

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

Present:

The Hon'ble Justice Partha Sarathi Sen

WPA 18437 of 2016

**Mrinal Kumar Debnath
Vs.
Union of India & Ors.**

For the petitioner : Mr. Kumar Jyoti Tewari, Sr. Adv.
Mr. Aniruddha Tewari
Ms. Samriddhi Nayak

For the U.O.I. : Mr. Indrajeet Dasgupta
Ms. Puspita Bhowmik

For the respondent Nos. 4 : Mr. Debasish Chattopadhyay
to 7 Mr. Tirthankar Basu

Heard on 19.02.2025

Judgment on : 19.02.2025

PARTHA SARATHI SEN, J.:

1. By filing the instant writ petition the writ petitioner has prayed for issuance of appropriate writ/writs against the respondent authorities for setting aside and/or quashing of the followings namely; the charge-sheet dated 09.09.2024 as submitted against

him, the order dated 29.10.2015 as passed by the Senior Security Commissioner, RPF Metro Railway, Kolkata, the appellate authority's order dated 13.01.2016 as passed by the Additional Chief Security Commissioner/RPF Eastern Railway, Kolkata and the revisional authority's order dated 09.08.2016 as passed by I.G. cum Chief Security Officer/RPF Eastern Railway, Kolkata.

2. In course of hearing Mr. Tewari, learned Senior Advocate duly assisted by Mr. Aniruddha Tewari, learned Advocate appearing for the petitioner at the very outset submits before this Court that at the relevant point of time the writ petitioner was posted as a Constable, Railway Protection Force ('RPF' in short), North Coy., Metro Railway, Kolkata. Drawing attention to page nos. 51 and 53 of the instant writ petition it is argued by Mr. Tewari that as against the writ petitioner one Sandip Sarkar and one Sekhar Bala lodged two different complaints in writing both dated 09.07.2014. It is submitted further that on the basis of the said two complaints the respondent authorities initiated a preliminary enquiry vide memo dated 14/15.07.2014 whereby and whereunder one Inspector, RPF Tollygunge, Metro Railway, Kolkata was assigned to conduct such preliminary enquiry in terms of Rule 248 of RPF Rules, 1957 (hereinafter referred to as the 'said Rules, 1957').

3. In his next limb of submission Mr. Tewari submits before this Court that in course of the said preliminary enquiry the statement of the aforementioned two complainants, viz., Sandip Sarkar and Sekhar Bala were recorded by the said Inspector and the present writ petitioner was given opportunity to cross-examine the said two complainants. It is further submitted by Mr. Tewari that on comparative study of the statements of the aforesaid two complainants as recorded by the said Inspector it would reveal that surprisingly their statements are more or less identical and even in their respective cross-examination the said two complainants had given identical replies which made the basis of the said complaint highly improbable.
4. Mr. Tewari further submits that the Inspector who has been assigned to conduct the preliminary enquiry had failed to consider material contradiction (because of similarity of evidence) in the statements of the said two complainants and thus the report as submitted by him and as available at page nos. 55 and 56 of the instant writ petition must be considered as perverse and, therefore, appropriate relief may be granted to the writ petitioner in terms of the prayers made in the writ petition.
5. It further submitted by Mr. Tewari that from the report of the said Inspector it would reveal that the respondent authorities were predetermined to impose punishment upon the writ petitioner

which is why in such report some distortion of facts with regard to the time have been done which is apparent on the face of record and thus the preliminary enquiry report dated 24.07.2014 as submitted by the Inspector, RPF, Tollygunge may be considered as unjust and the same may be set aside.

6. Per contra, Mr. Dasgupta, learned advocate appearing on behalf of the respondent nos. 1, 2 and 3 i.e., Union of India and its functionaries submits before this Court that the contradiction as pointed out by Mr. Tewari, is minimal in nature and the same cannot affect the preliminary enquiry report which is merely the basis of a charge-sheet as issued against the writ petitioner by the disciplinary authority.
7. It is further submitted that the writ petitioner had every opportunity to challenge the findings of the preliminary enquiry report in appropriate forum and in not doing so and, thereafter, participating in the disciplinary proceeding, the writ petitioner had waived his right to challenge the validity and correctness of the said preliminary enquiry report. It is, thus, contended on behalf of the respondent nos. 1 to 3 that the writ petitioner is not entitled to any relief as prayed for only on the score that the said preliminary enquiry report contents a minor discrepancy with regard to the time which may be overlooked especially when in course of departmental enquiry, in course of appellate proceeding

and revisional proceeding, the enquiry officer, the disciplinary authority and the revisional authority had applied their independent mind in coming to the conclusion with regard to the charges as framed against the writ petitioner as well as with regard to the punishment as imposed upon the writ petitioner. It is submitted further that in a judicial review, this Court must not exercise its power like an appellate Court by reassessing the evidence as recorded in the departmental proceeding.

8. Mr. Chattopadhyay, learned advocate appearing on behalf of the respondent nos. 4 to 7 being the different functionaries of the Metro Railway authority while adopting the argument of Mr. Dasgupta places his reliance upon a reported decision of **Ram Murti Yadav Vs. State of Uttar Pradesh & Anr.** reported in **(2020) 1 SCC 801**.
9. It is submitted by Mr. Chattopadhyay that in the reported decision of **Ram Murti Yadav (supra)**, it has been held by the Hon'ble Supreme Court that scope for judicial review of order of compulsory retirement is very much limited inasmuch as the same is based on subjective satisfaction of the employer and the same should not be interfered with unless it is found that the decision arrived by the disciplinary authority is otherwise arbitrary, capricious, mala fide, overlooking and ignoring relevant materials.

10. On careful consideration of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, if I look to the factual aspects of this case, it appears to this Court that the written complaint as made by Sandip Sarkar and the written complaint as made by Shekhar Bala are more or less identical not only in nature but also in language. It is undisputed that on the basis of the said two written complaints, a preliminary enquiry was conducted and one inspector of RPF/Tollygunge was entrusted to conduct such preliminary enquiry.
11. This Court has occasion to go through the statements recorded in such preliminary enquiry as made by the said two complainants, namely, Sandip Sarkar and Shekhar Bala. It reveals to this Court that both the complainants are resident of same Police Station though under different Post Office. It has also been noticed by this Court that both the complainants stated it categorically in their respective statements that on the very first day of visit by the delinquent, he was accompanied by one Piyush Debnath who is a common friend of both the complainants. In course of preliminary enquiry, opportunity was given to the delinquent to cross-examine the said two complainants and in course of such cross-examination, both the complainants have stated that the delinquent went to their house on 18.07.2014 at about 8.30 p.m.

12. This Court is well-aware that being a writ court in a judicial review, this Court is not expected to act as an appellate court and, therefore, it is not the duty of a writ court to reassess the evidence which is the primary duty of the enquiry officer. This Court is also conscious that sitting in a judicial review, this writ court is not expected to substitute its own view, even if, this Court disagrees with the view taken by the enquiry authority. However, the scope of judicial review is not at all limited when it is placed on record that the decision as arrived by the enquiry authority is highly improbable and/or is based on extraneous material and/or non-consideration of materials as available in the record.
13. On careful perusal of the statements of Sandip Sarkar and Shekhar Bala as recorded in course of preliminary enquiry, it reveals to this Court that it is the version of Sandip Sarkar that even on being asked by the delinquent which is the writ petitioner herein, he did not pay any money to him, on the contrary, it is the version of another complainant Shekhar Bala that on being asked by the delinquent/writ petitioner herein, he handed over a sum of Rs. 5,000/- to him. Both the said two complainants were cross-examined and this Court has noticed that the entire cross-examination of the said two complainants are absolutely identical in nature even line by line and it has also been stated by the said two complainants that the delinquent who is the writ petitioner

herein went to their house on the same day at the same time i.e., on 18.07.2014 at 8.30 p.m. which in considered view of this Court is practically impossible since the aforesaid two complainants are residents of two different postal areas.

14. As rightly pointed out by Mr. Tewari that the preliminary enquiry officer i.e., the concerned inspector while submitting such report probably had perused such material contradiction and thus, in his report dated 24.07.2014, he had altered the time by saying *“..... he went to their house at about 6.30 p.m. and 8.30 p.m. separately....”*.
15. It appears to this Court that this Court has every reason to believe that the inspector RPF/Tollygunge while submitting his report dated 24.07.2014 had intentionally made an attempt to overlook the aforementioned contradiction and thus, altered the time by writing 6.30 p.m. instead of 8.30 p.m. at the relevant place of his report. This Court thus, considers that the report dated 24.07.2014 as submitted by the inspector RPF/Tollygunge is perverse for non-consideration of material contradictions in the cross-examination of the complainants. This Court further considers that the said report dated 24.07.2014 calls for interference in view of conscious wrong recording of facts probably with a sole intension to make out a case for submission of charge-

sheet against the delinquent who is the writ petitioner before this Court.

16. The reported decision of **Ram Murti Yadav (supra)** as cited from the side of the respondent is of no help to the respondent/authorities inasmuch as this Court has already come to a finding that the preliminary enquiry report is not sustainable in the eye of law since the same has been submitted ignoring the relevant material which includes material contradiction.
17. This Court thus considers that since a serious miscarriage of justice occurred while submitting the preliminary enquiry report by the inspector/RPF/Tollygunge on 24.07.2014, the said enquiry report stands hereby quashed.
18. Consequently, the charge-sheet which was submitted on the basis of the enquiry report also stands hereby quashed.
19. Consequently, the finding and the punishment as awarded by the disciplinary authority vide its order dated 29.10.2015, the finding of the appellate authority dated 13.01.2016 as well as the finding of the revisional authority dated 09.08.2016 are all hereby set aside and quashed.
20. The respondents, more specifically, the respondent no. 5 is hereby directed to reinstate the writ petitioner to the post of constable, RPF positively within a period of fortnight from the date of communication of the server copy of this order.

21. Mr. Dasgupta, learned advocate appearing on behalf of the respondent nos. 1, 2 and 3 i.e., Union of India and its functionaries and Mr. Chattopadhyay, learned advocate appearing on behalf of the respondent nos. 4 to 7 being the different functionaries of the Metro Railway authority are requested to communicate the server copy of this order to the respondents/authorities for their compliance.
22. The respondents/authorities are directed to act on the server copy of this order.
23. Similar, liberty is given to the learned advocate-on-record for the writ petitioner to communicate the server copy of this order to the respondents/authorities for their immediate compliance.
24. It is further made clear that the writ petitioner is not entitled to get any backwages from the date of his compulsory retirement till today.
25. It is also, however, made clear that for the purpose of calculation of the pensionary benefits of the present writ petitioner, the period from compulsory retirement of the writ petitioner till today shall be considered as continuation of service and accordingly, the notional benefits as accrued thereon shall have to be disbursed at the time of his superannuation, if he is otherwise entitled to the same the relevant time.

26. With the aforementioned observations, the instant writ petition being **WPA 18437 of 2016** is hereby disposed of.
27. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(PARTHA SARATHI SEN, J.)

28. After passing of the judgment, Mr. Dasgupta, learned advocate appearing on behalf of the Union of India and its functionaries prays for stay of operation of the judgment and order.
29. Such prayer is considered and rejected.

(PARTHA SARATHI SEN, J.)