

**(2004) 06 GAU CK 0007**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C) No. 3399 of 2003**

|                         |    |            |
|-------------------------|----|------------|
| Mahendra Kr. Singh      | Vs | APPELLANT  |
| N.F. Railway and Others |    | RESPONDENT |

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**Date of Decision :** 08-06-2004

**Acts Referred:**

Railway Protection Force Rules, 1987 — Rule 154.2, 154.5

**Citation :** (2005) 104 FLR 213 : (2004) 3 GLR 699

**Hon'ble Judges :** Ranjan Gogoi, J

**Bench :** Single Bench

**Advocate :** D.K. Mishra, S. Jahan and J. Rahman, for the Appellant; S. Sarma, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Ranjan Gogoi, J.—An order dated 16/17/8/2002 dismissing the writ petitioner from service has been put to challenge in the present writ application. The appellate order dated 24.2.2003 dismissing the appeal filed by the writ petitioner against the aforesaid order of dismissal is an incidental matter of challenge in the present writ proceeding.

2. The facts, in brief, may be noted at the outset.

A complaint dated 1.6.1998 was lodged by one Shri Ram Avtar Singh to the Chief Security Commissioner, Railway Protection Force, R.P.F., New Delhi alleging-Chat the writ petitioner who was at the relevant point of time serving as a Constable in the Railway Protection Force and posted at Maligaon, Guwahati, Assam had accepted a sum of Rs. 60,000.00 for arranging the appointment of the nephew of the complainant one Shri Bijendra Singh, as a Constable in the Railway Protection Force. On the basis of the complaint filed, the authority decided to hold a preliminary enquiry and for said the purpose, two Inspectors of the Railway Protection Force, i.e., Shri S.K. Basak and Shri M.C. Medhi were appointed. In the course of the preliminary enquiry held by the aforesaid officers,

the statements of the complainant Shri Ram Avtar Singh, is nephew Bijendra Singh and the two persons in whose presence the money was claimed to have been paid i.e. Shri Harphool Singh and Shri Shahi Ram were recorded. Certain documents were also taken on record in the course of preliminary enquiry. The result of the preliminary enquiry was adverse to the writ petitioner and after submission of the report of the preliminary enquiry, a Memorandum dated 6.4.2000 was issued by the Divisional Security Commissioner, RPF, N.F. Railway at Lumding, proposing to hold a disciplinary proceeding/enquiry against the writ petitioner. The enquiry proposed was in respect of the following charge, which was set out separately in a Charge Memo enclosed to the Memorandum dated 6.4.2000.

#### CHARGE

"Gross misconduct on the part of Shri Mahendra Kr. Singh while working as HG/RPF/R.Coy/NCC took Rs. 60,000.00 (Sixty thousand) from Shri Ram Avtar Singh S/o Shiv Sahi Ram of Village Dhani Radha P.O. Ahrod, Dist. Rewari (Haryana) with the commitment to arrange appointment of his nephew Shri Bijender Singh as constable/RPF in N.F, Railway who attended the Recruitment Test at Reserve Line/Maligaon on 18.01.1996 vide call letter bearing No. 000425 for his recruitment in which he was not selected. Thus, he has contravened Rule 146.4 and 146.7 of the RPF Rule, 1987."

3. On receipt of the Memorandum containing the aforesaid charge, the writ petitioner by his letter dated 5.6.2000 sought for copies of the statements adduced in the course of the preliminary enquiry as well as photocopies of the documents taken on record in the said enquiry, which request of the writ petitioner was complied with by the respondents. The writ petitioner submitted his reply and thereafter an enquiry in respect of the charge levelled was held. In the said enquiry the two persons who had carried out the preliminary enquiry in respect of the allegation levelled against the writ petitioner, i.e., Shri S. K. Basak and Shri M.C. Medhi were examined. The statement of the charged officer, i.e., the writ petitioner was also recorded. Two affidavits filed by Sri Ram Avtar Singh and Shri Bijendra Singh both dated 8.5.2000 to the effect that no payment was made to the charged officer i.e. the writ petitioner and that the amount of Rs. 60,000.00 in question was paid to one Late Phool Chand Sharma as a loan to enable the aforesaid Late. Phool Chand Sharma to complete the construction of his house was also put on record in the course of the enquiry proceeding. The Enquiry Officer, at the conclusion of the enquiry, submitted his report holding that the charge of payment/receipt of money by the writ petitioner was not proved. However, the writ petitioner, in course of the enquiry held, had admitted writing certain letters to Shri Bijendra Singh with regard to the alleged transaction. The Enquiry Officer, therefore, concluded that while writing of the said letters by the writ petitioner to Shri Bijendra Singh with regard to payment of the money in question was established, there was no further material to hold the charge of receipt/payment of money to be proved. It must be noticed at this

stage that the Enquiry Officer in coming to the aforesaid finding, primarily relied on the affidavits dated 8.5.2000 filed by Shri Ram Avtar Singh and Shri Bijendra Singh and also took note of the said of the delinquent writ petitioner that the letters in question were written by him to Shri Bijendra Singh on behalf of one Late Phool Chand Sharma.

4. The report of the enquiry was furnished to the writ petitioner on 14.6.2002 and thereafter by the impugned order dated 16/17/8/2002, the punishment of dismissal from service was imposed by the disciplinary authority. In the order dated 16/17/8/2002 imposing the punishment in question, the disciplinary authority has recorded the finding that the conclusion reached by the Enquiry Officer that the charge of receipt/payment of money to the writ petitioner was not proved, was not acceptable. The disciplinary authority, on the materials on record, came to the conclusion that the writ petitioner himself had received the money in question to secure the appointment of Shri Bijendra Singh as a Constable in the Railway Protection Force. It is the correctness of the view taken by the disciplinary authority and the manner in which the findings of the Enquiry Officer have been recorded that has been agitated in the present writ petition.

5. Mr. D.K. Mishra, learned Sr. Counsel appearing for the writ petitioner has made a two-fold submission in support of the challenge, projected in the writ petition. The learned counsel has contended that in the notice-dated 14.6.2002 by which the enquiry report was forwarded to the writ petitioner, there was no mention by the disciplinary authority of its intention of disagree with the findings recorded by the Enquiry Officer. Yet, in the final order dated 17/18/8/2002, the disciplinary authority had disagreed with the conclusions of the Enquiry Officer and had arrived at its own independent findings without, however, giving the writ petitioner any opportunity. This, the learned counsel contends, is in violation of all established principles of fair procedure and the doctrine of reasonable opportunity that the principles of natural justice require adherence to. It is further argued by Mr. Mishra that in any view of the matter, the conclusion reached by the disciplinary authority that it is the writ petitioner who had received the payment in question would not be tenable in law, as the said conclusion has been reached on the basis of no acceptable evidence. The learned counsel has contended that a reading of the order dated 16/17/8/2002 would reveal that the disciplinary authority in coming to the aforesaid conclusion relied on the statements made in the preliminary enquiry by the complainant Shri Ram Avtar Singh and Shri Bijendra Singh as well as the persons in whose presence money was claimed to have been paid to the writ petitioner. None of the aforesaid witnesses have been examined in the course of the Enquiry held though Shri Ram Avtar Singh and Shri Bijendra Singh were specifically cited as witnesses in support of the charge levelled. The aforesaid statements made in the preliminary enquiry were sought to be proved by examining Shri Basak and Shri Medhi, the two Inspectors who had conducted the preliminary Enquiry, As the complainant and his nephew Shri Bijendra Singh were not examined in the disciplinary proceeding held against the writ petitioner, he was unable to cross-

examine the aforesaid persons and, therefore, according to the writ petitioner, the statement of the aforesaid two persons made in the course of the preliminary enquiry . has remained untested; according to the learned counsel for the petitioner, the disciplinary authority could not have relied on the said statements to come to the impugned decision.

5. Controverting the submissions advanced on behalf of the writ petitioner, Mr. S. Sarma, learned counsel appearing for the Respondents has submitted that all the papers pertaining to the preliminary enquiry including the statements of the witnesses recorded in the said enquiry were made available to the delinquent i.e. the writ petitioner at his request. The writ petitioner had admittedly written letters to Shri Bijendra Singh for payment of the money in question and the defence set up by him that such letters were written on behalf of Late Phool Chand Sharma as the aforesaid person Late Phool Chand Sharma was illiterate, can hardly be accepted. Learned counsel for the" respondents has argued that the aforesaid version advanced by the delinquent writ petitioner was rightly rejected by the disciplinary authority as Late Phool Chand Sharma was working as an Assistant Sub Inspector in the R.P.F. Learned counsel for the respondent has further contended that the defence set up by the delinquent/writ petitioner with regard to the writing of the letters in question not being acceptable, writing of the aforesaid letters for payment of money in question is admitted and such admission, according to the learned counsel for the respondents, clearly proves and establishes the substratum of the charge brought against the writ petitioner.

6. Before advertng to the respective submissions advanced by the learned counsel for the parties, the broad principles which would govern the conduct of a disciplinary proceeding against a Govt. servant and the correct parameters with regard to conduct of such a proceeding must be noticed. In a disciplinary proceeding, the provisions of the Evidence Act will not strictly apply. While in a criminal trial, a person charged with the commission of an offence would have the privilege of remaining silent, the same benefit will not be available to a charged officer in a disciplinary proceeding. The charged officer would be expected to come up with his version in respect of the allegation made and the culpability or otherwise of the charged officer will have to be judged by a preponderance of probabilities of the two versions as put forward by the respective parties.

7. In the present case, the argument advanced by Mr. Mishra with regard to the necessity on the part of the disciplinary authority to communicate to the charged officer, the proposed disagreement with the conclusion reached by the Enquiry Officer and the requirement of giving a reasonable opportunity to the delinquent to have his say in the matter of such disagreement, appears to have taken care of by Rule 154.2 and 154.5 of the Railway Protection Force Rules, 1987. Under Rule 154.5 of the Rules, if the disciplinary authority is in disagreement with the findings of the Enquiry Officer on any article of charge, it is open for the disciplinary authority to record its reasons for such disagreement and also to

record its own findings on such charge if the evidence on record is sufficient for the said purpose. The requirement of giving prior opportunity to the delinquent with regard to the disagreement that is proposed by the disciplinary authority appears to have been expressly excluded by the provisions of the Rules. As such exclusion made by the Rules has not been challenged in the present writ proceeding, having regard to the provisions of the Rules in force, this Court finds the action of the disciplinary authority in recording its disagreement with findings of the Enquiry Officer and thereafter, in recording its own conclusion in the matter<sup>1</sup>, to be in conformity with the Rules. The first limb of the argument advanced on behalf of the writ petitioner therefore, has to fail.

8. Coming to the second limb of argument advanced by Mr. Mishra, learned counsel for the petitioner, what this court finds is that neither Shri Ram Avtar Singh nor Shri Bijendra Singh nor any of the persons in whose presence the money was allegedly paid to the writ petitioner had been examined in the course of the enquiry held against the writ petitioner though Shri Ram Avtar Singh and his nephew Shri Bijendra Singh were cited as witnesses in support of the charge. Shri Basak and Shri Medhi, the two Inspectors who conducted the preliminary enquiry were, however, examined and the petitioner was given the opportunity to cross-examine the aforesaid witnesses. The aforesaid two witnesses, i.e., Shri Basak and Shri Medhi in their statements had testified as to what had transpired in the preliminary enquiry held against the writ petitioner and the said two witnesses have also proved certain records of the preliminary enquiry. It is not known as to whether Shri Basak and Shri Medhi were cross examined by the writ petitioner but what transpires from the record is that the statements made by the aforesaid two witnesses stand virtually un rebutted.

The argument advanced is that as Shri Ram Avtar Singh and Shri Bijendra Singh were not examined in the enquiry held against the petitioner, none of the aforesaid two persons could be cross examined by the petitioner and consequently, the statements of the aforesaid two persons made in the course of the preliminary Enquiry had remained virtually untested. As the findings of the disciplinary authority were reached on the basis of the statements of the aforesaid two persons, such findings have been contended to be untenable and unacceptable in law.

The argument though attractive at first blush, must necessarily be examined in the light of what had subsequently happened. Two affidavits dated 8.5.2000 filed by Shri Ram Avtar Singh and Shri Bijendra Singh were brought on record in the preliminary enquiry and that too by the writ petitioner. In the aforesaid affidavits, the concerned persons had resiled from the statements made in the preliminary enquiry and had set up a version supporting the charged officer. When the writ petitioner himself had brought on the record of the Enquiry, the affidavit evidence of the two concerned persons, it cannot be appreciated as to how the petitioner can complain of not being given an opportunity to cross examine the said persons. The writ petitioner who had himself brought the evidence of the

two witnesses in his support, obviously cannot be heard to complain that the said persons were not made available for cross examination. The veracity of the affidavit evidence of the said two persons has been doubted by the disciplinary authority on the ground that there is nothing in the affidavit to show as to why the aforesaid two persons had changed their stand subsequently. In view of the grounds on which the affidavit evidence of Shri Ram Avtar Singh and Shri Byendra Singh were rejected by the disciplinary authority, this Court is unable to find any fault with the decision reached. It is the considered view of the Court that in absence of any explanation forthcoming as to why Shri Ram Avtar Singh and Shri Bijendra Singh had changed their stand and had subsequently tried to exonerate the writ petitioner, there is a fair amount of suspicion in the subsequent stand taken which would throw a serious doubt on the credibility of the version brought in by nears of the affidavits filed. As noticed the version narrated by the aforesaid two persons in the preliminary enquiry had been brought on record of the Enquiry by examining the two persons who had conducted the preliminary Enquiry and the evidence adduced by the said two persons stand un rebutted. The prejudice claimed by the writ petitioner on account of Shri Ram Avtar Singh and Shri Byendra Singh not being made available for cross examination has been found to be non-existent for the reasons already cited. I am, therefore, of the view that this writ petition has not merit and it will be proper to dismiss the same, which I hereby do. However, having regard to the facts and circumstance of the case there shall be no order as to costs.