

Form No.J(2)

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

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 36768 of 2013

**Utpal Kumar Biswas
Versus
Union of India & Ors.**

For the petitioner	:	Mr. Achin Kumar Majumder
For the respondents	:	Ms. Aparna Banerjee
Heard on	:	19.03.2024
Judgment on	:	19.03.2024

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, challenging the order dated 21st November, 2013 and the charge sheet dated 3rd December, 2013.
2. The petitioner is the head constable of the Railway Protection Force (RPF) and at the material point of time was posted at Reserve Coy, Liluah under Howrah-I Division. While he was posted at RPF Post, Belur Scrap Yard he was placed under suspension by order dated 6th July, 2011 in contemplation of a disciplinary proceeding. Subsequently, the order of suspension was revoked by the competent authority by order dated 8th May,

2012. Following the aforesaid, a departmental proceeding was initiated against the petitioner on the basis of a charge sheet dated 28th December, 2011 issued by the Senior Security Commissioner, RPF, Eastern Railway, in his capacity as the Disciplinary Authority of the petitioner.

3. Immediately, upon such charge sheet being issued, the petitioner had made a detailed representation dated 25th January, 2012 denying all material allegations. Unfortunately, the petitioner's representation having not been found satisfactory, an enquiry officer was appointed to enquire into the charges leveled against the petitioner. According to the petitioner, since the status of the enquiry officer was far below the rank of the two principal witnesses named in the charge sheet, the petitioner by a further representation dated 16th February, 2012 addressed to the Disciplinary Authority, had requested appointment of any other official as the enquiry officer who is higher in rank than the aforesaid two principal prosecution witnesses, inasmuch as according to the petitioner, the enquiry officer who was lower in rank than the principal prosecution witness would not be in a position to hold a fair and impartial enquiry and there would be every likelihood of the said enquiry being influenced by the decision of the fact finding authority who were higher in rank and status than the enquiry officer.

4. Since, the petitioner's representation was not adhered to, the petitioner was compelled to move a writ petition before this Court which was registered as WP no. 6148 (W) of 2012. By order dated 4th April, 2012, a Coordinate Bench of this Court on being *prima facie* satisfied with the case as made out had granted liberty to the respondents to appoint an enquiry officer who shall be superior in rank to both the aforesaid witnesses. It was further made clear that till such appointment is made, no further proceeding shall be conducted on the basis of the memorandum of charges out of which the writ petition arises and upon such appointment being made, it shall be open to the respondent authorities to continue with the disciplinary proceeding against the petitioner on the basis of the same memorandum of charges. On the basis of the aforesaid observations, the said writ petition was disposed of.
5. Although, the respondents had preferred an appeal before the Division Bench of this Court, by order dated 5th March, 2013, the Division Bench of this Hon'ble Court while refusing to interfere with the order passed by the Coordinate Bench of this Court disposed of the said appeal and the connected applications.
6. Records, however, reveal that by an office order dated 7th October, 2013, the aforesaid charge sheet was cancelled by citing procedural lapses. Following such cancellation, a show cause notice dated 28th October, 2013 was issued calling upon the

petitioner to show cause as to why disciplinary proceeding shall not be initiated against the petitioner. Although, the petitioner had duly responded to the said show cause notice and had questioned the authority of the respondents to initiate further proceeding against the petitioner after having withdrawn the previous charge sheet, by order dated 21st November, 2013, the respondents decided to issue a fresh charge sheet and accordingly on 3rd December, 2013, a memorandum of charge was issued.

7. Challenging the aforesaid order dated 21st November, 2013 and the memorandum of charge dated 3rd December, 2013, the present writ petition has been filed.
8. Mr. Majumder, learned advocate appearing for the petitioner, by drawing attention of this Court to the previous charge sheet submits that such charge sheet identifies the names of the witnesses which, *inter alia*, include A.K. Sinha and S.K. Dasgupta. Since, the enquiry officer was lower in rank than the aforesaid two principal prosecution witnesses, the petitioner requested the authorities to change the enquiry officer and/or to appoint any other person in his place who was higher in rank than the aforesaid two principal prosecution witnesses.
9. Since, the petitioner's representation was not adhered to, the petitioner was compelled to move this Hon'ble Court whereupon the order dated 4th April, 2012 was passed. The respondents,

however, did not adhere to the direction passed by the Coordinate Bench of this Court and on the contrary by office order dated 7th October, 2013 had purported to withdraw the charge sheet. According to Mr. Majumder, once, the respondents had purported to withdraw the charge sheet without reserving in them the liberty to proceed afresh, by recording that the cancellation of the charge sheet was without prejudice to their rights, no further charge sheet could have been issued against the petitioner. In support of the aforesaid contention, Mr. Majumder has placed before this Court an unreported judgment delivered by a Coordinate bench of this Court in the case of ***Asit Dey Roy v. Union of India & Ors.*** in **W.P.C.T. 210 of 2008** on 19th August, 2009.

10. Referring to the order dated 21st November, 2013 and the memorandum of charges dated 3rd December, 2013, he submits that the second charge sheet is based on the self-same cause of action based on which the first charge sheet was issued. Only the names of the two witnesses who were higher in rank than the enquiry officer do not feature in the list of the witnesses. Unfortunately, the aforesaid witnesses form part of the fact finding committee and the subsequent charge sheet issued against the petitioner has caused immense prejudice to the petitioner.
11. In the facts and circumstances as stated above, Mr. Majumder prays that the subsequent decision to issue a fresh charge sheet

dated 21st November, 2013 and the second charge sheet dated 3rd December, 2013 should be set aside and quashed.

12. Ms. Banerjee, learned advocate appearing for the respondents, submits that the respondents had acted within its jurisdiction and authority in purporting to cancel the previous charge sheet. By placing before this Court a supplementary affidavit affirmed by the respondents on 4th December, 2023, it is submitted that as per Railway Board's letter no. E (D & A) 68 RG 6-26 dated 29th June, 1986, a Disciplinary Authority is competent to cancel the charge sheet and issue a fresh charge sheet. She submits that there is no irregularity in cancelling the previous charge sheet and issuing a second one.
13. Heard the learned advocates appearing for the respective parties and considered the materials on record.
14. Admittedly in this case, a previous charge sheet was issued on 28th December, 2011. Since, the two principal prosecution witnesses formed part of the fact finding committee, who were higher in rank, than the enquiry officer the petitioner apprehending failure of justice had made a representation for change of enquiry officer. When such representation did not yield result, a writ petition was filed before this Court which was registered as WP no. 6148 (W) of 2012. By an order dated 4th April, 2012, a Coordinate Bench of this Court was, *inter alia*,

pleased to dispose of the said writ petition by observing as follows:-

“ In these circumstances, I give liberty to the respondents to appoint an enquiry officer who would be superior in rank to both these witnesses. Till such appointment is made, no further proceeding shall be conducted on the basis of memorandum of charges, out of which the present writ petition arises. Upon such appointment being made, it shall be open to the respondent authorities to continue with the departmental proceeding against the petitioner on the basis of the same memorandum of charges.

The writ petition stands disposed of in the above terms.”

15. Although, an appeal was preferred, the Division Bench of this Court by its order dated 5th March, 2013 refused to interfere. Records reveal that the memorandum of charge dated 28th December, 2011 was cancelled by the respondents citing “*procedural lapses detected*”. However, no procedural lapses had been identified. Although, Ms. Banerjee, by placing reliance on the Railway Board’s letter 29th June, 1986 has attempted to justify the said cancellation, however, to appreciate the aforesaid contention, it would be relevant to consider the said letter. The same is extracted hereinbelow:

“E (D & A) 68 RG 6-26

4.a) If a chargesheet found to be faulty due to any reason like if it has not been issued by the appropriate Disciplinary Authority or if the charges require modification/addition or if a major penalty chargesheet needs to be issued instead of a minor penalty chargesheet etc. the correct procedure would be to cancel the chargesheet, indicating the reasons for such cancellation and stating categorically that the

cancellation is without prejudice to the right of the administration to issue of a fresh chargesheet.”

16. From the aforesaid, it would be apparent and clear that no liberty has been reserved by the respondents to issue any fresh charge sheet, nor has it been recorded that the same is issued without prejudice to the rights of the respondents to issue a fresh charge sheet.
17. Unfortunately, as it seems by a communication dated 28th October, 2013, a further show cause was issued by the respondents calling upon the petitioner to show cause as to why disciplinary proceeding shall not be initiated against the petitioner in respect of the self-same cause of action based on which the first charge sheet was issued. Although, the petitioner had responded to the same and had questioned the initiation of fresh proceeding by the authorities without adhering to the direction passed by the Coordinate Bench of this Court, by a communication dated 21st November, 2013, the Senior Security Commissioner, RPF, Eastern Railway, Howrah (I) had decided to issue a fresh charge sheet on the petitioner and accordingly on 3rd December, 2013 the second charge sheet was issued.
18. A perusal of the second charge sheet would demonstrate that the two principal prosecution witnesses who were senior in rank than the enquiry officer appointed in respect of the second charge sheet, were omitted. The aforesaid would clearly demonstrate that the same had been done with the object of overreaching the

direction passed by the Coordinate Bench of this Court which had reached finality.

19. At the *ad interim* stage when the writ petition was taken up for consideration, this Court, by order dated 19th February, 2024 was, *inter alia*, pleased to stay all further proceeding against the petitioner. Although, the respondents were granted liberty by the order dated 4th April, 2012 to proceed on the basis of the self-same memorandum of charge by appointing an enquiry officer, higher in rank than the aforesaid two principal prosecution witnesses, whose names feature under serial nos. 10 and 11 of the memorandum of charges dated 28th December 2011, but the same had not been done.
20. The manner in which the charge sheet has been cancelled and a fresh charge sheet was issued, speaks volumes about the conduct of the respondents. Be that as it may, since Ms. Banerjee at this stage submits that the respondents are ready and willing to continue with the disciplinary proceeding in terms of the directions issued by the Coordinate Bench of this Court dated 4th April, 2012 by appointing an enquiry officer higher in rank than the aforesaid two principal prosecution witnesses, whose names feature under serial nos. 10 and 11 of the charge sheet dated 28th December 2011, I set aside the subsequent order dated 7th October, 2013 canceling the charge sheet 28th December, 2011, the show cause notice dated 28th October, 2013, the decision of

the Senior Security Commissioner to issue the second charge sheet dated 21st November, 2013, and the second charge sheet dated 3rd December, 2013 issued by the respondents.

21. The respondents shall be at liberty to proceed with the enquiry from the stage of issuance of the charge sheet by appointing an enquiry officer higher in rank than the aforesaid two principal prosecution witnesses, strictly in terms of the direction contained in the order dated 4th April, 2012.
22. The entire proceeding must be concluded within a period of 16 weeks from the date of communication of this order.
23. It is made clear that if the respondents do not conclude the disciplinary proceeding within the period as provided hereinabove, the entire disciplinary proceeding shall stand lapsed without any further reference to this Court.
24. With the above observations and directions, the writ petition stands **disposed of**.
25. Urgent photostat certified copy of this order, if applied for, be made available to the parties, upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)