

**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**

**M.A.T. 1124 of 2024**

**Sri Hira Lal Singh  
Vs.  
Union of India &Ors.**

**with**

**M.A.T. 1725 of 2024  
With  
CAN 2 of 2024**

**Union of India &Ors.  
Vs.  
Sri Hira Lal Singh**

Mr. Achin Kumar Majumder,  
Ms. Ananya Adhikary  
...for the Appellant in MAT 1124 of 2024  
...for the Respondent in MAT 1725 of 2024

Mr. Sukumar Bhattacharyya,  
Ms. Oindrila Chatterjee,  
Ms. Subhangi Bhattacharya  
...for the U.O.I.

Heard on : 30<sup>th</sup> June, 2026

Judgment on : 30<sup>th</sup> June, 2026

**Madhuresh Prasad, J.:**

1. Heard the learned advocates representing the appellant and the respondent.
2. The present writ petitioner, a Constable in the Railway Protection Force, was proceeded against in an enquiry. He was visited with a penalty on

finding the charges proved. The sum and substance of the charges against the petitioner was that without taking permission or giving intimation to his controlling officer, he absented himself from his duty on 15.09.2007. The further allegation made against him was that he gave a misdeclaration of his actual identity before the police officers by mentioning his fake chest number and certain other such allegations. The petitioner was visited with a penalty of withholding of his next due increment for two years with cumulative effect. The punishment contemplated that his suspension period is treated as suspension for all purposes. The punishment order dated 16.12.2008, gave an opportunity to the petitioner to make an appeal within thirty (30) days.

3. The petitioner preferred an appeal. The detail and elaborate appeal of the petitioner dated 01.01.2009, was submitted before the Divisional Security Commissioner RPF, Eastern Railway at Malda. The appellate authority has rejected the appeal by an order dated 20.04.2009.
4. The writ petition was filed assailing the entire enquiry proceeding from issuance of the charge, till passing of the order by the appellate authority. The writ petitioner alleged procedural irregularity in the enquiry and non-consideration of the appeal by the appellate authority.
5. The learned Single Judge has partly allowed the writ petition. The order of the Disciplinary Authority insofar as it directed the period of suspension to be treated as suspension for all purposes was interfered with. The learned Single Judge directed the period of suspension be treated as "*on duty*" for all purposes. The petitioner was held entitled to all consequential benefits as a result of such relief.

6. The learned Advocate for the writ petitioner appellant submits that Rule 153.3 of the Railway Protection Force Rules, 1987 (for short “1987 Rules”) contemplates that the Disciplinary Authority based on the allegations to be inquired into, should decide whether a case is made out for proceeding against the employee for major or minor punishment. Since the Rule casts an obligation to decide such an issue, the Disciplinary Authority should have given an opportunity to the petitioner at this stage, which has not been done. The learned Advocate submits that issuance of charge memo without giving an opportunity to the petitioner, manifests undue haste and a predisposition. The charge memo, therefore, stands vitiated. The stages thereafter including the enquiry are, therefore, unsustainable.

7. Since, reliance is placed on Rule 153.3. of 1987 Rules, we consider it apposite to reproduce the same which reads :-

*“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.”*

8. The petitioner raised such a grievance before the appellate authority including various other procedural lacunae. However, the appellate authority did not consider the issues raised in the appeal.

9. In support of his submission, the learned advocate for the writ petitioner/appellant relied upon a decision of the Hon’ble Supreme Court

of India in the case of ***State of Punjab Versus V. K. Khanna & Ors.*** reported in ***(2001) 2 SCC 330***.

10. The learned advocate appearing on behalf of the respondent, however, would submit that the allegations levelled by the petitioner are unsustainable. Rule 153.3 does not contemplate giving an opportunity of hearing even prior to service of a charge-memo. He submits that the enquiry proceeding was conducted in accordance with the procedural prescription contained in the 1987 Rules. He has referred to decision of the Hon'ble Supreme Court of India in the case of ***Union of India & Ors. Versus Managobinda Samantaray*** and handed over a print out of the decision from ***2022 LiveLaw (SC) 244***. He submits that the Tribunal or this Court exercising judicial review under Article 226 of the Constitution of India should not interfere with the proceeding or the quantum of punishment unless the Court finds that the conclusions arrived at in a disciplinary proceeding are in violation of the procedural prescription governing the conduct of such proceeding, and such infraction gives rise to a prejudice/miscarriage of justice. He would submit that the writ jurisdiction is circumscribed by limits of correcting error of law and procedural error leading to manifest injustice or violation of the principles of natural justice. The Court may interfere also when the decision is found to be ailing with perversity.
11. No such case is made out in the present appeal and therefore, the learned Single Judge should not have interfered with the punishment. The limited interference by the learned Single Judge is unsustainable.

12. Once the learned Single Judge found no reason to interfere with the finding in the inquiry regarding the charges being proved, there was no scope for interfering with the punishment and its consequences. There is no finding returned by the learned Single Judge that treatment of the suspension period, as suspension for all purposes, was disproportionate to the gravity of the charge or otherwise.
13. The learned advocate for the writ petitioner/appellant on the other hand submits that since, the learned Single Judge did not take into consideration the alleged violation of Rule 153.3. In view of such infirmity, the subsequent actions of the Enquiry Officer and Disciplinary Authority are all unsustainable and therefore, the Court should have set aside the entire proceeding.
14. He further submits that the petitioner specifically made a submission before the learned Single Judge Bench that the appellate authority has failed to exercise jurisdiction vested in it. Referring to Rule 217 of the 1987 Rules, he submitted that the rule casts an obligation on the appellate authority to consider the appeal with reference to alleged violation of procedure occasioning miscarriage of justice, and also to consider whether the findings are based on evidence or not. As per Rule 217.3, the appellate authority is also required to consider whether quantum of punishment is commensurate with the charges/findings.
15. Rule 217.3, relied upon by the learned advocate reads :-

*“217.3. In the case of an appeal against an order imposing any of the punishments specified in rules 148 or 149 or enhancing any penalty imposed under the said rules the appellate authority shall consider:-*

(a) whether the procedure prescribed in these rules has been complied with, and if not, whether such non-compliance has resulted in violation of any constitutional provisions or in miscarriage of justice;

(b) whether the findings are warranted and based on evidence on record; and

(c) whether the punishment or the enhanced punishment imposed is adequate or inadequate or severe and pass speaking orders for-

(i) setting aside, confirming, reducing or enhancing the punishment, or

(ii) remitting the case to the authority which imposed or enhanced the punishment or to any other authority with such directions as it may deem fit in the circumstances of the case:

*Provided that –*

(i) no order imposing an enhanced punishment shall be passed unless the appellant is given an opportunity of making any representation which he may wish to make against such enhanced punishment; and

(ii) if the enhanced punishment, which the appellate authority purposes to impose, is one of the punishments specified in clause (a) to (d) of rule 148.2 and an inquiry under rule 153 has not already been held in the case, the appellate authority shall, subject to the provisions of rule 153 itself hold such inquiry or direct that such inquiry be held and thereafter on a consideration of the proceedings of such inquiry pass such orders as it may deem fit.”

16. The order of the appellate authority dated 20.04.2009 reads:

*“APPELLATE ORDER*

*Sri H.L Singh, Constable/3814 of CIB/ASN now at RPF/Post/JMP(YD) has submitted an appeal against the punishment order of withholding of*

*next increment for two years with C.E. Imposed by ASC/Malda vide his P.O No 312/08, dt 16.12.08 connection with charge sheet No SC 30/38/DAR/HLS ASN dt 22.10.07 issued by ASC/PS/HQ*

*Due to non-availability of ASC/MLDT as well as per order of SC 36/33/7-E/Pt XX dt 18.03.09 i have carefully gone through the DAR file and appeal of the appellant. He has no fresh point to clarify his conduct and the charges leveled against him are serious in nature. Order is dictated. I upheld the punishment awarded by ASC/MLDT Hence the appeal is regretted. He may be informed accordingly."*

17. The order is a cryptic order, not supported by any consideration, or reasons and is unsustainable. The same was liable to be set aside. The learned Single Judge, however, has not considered this aspect of the matter.
18. The learned advocate for the Railways opposed such contention and placed reliance on a Constitution Bench decision of the Hon'ble Supreme Court of India in the case of **S.N. Mukherjee Versus Union of India** reported in **(1990) 4 SCC 594**. He submitted that where the revisional or appellate authority affirms an order of the original stage, the authority need not give separate reasons, if it is agreeing with the reasons contained in the order under challenge. He, therefore, submits that the submission of the learned advocate for the writ petitioner/appellant regarding non-consideration of the appeal by the appellate authority is devoid of any substance.
19. We have considered the rival submissions.
20. Insofar as the allegation of the writ petitioner that Rule 153.3 was violated, the issue having raised before the appellate authority, we are of the view that the same was required to be considered by the appellate authority. The reason for our such conclusion is founded on a reading of

Rule 217.3 of the 1987 Rules. The 217.3(a) casts an obligation on the appellate authority to consider whether the procedure prescribed in the Rule was complied; and if not whether such non-compliance resulted in violation of any constitutional provisions, or any miscarriage of justice. The order of the appellate authority extracted above, however, leaves no ambiguity that there is no consideration whatsoever with reference to any procedural aspect of the enquiry leading to the order of penalty being inflicted against the petitioner.

21. At this juncture, we consider it necessary to take note of a fact that the 1987 Rules is a statutory Rule framed under Section 21 of the Railway Protection Force Act 1957, (hereinafter referred to as "*the 1957 Act*"). The Rules, including the Rule 217.3, therefore, were required to be observed by the Appellate Authority while considering the petitioner's appeal. Since the appellate authority did not act in terms of the procedure prescribed in Rule 217.3 and failed and omitted to consider the appeal with reference to the parameters specified in Rule 217.3, the same occasioned an infraction of procedure as well as an abdication of duty by the appellate authority, cast upon it by Rule 217.3.
22. As per Rule 217, the appellate authority was required to consider whether there was any violation of a procedural prescription, whether the findings were based on evidence on record and whether the quantum of punishment was commensurate to the gravity of the charges, which the appellate authority has failed to do. The duty cast upon the appellate authority is under a statutory rule. The appellate authority was bound by such rule.

23. We, therefore, have no hesitation in holding that the order of the appellate authority dated 20.04.2009 is unsustainable and liable to be quashed.
24. Insofar as the reliance placed on the decision of the Hon'ble Supreme Court of India in the case of **S.N. Mukherjee** (*supra*), we find no force in such submission advanced by the learned advocate for the Railways.
25. In the present case, the exercise of power and jurisdiction by the appellate authority is governed by statutory Rule 217.3 of the 1987 Rules, which requires the appellate authority to accord consideration on the specific issues, discussed above. The decision of the Apex Court in the case of **S.N. Mukherjee** (*supra*) on the other hand was rendered while considering provisions under the Army Act and Rules and specific provisions contained therein. The present Rule did not fall for consideration before the Apex Court in the case of **S.N. Mukherjee** (*supra*).
26. We, therefore, find reliance placed by the learned advocate for the Railways, on the decision of **S.N. Mukherjee** (*supra*) to be misplaced. The said judgement, has no application to the facts and circumstances of the present case, which are distinguishable for the above reasons.
27. In view of our above consideration, we are of the view that the appellate authority should accord a reconsideration to the grievances raised by the writ petitioner in the appeal strictly in terms of the provisions contained in Rule 217.3 of the 1987 Rules; and/or any other provisions in the 1957 Act/1987 Rules.

28. To facilitate such consideration, we set aside the judgement of the learned Single Judge Bench; quash the order dated 20.04.2009 passed by the Appellate Authority and leave all issues open for the appellate authority to consider.
29. Having regard to the fact that there has been considerable lapse of time in between, we are of the view that the appellate authority should pass a final order in accordance with the provisions contained under the Act and Rules, within a period of six (06) weeks from the date of receipt/production of a copy of this order before the appellate authority.
30. Since, we have remanded the matter to the appellate authority, we leave the issue regarding alleged non-compliance of Rule 153.3 open to be considered by the appellate authority.
31. We make it clear that we have not expressed any opinion on the merits of the appeal submitted by the writ petitioner.
32. The appeal and cross-appeal are accordingly disposed of.
33. Pending application, if any, also stands disposed of.
34. There will be no order as to costs.
35. Urgent certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree.

**(Prasenjit Biswas, J.)**

**(Madhuresh Prasad, J.)**