

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

WA.No. 984 of 2015 () IN WP(C).10591/2004

**AGAINST THE ORDER/JUDGMENT IN WP(C) 10591/2004 of HIGH COURT OF KERALA
DATED 11-02-2015**

APPELLANT(S)/LEGAL REPRESENTATIVE OF THE PETITIONER:

**ANANDU M
S/O. LATE RADHAKRISHNAN NAIR, KALPAKA, ERAM
CHATHANNOOR PO, KOLLAM 691 572**

BY ADV. SRI.SHABU SREEDHARAN

RESPONDENT(S)/RESPONDENTS:

- 1. DIVISIONAL SECURITY COMMISSIONER, RAILWAY PROTECTION FORCE,
PALAKKAD 678 014**
- 2. CHIEF SECURITY COMMISSIONER,
RAILWAY PROTECTION FORCE, SOUTHERN RAILWAY
CHENNAI 600084**
- 3. DIRECTOR GENERAL
RAILWAY PROTECTION FORCE, RAILWAY BHAVAN
NEW DELHI 110001**

BY SRI.C.S.DIAS,SC, RAILWAYS

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 27-05-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ASHOK BHUSHAN, CJ

&

A.M. SHAFFIQUE, J.

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W.A. No. 984 of 2015

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Dated this, the 27th day of May, 2015

J U D G M E N T

Shaffique, J.

The legal heir of the writ petitioner, Sri.K.R.Radhakrishnan Nair, is the appellant. Sri.K.R.Radhakrishnan Nair, while working as Constable in the Railway Protection Force, was removed from service. The petitioner challenged the orders passed by the disciplinary authority in that regard.

2. The facts involved in the case would disclose that the petitioner was found guilty of two charges. Charge No.2 was found against him and in respect of Charge No.3, he was found partially guilty. After issuing appropriate notice, he was imposed with a penalty of reduction of his pay to the minimum scale for a period of three years with recurring and cumulative effect. However, the Chief Security Commissioner in terms of the powers available under the Railway Protection Force Rules, 1987 re-opened the matter in regard to the question of enhancing the

punishment and after notice to the petitioner, the punishment was enhanced and he was removed from service. Though an appeal was filed, it came to be dismissed. The orders passed by the Chief Security Commissioner and the appellate authority was under challenge.

3. The main contention urged by the petitioner was that the original disciplinary authority having imposed a punishment for reduction of pay, there was no reason for re-opening the matter and imposing punishment for removal from service. The charges proved were minor in nature and did not call for major penalty. Further, it was contended that even though there was some proved misconducts on earlier occasions on which the petitioner has suffered punishment, the same should not have been the basis for issuing major penalty as far as the proved charges are concerned.

4. Learned Single Judge after an elaborate consideration of the factual and legal aspects involved in the matter dismissed the writ petition.

5. Learned counsel for the appellant reiterates the contentions urged in the writ petition and submits that the

judgment is liable to be set aside on account of the fact that the entire materials on record have not been taken into consideration.

6. In fact, a perusal of the records would show that the petitioner had approached this Court on various occasions with reference to the very same punishment imposed on him. OP No.3007/94 was filed challenging the imposition of penalty and by judgment dated 2/3/1994, this Court had directed independent appraisal of the case records giving due weight to the opinion formed by the disciplinary authority in the matter of imposition of penalty. Even after the said judgment, the very same decision has been taken and petitioner approached this Court by filing OP No.13770/1994, which was disposed of by the learned Single Judge by judgment dated 23/7/2002 by issuing the following directions:-

“10. I direct that the appeal filed by the petitioner, referred to in Ext.P8, should be re-heard after giving an opportunity to the petitioner to partake in the proceedings. Taking notice of the circumstance of the case of the petitioner, the third respondent should also arrange for warrant to be issued for his journey to the place of hearing. A decision, one

way or other, will be taken within a period of three months from the date of receipt of a copy of this judgment."

Thereafter also, the appellate authority had considered the matter and however, they did not deviate from the opinion expressed earlier.

7. The main contention urged by the learned counsel for the appellant is with reference to the proportionality of the punishment. The petitioner died during the pendency of the writ petition and his son as the legal representative has filed this appeal. It is a settled principle of law that the court shall not normally interfere with the punishment imposed by the disciplinary authority unless the punishment is shockingly disproportionate to the proved charges. In fact, the proved charge is charge No.2 which itself may be treated as a charge for which a major penalty could be imposed. Charge No.2 indicates that the petitioner assaulted one Sri.A.Mohanan and attempted to stab him with broken glass. Being a Police Force, the officials should be more responsible and the statutory authorities cannot permit delinquent officers to be set free by imposing minor penalties. Unless sufficient discipline is maintained in a Police

Force, it may not be possible for the employer to maintain discipline in the Force. In such circumstances, when a disciplinary authority felt it necessary to remove the petitioner from service and that too taking on account the fact that there were previous proved misconducts of which punishment had been imposed on the delinquent, we do not think that the learned Single Judge has committed any error in not interfering with the punishment imposed.

We do not find any ground to interfere with the judgment of the learned Single Judge and hence, the writ appeal is dismissed.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

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PA to Judge