

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE**

**MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936**

**WP(C).No. 34534 of 2014 (N)**  
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**PETITIONER:**  
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**C.S.SAJI, AGED 43 YEARS,S/O.C.K SEKHARAN,  
CONSTABLE, RAILWAY PROTECTION FORCE,  
SOUTHERN RAILWAY, CHENGANNUR, RESIDING AT CHANGAYATH,  
PERISSERY P.O, CHENGANNUR, PATHANAMTHITTA DISTRICT,  
PIN-689 121**

**BY ADVS.SRI.T.C.GOVINDA SWAMY  
SMT.KALA T.GOPI  
SMT.T.N.SREEKALA**

**RESPONDENTS:**  
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- 1. UNION OF INDIA,  
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,  
MINISTRY OF RAILWAYS, NEW DELHI-110 001**
- 2. THE CHIEF SECURITY COMMISSIONER,  
RAILWAY PROTECTION FORCE, SOUTHERN RAILWAY,  
HEAD QUARTERS, CHENNAI-600 003**
- 3. THE DEPUTY CHIEF SECURITY COMMISSIONER,  
RAILWAY PROTECTION FORCE, SOUTHERN RAILWAY,  
HEAD QUARTERS, CHENNAI-600 003**
- 4. THE DIVISIONAL SECURITY COMMISSIONER,  
RAILWAY PROTECTION FORCE, SOUTHERN RAILWAY,  
TRIVANDRUM DIVISIONAL HEAD QUARTERS,  
THIRUVANANTHAPURAM-695 014**
- 5. SHRI. RAJNISH KUMAR TRIPATHI,  
DIVISIONAL SECURITY COMMISSIONER,  
RAILWAY PROTECTION FORCE, SOUTHERN RAILWAY,  
TRIVANDRUM DIVISIONAL HEAD QUARTERS,  
THIRUVANANTHAPURAM-695 014**
- 6. THE INSPECTOR PROTECTION FORCE/ERNAKULAM & INQUIRY  
OFFICER, RAILWAY PROTECTION FORCE, SOUTHERN RAILWAY,  
ERNAKULAM JUNCTION, RS & PO, KOCHI-682 016**

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

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 23-02-2015, ALONG WITH WPC.NO. 35410 OF 2014, THE COURT  
ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

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- P1:- A TRUE COPY OF THE ORDER OF SUSPENSION SERVED UPON THE PETITIONER BY THE IPF/TRIVANDRUM UNDER NO.25/TVC/2014 DTD 15/8/2014
- P2:- A TRUE COPY OF MEMORANDUM OF SUSPENSION ISSUED BY THE 4TH /5TH RESPONDENT UNDER NO.VXP/227/153/MISC/14 DTD 15/8/2014
- P3:- A TRUE COPY OF A MEMORANDUM OF CHARGES FOR IMPOSITION OF MAJOR PENALTY ISSUED BY THE 4TH/5TH REPENDENT UNDER NO. VXP/227/153/08/14 DTD 9/9/2014
- P4:- A TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 5TH RESPONDENT DISCIPLINARY AUTHORITY IN THE WPC NO.23378/2014 WITHOUT EXHIBITS
- P5:- A TRUE COPY OF THE JUDGMENT DTD 16/10/2014 IN WPC.NO.23378/2014 RENDERED BY THIS HON'BLE COURT
- P6:- A TRUE COPY OF THE JUDGMENT IN WPC NO.23377/2014 DTD 16/10/2014 RENDERED BY THIS HON'BLE COURT
- P7:- A TRUE COPY OF THE RELEVANT PAGES OF THE REPORT OF THE FACT FINDING INQUIRY COMMITTEE AS SUBMITTED UNDER NO. ASC/PROSO/HQ/MMC/FFE/01/2014 DTD 31/8/2014 BY THE ASC/PROSN/HQ/MMC/S.RLY
- P8:- A TRUE COPY OF THE DETAILED REVISION PETITIONER UNDER RULE 219(4) OF THE RAILWAY PROTECTION RULES, 1987 DTD 3/11/2014 SUBMITTED THROUGH PROPER CHANNEL
- P9:- A TRUE COPY OF THE COMMUNICATION ISSUED BY THE IPF/ERNAKULAM AND THE INQUIRY OFFICER UNDER NO.ERS/DAR/01/2014 DTD 4/12/2014
- P10:- A TRUE COPY OF THE LETTER BEARING NO.ERS/DAR/01/2014 DTD 28/10/2014. ISSUED BY THE IPF/ERNAKULAM
- P11:- A TRUE COPY OF THE ORDERS OF THE RAILWAY BOARD AS EXTRACTED IN A BOOK TITLED "DISCIPLINE & APPEAL RULES" BEARING NO.E(D & A)83 RG 6-17 OF 31/5/1983
- P12:- A TRUE COPY OF THE ORDER OF THE RAILWAY BOARD BEARING NO 2006/SEC/(ABE)/DAR/1/2011 DTD 2/11/2007
- P13:- A TRUE COPY OF THE REPRESENTATION ADDRESSED TO THE 4TH/5TH RESPONDENT, THROUGH THE INQUIRY OFFICER, ON 12/12/2014
- P14:- A TRUE COPY OF REPRESENTATION DTD 12/12/2014 ADDRESSED TO THE 4TH/5TH RESPONDENT SUBMITTED THROUGH THE EO ON THE SAME DAY
- P15:- A TRUE COPY OF A LETTER BEARING NO.VXP/227/153/8/14 DTD 12/12/2014 ISSUED BY THE FIFTH RESPONDENT
- P16:- A TRUE COPY OF THE LETTER BEARING NO. ERS/DAR/01/2014 DTD 12/12/2014 ISSUED BY THE SIXTH RESPONDENT

WP(C).NO.34534/2014

- P17:- A TRUE COPY OF COMMUNICAITON BEARING NO.ERS/DAR/01/2014 DTD 13/12/2014 ISSUED BY THE 6TH RESPONDENT
- P18:- A TRUE COPY OF THE REPRESENTATION DTD 15/12/2014 ADDRESSED TO THE 6TH RESPONDENT
- P19:- A TRUE COPY OF THE RESPONSE FROM THE 5TH RESPONDENT UNDER NO. VXP/227/153/08/14 DTD 15/12/2014
- P20:- A TRUE COPY OF A COMMUNICATION BEARING NO.ERS/DAR/01/2014 DTD 16/12/2014 FIXING THE INQUIRY ON 17/12/2014 AT ERNAKULAM ISSUED BY THE SIXTH RESPONDENT

RESPONDENT(S)' EXHIBITS:

NIL

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/TRUE COPY/

P.A.TO.JUDGE

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**A. MUHAMED MUSTAQUE, J.**

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**W.P.(C) Nos.34534 & 35410 of 2014**  
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Dated this the 23rd day of February, 2015

**JUDGMENT**

These writ petitions are filed by members of Railway Protection Force (RPF), working in the Trivandrum Division of Southern Railway. They approached this Court challenging Exts.P1 to P9 charge memo and for certain other reliefs. The issue in both these writ petitions are common and therefore, these writ petitions are disposed of by a common judgment.

2. These writ petitions essentially contain a challenge against the disciplinary proceedings. It is submitted that the disciplinary proceedings are yet to be concluded. One of the main ground of challenge is that the disciplinary authority 4<sup>th</sup> respondent is a witness to the incident, and any disciplinary proceedings involving such witness would prejudice the petitioners. Further, it is submitted that if the enquiry is completed, the disciplinary authority, who is a witness and whose behest the action is being initiated, will act adverse to the interests of the petitioners.

3. The apprehended bias in this case is on account of an incident arose in connection with a surprise visit conducted by

the 4<sup>th</sup> respondent, who is the disciplinary authority. On inspection, he found that certain officers on a highly inebriated state and on his command, his subordinate officer, Assistant Security Commissioner directed the officers who are under the influence of alcohol, for examination by a medical team. The allegation against the petitioners is that they have prevented the Assistant Security Commissioner to take the officer concerned for medical examination and it is also stated that they have misbehaved and threatened the Assistant Security Commissioner. Therefore, it is submitted that the disciplinary authority being a witness, who had prejudice to the interests of the petitioners. The learned counsel for the petitioners, Shri T.C. Govindaswamy argued extensively with reference to various judgments of the Hon'ble Supreme Court relating to the principles of bias.

4. The question of a bias is essentially a question relating to appreciation of a fact. Whether there exists real bias or likelihood of bias could be examined only after final decision on the matter. No doubt, in an apprehended bias when imminent consequence is followed, an interference is possible by invoking powers under Article 226 of the

Constitution of India. However, it all depends upon facts and circumstances which necessitates it. The High Court, while invoking the power under Article 226, normally should not interfere with ongoing disciplinary proceedings. The judicial review is directed against decision taking process. The examination of decision making process for the purpose of validity would arise only on finalization of such proceedings.

5. It is submitted by the learned Standing Counsel that the examination of witnesses are over and the 4<sup>th</sup> respondent was not examined. I do not find any reason to interfere with the ongoing disciplinary proceedings at this stage.

6. However, in order to avoid further controversies and delay in the matter, I am of the view that a superior officer to the 4<sup>th</sup> respondent shall act as a disciplinary authority. In such circumstances, the 2<sup>nd</sup> respondent shall act as the disciplinary authority for all purposes. If the petitioners have any particular instances of complaint, the petitioners are free to raise any complaint before the 2<sup>nd</sup> respondent, who shall look into such complaints for remedial action. The learned Standing Counsel further submitted that on account of the delaying tactics adopted by the petitioners, the enquiry officer is unable

to conclude the proceedings. The petitioners shall cooperate with the enquiry officer. The enquiry officer shall see that the entire proceedings are completed within a period of three months from the date of receipt of a copy of this judgment.

These writ petitions are disposed of as above.

Sd/-  
**A. MUHAMED MUSTAQUE,**  
**JUDGE.**

//true copy//

P.S. To Judge

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