, the aforesaid decision was passed by placing reliance on electronic/social media, it was all the more obligatory on the part of the respondents to at least hold a proper enquiry.

22. From the disclosure made by the respondents, it would transpire that the petitioner had categorically disowned to have made or posted the comment based on which the petitioner was dismissed from service. It would also appear that the Assistant Security

Commissioner by proceeding on the premise that although in course of the discrete enquiry the petitioner denied to have posted any comment, since, he measurably failed to justify his contention, it was presumed that the objectionable comments were posted by him. Admittedly, in the said case, no opportunity was given to the petitioner to explain his conduct through a regular enquiry, as such the observation made by the Assistant Security Commissioner that the petitioner failed to justify his conduct appears to be a decision taken in hot haste to somehow hold the petitioner guilty.

23. In the aforesaid backdrop, the order dated 2nd May, 2018 passed by the Disciplinary Authority by placing reliance on electronic/social media, without even affording the petitioner an opportunity to explain whether the comments at all originated from the social media account of the petitioner, in my view cannot be sustained. The same is, therefore, set aside and quashed. As a sequel thereto, and for reasons discussed hereinabove, the order passed by the Appellate Authority dated 1st August, 2018 is also set aside. The respondents are directed to reinstate the petitioner in service forthwith.

24. It shall, however, be open to the respondents, despite the delay, to initiate regular disciplinary proceedings against the petitioner as provided in Rule 153 of the said Rules, provided the same is initiated within a period of eight weeks from the date of communication of this order. The period of absence of the petitioner

would be treated as a period spent on extraordinary leave and would not constitute break in service. The petitioner would be entitled to all consequential benefits, subject to final outcome of the disciplinary proceedings, if initiated in the manner provided herein.

25. With the above observations/directions, the writ petition is partly allowed.

26. There shall be no order as to costs.

27. 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.)