

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2017

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.No.6499 of 2003
and W.M.P.No.8359 of 2003

P.Jayakannan

...Petitioner

Vs

1.The Union of India owning
Southern Railway
rep by its Secretary,
Ministry of Railways
Rail Bhavan, New Delhi.

2.The General Manager
Southern Railway,
Park Town, Madras 600 003.

3.The Chief Security Commissioner
Railway Protection Force,
Madras 600 003.

4.The Divisional Security Commissioner
Southern Railway, Mysore.

...Respondents

Prayer:- Writ Petition filed under Article 226 of the
Constitution of India to issue a writ of certiorarified mandamus
calling for the records in No.Y/SXP.227/PJ/MJR-04/2001, dated
20.12.2002 passed by the 4th respondent and quash the same as
illegal and direct the respondents to reinstate in the services
with attendant benefits.

For petitioner : Mr.Veerasekaran

for Mr.A.Thiyagarajan

For Respondents : Mr.V.G.Suresh Kumar

RESERVED ON	PRONOUNCED ON
03.01.2017	12.01.2017

ORDER

This writ petition has been filed seeking a writ of
certiorarified mandamus calling for the records in

No.Y/SXP.227/PJ/MJR-04/2001, dated 20.12.2002 passed by the 4th respondent and quash the same as illegal and direct the respondents to reinstate in service with attendant benefits.

2. Heard Mr.Veerasekaran, learned counsel for Mr.A.Thiyagarajan, learned counsel on record for the petitioner and Mr.V.G.Suresh Kumar, learned counsel for the respondents.

3. The case of the petitioner appears to have had a chequered history. The petitioner was appointed as "Rakshak" in the Railway Protection Force [hereinafter would be referred to as "the RPF"] on 06.08.1981 on probation. During his probation, he was found to be involved with Railway employees and private persons in the theft of ten scooter tyres and rims valued at Rs.6,180/- from the Basic Training Centre, Ashokapuram on 15.01.1983. Investigation in the said case was taken over by one Mr.Monappa, an Officer of the RPF under the Railway Property (Unlawful Possession) Act, 1966. Investigation in the theft case was completed and a complaint was filed by the RPF in C.C.No.4495 of 1983 before the Additional Chief Judicial Magistrate, Mysore against the accused involved in the offence, including the petitioner herein on 03.08.1983. Since the petitioner was involved in the offence, his probation was not extended and his services were terminated on 05.08.1983. The petitioner remained silent and did not challenge his termination. He participated in the criminal trial and all the accused were acquitted in C.C.No.4495 of 1983 on 23.05.1988 by the Additional Chief Judicial Magistrate, Mysore. After his acquittal, the petitioner made a representation to the Chief Security Commissioner, RPF on 22.06.1988 requesting to reinstate him into service. His request was disallowed by the Chief Security Commissioner on 28.11.1988, challenging which, the petitioner filed W.P.No.6145 of 1989.

4. A learned Single Judge of this Court was pleased to allow W.P.No.6145 of 1989 on 01.03.1996 and directed the RPF to reinstate the petitioner into service with full backwages. Aggrieved by the order passed by the learned Single Judge, the RPF took the matter on appeal in W.A.No.349 of 1996 and a Division Bench of this Court passed the following order:

"Hence, we set aside the order of the learned Single Judge, so far as it relates to the reinstatement of the respondent with backwages and all attendant benefits and direct the appellants to hold an enquiry by framing necessary charges and complete such enquiry within a reasonable time and thereafter pass orders. The reinstatement and other benefits of the respondent will be subject to the findings

that may be arrived at by the appellants in the departmental proceedings.

The writ appeal is partly allowed in the above terms. No costs."

5. The Division Bench had denied the grant of backwages to the petitioner and had only directed his reinstatement with liberty to the RPF to take departmental action against him. Pursuant to the said order, the petitioner was reinstated into service on 31.10.2001 and on 05.11.2001, he was suspended from service. Departmental enquiry was initiated and one Mr.K.S.Kabbur was appointed as the Enquiry Officer. The petitioner made a representation that he wanted a Tamil speaking person as Enquiry Officer so that he can explain his case better. This request was considered favourably and one Mr.G.S.Asirvatham was nominated as the Enquiry Officer to conduct enquiry. The charge against the petitioner is as follows:

"Charged for discreditable conduct and connivance in the theft of Railway Property in that while on off duty on 05.01.1983 he conspired and criminally connived with the Railway Employees of Ashokapuram Workshops and committed the theft of 10 Nos. of Scooter Rim with tyres & tubes valued at Rs.6180/- from the Basic Training Centre/Workshops/Ashokapuram got involved in AP RPF Post Cr.No.2/83 under Section 3 of RP(UP) Act, 1966."

6. In the enquiry, four witnesses were examined by the Department. The Enquiry Officer held the charge to be proved. The disciplinary authority gave an opportunity of further hearing to the petitioner and by order dated 13.09.2002, imposed a penalty of 'removal of service' on the petitioner. Challenging the order of disciplinary authority, the petitioner preferred an appeal before the Deputy Chief Security Commissioner, which was dismissed on 20.12.2002, challenging which, the petitioner is before this Court.

7. Mr.Veerasekaran, learned counsel for the petitioner contended that the petitioner was honourably acquitted in the criminal proceedings and therefore, the entire departmental proceedings stand vitiated. The learned counsel further contended that the petitioner was placed under suspension during enquiry and he was not given sufficient opportunity to defend himself. He submitted that the Enquiry Officer had placed reliance upon the confession statements of co-accused to fasten liability on the petitioner. He also submitted that all the witnesses are departmental witnesses.

8. This Court gave its anxious consideration to the rival submissions.

9. It must be borne in mind that the petitioner was under probation at the relevant point of time in a uniformed service, where he was required to perform his duties of protecting railway properties with utmost care. It is trite that just because the criminal proceedings had ended in acquittal, it is not axiomatic that the delinquent employee should be let off scot-free without anything more in the departmental proceedings also. The quality of proof that is required before a criminal Court to prove a charge is proof beyond reasonable doubt, whereas, in departmental proceedings, it would suffice if the allegations are proved by preponderance of probability. That apart, this Court perused the judgment in C.C.No.4495 of 1983 dated 23.05.1988 passed by the Additional Chief Judicial Magistrate, Mysore acquitting the accused. The Additional Chief Judicial Magistrate, Mysore, has accepted that the properties in question were properties of the Railways, but had acquitted the accused on the ground that the independent witnesses for seizure of the stolen properties turned hostile. It may be necessary to extract the relevant paragraph from the said judgment:

"7.Only the evidence of P.W.1, S.I. of RPF and P.W.7 H.C.191 who said to have accompanied P.W.1 for the raid are standing before Court. But their evidence remained unsupported by the independent witnesses namely P.W.2 and 8. Further, there is no material available for the Court to believe the purpose of they becoming hostile. As such, I hold the prosecution failed to establish the proof in regard to seizing of M.Os.1 to 9 in accordance with the mahazar at Ex.P14. This failure has occasioned to prosecution mainly on account of P.W.2 and 8 gave a go-by to the seizure mahazar at Ex.P4."

10. It is common knowledge that independent witnesses are won over during trial by the accused and they invariably turn hostile in most of the cases. Therefore, this is not a case where the petitioner has been acquitted honourably.

11. Now, coming to the challenge to the departmental proceedings, this Court finds that initially one Mr.Kabbur was appointed as Enquiry Officer and on the request of the petitioner, a Tamil knowing Officer by name Mr.Asirvatham was appointed as Enquiry Officer. The petitioner has cross examined P.W.1 in the department proceedings.

12. As regards the contention that the Enquiry Officer ought not to have relied upon the confession of the co-accused, this Court is of the view that a confession given to an Officer of the RPF is not hit by Section 25 of the Indian Evidence Act, as they are not Police Officers and they do not file a Final Report under Section 173(2) Cr.P.C. before the jurisdictional Magistrate. The Officers of the RPF file a private complaint before the Magistrate and the procedure of trial in such cases is adumbrated in Chapter XIX- B Cr.P.C. - Cases instituted otherwise than on police report, of the Code of Criminal Procedure. Since RPF officers are not Police Officers, such confessions are admissible not only against the maker, but they can also be taken into consideration against co-accused under Section 30 of the Evidence Act in a joint trial before the Magistrate. However, when that is the position of law even with regard to a criminal prosecution under the Railway Property (Unlawful Possession) Act, 1966 Act, the question is still worse in a domestic enquiry, where such confessions are admissible and can be relied upon. The disciplinary authority has passed a detailed order, considering all aspects of the matter threadbare and has answered every objection raised by the petitioner. This Court also does not find any infirmity in the disciplinary proceedings warranting interference. Similarly, the order of the appellate authority dated 30.12.2002 concurring with the findings of the disciplinary authority is also a speaking order and does not warrant interference. In matters relating to disciplinary proceedings, this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, cannot scrutinise the evidence on record like an appellate authority.

In the result, this petition is devoid of merits and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gms

To

1.The Union of India owning
Southern Railway
rep by its Secretary,
Ministry of Railways
Rail Bhavan, New Delhi.

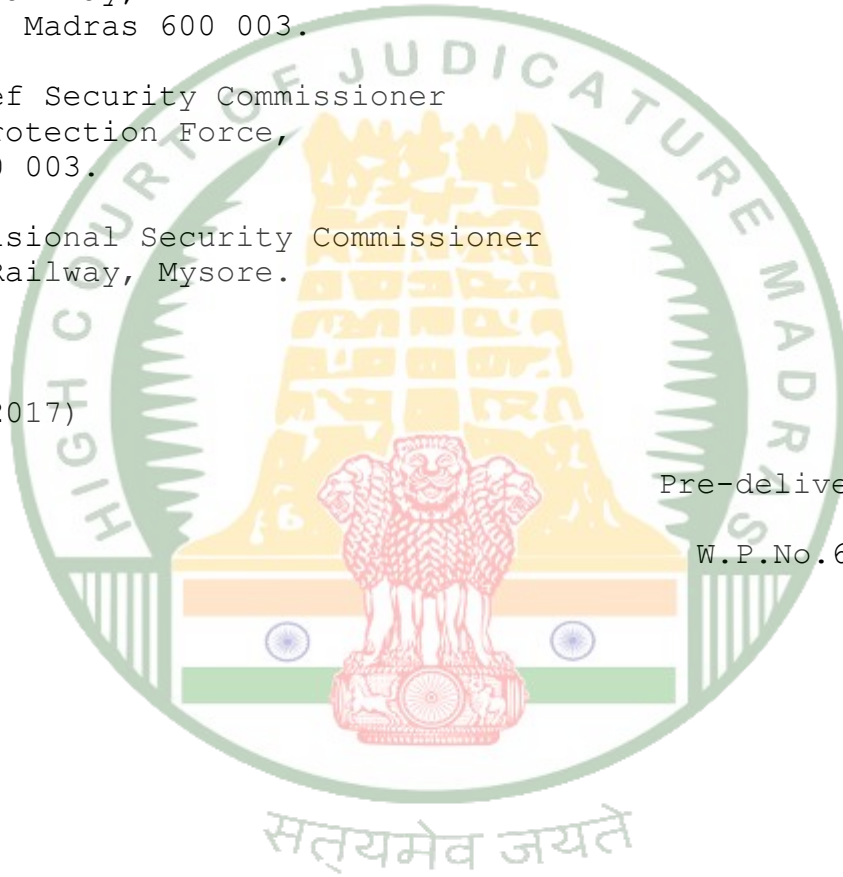
2.The General Manager
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3.The Chief Security Commissioner
Railway Protection Force,
Madras 600 003.

4.The Divisional Security Commissioner
Southern Railway, Mysore.

AK(CO)
RS(08/02/2017)

Pre-delivery order in
W.P.No.6499 of 2003



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