

Form No. J. (2)  
(SKB)

**IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
APPELLATE SIDE**

**Present :**

**The Hon'ble Justice:- Madhuresh Prasad  
And  
The Hon'ble Justice:- Prasenjit Biswas**

**F.M.A. 424 of 2021  
With  
CAN 1 of 2021**

**Sailendra Kumar  
-Versus-  
Union of India and others**

Mr. Achin Kumar Majumder,  
Ms. Ananya Adhikary

... for the petitioner.

Mr. Pradin Kumar Das

... for the Union of India.

Heard on: 25.02.2026, 11.03.2026 & 12.03.2026

Judgment on: **12<sup>th</sup> March, 2026**

**Madhuresh Prasad, J.:**

1. Heard the learned advocates representing the parties.

2. The appellant/petitioner an Inspector in the Railway Protection Force (in short 'RPF') posted at Malda was awarded a punishment stopping three annual increments for a period of three years with cumulative effect by an order dated 17.12.2008 issued by the Senior Divisional Security Commissioner, RPF (The Disciplinary Authority). He preferred an appeal against the order. The appeal was also rejected by the Appellate Authority by an order dated 18.08.2009.
3. The appellant/petitioner assailed the punishment and the order of the Appellate Authority including the entire departmental proceedings by way of a writ petition. The writ petition was registered as W.P.A. No.19950 of 2009.
4. After hearing the parties, the writ petition was dismissed by the learned Single Judge by a judgment dated 29.01.2021. The judgment of the learned Single Judge is under appeal by way of this present intra court appeal.
5. The learned advocate for the appellant submits that the punishment awarded to the appellant/petitioner was unsustainable. He submits that the Enquiry Report dated 18.09.2008 manifests no consideration by the Enquiry Officer. The charges have been held proved without any consideration and without reference to any material. No

finding on the material adduced in the course of enquiry was recorded by the Enquiry Officer.

6. The Disciplinary Authority in its order dated 17.12.2008 has found that the Enquiry Report is not a speaking order. However, the Disciplinary Authority proceeded in the matter with a view to finalizing the issue. The relevant extract of the order of the Disciplinary Authority in this regard reads as follows:

*“I have gone through the entire case file including records of enquiry, evidences and findings of the E.O and written statement of defence submitted by the charged officer. The E.O in his findings concluded that the charged officer is guilty of all the 5 charges leveled against him. It is pertinent to mention here that the findings submitted by ASC/Andal is not at all in speaking manner for his coming to the conclusion narrated in the findings. Since the case has already been delayed badly and no hope for the E.O to cope with the discrepancies is expected, it is decided to finalize the case as under:-”*

7. The Disciplinary Authority, did not record any finding based on any material whatsoever regarding the charges being proved. He has merely taken note of the charge memo and, thereafter, proceeded to record findings, which are without any basis and without any reference to the material adduced in the enquiry. The order was passed in a mechanical way, and the findings are without reference to any material in enquiry. Therefore, the order including the consequential punishment is unsustainable.

8. The Hon'ble Single Judge, failed to consider that the entire proceeding arises out of an alleged theft, which took place from a Wagon No.SR BCXC-32999 (hereinafter referred to as "the wagon"), which was attached to a particular train and brought to the Malda Yard on 21.06.2007. The wagon was detained at Malda Yard till 29.07.2007. The theft was, however, discovered when the wagon moved out of the Malda Yard and after it reached Barharwa Station.
9. It was alleged against the petitioner/appellant who was the Inspector, Crime Intelligence Branch (CBI), at Malda, that he failed to collect intelligence about theft of the cable which took place in Malda Yard. He also failed to collect intelligence about disposal of the stolen cable, the offenders responsible for the theft; and also that he failed to supervise the CIB Staff at Malda for collection of such intelligence. It was also alleged that he failed to give intimation to the Headquarters and higher authorities.
10. At the relevant time, one Sri R.S.P. Singh was the Divisional Security Commissioner at Malda Town in the Eastern Railway. He was also proceeded against for an allegation arising out of the self-same alleged theft at Malda Yard. It was alleged that he failed to prevent the theft. The substance of the allegation was common, in relation to an

alleged theft of 3079 meters of cable valuing Rs.6,30,903/-, from the self same wagon.

11. After considering the charges leveled against the D.S.C., Malda, Sri R.S.P. Singh, the Director General of the Force, recorded a finding in the following terms:

*“Going through the written statement of defence and hearing the Charged Officer in person vis-à-vis material on record, I find that the Charged Officer had rightly taken steps to register a case as unlocalised RTT and not as Yard theft and initiate inquiries accordingly. There was, therefore, no question of fixing responsibility as the place of occurrence was not conclusively established to be Malda Division. CSC/Eastern Railway, in his comments has also concluded that the GRP investigations ended in Final Report and could not localize the crime scene. In view of the above, I do not propose to pursue the disciplinary proceedings. The charges leveled vide memorandum No 2007/Sec (E)/DAR-2/19 dated 01.01.2009 are hereby ‘dropped’.”*

12. On considering the material on record, we find that the self-same alleged theft from the wagon is the genesis, giving rise to two different proceedings, one against the writ petitioner and the other against the D.S.C., Malda. In so far as the D.S.C., Malda is concerned, it was held that there was no question of fixing of responsibility as the place of occurrence of the alleged theft could not be established to be in Malda Division. Such finding was recorded on 26.10.2009 by the Director General.

13. Such finding is subsequent to the findings recorded in the proceeding conducted against the petitioner for the

same alleged theft, wherein he was found guilty and punished by the Enquiry Officer and the Disciplinary Authority in the proceeding conducted against the writ petitioner/appellant.

14. This finding dated 26.10.2009 of the Director General's was brought to the notice of the learned Single Judge in the writ proceeding. The writ petitioner/appellant thus alleged that he was discriminated against. The finding with respect to the same occurrence in petitioner's case was at stark variance with the findings recorded in respect of the D.S.C., Malda.

15. We are conscious that the law does not contemplate that as a rule if there are more than one accused persons, then the findings are required to be uniform in respect of all the accused persons, since their individual role may be different and the material in support of the allegation against the individuals may also be different. However, in a case like the present case where the substratum of the allegation itself ceases to exist and the findings is recorded by the highest authority in the Force that the place of occurrence could not be established to be in Malda Division where both the D.S.C. and the present petitioner/appellant was posted at the relevant time, there is no scope for

concluding that the appellant/petitioner had any responsibility in respect of the alleged occurrence, which according to the Director General did not take place at Malda.

16. We find such submission on behalf of the writ petitioner to be acceptable that in view of the findings of the Director General dated 26.10.2009, the findings of the Disciplinary Authority dated 17.12.2008 was unsustainable.

17. A closer scrutiny of the findings recorded by the Disciplinary Authority further reveals that the findings are unsustainable irrespective of the order of the Director General dated 26.10.2009. Since the findings are based on surmises and conjectures, and without reference to any material in the enquiry. Therefore, the findings are fit to be set aside by the writ court even within the limited scope of judicial review under Article 226 of the Constitution of India, confined to the decision making process, as per law recently stated by the Apex Court in the case of ***Union of India and others Vs. P. Gunasekaran*** reported in ***(2015)2 SCC 610***.

18. In the order dated 17.12.2008, the Disciplinary Authority has taken note of the fact that when the wagon reached the Malda Yard on 21.06.2007 "*both sides both*

*doors sealed and nut-bolted on its arrival at Malda Yard on 21.06.2007".* He thereafter records that the wagon remained stable there up to 28.07.2007 and left Malda Yard at 29.07.2007 at 4.50 hours when *"both sides both doors were given same sealed condition remark as was found at the time of its arrival"*.

19. The finding of the Disciplinary Authority, therefore, leaves no room for doubt that the locks in the wagon in question was not at all tampered in the Yard. Perhaps it is after consideration of such material that a finding was arrived at in the proceedings against the D.S.C. that the place of occurrence was not established to be in Malda Division.

20. The Disciplinary Authority, thereafter, proceeds to record that the wagon was attached to a Train No.DC 015 and travelled to Barharwa Road where it arrived on 29.07.2007 when it was detected that the left side door had a seal missing.

21. However, based on such consideration, a perverse and conjectural finding was recorded in the following terms: *"possibility of above theft as per RPF seal checking remarks cannot be ruled out to have been committed at Malda Yard itself"*. He thereafter proceeds to record a finding that *"it is*

*obvious that he (petitioner/appellant) failed to collect necessary crime intelligence being in-charge of CIB Unit Headquarter at Malda".* The Disciplinary Authority thereafter recorded findings and awarded punishment in the following terms:

*"In context with the above, taking the role of the charged officer as per his designation and his failure in working out the case of crime which took place from a wagon stable in Malda yard, nature of crime with its value and the facts adduced during D&AR enquiry into consideration, it is felt that the charges leveled against charged officer Sri Shailender Kumar, IPF/CIB/MLDT, now IPF/T.E. Coy/Asansol, is established as such I award him punishment of stoppage of his next annual increment for a period of "three years with cumulative effect."*

22. The findings, are based on surmises and conjectures, cryptic, perverse and without reference to any material and, as such, clearly unsustainable and liable to be interfered with by this court exercising judicial review under Article 226.

23. The Hon'ble Single Judge having taken note of the submission of the appellant/petitioner regarding the stark variance in the findings recorded in his case and that of the D.S.C., proceeded to dismiss the writ petition by recording a finding that due and adequate opportunity was granted to the appellant/petitioner and, therefore, there being no

procedural lacuna in the enquiry, there was no scope for interference.

24. We find the conclusion of the learned Single Judge to be founded on a very well established and settled law that in case of there being no procedural lacuna, the court exercising judicial review is normally not expected to interfere with the findings.

25. However, the learned Single Judge failed to consider the petitioner's plea of discrimination based on the subsequent findings recorded by the Director General in the case of the DSC. The learned Single Judge also failed to take into consideration that the findings recorded by the disciplinary Authority against the writ petitioner was based on surmises and conjectures, cryptic, without reference to any material in support of the conclusion and were, therefore, unsustainable and liable to be set aside in a judicial review under Article 226 of the Constitution of India.

26. Having regard to the above noted infirmities in the findings of the Disciplinary Authority, and unsustainability of the order *vis-a-vis* the order dated 26.10.2009 passed by the Director General in the case of the DSC, we find that the Disciplinary Authority's order and the punishment are unsustainable.

27. We, therefore, having given our anxious consideration above are of the view that the order of the Disciplinary Authority dated 17.12.2008 is unsustainable and hereby quashed. The order dated 18.09.2009 of the Appellate Authority being an order of affirmation simplicitor of the unsustainable order passed by the Disciplinary Authority is, therefore, also unsustainable and hereby quashed.

28. The appeal and the writ petition stand allowed. It is needless to say that the appellant/petitioner would be entitled to benefits as a consequence of quashing of the orders.

29. Pending CAN stands disposed of.

30. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

**(Madhuresh Prasad, J.)**

**(Prasenjit Biswas, J.)**