

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

W.P.(C).No.1148 of 2015 (P)

PETITIONER(S):-

C.P.PADMANABHAN, AGED 55 YEARS, S/O.RAMUNNI KURUP,
CONSTABLE, RAILWAY PROTECTION FORCE, SR 8301694,
PALAKKAD, PERMANENTLY RESIDING AT:"SREE PADMAM",
KUTTOTH, KEEZHAL POST, (VIA) VADAKARA.

BY ADVS.SRI.C.VATHSALAN
SRI.K.RAKESH ROSHAN
SMT.THUSHARA.V.

RESPONDENT(S):-

1. THE GENERAL MANAGER, SOUTHERN RAILWAY,
HEADQUARTERS OFFICE, PARK TOWN P.O, CHENNAI - 600 003.
2. THE DIVISIONAL SECURITY COMMISSIONER,
RAILWAY PROTECTION FORCE, SOUTHERN RAILWAY,
PALAKKAD DIVISIONAL OFFICE, PALAKKAD - 678 009.
3. D I G CUM ADDITIONAL C S C (CHIEF SECURITY COMMISSIONER) R P F,
SOUTHERN RAILWAY, CHENNAI, PIN 600 001

R1 TO R3 BY STANDING COUNSEL SRI.JAMES KURIAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
01-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P1 - TRUE COPY OF THE CHARGE MEMO DATED 10-12-2012.
- EXT.P2 - TRUE COPY OF THE ENQUIRY PROCEEDINGS BY THE
2ND RESPONDENT.
- EXT.P3 - TRUE COPY OF THE PENALTY ADVICE WITH SPEAKING ORDER BY
THE 2ND RESPONDENT.
- EXT.P4 - TRUE COPY OF THE APPEAL FILED BY THE PETITIONER
DATED 24-8-2013.
- EXT.P5 - TRUE COPY OF THE PROCEEDINGS DATED 12-12-2014 BY THE
3RD RESPONDENT ALONG WITH INTIMATION WITH LETTER
DATED 22-12-2014.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.1148 of 2015-P

Dated this the 01st day of December, 2015

JUDGMENT

The petitioner is aggrieved with the punishment imposed as per Exhibit P3, purportedly after conducting a domestic enquiry; and affirmed as per Exhibit P5. The petitioner was working as a Constable with the Railway Protection Force.

2. The facts leading to the complaint were that the petitioner, while on duty was seen occupying a berth and sleeping, which was allotted to one another person. When the person who had the reservation, along with his father got into the train and tried to keep the baggage, the petitioner is alleged to have created a fracas and threatened the passenger and the person accompanying him. On the reserved passenger seeking the berth reserved in his name, the petitioner is said to have misbehaved with the said passenger even after the train proceeded with its journey, till Kannur.

3. Specific charges were framed with respect to the incident of misbehaviour and un-authorised occupation of a

reserved berth. The charge-sheet was issued, at Exhibit P1. A detailed enquiry was conducted, in which the complainant, the father of the passenger and the passenger were examined. There was no infirmity in the issuance of the show cause notice; the objections against which were considered and charges framed. There can be no procedural irregularity found, in the enquiry proceedings since the petitioner was given the list of documents and witnesses and permitted perusal of the documents relied on by the Department and also permitted cross-examination of the witnesses. The petitioner was also issued with the enquiry report and objections were called for before the punishment was imposed.

4. The jurisdiction of this Court under Article 226 in departmental proceedings is trite and if there is no procedural defect, this Court would not interfere with the findings of the disciplinary authority nor with the punishment imposed unless it is grossly disproportionate to the charges levelled. It is equally trite that, if, however, there is reliance on extraneous factors and if the findings are perverse or based on no evidence, then necessarily this Court would interfere so long as it does not amount to

re-appreciation of evidence.

5. The compelling contention put forward by the learned counsel for the petitioner is that even the Assistant Sub Inspector of Police who had been initially contacted by the passenger's father, had specifically deposed in his cross-examination that no complaint was lodged. This is despite the deposition that he had received a written complaint from one Chandrasekharan Nair, the father of the passenger.

6. What assumes significance is that the said Chandrasekharan Nair and his son Unnikrishnan, the passenger, were examined. Both of them did not recognise the petitioner who cross-examined them. The complainants having failed to identify the petitioner, the charges could not have been sustained against the petitioner. The mere fact that the petitioner was on duty at the relevant time would not raise a presumption that the petitioner was the person who misbehaved towards the passenger and the person who was accompanying him. It is also pertinent that even the allegations, as spoken of by the officer who initially investigated the issue, was that the petitioner accompanied the passenger till Kannur and harassed him constantly in the train. If

that be so, there would be absolutely no difficulty in identifying the person who harassed the passenger. Only in the circumstance of no identification having been made, this Court is of the opinion that Exhibit P3 and P5 cannot be sustained.

In the result, the writ petition is allowed. Exhibits P3 and P5 are set aside. The parties are left to suffer their respective costs.

Sd/-

K.Vinod Chandran
Judge.

vku/-

[true copy]